

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA**

**TESTAMENTARY AND INTESTATE JURISDICTION**

**ORIGINAL SIDE**

RESERVED ON:10.08.2023

DELIVERED ON:14.12.2023

**CORAM:**

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM**

**AND**

**THE HON'BLE MR. JUSTICE SABYASACHI BHATTACHARYYA**

**APO/89/2020**

**IA NO: GA/1/2020**

**(ARISING OUT OF TS/6/2004)**

**UNIVERSAL CABLES LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/11/2020**

**UNIVERSAL CABLES LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ANR.**

**WITH**

**OCO/20/2020**

**UNIVERSAL CABLES LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/3/2020**

**UNIVERSAL CABLES LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/90/2020**

**IA NO: GA/1/2020**

**(ARISING OUT OF TS/6/2004)**

**BIRLA CABLE LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/12/2020**

**BIRLA CABLE LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**OCO/21/2020**

**BIRLA CABLE LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/4/2020**

**BIRLA CABLE LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/91/2020**

**IA NO: GA/1/2020,**

**IA NO. GA/2/2021**

**(ARISING OUT OF TS/6/2004)**

**VINDHYA TELELINKS LTD.**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/13/2020**

**VINDHYA TELELINKS LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/22/2020**

**VINDHYA TELELINKS LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/5/2020**

**VINDHYA TELELINKS LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/92/2020**

**IA NO: GA/1/2020,**

**IA NO: GA/2/2020,**

**IA NO: GA/3/2020,**

**IA NO: GA/4/2021,**

**IA NO: GA/5/2021**

**(ARISING OUT OF TS/6/2004)**

**HARSH VARDHAN LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/14/2020**

**HARSH VARDHAN LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/23/2020**

**HARSH VARDHAN LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/6/2020**

**HARSH VARDHAN LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/94/2020**

**IA NO: GA/1/2020**

**(ARISING OUT OF TS/6/2004)**

**MEENAKSHI PERIWAL**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/15/2020**

**MEENAKSHI PERIWAL**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/24/2020**

**MEENAKSHI PERIWAL**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/7/2020**

**MEENAKSHI PERIWAL**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/95/2020**

**IA NO: GA/1/2020**

**(ARISING OUT OF TS/6/2004)**

**BIRLA CORPORATION LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/16/2020**

**BIRLA CORPORATION LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/25/2020**

**BIRLA CORPORATION LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/8/2020**

**BIRLA CORPORATION LIMITED**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**AND**

**APO/96/2020**

**IA NO: GA/1/2020, GA/2/2020**

**(ARISING OUT OF TS/6/2004)**

**SHREYAS MEDICAL SOCIETY**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/17/2020**

**SHREYAS MEDICAL SOCIETY**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/27/2020**

**SHREYAS MEDICAL SOCIETY**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/9/2020**

**SHREYAS MEDICAL SOCIETY**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**APO/98/2020**



**IA NO: GA/1/2020**  
**(ARISING OUT OF TS/6/2004)**

**ADITYA VIKRAM LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/10/2020**

**ADITYA VIKRAM LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/18/2020**

**ADITYA VIKRAM LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**WITH**

**OCO/26/2020**

**ADITYA VIKRAM LODHA**

**VERSUS**

**ARVIND KUMAR NEWAR AND ORS.**

**Appearance :**

**Mr. Darius Khambata, Sr. Adv.**

**Mr. Abhrajit Mitra, Sr. Adv.**

**Mr. Abhratosh Majumder, Sr. Adv.**

**Mr. Kunal Vajani, Adv.**

**Mr. Debanjan Mandal, Adv.**

**Mr. Sanjiv Kumar Trivedi, Adv.**

**Mr. Jishnu Chowdhury, Adv.**

**Mr. Subhankar Nag, Adv.**

**Mr. Soumya Ray Chowdhury, Adv.**

**Mr. Sarvapriya Mukherjee, Adv.**

**Mr. Deepan Kumar Sarkar, Adv.**

**Mr. Tushar Hathiramani, Adv.**

**Mr. Satadeep Bhattacharyya, Adv.**

**Mr. Kunal Mimani, Adv.**

**Ms. Mahima Cholera, Adv.**

**Ms. Iram Hassan, Adv.**

**Mr. Sanket Sarawgi, Adv.**

**Mr. Karthikey Bhatt, Adv.**

**Mr. Rachit Lakhmani, Adv.**

**Mr. Subhang Tandon, Adv.**

**...for Appellant (in APO No. 92 of 2020, 94  
of 2020 and 98 of 2020)**

**Mr. Jishnu Chowdhury, Adv.**

**Mr. Aritra Basu, Adv.**

**Mr. Paritosh Sinha, Adv.**

**Mr. Saubhik Chowdhury, Adv.**

**Ms. Ayushmita Sinha, Adv.**

**Mr. Tirthankar Das, Adv.**

**...for Appellant (in APO No. 89 of 2020)**

**Mr. Ranjan Bachawat, Sr. Adv.**

**Mr. Shaunak Mitra, Adv.**

**Mr. Sayan Roy Chowdhury, Adv.**

**Mr. Satyaki Mukherjee, Adv.**

**Mr. Paritosh Sinha, Adv.**

**Mr. Saubhik Chowdhury, Adv.**

**Ms. Ayushmita Sinha, Adv.**

**...for Appellant (in APO No. 90 of 2020)**

**Mr. Shyam Divan, Sr. Adv.**

**Mr. Ranjan Bachawat, Adv.**

**Mr. Shaunak Mitra, Adv.**

**Ms. Sanam Tripathi, Adv.**

**Ms. Anshula Laroia, Adv.**

**Mr. Paritosh Sinha, Adv.**

**Mr. Sayan Roy Chowdhury, Adv.**

**Mr. Satyaki Mukherjee, Adv.**

**Mr. Saubhik Chowdhury, Adv.**

**Ms. Ayushmita Sinha, Adv.**

**Mr. Tirthankar Das, Adv.**

**Ms. Tapasika Bose, Adv.**

**...for Appellant (in APO No. 91 of 2020)**

**Mr. Ranjan Bachawat, Sr. Adv.**

**Mr. Sayan Roy Chowdhury, Adv.**

**Mr. Satyaki Mukherjee, Adv.**

**Mr. Jasojeet Mukherjee, Adv.**

**...for Appellant (in APO No. 96 of 2020)**

**Mr. S.K. Kapur, Sr. Adv.**

**Mr. Ajay Bhargva, Adv.**

**Mr. Anuj Singh, Adv.**

**Mr. Akash Bajaj, Adv.**

**Mr. Pratik Mukhopadhyay, Adv.**

**...for Respondent No. 1**

**Mr. S.N. Mookerjee, Ld. Advocate General**

**Ms. Vineeta Meharia, Adv.**

**Mr. Pratik Mukhopadhyay, Adv.**

**Mr. Ajay Bhargava, Adv.**

**Ms. Vanita Bhargava, Adv.**

**Mr. Trishal Trivedi, Adv.**

**...for Respondent No. 2**

**Mr. Ratnanko Banerjee, Sr. Adv.**

**Mr. Debdatta Sen, Adv.**

**Mr. Swarnendu Ghosh, Adv.**

**Ms. Suchismita Chatterjee Ghosh, Adv.**

**Mr. Malay Kumar Seal, Adv.**

**Mr. Prasun Ghosh, Adv.**

**...for Respondent Nos. 3 & 4**

**Mr. Surojit Nath Mitra, Sr. Adv.**

**Mr. D.N. Sharma, Adv.**

**Mr. Kaushik Chowdhury, Adv.**

**Ms. Vaibhavi Pandey, Adv.**

**...for respondent No. 5**

**Mr. C.A. Sundaram, Sr. Adv.**

**Mr. Joy Saha, Sr. Adv.**

**Mr. Sourav Soparkar, Adv.**

**Mr. Abhishek Guha, Adv.**

**Ms. Rohini Musa, Adv.**

**Mr. Rajat Gupta, Adv.**

**Mr. Yash Vardhan Deora, Adv.**

**Mr. Ishaann Saha, Adv.**

**Ms. Akansha Chopra, Adv.**

**...for APL Committee (Majority Members)**

**Mr. Kishore Dutta, Sr. Adv.**

**Mr. Rajesh Upadhyay, Adv.**

**Mr. Mahendra Kr. Sharma,**

**...For Joint Administrator pendente lite**

**Mr. Anirban Ray, Ld Government Pleader**

**Mr. Rajarshi Dutta, Adv.**

**Mr. Sankarsan Sarkar, Adv.**

**Mr. Shwetaank Nigam, Adv.**

**...Intervenors**

**1. APO/89/2020**

**ARISING OUT OF TS 6/2004**

Appellant – Universal Cable Limited

Present appellant is a third party notice company in the suit.

Filed this appeal as Harsha Vardhan Lodha, the plaintiff no. 1 vide order dated 18<sup>th</sup> September, 2020 in G.A. 1735/2019 has been restrained from holding any office in M.P.Birla Group.

**GA/1/2020 (APO/89/2020)**

**Prayer**

- a. Leave be granted to the appellant/petitioner to file the present appeal ;
- b. Leave be granted to the petitioner to file the instant appeal from the order dated 18<sup>th</sup> September, 2020 passed by Hon'ble Justice Sahidullah Munshi in T.S. No. 6 of 2004 without certified copy and with the copy of the order downloaded from the website of this Hon'ble Court on the petitioner's following undertakings :-
- i. To have the judgment and order under appeal be drawn up and completed and to have the same included in the paper book ;
  - ii. To have the order admitting the appeal drawn up and completed to have the same included in the paper book ;
- c. Stay of the order dated 18<sup>th</sup> September, 2020 to the extent the said order contains the following directions :-
- (a) that Harsh Vardhan Lodha is restrained from holding any office in any of the entities of the M.P.Birla Group ;

- (b) that the petitioner should be guided by the majority decisions of the APL Committee in the exercise of voting rights flowing from investments “in the companies controlled by PDB”; and
- (c) that the plaintiffs are directed to implement the 19<sup>th</sup> July, 2019 and 30<sup>th</sup> July, 2019 majority decisions of the APLs,
- (d) Ad interim order in terms of the prayer above ;
- (e) Such further or other order or orders as to this Hon’ble Court may deem fit and proper.

**OCO/11/2020** – Cross Objection in A.P.O. No. 89 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5

**OCO/20/2020** – Cross Objection in A.P.O. No. 89 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/3/2020** – Cross Objection in A.P.O. No. 89 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.



## **2. APO/90/2020**

### **ARISING OUT OF TS 6/ 2004**

Appellant – Birla Cable Limited

Present appellant is a third party notice company in the suit.

Filed this appeal as Harsha Vardhan Lodha, the plaintiff no. 1 vide order dated 18<sup>th</sup> September, 2020 has been restrained from holding and office in appellants company.

### **GA/1/2020 (APO/90/2020)**

#### **Prayer**

- a. Leave be granted to the appellant to file the present appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications (Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.)
- b. Leave be granted to the appellants to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice
- c. Sahidullah Munshi in G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications (Harsh Vardhan Lodha & Ors. vs. Arvind Kumar

Newar & Ors.), without a certified copy thereof on the appellants' following undertakings :

- i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein ;
  - ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein ;
  - iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;
- d. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications (Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.), to the following extent as set out in paragraph 29 hereof ;
- e. Leave be granted to the appellant to file Memorandum of Appeal with copy of the judgment and order dated 18<sup>th</sup> September, 2020 downloaded from the website of the Hon'ble Court.

- f. Ad interim orders in term of prayers above ;
- g. Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

**OCO/12/2020** – Cross Objection in A.P.O. No. 90 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5

**OCO/21/2020** – Cross Objection in A.P.O. No. 90 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/4/2020** – Cross Objection in A.P.O. No. 90 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

**3. APO/91/2020**

**ARISING OUT OF TS 6/2004**

Appellant – Vindhya Telelink Ltd.

Appellant third party notice company in the suit, filed this appeal as Harsha Vardhan Lodha the plaintiff no. 1 has been restrained from holding any office in its company.

**GA/1/2020 (APO/91/2020)**

**Prayer**

- a. Leave be granted to the appellant to file the present appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.]
- b. Leave be granted to the appellants to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.] without a certified copy thereof on the appellants' following undertakings :
  - i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein ;
  - ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein ;

iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;

c. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019 in T.S. No. 6 of 2004 along with other connected applications [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.), to the following extent as set out in paragraph 29 hereof ;

d. Leave be granted to the appellant to file the instant appeal with the judgment and order dated 18<sup>th</sup> September, 2020 downloaded from the website of the Hon'ble Court ;

e. Ad Interim orders in terms of prayers above ;

f. Such further and/or other order or order be passed, direction or directions be given as Your Lordships may deem fit and proper.

**GA/2/2020 (APO/91/2020)**

**Prayer**

- a. Injunction restraining the said two joint Administrators pendent lite of the Estate of Priyamvada Devi Birla from interfering with the assets and properties of the petitioner and more particularly its 100% shareholding in its three wholly owned subsidiaries, August Agents Limited, Insilco Agents Limited and Laneseda Agents Limited.
- b. Injunction restraining the said two joint Administrators pendent lite from interfering with the management and affairs of the petitioner and its wholly owned subsidiaries ;
- c. Direction upon the Administrators pendent lite to forthwith withdraw the letters written by them being Annexures “N” and “O” hereto to the Registrar of Companies and Reserve Bank of India respectively.
- d. Injunction restraining the Administrators pendent lite from letters dated 22<sup>nd</sup> April, 2021 and 21<sup>st</sup> May, 2021 or holding out threats to the petitioner or otherwise claiming any right other than which flows from the shares held by the Administrators pendent lite in the petitioner company ;

e. Direction upon the Administrators pendent lite to forthwith withdraw the letters dated 20<sup>th</sup> May, 2021 and 21<sup>st</sup> May, 2021 being Annexures “S” and “T” respectively hereto as well as any other similar letter.

f. Ad-interim orders in terms of prayers above ;

g. Such further orders or directions be passed as this Hon’ble Court may deem fit and proper.

**OCO/13/2020** – Cross Objection in A.P.O. No. 91 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5

**OCO/22/2020** – Cross Objection in A.P.O. No. 91 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/5/2020** – Cross Objection in A.P.O. No. 91 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

#### **4. APO/92/2020**

#### **ARISING OUT OF TS 6/2004**

Appeal filed by Harsh Vardhan Lodha

**GA/1/2020 (APO/92/2020)**

**Prayer**

- a. Leave be granted to the petitioner to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G.A. No. 1786 of 2019, G.A. No. 1845 of 2019, G.A. No. 1005 of 2020, G. A. No. 1009 of 2020 and G.A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], without a certified copy thereof on the petitioner's following undertakings :
- i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein ;
  - ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein ;
  - iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;
- b. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of



2019, G.A. No. 1786 of 2019, G.A. No. 1845 of 2019, G.A. No. 1005 of 2020, G. A. No. 1009 of 2020 and G.A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], save and except to the extent mentioned in paragraph 59 hereof ;

- c. Leave be given to the petitioner to add, vary and/or amend the Memorandum of Appeal upon judgment and order dated 18<sup>th</sup> September, 2020 being made available to the petitioners.
- d. Leave be granted to the petitioner to file the instant appeal with a copy of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G.A. No. 1786 of 2019, G.A. No. 1845 of 2019, G.A. No. 1005 of 2020, G. A. No. 1009 of 2020 and G.A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.] downloaded from the website of the Hon'ble Court.
- e. Ad interim orders in terms of prayers above ;
- f. Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

**Prayer**

- a. Decisions of the APL Committee dated 23<sup>rd</sup> October, 2020 and 9<sup>th</sup> November, 2020 and any other similar decision be set aside ;
- b. Injunction restraining the APL Committee from giving any effect or further effect to the decisions of the 2 of the APL Committee members dated 23<sup>rd</sup> October, 2020 and 9<sup>th</sup> November, 2020 or any other similar decision ;
- c. Injunction restraining the Administrators pendent lite from exercising any power qua director or shareholder of any company where the Estate of Late Priyamvada Devi Birla has majority shareholding as per the affidavit of assets (Annexure “A”) and the unanimous inventory report of the APL Committee dated 15<sup>th</sup> October, 2013 (Annexure “D”) beyond or inconsistent with that laid down in the Companies Act, 2013, Articles of Association of the respective companies as well as other applicable laws ;
- d. Ad interim order in terms of prayers above ;
- e. Such further and/or other order or orders be passed and/or direction or directions be made as to this Hon’ble Court may deem fit and proper.

**GA/3/2020 (APO/92/2020)**

**Prayer**

- a. Decision of the 2 members of the APL Committee dated 8<sup>th</sup> October, 2020 and any other similar decision be set aside ;
- b. Injunction restraining the APL Committee from giving any effect or further effect to the decisions of the 2 of the APL Committee members dated 8<sup>th</sup> October, 2020 or any other similar decision ;
- c. If necessary, the decisions and directions by way of communications/orders of the said 2 members of the APL Committee more fully stated in paragraph 66 be declared illegal and set aside ;
- d. Injunction restraining the Administrators pendent lite from issuing/direction similar to those summarized in paragraph 66 ;
- e. Injunction restraining the defendants, their agents, servants and assigns from issuing/direction similar to those summarized in paragraph 68 ;
- f. Ad interim order in terms of prayers above ;

- g. Such further and/or other order or orders be passed and/or direction or directions be made as to this Hon'ble Court may deem fit and proper.

**GA/4/2021 (APO/92/2020)**

**Prayer**

- a. Injunction restraining the joint APLs from in any manner interfering with the discharging of petitioner's functions and duties as Trustee and/or Managing Committee member of Societies and Trusts, particulars whereof are given in Annexure "TT", which have no share capital, and the Estate of Priyamvada Devi Birla, (as per the Affidavit of Assets, being Annexure "F" and unanimous Report of the Administrators pendent lite being Annexure "H" and even otherwise), has no right in respect of such entities ;
- b. Stay of the order dated 18<sup>th</sup> September, 2020 and especially the direction therein which restrains the petitioner from holding any office in any of the entities of the M.P.Birla Group during the pendency of the suit ;
- c. Injunction restraining the joint APLs from taking any decision or action in respect of any asset that does not form part of the Estate of Priyamvada Devi Birla as per the Affidavit of Assets being Annexure "F" and the unanimous inventory report of the joint APLs dated 15<sup>th</sup> October, 2013, being Annexure "H" ;

- d. The decisions of the two of the joint APLs taken at the meetings of the joint APLs held on 8<sup>th</sup> October, 2020, 23<sup>rd</sup> October, 2020, to the extent more fully stated herein, be set aside ;
- e. Any decision similar to those taken at the joint APLs meetings held on 8<sup>th</sup> October, 2020, 23<sup>rd</sup> October, 2020, 9<sup>th</sup> November, 2020, 25<sup>th</sup> November, 2020, 29<sup>th</sup>/30<sup>th</sup> November, 2020 and 24<sup>th</sup> December, 2020 be set aside ;
- f. Injunction restraining the joint APLs and each of them from giving any effect or further effect to any of the impugned majority decisions taken at the meeting of the joint APL held on 8<sup>th</sup> October, 2020, 23<sup>rd</sup> October, 2020, 9<sup>th</sup> November, 2020, 25<sup>th</sup> November, 2020, 29<sup>th</sup>/30<sup>th</sup> November, 2020 and 24<sup>th</sup> December, 2020 or any other similar decision and more particularly, the decisions to alter the composition of Trustees and Managing Committee members of Societies and Trusts, which have no share capital, where the Estate of Priyamvada Devi Birla (as per the Affidavit of Assets being Annexure “F” as well as the unanimous inventory report of the joint APLs dated 15<sup>th</sup> October, 2013, being Annexure “H”) has no legally enforceable right ;
- g. Injunction restraining the joint APLs and/or or any of them from giving any effect or further effect to any of the impugned decisions taken at the joint APLs meetings held on 8<sup>th</sup> October, 2020, 23<sup>rd</sup> October, 2020, 9<sup>th</sup> November, 2020,

25<sup>th</sup> November, 2020, 29<sup>th</sup>/30<sup>th</sup> November, 2020 and 24<sup>th</sup> December, 2020 or any other similar decision taken at the said meetings of the joint APLs by two of the joint APLs ;

- h. Injunction restraining the joint APLS and/or or any of them from exercising any right other than those which legally arise out of the Estate of Priyamvada Devi Birla more fully stated in the affidavit of assets (Annexure “F”) as well as in the Inventory Report dated 15<sup>th</sup> October, 2013 (Annexure – “H”)
- i. Injunction restraining the joint APLs and/or any of them from interfering with the management and affairs of companies, namely East India Investment Company Private Limited, Gwalior Webbing Company Private Limited, Baroda Agents & Trading Company Private Limited, The Punjab Produce & Trading Company Private Limited and Punjab Produce holdings Limited prevailing as on the date of constitution of the present APL Committee i.e. 10<sup>th</sup> April, 2019 ;
- j. Injunction restraining the joint APLs and/or or any of them from taking any decision to remove any director of any company without the leave of this Hon’ble Court by virtue of the shares of the Estate of late Priyamvada Devi Birla ;

- k. Injunction restraining the joint APLs and/or or any of them from appointing any new director in any company, save and except with the leave of this Hon'ble Court, by virtue of shares belonging to the Estate of late Priyamvada Devi Birla ;
- l. Injunction restraining the Administrators pendent lite from exercising any power qua director or shareholder of any company where the Estate of Late Priyamvada Devi Birla has majority shareholding as per the affidavit of assets (Annexure "F") and the unanimous inventory report of the joint APLs dated 15<sup>th</sup> October, 2013 (Annexure "H") beyond or inconsistent with that laid down in the Companies Act, 2013, Articles of Association of the respective companies as well as other applicable laws ;
- m. All appointments nominations of directors, trustees and managing committee members at the behest of the two joint APLs, more fully stated in paragraph 61 above be declared illegal, null and void ;
- n. If necessary, a direction upon the joint APLs to immediately exercise voting rights arising out of the shares of the Estate of late Priyamvada Devi Birla such that the Board of Directors of East India Investment Company Private Limited, Gwalior Webbing Company Private Limited, Baroda Agents & Trading Company

Private Limited. The Punjab Produce & Trading Company Private Limited and Punjab Produce Holdings Limited as on 10<sup>th</sup> April, 2019 is restored ;

- o. Early hearing of G.A. No. 1 of 2020 arising out of A.P.O. 92 of 2020 for grant of stay of the order dated 18<sup>th</sup> September, 2020 (to the extent challenged appeal).
- p. Ad interim order in terms of prayers above ;
- q. Such further and/or other order or orders be passed and/or direction or directions be made as this Hon'ble Court may deem fit and proper.

**GA/5/2021 (APO/92/2020)**

**Prayer**

- a. The directions dated 22<sup>nd</sup> April, 2021 and 14<sup>th</sup> May, 2021 passed by two of the three APLs in the form of minutes of meeting dated 22<sup>nd</sup> April, 2021 and 14<sup>th</sup> May, 2021 being Annexure "I" and Annexure "R" respectively hereto and/or any other similar decision of the two joint APLs be set aside and declared illegal, null and void ;
- b. Stay of the order dated 18<sup>th</sup> September, 2020 and especially the direction therein which restrains the petitioner from holding any office in any of the entities of the M.P. Birla Group during the pendency of the suit ;



- c. Injunction restraining the joint APLs from issuing any directions or communications and/or exercising any right in respect of shares not recorded in their names and/or included in the affidavit of assets being Annexure “L” and the unanimous inventory report dated 15<sup>th</sup> October, 2013 being Annexure “M” ;
- d. Direction upon the said two joint APLs to immediately withdraw all letters written by them to the Registrar of Companies, Reserve Bank of India, Societies, Trusts and the like where purporting to exercise rights not arising out of shares recorded in their names and/or included in the affidavit of assets being Annexure “L” or the unanimous inventory report dated 15<sup>th</sup> October, 2013 being Annexure “M” ;
- e. Injunction restraining the joint APLs and/or any of the parties to the present suit, their agents, servants or assigns from giving any effect or further effect to or taking any step on the basis of the purported decisions of the said two APLs dated 22<sup>nd</sup> April, 2021 and 14<sup>th</sup> May, 2021 ;
- f. Injunction restraining the joint APLs, their agents, servants, assigns from in any manner interfering with the management and affairs of companies, Societies, Trusts and/or any entity not party to T.S. No. 6 of 2004 ;

- g. Ad-interim orders in terms of prayers above ;
- h. Such further orders or directions be passed as this Hon'ble Court may deem fit and proper.

**OCO/14/2020** – Cross Objection in APO No. 92 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5

**OCO/23/2020** – Cross Objection in APO No. 92 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/6/2020** - Cross Objection in APO No. 92 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

**5. APO/94/2020**

**ARISING OUT OF TS 6/2004**

Appellant – Priyamvada Devi Birla (deceased)

Appeal filed by Meenakshi Periwal was plaintiff no. 4 of TS/6/2004 in favour of Harsha Vardhan Lodha

**GA/1/2020 (APO/94/2020)**

**Prayer**

- a. Leave be granted to the petitioner to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G.A. No. 1786 of 2019, G. A. No. 1845 of 2019, G. A No. 1005 of 2020, G. A. No. 1009 of 2020 and G. A No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.] without a certified copy thereof on the petitioner's following undertakings] :
- i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein;
- ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein;
- iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;
- b. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G. A. No. 1786 of 2019, G. A. No. 1845 of 2019, G. A. No. 1005 of 2020, G.A. No. 1009 of 2020 and G. A. No. 1121 of 2020 in T. S. No. 6 of 2004 [Harsh

Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], save and except to the extent mentioned in paragraph 59 hereof ;

- c. Leave be given to the petitioner to add, vary and/or amend the Memorandum of Appeal upon judgment and order dated 18<sup>th</sup> September, 2020 being made available to the petitioners.
- d. Leave be granted to the petitioner to file the instant appeal with a copy of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G. A. No. 1761 of 2019, G. A. No. 1786 of 2019, G. A. No. 1845 of 2019, G. A. No. 1005 of 2020, G. A. No. 1009 of 2020 and G. A. No. 1121 of 2020 in T. S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.] downloaded from the website of the Hon'ble Court.
- e. Ad interim orders in terms of prayers above ;
- f. Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

**OCO/15/2020** - Cross Objection in APO No. 94 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5

**OCO/24/2020** - Cross Objection in APO No. 94 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/7/2020** – Cross Objection in APO No. 94 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

**6. APO/95/2020**

**ARISING OUT OF TS 6/2004**

Appellant – Birla Corporation Ltd. third party notice company in the suit in favour of Harsha Vardhan Lodha

**GA/1/2020 (APO/95/2020)**

**Prayer**

- a. Leave be granted to the appellant to file the present appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1845 of 2019, G.A. No. 831 of 2020, G.A. No. 832 of 2020, G.A. No. 842 of 2020 and G.A. No. 1005 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.]

b. Leave be granted to the appellants to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1845 of 2019, G.A. No. 831 of 2020, G.A. No. 832 of 2020, G.A. No. 842 of 2020 and G.A. No. 1005 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], without a certified copy thereof on the appellants' following undertakings :

i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein ;

ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein ;

iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;

c. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1845 of 2019, G.A. No. 831 of 2020, G.A. No. 832 of 2020, G.A. No. 842 of 2020 and G.A. No. 1005 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], to the extent as set out in paragraph 29 hereof ;

- d. Leave be given to file the instant appeal with the copy of the said judgment and order dated 18<sup>th</sup> September, 2020 downloaded from the website of the Hon'ble Court ;
- e. Leave be granted to the appellant to add, vary and/or amend the Memorandum of Appeal upon judgment and order dated 18<sup>th</sup> September, 2020 being made available to the appellant ;
- f. Ad interim orders in terms of prayers above ;
- g. Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

**OCO/16/2020** – Cross Objection in APO No. 95 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5

**OCO/25/2020** – Cross Objection in APO No. 95 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/8/2020** – Cross Objection in APO No. 95 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

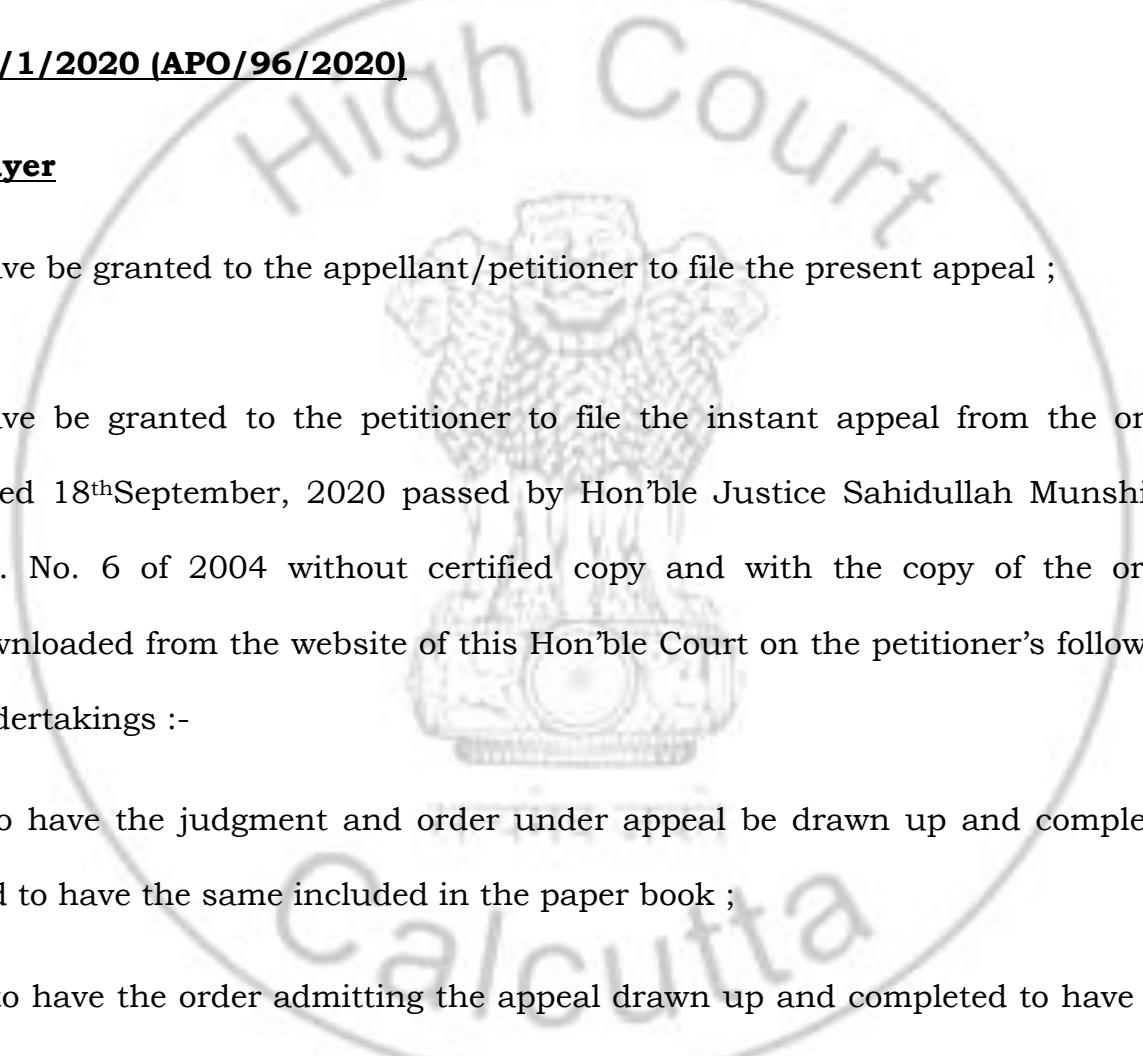
**7. APO/96/2020**

**ARISING OUT OF TS 6/2004**

Appeal filed by Shreyas Medical Society

**GA/1/2020 (APO/96/2020)**

**Prayer**

- 
- a. Leave be granted to the appellant/petitioner to file the present appeal ;
  - b. Leave be granted to the petitioner to file the instant appeal from the order dated 18<sup>th</sup> September, 2020 passed by Hon'ble Justice Sahidullah Munshi in T.S. No. 6 of 2004 without certified copy and with the copy of the order downloaded from the website of this Hon'ble Court on the petitioner's following undertakings :-
    - i. to have the judgment and order under appeal be drawn up and completed and to have the same included in the paper book ;
    - ii. to have the order admitting the appeal drawn up and completed to have the same included in the paper book ;
  - c. Stay of the order dated 18<sup>th</sup> September, 2020 to the extent the said order contains the following directions :-



i. That the petitioner [if it has been held that the petitioner is a M.P. Birla Group concern and that the Learned Judge intended the direction to apply against the appellant] is to be guided by the APL Committee with regard to exercise of voting rights from their investments in companies controlled by Late Priyamvada Devi Birla [in case it has been held that the companies referred to in paragraph 6 of the stay petition];

ii. That the plaintiffs in the suit are required to implement the majority decisions of the APL Committee dated 19<sup>th</sup> July, 2019 to the extent these decisions, concerns the petitioner.

d. Ad interim order in terms of the prayer above ;

e. Such further or other order or orders as to this Hon'ble Court may deem fit and proper.

**GA/2/2022 (APO/96/2020)**

**Prayer**

a. Leave may be granted to Shri Umesh Varma, the applicant to be impleaded as a respondent in the proceeding being APO No. 96 of 2020 ;

- b. Leave be granted to the applicant to intervene in the present proceeding and/or be examined *pro interesse suo*.
- c. The appeal being A.P.O. No. 96 of 2020 [Shreyas Medical Society –vs- Arvind Kumar Newar & Ors.] be dismissed as withdrawn unconditionally ;
- d. The authorization and vakalatnama executed by Mr. Pradip Tondon, acting as the Member of the Managing Committee of the petitioner be revoked, cancelled and declared invalid, null and void ;
- e. Appropriate orders and directions be given so that any document or affidavit that has been filed by or may be filed by Mr. Jasojeet Mukherjee, Advocate on the instructions of Mr. Pradip Tondon are not taken on record ;
- f. Interim orders and/or orders passed in the instant appeal be vacated ;
- g. Stay of hearing of the appeal being A.P.O. No. 96 of 2020 [Shreyas Medical Society vs. Arvind Kumar Newar & Ors.] till disposal of the present application;
- h. Ad-interim orders in terms of prayers above ;

- i. Such further order(s) and/or directions(s) be passed as may be deemed fit and appropriate by this Hon'ble Court.

**OCO/17/2020** - Cross Objection in APO No. 96 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5

**OCO/27/2020** - Cross Objection in APO No. 96 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.

**OCO/9/2020** - Cross Objection in APO No. 96 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

**8. APO/98/2020**

**ARISING OUT OF TS 6/2004**

Appeal filed by Aditya Vikram Lodha

**GA/1/2020 (APO/98/2020)**

**Prayer**

- a. Leave be granted to the petitioner to file a Memorandum of Appeal from the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G.A. No. 1786 of 2019, G.A. No.1845 of 2019, G.A. No. 1005 of 2020, G.A. No. 1009 of 2020 and G. A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], without a certified copy of thereof on the petitioner's following undertakings :
- i. to have the order admitting the appeal drawn up, completed and to include a copy thereof in the paper book to be filed herein ;
  - ii. to have the order impugned drawn up, completed and to include a certified copy in the paper book to be filed herein ;
  - iii. to prepare and include a List of Dates pertaining to the question of limitation in the paper book to be filed herein ;
- b. Stay of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G. A. No. 1786 of 2019, G. A. No. 1845 of 2019, G. A. No. 1005 of 2020, G.A. No. 1009 of 2020 and G.A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.], save and except to the extent mentioned in paragraph 59 hereof ;

- c. Leave be given to the petitioner to add, vary and/or amend the Memorandum of Appeal upon judgment and order dated 18<sup>th</sup> September, 2020 being made available to the petitioners.
- d. Leave be granted to the petitioner to file the instant appeal with a copy of the judgment and order dated 18<sup>th</sup> September, 2020 passed by the Hon'ble Justice Sahidullah Munshi in G.A. No. 1735 of 2019, G.A. No. 1761 of 2019, G. A. No. 1786 of 2019, G. A. No. 1845 of 2019, G. A. No. 1005 of 2020, G.A. No. 1009 of 2020 and G.A. No. 1121 of 2020 in T.S. No. 6 of 2004 [Harsh Vardhan Lodha & Ors. vs. Arvind Kumar Newar & Ors.] downloaded from the website of the Hon'ble Court.
- e. Ad interim orders in terms of prayers above ;
- f. Such further and/or other order or orders be passed, direction or directions be given as Your Lordships may deem fit and proper.

**OCO/10/2020** - Cross Objection in APO No. 98 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan being the respondent Nos. 1 & 2 respectively.

**OCO/18/2020** – Cross Objection in APO No. 98 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5.

**OCO/26/2020** – Cross Objection in APO No. 98 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta being the respondent Nos. 3 & 4 respectively.



**JUDGMENT**

***(Judgment of the Court was delivered by T.S.Sivagnanam, CJ. and  
Sabyasachi Bhattacharyya, J.)***

1. All these intra court appeals are directed against the order dated 18.09.2020 in G.A No. 43 of 2016 etc. APO Nos. 89, 90, 91 and 95 of 2020 which have been filed by four companies namely Universal Cables Limited (UCL), Birla Cables Limited (BCL) and Vindya Telelinks Limited (VTL) and Birla Corporation Limited (BCRL). All these companies were not parties to the original proceedings before the Learned Single Bench and leave has been granted for them to prefer these appeals.

| SL NO. | CASE NUMBER        |             | PARTIES                                                                                     |
|--------|--------------------|-------------|---------------------------------------------------------------------------------------------|
| 1.     | APO NO. 89 OF 2020 |             | Appeal filed by Universal Cables Limited                                                    |
|        | 1.1                | OCO/11/2020 | Cross Objection in A.P.O No. 89 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5 |
|        | 1.2                | OCO/20/2020 | Cross Objection in A.P.O No. 89 of 2020 filed by Devendra Kumar Mantri and                  |

|           |                           |                    |                                                                                                                                             |
|-----------|---------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|           |                           |                    | Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively.                                                                         |
|           | <b>1.3</b>                | <b>OCO/3/2020</b>  | Cross Objection in A.P.O No. 89 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively. |
| <b>2.</b> | <b>APO NO. 90 OF 2020</b> |                    | Appeal filed by Birla Cable Limited                                                                                                         |
|           | <b>2.1</b>                | <b>OCO/12/2020</b> | Cross Objection in A.P.O No. 90 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5                                                 |
|           | <b>2.2</b>                | <b>OCO/21/2020</b> | Cross Objection in A.P.O No. 90 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4            |



|           |                           |                    |                                                                                                                                                |
|-----------|---------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
|           |                           |                    | respectively.                                                                                                                                  |
|           | <b>2.3</b>                | <b>OCO/4/2020</b>  | Cross Objection in A.P.O No. 90 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively.    |
| <b>3.</b> | <b>APO NO. 91 OF 2020</b> |                    | Appeal filed by Vindya Telelinks Limited                                                                                                       |
|           | <b>3.1</b>                | <b>OCO/13/2020</b> | Cross Objection in A.P.O No. 91 of 2020 filed by Pradip Kumar Khaitan, the respondent No. 5                                                    |
|           | <b>3.2</b>                | <b>OCO/22/2020</b> | Cross Objection in A.P.O No. 91 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively. |

|           |                           |                    |                                                                                                                                                |
|-----------|---------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
|           | <b>3.3</b>                | <b>OCO/5/2020</b>  | Cross Objection in A.P.O No. 91 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively.    |
| <b>4.</b> | <b>APO NO. 95 OF 2020</b> |                    | Appeal filed by Birla Corporation Limited                                                                                                      |
|           | <b>4.1</b>                | <b>OCO/16/2020</b> | Cross Objection in A.P.O No. 95 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5                                              |
|           | <b>4.2</b>                | <b>OCO/25/2020</b> | Cross Objection in A.P.O No. 95 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively. |
|           | <b>4.3</b>                | <b>OCO/8/2020</b>  | Cross Objection in A.P.O No. 95 of 2020                                                                                                        |

|  |  |  |                                                                                                     |
|--|--|--|-----------------------------------------------------------------------------------------------------|
|  |  |  | filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively. |
|--|--|--|-----------------------------------------------------------------------------------------------------|

2. APO No. 92 of 2020 has been filed by Mr. Harsh Vardhan Lodha (HVL), the plaintiff No. 1. APO No. 94 of 2020 has been filed by the plaintiff No. 3. APO No. 96 of 2020 has been filed by Shri Shreyas Medical Society, who is not a party to the proceedings before the learned Single Bench. APO No. 98 of 2020 has been filed by Mr. Aditya Vikram Lodha, the second plaintiff. In all these appeals, cross objections have been filed the details of which are furnished in tabulated form for convenience.

| SL NO. | CASE NUMBER        |             | PARTIES                                                                                           |
|--------|--------------------|-------------|---------------------------------------------------------------------------------------------------|
| 1.     | APO NO. 92 OF 2020 |             | Appeal filed by Harsh Vardhan Lodha                                                               |
|        | 1.1                | OCO/14/2020 | Cross Objection in A.P.O No. 92 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5 |

|           |                           |                    |                                                                                                                                                |
|-----------|---------------------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
|           | <b>1.2</b>                | <b>OCO/23/2020</b> | Cross Objection in A.P.O No. 92 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively. |
|           | <b>1.3</b>                | <b>OCO/6/2020</b>  | Cross Objection in A.P.O No. 92 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively.    |
| <b>2.</b> | <b>APO NO. 94 OF 2020</b> |                    | Appeal filed by Meenakshi Periwal                                                                                                              |
|           | <b>2.1</b>                | <b>OCO/15/2020</b> | Cross Objection in A.P.O No. 94 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5                                              |
|           | <b>2.2</b>                | <b>OCO/24/2020</b> | Cross Objection in A.P.O No. 94 of 2020                                                                                                        |

|           |                           |                    |                                                                                                                                             |
|-----------|---------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|           |                           |                    | filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively.                                      |
|           | <b>2.3</b>                | <b>OCO/7/2020</b>  | Cross Objection in A.P.O No. 94 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively. |
| <b>3.</b> | <b>APO NO. 96 OF 2020</b> |                    | Appeal filed by Shreyas Medical Society                                                                                                     |
|           | <b>3.1</b>                | <b>OCO/17/2020</b> | Cross Objection in A.P.O No. 96 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5                                           |
|           | <b>3.2</b>                | <b>OCO/27/2020</b> | Cross Objection in A.P.O No. 96 of 2020 filed by Devendra Kumar Mantri and                                                                  |

|           |                           |                    |                                                                                                                                             |
|-----------|---------------------------|--------------------|---------------------------------------------------------------------------------------------------------------------------------------------|
|           |                           |                    | Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively.                                                                         |
|           | <b>3.3</b>                | <b>OCO/9/2020</b>  | Cross Objection in A.P.O No. 96 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively. |
| <b>4.</b> | <b>APO NO. 98 OF 2020</b> |                    | Appeal filed by Aditya Vikram Lodha                                                                                                         |
|           | <b>4.1</b>                | <b>OCO/10/2020</b> | Cross Objection in A.P.O No. 98 of 2020 filed by Arvind Kumar Newar and Nand Gopal Khaitan, being the respondent Nos. 1 and 2 respectively. |
|           | <b>4.2</b>                | <b>OCO/18/2020</b> | Cross Objection in A.P.O No. 98 of 2020 filed by Pradip Kumar Khaitan, being the respondent No. 5                                           |

|  |            |                    |                                                                                                                                                |
|--|------------|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------|
|  |            |                    |                                                                                                                                                |
|  | <b>4.3</b> | <b>OCO/26/2020</b> | Cross Objection in A.P.O No. 98 of 2020 filed by Devendra Kumar Mantri and Radha Devi Mohatta, being the respondent Nos. 3 and 4 respectively. |

3. The matter concerns the estate of late Smt. Priyamvada Devi Birla (PDB), wife of late Shri Madhav Prasad Birla (MPB). Madhav Prasad Birla passed away on 30.07.1990 leaving behind Priyamvada Devi Birla as his sole legal heir. The defendants being sisters of Madhav Prasad Birla contended that Priyamvada Devi Birla had executed a will on 13.07.1982.

4. Shri Madhav Prasad Birla (MPB) and Smt. Priyamvada Devi Birla (PDB) as a couple executed mutual wills in 1981. In 1982, they executed mutual will revoking earlier mutual wills. Shri Madhav Prasad Birla passed away on 30.07.1990. Smt. Priyamvada Devi Birla executed her last will testament dated 19.04.1999 in which Mr. Rajendra Singh Lodha (RSL) was named as executor. This will was registered on 21.04.1999. PDB passed away on 03.07.2004. RSL as executor of PDB's will dated 18.04.1999 filed PLA No. 204 of 2004 seeking grant of probate of the will and the letter dated 15.04.2003 if held to be a

codicil. The defendants, sisters of MPB as executors of the earlier will of PDB dated 13.07.1982 resisted such a prayer. Thus, the core of the dispute is the will executed by PDB which has given rise to a spate of litigation before this court and even after the lapse of more than 18 years after the demise of PDB, the litigation has not seen the end of the day.

5. In the probate proceedings, four applications were filed two by the defendants and two by the plaintiffs who shall be referred to the Lodha's. GA No. 1735 of 2019 was filed by the defendants 1(b), Mr. Arvind Kumar Mewar to implement the decision of the Administrator Pendente Lite (APL) dated 19.07.1999; to direct APL to exercise voting rights in terms of its decision; if necessary adjourn the Annual General Meeting (AGM) of four manufacturing companies and if necessary to issue notice to the concerned companies, trust and societies of MPB group to ensure compliance of the APL decision dated 19.07.1999. Additionally direction was sought for to direct HVL to implement the decision of the APL dated 30.07.2019; to restrain HVL from offering himself for reappointment as Director in VTL, BCrL in their AGM; to restrain HVL from seeking position in the Board of VTL and BCL; to direct HVL to withdraw his consent for re-appointment as Director of VTL, BCL or holding any position; to restrain HVL from claiming any profit based remuneration or commission from VTL, BCL, UCL and BCrL, and to injunct HVL from acting as Chairman/Director of VTL, BCL.



6. GA 1845 of 2019 was filed by defendant 1(b) Mr. Arvind Kumar with a prayer to modify the order dated 2/5/ August, 2019 by directing voting in relation to Resolution no. 5 and 6 of Annual General Meeting notice of BCRL dated 01.07.2019 to be stayed and voting relating to Resolution no. 5 and 6 of the Annual General Meeting notice dated 01.07.2019 of BCRL to be restrained.
7. GA No. 1764 of 2019 was filed by the plaintiffs with a prayer to declare that the estate of PDB comprises only of assets described in affidavit of assets filed by the original plaintiff in the testamentary suit and for further declaration that all three members of the APL should take unanimous decision and the majority decision dated 19.07.2019 cannot be implemented.
8. GA No. 1786 of 2019 was filed by plaintiffs to set aside that the majority decision of the APL dated 30.07.2019. The plaintiffs had filed affidavit in opposition in GA No. 1735 of 2019 affirmed by HVL contending that the probate court does not have jurisdiction to pass any orders on those applications; majority decision of APL cannot be accepted to be a valid decision as it is a single body and called as the joint administrators.
9. The petitioners/defendants not being aggrieved by the decision of the APL, cannot move the Probate Court as per the earlier order dated 23<sup>rd</sup> August,

2012. That estate of PDB must be read according to the affidavit of assets in PLA 242 of 2004. PDB's share holding in any company was never included in the estate of PDB, the majority decision of APL dated 19.07.2019 is not valid.

10. The learned Single Bench by the impugned order rejected the prayer sought for in GA No. 1761 of 2019 by observing that the application is without any merit as the Division Bench never intended that the decision which was to be taken by the APL, should not be moved by majority but by unanimity. For the same reason, GA No. 1786 of 2019 was also dismissed. After considering the facts and circumstances, the learned Single Bench held that

- (i) Section 247 of the Indian Succession Act (Succession Act) demonstrates the largest scope for the Court to exercise its jurisdiction to protect and preserve the estate of the deceased through such machineries it deems fit and in the present case through APL without the right of distributing the assets;
- (ii) Section 247 of the Succession Act enjoins the duty upon the Court as guardian of the estate of the deceased to not only appoint an administrator, but to render all protection to the administrator during pendency of the suit or proceeding touching the validity of the will left behind by the deceased;

- (iii)** the parties having subjected themselves to the jurisdiction of the APL, it is not permissible to anyone of them to argue that the Court has no jurisdiction to look into the complaint against the APL or to seek order to ensure smooth functioning of the APL; (iv) the APL possesses all powers, rights and duties of an ordinary administrator and is subjected to the control of the Court.
- (iv)** So long as the lis is touching the will or codicil Court of administration has not only jurisdiction over the estate of the deceased being in custodia legis,
- (v)** The Court appointing APL shall always have authority to oversee, supervise the APL and in the event any apprehension expressed by either of the parties having interest over the estate of the deceased, the Court can suitably protect and preserve status quo of the properties under the “will” and if necessary by issuing appropriate order of injunction of temporary nature during pendency of the Administration proceedings;
- (vi)** The Succession Act is a special law and a conjoint reading of the relevant provisions in part IX of the Act indicates that exclusive

jurisdiction is vested in the special form created under the Act for grant of probate and matters connected therewith.

**(vii)** That, the Act is a self-contained code in so far as the question of making an application for probate, grant or refusal of probate or an appeal carried against a decision of the Probate Court.

**(viii)** The probate proceedings shall be conducted by the Probate Court in the manner prescribed in the Act and in no other way. Therefore, it cannot be argued that there is any lacuna in the Act to cover any exigency concerning a probate proceedings or Administrator Proceedings.

**(ix)** That, the Court is well-equipped under Section 247 of the Succession Act for administration during pendency of such proceedings.

**(x)** Even if the provisions of Order 39 Rule 1 and 2 CPC may not be attracted for protecting interest of the parties in the pending administration suit but the Court can appropriately deal with the situation wherever it relates to protection and preservation of the estate of the deceased in the pending proceedings. Thus, the Court held that it has jurisdiction to pass appropriate orders in favour of protection and preservation of the estate of the deceased subject to

entertainability of the prayers made in the application filed by the defendants.

**(xi)** It was further held that since, the APL is under the immediate control of the Court and its decision has not been implemented or could not be implemented by reason of objection by the nominee member of the plaintiff on the ground that it is not a unanimous decision of the APL and therefore, the defendants have come forward with a prayer to direct implementation of the decision of the APL and considering the facts and the other circumstances, (which we will deal in the later part of this judgment and order), the learned Single Bench directed implementation of the decision of the APL dated 19.07.2019 and 30.07.2019 taken by majority and also all consequential decisions of the APL in furtherance to the decision and by also restraining from drawing any benefit personally out of the assets of the estate of the deceased during the pendency of the testamentary suit.

**(xii)** The plaintiffs were restrained from interfering with the decisions of the APL and any decision which will be taken by it in future by majority if the same directly or indirectly relates to the estate of the deceased and HVL is restrained from holding any office in any of the entities of MP Birla Group during the pendency of the suit. As mentioned above, both the parties being not satisfied with the order and direction issued by the learned single Bench, have preferred the

present appeals and in all the appeals, cross-appeals have been also filed by the other side.

11. Mr. Darius Khambatta, learned senior advocate appearing for the appellants categorizes his submissions under various heads numbering about 30. We shall refer to the submissions in seriatim. It is submitted that the Section 34 of the Letters Patent confers testamentary jurisdiction on the High Court, a probate court exercises special and limited jurisdiction as it is not an ordinary Civil Court, nor a company court. In the impugned order passed by the learned single bench dated 18.09.2020, this principle of law has been accepted. It is submitted that a probate petition for letters of administration on the one hand and an administration suit on the other or the proceedings that are separate and distinct in character. In an administration suit, a civil court may be required to examine transactions involving properties of the estate in order to determine the assets of the estate as on the date of the death of the owner thereof. The testamentary court's jurisdiction is however limited to determination of the will, it does not determine the title or any question as to the existence of any property and the requirement of appointment of an administrator. In the inter-parties decision in the case of **Krishna Kumar Birla Versus Rajendra Singh Lodha**<sup>1</sup>, in paragraph 57 it has been held that the jurisdiction of the probate court is limited being confined only to consider the genuineness of the will. The question of title arising under the act cannot

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<sup>1</sup> (2008) 4 SCC 300

be gone into in the probate proceedings, construction of a will relating to the right, title and interest of any other person is beyond the domain of the probate court. It is further submitted that it is settled law that only a person who has caveatable interest can be added as a party to a testamentary proceeding. It is an admitted fact that none of the third party companies namely BCL, VTL, UCL or any other third party companies, trust or societies have any caveatable interest in the testamentary suit in TS No. 06 of 2004 and therefore they cannot be made or added as parties to the testamentary suit and they have not been added as parties and consequently no order can be passed by the testamentary court against third parties, even if it is necessary to protect the estate. It is submitted that in the impugned order, the learned single bench has accepted this proposition and in this regard, the learned senior counsel referred to various paragraphs of the impugned order. It is submitted that in the intra party judgment reported in **2016 SCC Online Calcutta 1541** it has been held that a probate court cannot pass any injunction order against the third party as third party who has no caveatable interest in the probate proceedings cannot be allowed to be added as a party in the probate proceedings and also for the reason that no order can be passed affecting the right of the stranger without adjudicating his right and adjudication of his rights in the probate proceedings is impossible as probate court cannot decide any foreign issue unconnected with the probate proceedings.

12. With the above reasoning, the learned single bench of this court refused to grant injunction against BCL as being the third party to the testamentary suit. It is submitted that the same principle would apply in the instant case and no interim order can be passed affecting BCL and other companies, trusts and societies by a coordinate bench in the same suit. It is further submitted in terms of Section 247 an administrator pendente lite (APL) is the legal representative in respect of estate only. Explaining the scope and meaning of “property” that is bequeathable, it is submitted that Section 2(h) of the Indian Succession Act, 1925 defines a “will” to mean the declaration of the intention of testator with respect to his property which he desires to be carried into effect after his death. This principle is embodied in Section 30 of the Hindu Succession Act, 1956. Further Section 5 of the Indian Succession Act speaks of succession to immovable and movable property of the deceased, only properties bequeathable. “Property” connotes an ownership or right which does not depend on the courtesy of others. It signifies a beneficial right to or a thing considered as a having money value with reference to transfer or succession. Property is the right to use or enjoyment or the beneficial right of disposal of anything that can be the subject matter of ownership. The phrase “property belonging to a person” has two ingredients namely ownership and the absolute right of the user. The Hon’ble Division Bench in the case of **Rajendra Singh Lodha Versus Ajoy Kumar Newar**<sup>2</sup> held that the estate mainly comprises of the controlling block of shares held by PDB at the time of her death which has

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<sup>2</sup> ILR 2007 (2) Calcutta 377



also been disclosed in the affidavit of assets. The Hon'ble Division Bench by order dated 23.08.2012 directed the Joint APLs to register their names in the Register of Members of the companies in which PDB held shares and further directed the Joint APLs to prepare and file an inventory of asset forming part of the estate. It is further submitted that the Hon'ble Division Bench in ***Birla Corporation Limited Versus Arvind Kumar Newar*** dated 04.05.2020 held that even on convenience, the estate of PDB is the owner of the shares in the company\ies as mentioned in the schedule of asset filed in the testamentary proceedings and the unanimous report of the APL to which there is no dispute. It is further submitted that only one of the assets forming part of the estate of PDB had been inadvertently not included in the affidavit of assets filed on behalf of RSL in TS No. 06 of 2004. RSL applied for amendment of the affidavit of assets to include this asset in Uttaranchal/Himachal Pradesh and the affidavit of assets was amended on the basis of a consent order dated 16.12.2004 in GA No. 4345 of 2004. It is submitted that when the amendment application was moved it was not the case of the Birla's that certain other assets such as any alleged right to control certain trust and societies have been left out on the other hand, the order allowing the amendment was not opposed by Birla's. It is further submitted that the APL represents the estate of the deceased and thus is required to carry out and file proceedings only with the permission/directions of the probate court before competent courts to protect and preserve the assets forming part of the estate. After referring to the Section 211, 305 and Section 306 of the Indian Succession Act, it is submitted that in

terms of the said provision the Joint APLs stepped into the shoes of estate/deceased. Further in view of Section 247 of the Hindu Succession Act an administrator acts as a general administrator (barring the power of distribution of estate) and thus the provisions of Section 211 and 305 of the Succession Act would apply to the APL as well. It is submitted that the APL is analogous to a receiver. Receiver must take all steps for the purpose of preservation of the property invoking the jurisdiction of the competent court or authority depending on the nature of transgression of the estate and protection required. The learned senior advocate referred to the inter party decision in the case of **Rajendra Singh Lodha Versus Ajoy Kumar Newar**<sup>3</sup> wherein it was held that the appointment of administrator is analogous to that of an appointment of receiver and after perusing and analysing the cases cited by both parties, it has been concluded that the matter of appointment of administrator pendente lite under Section 247 of the Act, the main criteria is nothing but necessity, necessity to preserve the estate of the deceased.

13. It is further submitted that no shareholder has any interest in the assets of the company. This proposition was accepted by the learned single bench and has agreed with the coordinate bench judgment in **Harsh Vardhan Lodha Versus Ajoy Kumar Newar and Others**<sup>4</sup>. For the same proposition, reference was made to the judgment of the Hon'ble Division Bench in **Birla Corporation Limited Versus Arvind Kumar Newar** dated 04.05.2020 wherein it was held

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<sup>3</sup> ILR 2007 (II) Calcutta 377

<sup>4</sup> 2016 SCC Online Calcutta 1541

that there is a clear distinction between a company and a shareholder, even though that share holders may be only one and is either the Central or State Governments. In the eye of law, a company registered under the Company's Act is a distinct legal entity other than the legal entity or entities that hold its shares in the said company. It is further submitted that controlling interest is inextricably linked to ownership/voting power of the shares held in a company. Only such ownership/voting power of share is an asset and any other form of controlling interests/power perse is not an asset forming part of the estate. It is submitted that control or controlling interest is only an incidence of ownership/voting powers of shares; personal influence is not a legal right and thus not enforceable in law. It is further submitted that only a person/entity whose name is registered on the Register of Members of a company or recorded as beneficial owners in the records of the depository is entitled to exercise the rights of a shareholder and no person can claim to be legally entitled to this right. To explain the meaning and scope of "control", reference was made to Section 2(27) of the Companies Act 2013 and Section 2(1)(e) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations. It is further submitted that as per Section 152(2) of the Companies Act, 2013, directors are appointed by the company in the General Meeting of its shareholders. As per Section 101(3) the notice of every meeting is given to every member, legal representative of the deceased member or the assignees of the member (apart from auditors and directors) of the company. Thus, the right to appoint a Director only vest in a member as defined under

Section 2(55) of the said Act that is a person whose name is entered in the Register of Members or the beneficial owner in the records of the depository. It is submitted that in the instant case even by the respondent's own showing since the estate does not hold or even control directly by strength of shares of the estate or along with the companies in Tier 1 and Tier 2, majority shares in the four listed companies in the MP Birla Group the estate cannot be considered to exercise control over the said companies. Thus, it is submitted that PDB's estate does not hold a margin of the extent of share to individually assert control over the four listed companies. Control as defined in Section 2(27) of the Companies Act 2013 has to be a "right", "exercisable", by virtue of "shareholding or management right or shareholders agreement or voting agreements or any other manner". It is submitted that the expression "any other manner" contains general words since they follow specific and particular words of the same genus, it is presumed that the legislature has used the general words in a limited sense to convey the meaning implied by specific and particular words. In the definition of "control" the expression "any other manner" takes colour from the genus of the preceding words that is legally enforceable rights/agreements and thus must necessarily be read as being in any other manner enforceable in law. The same conclusion is reached by applying principle of *noscitur a sociis* and the rule of last antecedent. It is submitted that the words "any other manner" can never be drawn out of context to apply to a courtesy or power of influence or persuasion that were personal to PDB but which would not have been enforceable in law even by

her, much less by her estate. More so, the force of personality or the powers of persuasion are not inheritable “property”.

14. It is further submitted that PDB did not have the right to determine the manner of voting of the other group entities. Other group entities were legally in a position to either accept or reject her directions. These group entities had and continue to have eminent people on their board including very senior former public servants and other highly qualified individuals with independent minds of their own. The mere fact that the group entities may have accepted PDB’s directions did not ipso facto confer any legal right upon her to cause the group entities and their goals to act to her directions nor did it take away the independent rights of ownership of shareholding of these other entities. PDB would not have approached any court to enforce any alleged legal right against these group entities to act according to her directions nor could a third party have gone to any court to cause such group entities to act to the directions of PDB and not independently. Therefore, in the absence of any right, the estate and its administrator cannot be legally entitled to do what even PDB could not have herself enforced. It is further submitted the estate by itself does not exercise control as alleged over the entire promoter group shareholding in the companies of the MP Birla group. The only other way in which the estate along with the other members of the promoter would exercise *de facto* control over the entire promoter group shareholding in the companies of MP Birla Group “assuming” (while denying that they could) would be by acting in concert with

other members of the promoter group. Regulations 2(1)(q) of the Takeover regulations defines “person acting in concert”. The definition indicates that persons acting in concert require two or more persons to act with a common objective or purpose. This, itself predicates the exercise of control by at least two or more distinct persons. Thus, estate of PDB alone does not exercise even *de facto* control over the listed companies of the MP Birla Group. Further it is submitted that an analysis of the break-up of shareholding in the relevant companies demonstrates that the estate of PDB along with five private companies had the following shareholding in the four listed companies of the group: (a) 25.10% in Universal Cables Limited (UCL) (b) 12.16% in Vindya Tele Links Limited (VTL), (c) 10.33% in Birla Cables Limited (BCL) and (d) 14.23% in Birla Corporation Limited (BCrL). Further the shareholding of PDB in respect of two tier1 and three tier 2 companies was explained in detail. It is submitted that in the dissenting note of Mr. M.K. Sharma, member of the APL, he has explained what percentage of shareholding of the estate in the manufacturing companies and its direct and indirect control would be. This dissenting view what has been explained by the appellant corroborates as to the extent of the estate and the control of the estate along with tier 1 and tier 2 companies and this dissent has not been challenged by the defendants as being incorrect. It is submitted that the learned single bench has invoked the doctrine of “persons acting in concert” and mixed up the concept and personal influence of PDB with ownership/ control of the estate over the shares of other members of the promoter group or voting right arising out of such shares of such other

members. It is submitted that having invoked the doctrine of “persons acting in concert”, which by its very definition requires two or more distinct persons to act with common intention or purpose, it is submitted that the order of the learned single bench as well as the contention of the respondents that the so called controlling interest over the MP Birla Group of companies form part of the PDB estate are erroneous.

15. It is submitted that the promoters do not have any special rights to control as such and hence, no such right devolve upon the administrator of the estate of the deceased promoter. It is submitted that PDB was shown either as promoter or part of the promoter’s group in BCrL, BCL, UCL and VTL. However, such disclosure by a person or an entity as a co-promoter or as part of the promoter group, does not ipso facto lead to or vest any legal right to control the company or the rights exercisable by any other share holder, also shown as a promoter or part of the promoter group. A “promoter” is not vested with any specific/ special rights under the Companies Act, 2013 and/or the SEBI Regulations, but is in fact required to comply with additional obligations imposed thereunder, namely, (i) a right to control does not flow from the position of promoter as per Section 2(27) of the Companies Act and Section 2(69) clarifies that a person who already has control over the affairs of the company can be termed as a “promoter”, (ii) the Companies Act as well as SEBI Regulations provide various obligations for the promoters and in this regard, reference was made to Sections 7(6), 35(1), 42(10) and 120(4) of the Companies

Act which deal with liabilities of promoters. Sections 168(3), 257(3), 284(10), 300(1) and 340 of the Companies Act and Regulations 7 and 9 of the SEBI (Prohibition of Insider Tradings) Regulations, 2015 were also referred to for the obligations of the promoters, (iii) the Companies Act and the SEBI Regulations do not provide any right to the promoters, except certain limited exemption as contained in Section 3(4) of the Takeover Regulations, (iv) promoters do not have any right to control other Members of the promoter group by virtue of their status as “promoter”, (v) the doctrine of identification does not apply to large listed companies and (vi) this has been so and so held in the inter-party decision of this Court in ***Harsh Vardhan Lodha Versus Ajay Kumar Newar***<sup>5</sup>.

16. It is submitted that the learned Single Bench has erroneously observed that since PDB was the “single individual promoter”, she was the single directing hand of the promoter group of shares in MP Birla Group. The mere fact that a person is a promoter or even allegedly the single individual promoter, cannot ipso facto make PDB the single directing hand or mind of the MP Birla Group. Even assuming without admitting that PDB was the single directing mind of a promoter belonging to the promoter group, does not have the legal right to direct the manner of voting of other group entities and the same not being property heritably in law, cannot be exercised by the administrators. The concepts of single directing mind and will are inapplicable and irrelevant in determining the aspect of “control” within the meaning of the

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<sup>5</sup> 2016 SCC Online Cal 1541



Companies Act. The same concept only arises if the company is accused of wrong doing in which case the single directing mind is sought to be identified in order to fix liability. It is "*mens rea*" which is as attributed to corporations or the principles of "alter ego" of the company. However, even in cases where "directing mind and will" is looked into in order to fix liability for the wrong doing of a company, it is only when a statute permits this enquiry to be made. In the instant case, the concept does not and cannot arise or be pressed into operation nor before the same cases where there is no accusation of wrong doing, criminality or fraud against the company.

17. It is further submitted that trusts and societies are distinct legal entities independently managed and controlled. In this regard Sections 3, 6, 36, 37, 38, 39, 40 and 42 of the Indian Trust Act, 1882 were referred to. Section 5 of the Society Registration Act, 1860 and Section 16 of the State Act were also referred to. It is submitted that PDB during her lifetime did not have any right of nomination of any Member of the managing committees to the societies or any trust. This Court did not vest the joint APLs with power which PDB during her lifetime did not have in respect of any of the trusts or societies as themselves and this is also beyond the scope of testamentary proceedings. Further, none of the parties in the past considered the trusts or the societies as part of the estate of PDB in respect of the affidavits of assets. In this regard, the affidavit of assets filed by the defendants in PLA No. 242 of 2004 was referred to and it was submitted that it does not disclose the share holding of trusts

and societies as part of the estate of PDB. Further, unanimous inventory report filed by the Joint APLs on 15<sup>th</sup> October, 2013 does not include share holding of trusts and societies as part of the estate. The trusts and societies are controlled and managed by their respective trustees/ managing committee members as per the deeds of the trusts and rules and regulations of the societies. After referring to various clauses of the deed of trust of MP Birla Foundation, it is submitted that the analysis of the deed of trust and the rules and regulations of the society would show that the societies/ trusts are not controlled by the estate. Further, the Joint APLs did not come to any finding that there is any clause in any of the documents furnished by the defendants which gave the estate of PDB a right to control the affairs of the trusts and societies and the respondents have not pointed out any clause in any trust deed or rules and regulations which gives such a power. Further, it is submitted that persons who settle trusts and provide seed money and appoint the individual trustees, may have been in a position to exercise personal influence over the trustees/ managing committee members during their lifetime. However, such influence is not a legal right that the settlors have vis-a-vis the concerned trustees or societies unless the constitution of the trust or society gives such power. Therefore, it is not property which can be legally bequeathed by the settlor. Further, the fact that a trust/ society is shown as part of the promoter group in any company does not make it part of the estate of PDB. The entities/ persons shown in a promoter group nevertheless have distinct and independent share holdings in the company. It is submitted that Regulation 2(pp) of SEBI (Issue of

Capital and Disclosure Requirements) Regulations, 2018 defines “promoter group” in an inclusive manner and it shows that as long as the share holding of an individual/ entity is disclosed under the heading “promoter group”, even without any relationship much less ownership or control between such entities/ persons, they will be shown as part of the promoter group. Hence, the disclosure of some trusts/ societies and public listed companies as part of the promoter group of some companies does not in any manner indicate that the share holding was owned and/or controlled by PDB and much less the estate of PDB. It is submitted that the Birlas would contend that the trusts and societies are funded by the MP Birla Group and thus, the estate controls them. This contention is incorrect as the main source of funding of these trusts and societies or dividends earned from shares held by them in various companies which include companies which are admittedly not part of the MP Birla Group. Furthermore, merely because donation is made by a corporate house, a trust or society does not vest the corporate house with a right to control and manage the affairs of such trust or society unless there is provision to the said effect to the constitution of the trust or society. Further, the prayer sought for in GA No. 3714 of 2008 and GA No. 3718 of 2008 on which order dated 23.08.2012 was passed, the prayers did not include any reference directly or indirectly against any of the trusts or societies.

18. It is submitted that share holders and directors are distinct and independent organs in a company. Share holders have no right to direct how

directors should act or how a company should be managed. They can control management of a company only by electing or removing the directors at a general meeting of the company.

19. In the inter-party decision in ***Harsh Vardhan Lodha Versus Ajay Kumar Newar***<sup>6</sup>, it has been held that Probate Court has no jurisdiction to pass orders against individuals or entities acting in different capacities. Further, it is submitted that the Probate Court had no jurisdiction to pass orders in respect of the management and affairs of corporate/ contractual rights of other entities holding shares in MP Birla Group namely, trusts/ societies and other share holding companies. The Court only in exceptional circumstances appoints receiver to run businesses or partnership firms and the Court will never appoint a receiver for the purpose of running a business. The Court only in exceptional circumstances pierces the corporate veil and this power is beyond the scope of testamentary jurisdiction. It is submitted that without piercing the corporate veil of either corporate companies, trusts and societies, it could not have been held that PDB would have had any legal right of ownership or control over the share holding of these independent companies or over the trusts/ societies. The Probate/ Testamentary Court does not have jurisdiction to pierce the corporate veil of any entity and such piercing of the corporate veil can only be done in exceptional circumstances. It is further submitted that the words “acting in concert” respects the corporate veil of the

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<sup>6</sup> 2016 SCC Online Cal 1541

various entities acting in concerts. In fact, the Joint APLs' position is that the entities of MP Birla Group are acting in concert as recorded in the decision dated 19<sup>th</sup> July, 2019. The impugned order passed by the learned Single Bench does not pierce the veil of any of the group entities of the MP Birla Group much less of any trusts or societies and in fact, it represents the corporate veil of the entities by accepting the principle laid down by the Hon'ble Supreme Court in the case of **Bacha Gazdar's**. Therefore, it is submitted that it was not open in law for the learned Single Bench to have passed any orders restricting the shareholding, property or management rights in respect of these entities including trusts and societies. Hence, the appellants could not have been restrained in general from holding any office in any of the entities in MP Birla Group during the pendency of the suit as that would amount to interfering with the administration and ownership rights of share holders, distinct corporate entities and distinct trusts and societies which is beyond the jurisdiction of a Testamentary Court. In this regard, reference was made to the order passed by the Hon'ble Division Bench date 1<sup>st</sup> October, 2020 by which the Hon'ble Division Bench modified part of the order passed by the learned Single Bench. It is further submitted that the Joint APLs have to initiate the substantive proceedings before the competent forum to seek relief in order to enforce rights of the estate only with the permission/ direction of the Probate Court and the same cannot be done in a Testamentary proceedings.

20. With regard to the reliefs claimed in GA No. 1735 of 2019 and GA No. 1845 of 2019 it is submitted that the prayer that the Joint APLs should be empowered to exercise voting rights in respect of shares which do not stand recorded in their names, is totally prohibited by law and is illegal. This is not only contrary to Section 47 read with Section 2(55) of the Companies Act, if accepted, would amount to rectification of the share register of the company. That apart the joint APLs have not sought rectification and the share register. Grievances regarding rectification of the share registers are entrusted to the National Company Law Tribunal (NCLT), and the jurisdiction of the Court to grant rectification of share register has been ousted by Section 430 of the Companies Act, 2013. Therefore, it is submitted that the questions to be decided in GA No. 1735 of 2019 and GA No. 1845 of 2019 are whether the prayers or reliefs as claimed in those applications are contrary to law and whether any Civil Court would have jurisdiction to grant such relief; whether the Probate Court has jurisdiction to entertain the two applications which contained prayers which are not relevant for deciding the genuineness of the will which is the subject matter of TS No. 6 of 2004; can any group of share holders, even if they have more than 62% shares in the companies, direct the directors of the company to appoint directors nominated by them or can cast votes on shares not registered in their names and registered in the names of other persons/ entities; whether the Testamentary Court would have jurisdiction to decide title of the estate to the shares in various companies besides those admitted by the parties in their respective affidavit of assets and

the unanimous inventory report of the Joint APLs and whether the Testamentary Court can pass orders against third party companies. Further, it is submitted that the petitions are not under Section 247 of the Indian Succession Act and those petitions are not for preservation or protection of the estate of PDB which is well-protected and preserved as held by the Hon'ble Division Bench in the judgment dated 4<sup>th</sup> May, 2020.

21. It is submitted that the impugned order directs the plaintiff to implement the majority decision of APL to directly appoint Directors to the company which is illegal and beyond the jurisdiction of the Testamentary Court. The majority decision of the two Members of the APL dated 19<sup>th</sup> July, 2019 is totally illegal, contrary to law, void and cannot be implemented. The Hon'ble Division Bench in its order dated 23<sup>rd</sup> August, 2012 has clearly specified and circumscribed the authority and powers of the Joint APLs and they have not been authorised by the said order or by any provision of law to direct any company or its Board to appoint them as Directors or to direct appointment or continuation of any person of their choice as Director. It is submitted that Directors of the company can be appointed only and continue in office only in the manner prescribed by the Companies Act, 2013 and, therefore, it is not within the jurisdiction or power of any of the Joint APLs to override the Companies Act. The share holders are not authorised by the Act to straight away direct the company to appoint any person as director. Therefore, it is not within the authority or power of any officer of the Court to short circuit or override the statutory

provisions of the Companies Act, 2013 regarding appointment of Directors. It is further submitted that it is not within the power of HVL to implement any of the decisions of the two Joint APLs dated 19th July, 2019. HVL has requisite qualified shares which constitute nominal and very insignificant percentage of share capital of the companies. Only share holders at the general meeting of a company by majority votes can appoint Directors of a company or allow continuation of the Directors already appointed. Therefore, the direction as prayed for in prayer (a) in GA No. 1735 of 2019 is clearly contrary and repugnant to the Company Law and wholly illegal. It is submitted that HVL, the appellant is a party to TS No. 6 of 2004 as a legatee under the will sought to be propounded and not as a share holder or Director of any of the companies within MP Birla Group. This aspect has been clarified by the judgment of the Single Bench of this Court dated 19th May, 2016. It is submitted that the Probate Court cannot give any direction to HVL by treating him as Director of any company. Furthermore, the Probate Court has no jurisdiction to give any direction to any Director of any company even within MP Birla Group. Companies are separate juristic entities. Furthermore, direction sought for by the other Birlas are not relevant for considering the question of genuineness of PDB's will. It is submitted that the Joint APLs cannot act by majority. The learned Single Judge in the order dated 27th August 2010 appointing the Joint APLs directed that the Joint Administrators will act ordinarily, jointly but in the case of non-availability of any of the Joint Administrators, remaining Administrators or Administrators will act, however,



ratification of the Court is to be obtained later at the earliest. Hence, this order clearly provides that the Joint APLs will act jointly that is not by majority, where all the Members are available. In this regard, the learned Senior Advocate referred to the order of the Division Bench dated 22nd December, 2011 and the order dated 19th January, 2012. Thus, it is submitted that the Joint Administrator's will act jointly had been accepted by the parties. Referring to Section 48 of the Indian Trust Act, 1882, it is submitted that the said provision provides that when there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides. Therefore, wherever the law seeks to give power to a body to decide by majority, it specifically makes the provision. It is submitted that Courts can pass judgment by majority as it is provided for in Section 98 and Order 47 Rule 6 of the Civil Procedure Code (CPC). The Board of Directors of companies can pass resolutions by majority because Regulations 68 of Schedule 1, Table F gives them such power. The share holders can pass resolutions by majority as Section 114 of the Companies Act gives such power. In terms of Sections 29 and 31(2) of the Arbitration and Conciliation Act, 1996 Joint Arbitrators can pass awards by majority. Under Section 17(3) of the Waqf Act, 1995, Members of the Waqf Board can decide by majority. In terms of Section 12(c) of the Partnership Act, 1932, partners can act by majority in certain matters. Thus, when the law is silent, the Joint officers have to act jointly. Further, it is submitted that the fact that the Joint APLs has to act jointly was accepted by the respondents in 3 SLPs before the Hon'ble Supreme

Court challenging the judgment and order dated 12th June, 2014 passed by the Hon'ble Division Bench, in the Special Leave Petitions, the respondents took a stand that the administrators had to act jointly and no Member of APL would act as an umpire which is also emphasized by the use of the phrase "Joint Administrators" in various parts of the judgment and order dated 23rd August, 2012. Further, the respondent in GA No. 1964 of 2018 made such prayer for direction of the Hon'ble Court authorizing the Joint APLs to act as per majority decision since, they are well aware that unless specific direction to act by majority was given by the Hon'ble Court, the Joint APLs had no such power, like Joint Receivers would have to act unanimously. Further, referring to the order dated 10th April, 2019 by which the Joint APLs were reconstituted, it is submitted that in the said order it had been observed that for effective functioning of the APL committee which shall consist of a retired Judge of the Court and two nominees of the respective parties, it was directed that the two nominees will render fullest to cooperation with the Hon'ble Judge in order to enable His Lordship to effectively discharge his duties for the purpose of smooth administration of the estate and also to prevent any stalemate in the process of such smooth administration.

22. It is submitted that the impugned order cannot alter the order dated 27th August, 2010 by which the Joint APLs were appointed and therefore, the directions were issued in Sub-Para (a), (b) and (c) in the impugned order enforcing the APLs' decision by majority and recognizing the power of the Joint

APLs to act by majority is contrary to law and to the order of appointment of the APLs.

23. It is submitted that the decision of two of the APLs to re-investigate into the extent of the estate and percentage of share holding is beyond their authority and contrary to the unanimous inventory report of 2013. It is submitted that the extent of the estate of PDB had already gone into and inventorized on 15th October, 2013 unanimously by the 3 Joint APLs and such inventory was made pursuant to the order of the Hon'ble Division Bench dated 23rd August, 2012. Further, the Hon'ble Division Bench in the order dated 4th May, 2020 held that the unanimous report of Joint ALPs has not been disputed. Further, the inventory of assets records the share holding held by the estate as per the affidavit of assets filed by both parties and since, neither the appellants nor the respondents have sought to amend their affidavit of assets without prejudice to whatsoever submitted, there was no occasion for the APL to re-investigate the extent of the estate. Further, in re-investigation into the extent of the estate for the purpose of including assets that have been left out or to exclude wrongly included assets, could only result in a report to this Court.

24. The decision of the Joint APLs dated 19th July, 2019 was challenged on several grounds which had not been dealt with in the impugned order namely, that re-investigation to the extent of the estate was unwarranted; the decision

of the Joint APLs to decide by majority instead of unanimously is contrary to the order appointing the Joint APLs and thirdly, that the decision to direct appointment of all 3 Members of the Joint APLs as Directors of Tire 1 and 2 companies and certain other individuals as Directors of 4 listed companies, 3 subsidiaries of one listed company and an unlisted company is bad in law since the Joint APLs merely represents the estate of PDB and thus, had no rights to seek appointment of Directors in companies in which PDB was not a "Member". Further, without prejudice, it is submitted that such appointment of Directors cannot be made contrary to the provisions of Company Law. Similarly, the decision of the APLs dated 30th July, 2019 was challenged by the plaintiffs in GA No. 1786 of 2019 on several grounds which were not dealt with in the impugned order.

25. It is submitted that the two Joint ALPs have made observation that HVL has been acting against the interest of PDB's estate is incorrect and in this regard, the learned Senior Counsel referred to the affidavit-in-opposition filed by RSL dated 10th May, 2005 to state that the consistent stand from the very beginning was that the estate of the testatrix does not directly or indirectly hold majority block of shares in UCL, BCrL and VTL. Charitable societies and trusts are not part of the estate of the testatrix which are managed by the respective managing committees and trustees of the societies or trusts. The companies are separate legal entities controlled by their Board of Directors and the affairs of the estate of the testatrix do not include the right to control the affairs of

BCrL and/or its assets or properties as alleged. It is submitted that similar submissions were made by HVL before the Joint APLs which is evidenced by the Minutes of the meeting dated 21st July, 2017, similar stand was taken in his affidavit-in-opposition to the administrator's proceedings filed by the respondents in 2008 which culminated in judgment of the Division Bench dated 23rd August, 2012, apart from similar stand being taken in all the matters which were filed before the Joint APLs.

26. It is submitted that the non-cooperation of HVL complained of is the refusal of the learned Senior Counsel appearing on behalf of HVL to make a concession that HVL shall cause a recommendee of the Joint APLs to be appointed as a Director of the 3 subsidiary companies of a listed company. It is submitted that appointment of Directors of certain companies have to be made on basis of resolution of the Nomination and Remuneration Committee of the representative to the listed companies in terms of Section 178 of the Companies Act, 2013. Therefore, the Chairman of the company, HVL cannot arrogate unto himself the power to cause such appointment when such power ultimately rests with the Board of Directors. The observation of the two Joint APLs that the evident performance of BCrL, the flagship company of MP Birla Group is deteriorating ever since, HVL became the Chairman is misproved. It is a matter of record that the performances of all those 4 manufacturing companies have substantially improved after the demise of PDB in 2004. Since after 2004, the prices of shares of those companies which are authorized in the

stock exchange have gone up substantially in BCrL, UCL, VTL and BCL and dividends have been consistently declared by those companies. Further, there are no ground for opposing the re-appointment of the HVL as one of the directors of the 4 listed manufacturing companies and not the case has been left out in those companies that the estate will be prejudiced if HVL has re-appointed the Directors and votes should be cast against HVL.

27. The next aspect which was dealt with by the learned Senior Counsel is with regard to the alleged admissions of RSL and judicial findings regarding "control". It is submitted that no undertaking was given by RSL who merely agreed that the share holding of the companies which were then vested with him as sole executor of the estate of PDB would not be transferred or disposed of till the disposal of the application. On the said basis directions were issued. The direction was fully complied with by RSL. After his demise on 3rd October, 2008 and pursuant to the order of the Hon'ble Division Bench dated 23rd August, 2012, the Joint APLs took over their share certificates from appellant and all the shares had since been recorded in the names of the Joint APLs pursuant to their application made to the respective companies. Hence, there is no scope for any apprehension that any share of the estate of PDB would be transferred or disposed of by HVL or any party to the suit. In fact the Hon'ble Division Bench in the judgment dated 4th May 2020 has held that the shares are protected in all respects as APL has been appointed and as such interfering with such shares is difficult at that stage. Further, it is contended that the ad

interim order has been misconstrued to be a direction against third party companies. A direction was given to RSL who was then the executor of the estate and the sole plaintiff in TS No. 6 of 2004. In this regard, the order passed by the learned Single Bench dated 23rd March, 2005 in GA No. 4374/4376 of 2007 was referred to.

28. With regard to the reliance placed by the respondents to the order passed by the CLB, it is submitted that incomplete reliance of the said order is devoid of merit in view of the judgment of this court dated 24.08.2005. It is further submitted that the CLB is not the competent forum to adjudicate upon the extent of PDBs estate; the observations made in the orders dated 25.04.2005 and 24.08.2005 do not even purport to take away the voting right of any of the promoter group shareholders or in any way cast upon any of them the duty to obey any directions of the Joint APL; observations in both orders do not require the company to change its Register of Members; the observations are irrelevant since the order was prior to the inventory report of the assets of the estate in respect of the shares held by the deceased; the issue has been finally settled by the Hon'ble Division Bench by a judgment and order dated 04.05.2002 in this probate proceedings that the asset of the estate are as per the schedule of assets; the mere fact that submissions of counsel is recorded that PDB controlled the first respondent and the 28<sup>th</sup> respondent in her lifetime does not take away legal title of those respondents over their own assets deemed the share held by them in VCL nor does it confer upon the estate of PDB the legal

right/title over their own respective assets; the shareholders of the company is an entity distinct from the company and does not have any interest in the assets of the company; no estoppel can arise on a question of law or even on a mixed question of law and fact from the submissions by counsel, and the Hon'ble Division Bench in judgment dated 26.04.2021 has held that the said order dated 25.04.2005 is not relevant. In any event HVL is not estopped from adjudicating the same issue as neither the HVL nor the respondent in the testamentary suit were parties to the CLB proceedings and since CLB proceedings were dismissed for lack of jurisdiction, the observations made in such a case cannot operate as res judicata.

29. With regard to the orders of the CLB dated 28.06.2006, it has been submitted that the alleged statement was relied on by the respondents to support their case that PDB's estate comprises the controlling interest of the MP Birla Group. Such reliance on the alleged admission is devoid of merit as the order was passed in an application challenging transmission of shares held by the PDB in only one investment company namely the East India Investment Company Private Limited to RSL as executor of her estate and was not a proceeding for determining title to the shares held by the different promoter group entities in the operating companies. Further the CLB is not the competent forum to adjudicate upon the extent of the PDBs estate and thus the observation cannot operate as res judicata. Further such alleged statements of counsel on question of law or at most, a mixed question of law



and fact does not amount to an admission made by a party. In any event no title can be created/extinguished by admission. Further there can be no estoppel against the statute. The statutory right to vote on shares held by the promoter group entities in BCL cannot be taken away by applying the doctrine of estoppel and these issues had been finally settled by the Hon'ble Division Bench in its judgment dated 04.05.2020 holding that the assets of the estate are as per schedule of assets. The Learned Senior Counsel referred to the written submission which were made on behalf of the RSL during 2005 and 2007 before the learned Single Bench as well as the Hon'ble Division Bench and submitted that these submissions were relied upon by the respondent as an admission of RSL of their case of control and controlling interest and such submission is mis-conceived. These are the written submissions and not affidavit of RSL as in the affidavit in opposition of RSL dated 10.05.2005 to the petition in GA No. 4375 of 2004, it has been categorically stated that PDB did not own majority block of shares in the operating companies. Both sets of the written submissions on behalf of the RSL reiterated the contents of the schedule of assets and the value thereof as stated by the Birla's in the affidavit of assets filed by them in PLA No. 242 of 2004 and the valuation made thereof by the Birla's, that submissions would have to be seen in that context. The submissions do not in any manner state/admit that PDB exercised voting right of the entire promoter group of shareholdings as manufacturing companies through any alleged mechanism of interlocking of cross shareholding of shares registered in the names of the manufacturing companies or societies.

Therefore, the net effect of the statements in the written notes is whatever is disclosed in the affidavit is referred to as the “controlling block”. In any event it is submitted that written submission of RSL was prior to the joint APLs unanimously inventory report dated 15.10.2013 which found the estate to be what is disclosed in the affidavit of assets. Further any submissions by RSL’s counsel cannot bind HVL much less the entities of the group who were not parties to such proceedings or their statutory right to vote in respect of shares owned by them in various companies or confer control to direct voting on the administrators of the estate of a deceased shareholder.

30. It is submitted that the respondents have argued that a learned single bench of this court while hearing the appeal from the order of CLB has held that the estate of PDB held 62.90% shareholding in BCRL which is not true. In fact, the court recorded the case of both groups and did not decide this and contrary made certain other observations that the jurisdiction to decide on this issue has largely shifted from the domain of CLB to the probate court and the courts for trial of suits. Further it is submitted that these observations regarding shifting of jurisdiction in a statutory appeal which order of CLB was approved by the Hon’ble Division Bench in its judgment dated 04.05.2020. Further the respondents have omitted to refer to paragraph 16 of the judgment wherein it was observed that an inconsistent case is being run by the appellants therein as it has been pleaded in the main petition that late MP Birla and as also PDB transferred their properties including shares to five

charitable trusts. Thus, the respondents are running contrary cases and should not be allowed to approbate and reprobate. Thus, it is submitted that the impugned order is beyond the jurisdiction of the court and also beyond the scope of the GA No. 1735 of 2019 and GA No. 1845 of 2019. It is submitted that the decision of the majority APL dated 19.07.2019 is beyond their jurisdiction and competence and was erroneously made without even having conclusively determined the extent of the estate. The decision of the majority APLs dated 30.07.2019 is beyond the relief claimed in the master summons taken out in GA No. 1735 of 2019 or GA No. 1845 of 2019 and therefore the court had no jurisdiction to pass any order of implementation of the decision dated 30.07.2019. Without prejudice, it is contended that even if such prayer was contained in the master summon's, the said relief would have been beyond the jurisdiction of the testamentary court to grant. In any event, the direction contained in the impugned order runs contrary to the findings of the learned single bench which accepted the decision of the coordinate bench that probate court at best can pass necessary directions upon APL to initiate appropriate proceedings before appropriate forum for seeking appropriate reliefs in accordance with law. It is further submitted that the directions issued in the impugned order to the plaintiffs to implement all consequential decisions of APLs is beyond the prayers sought for in the application and hence without jurisdiction. The direction is uncertain and vague and grants blanket enforceability to all subsequent decisions of APLs thus negating the order of the Hon'ble Division Bench dated 23.08.2012. It is further submitted that the

third direction restraining the plaintiff from drawing any benefit personally from out of the assets of the estate of the deceased is beyond the scope of the prayers in those two petitions. There is no allegation made that the plaintiff are taking any benefit personally from and out of the funds of the estate. So far as the directions contained in sub para (b), learned single bench restrained the plaintiffs from interfering with the decision of the Joint APLs and any decision which may be taken by APL by majority in future, if the same directly and indirectly relates to the estate of the deceased. This order is beyond the jurisdiction of the learned single bench to take away the legal remedy and right given to the parties by the Hon'ble Division Bench in its order dated 23.08.2012 which expressly permits an aggrieved party to challenge a decision made by the Joint APLs before probate court. The second limb of the order in sub para (b) restrains HVL from holding any office in any of the entities of the MP Birla Group during pendency of the suit. This order has been passed despite the fact that HVL has been director of MP Birla Group of Companies even during the lift time of PDB and has continued to be elected or reappointed thereafter from time to time with a requisite majority, as per provisions of the Companies Act, 2013 and those resolutions appointing him as director have not been set aside till date. It was submitted that the HVL was reappointed in BCL on 23.09.2021, in UCL on 18.08.2020 in BCRL on 25.08.2020 and VTL on 05.08.2019. Further it is submitted when the respondent sought to restrain HVL from offering or proposing himself as a candidate for director of VTL and BCL at the meetings to be held on 5<sup>th</sup> and 6<sup>th</sup> of August 2019, by way of a

supplementary affidavit filed in GA No. 1735 of 2019 no such order was passed and HVL contested and was reappointed as a director. Similarly in August 2020, the respondents file an application in GA No. 1005 of 2020 seeking an order restraining reappointment of HVL as director of BCRL and UCL at the annual general meeting proposed on 25.08.2020 and 18.08.2020 respectively and no order of interim injunction was passed and HVL contested and was reappointed as a director. More importantly, none of these resolutions reappointing HVL as director have been set aside. It is submitted that despite the aforementioned facts as well as the fact that the learned single bench accepted that probate court has no jurisdiction to pass any order against third parties and without prejudice to the fact that a supplementary affidavit does not serve to amend a notice of motion or enable a party to seek new relief therein. It is submitted that the impugned order erroneously and indirectly restrains HVL from holding any part in any of the entities of the MP Birla Group during the pendency of the suit. Thus, the directions contained in the sub para (b) (ii) of the impugned order exceeds the jurisdiction of a probate court and erroneously curtails the tenure of office of a director in contravention of Section 152 of the Companies Act, 2013 which fixes the tenure of a director appointed or reappointed at the annual general meeting and in the case on hand it is three years. Lastly, it was submitted that the impugned order is in violation of the principles of natural justice. It is submitted that the defendants 1(b) and 1(c) were the applicants in GA No. 1735 of 2019 and GA No. 1845 of 2019 and they made their submissions at the first instance and thereafter the

plaintiffs being respondents in those applications made submissions and it was concluded. At that juncture, the defendant no. 3(a) did not make any submissions. Thereafter, the learned single bench permitted defendants no. 1(b), 1(c), 1(d) and 2 to advance new arguments and rely on new judgments in reply for the first time. Thereafter the three noticee companies made their submissions. After conclusion of the submissions of the three notices companies, learned single bench permitted the defendant no. 3(a) to advance new arguments and file exhaustive rejoinder notes of submissions and notes on relief which though objected to by the plaintiff was allowed by the learned single bench. The defendant no. 1(d), 2 and 3(a) have not filed any pleadings in any of the seven applications decided by the learned single bench, hence submissions in this behalf was without any pleadings by them. In such circumstances, the plaintiffs were constrained to file an application in GA No. 1121 of 2020 praying for opportunity of giving hearing to the plaintiff to deal with the new arguments and the new judgments cited by the defendant for the first time in the reply after the conclusion of the submissions of the plaintiffs. However, no such opportunity was granted to the plaintiffs and orders were reserved by learned Single Bench on 04.09.2020.. However, in the cause title of the order recording the same not only GA No. 1735 of 2019 and GA No. 1845 of 2019 were included but several other GAs which were wholly unconnected with the two GAs including GA No. 1005 of 2020 of the defendants filed in August 2020 were included. This necessitated the plaintiff to file clarification application in GA No. 78 of 2020 wherein the learned single bench by order

dated 16.09.2020 directed that all other applications which appeared in the list of 04.09.2020 except GA No. 2007 of 2019 will be considered for adjudication.

This procedure is contrary to the establish practice and is also in violation of the principles of natural justice.

31. Mr. Khambatta, learned senior advocate appearing for the appellants elaborated his submissions in the following manner. It is reiterated that the will sought to be probated by the Birla's contained identical list of properties and in this regard referred to the probate petitions of Shri Ganga Prasad Birla in PLA No. 242 of 2004 and in particular the affidavit of executors Shri G.P. Birla and Shri S.N Tapuriah which contains the list of assets and its valuation. In Annexure-A therein, the valuation of the movable and immovable properties of PDB as on 03.07.2004 and in column 5 therein, the properties in public companies have been given as the number of shares in each of those companies. The learned senior advocate wanted us to compare the same with the affidavit of Shri G.P. Birla and another along with Annexure A of the affidavit filed by the RSL to show that both the annexures contained the identical list of properties. It is further submitted that in the affidavit filed in support of GA No. 4375 of 2004 for the first time the word "control" comes up and a prayer is sought for to appoint an independent person as administrator to exercise control and management over and in respect of the shares standing in the name of PDB in various companies and indirect control in other companies by virtue of such shareholding. Further it has been stated that in

view of interlocking pattern of shareholding in various Birla companies, if the control and management of the deceased's estate is improperly handled or manipulated by the alleged executor even for a short while, it would have far reaching consequences not only in regard to the value of the immediate assets of the deceased but also in regard to the various other companies, institutions and charitable organizations with which, she was associated. In the prayer sought for in the said application, appointment of an administrator was prayed for to take over all movable and immovable assets and properties of PDB including the voting right and the right to control of the deceased in respect of the companies specified in the Annexure J to the said petition. It is submitted that such a prayer is a very wide prayer made for the first time before this Court whereas the prayer (b) seeks for the administrator to take over the management, affairs and control of the MP Birla Group of Companies and the shareholding of the companies specified in Annexure AA which is a very narrow prayer. It is submitted that at the first instance no prayer was made for appointment of an administrator to the charitable institutions and societies and this was included in the said application which was a very wide prayer. Reference was made to the decision reported in **Priyamvada D. Birla Versus Laxmi D. Newar**<sup>7</sup> wherein the applications filed by the Laxmi Devi Newar and others for appointment of an administrator was considered, referring to paragraph 30 and 31 of the said decision wherein the court accepted the

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<sup>7</sup> 2005 4 CHN 544



argument that shareholders stand on a different footing from that of the company, which is a separate legal entity.

32. Nextly, reference was made to the decision reported in ***Priyamvada Debi Birla Versus Ajoy Kumar Newar***<sup>8</sup> wherein the court held that going by the prayer portions of the application made by the caveatrix, the prayer for appointment of an administrator cannot be considered for if considered, that would amount to taking over of management and control of separate juristic bodies by the probate court as it has no jurisdiction to do, however, the prayer for APL can be considered. Further by referring to the paragraph 75 of the said decision, it is submitted that the court held that the APL (Joint Administrators, Pendente lite) should function strictly in accordance with the Companies Act. Reference was made to the decision of the Hon'ble Division Bench reported in ***2007 Calcutta Law Series page 377*** and in particular the findings/observations made by the court in paragraph 253 to 262 and ultimately the court held that the respondents therein has not been able to make out a case of necessity for appointment of APL on the ground of waste, mismanagement, misconduct of the executor. Further paragraphs 275 to 287 of the judgment were referred to and it was submitted that the court held that the Board of Management of the companies cannot be dislodged and the court has no jurisdiction to appoint APL and in paragraph 287, the court specifically dealt with Section 247 of the Succession Act and in paragraph 294, the court

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<sup>8</sup> AIR 2006 Calcutta 259

rendered a finding that there is no finding of waste and mismanagement or siphoning out of money, dilution of properties by the named executor and there is no reason to appoint APL for a part of the estate i.e. the controlling block of shares and allow the executor to manage the remaining part of the estate except valuable movable assets, jewellery, gold coins etc. Further it is submitted in paragraph 301 of the said judgment, the Division Bench pointed out that it has considered the nature of the estate, mostly the controlling block of shares held by PDB at the time of her death which has been disclosed in the affidavit of assets and there is no dispute in respect of such shares of PDB by the respondents therein nor any allegations has been made, that RSL failed to disclose the number of shares by the respondents, as an executor RSL took possession of the said shares and there is no allegation that he has failed to collect the assets. Thus, it is submitted that the Hon'ble Division Bench has rendered a finding on the extent of the estate and the said judgment has attained finality as the special leave petition filed against the said judgment was dismissed as not pressed by order dated 16.04.2008 in view of the judgment pronounced by the Hon'ble Supreme Court reported in **Krishna Kumar Birla Versus Rajendra Singh Lodha and Others**<sup>9</sup>. Paragraph 57 of the said decision was referred to wherein the Hon'ble Supreme Court held that the jurisdiction of the probate court is limited being confined only to consider the genuineness of the will; question of title arising under the act cannot be gone into in the probate proceedings. Construction of a will relating to the

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<sup>9</sup> 2008 4 SCC 300

right, title and interest of any person is beyond the domain of the probate court. Further in paragraph 187 of the said decision, the Hon'ble Supreme Court held that the submissions that RSL is an outsider and bequeath is unnatural did not appeal to the Hon'ble Supreme Court and such a question cannot be determined at the relevant stage. Further it was observed as to why an owner of the property executes a will in favour of the another is a matter of his/her choice; only by a will deprive his close family members including his sons and daughters. The court is concerned with the genuineness of the will. If it is found to be valid any further question as to why did she do so would be completely out of its domain. A will may be executed even for the benefit of others including animals. It is submitted that on 03.10.2008, RSL passed away. On 19.11.2008 the purported executors filed application for appointment of APL in GA No. 3714 of 2008 in PLA 242 of 2004. It is submitted that the in terms of the prayer (c) in paragraph 42 of said application/petition what was sought for was appointment of APL with a direction to take all decisions and exercise all his rights in regard to the shareholdings of PDB in the companies referred to in annexure C. It is submitted that from the averments made in the said petition, more particularly in paragraph 33, it is submitted that when it suits the Birla's, they seek to take shelter under the provisions of the Companies Act. It is stated that "what is sauce for the goose is sauce for the grandeur". The appellant had filed an affidavit in the said application specifically denying that PDB was in control of the management or business of the companies mentioned in annexure B with the petition. It was stated that all

the companies are managed by their respective Board of Directors and the question of either PDB or RSL or HVL controlling or attempting to take over all these companies does not arise. Further it was denied that the estate of PDB is in medio or that there is no person to manage and administer or oversee the estate as alleged.

33. Nextly, the learned senior counsel referred to the judgment of dated 27.08.2010 in applications GA No. 3732 of 2008, GA No. 3714 of 2008, GA No. 3718 of 2008 in PLA No. 242 of 2004 and GA No. 3731 of 2008 in T.S. No. 06 of 2004. In the said decision, the court pointed out that the law is well settled by the Supreme Court by a large number of decisions that voting rights is essentially impartible adjunct to the shares. It was further held that the right of voting and incidental rights in connection with the shareholding automatically passes to the successor holder of the share, whether by way of transfer or by transmission therefore it is impossible to accept the contention that APL while taking custody of shares will have the limited role and obligations to receive the dividend only and will not be entitled to participate in the voting at any meeting of the companies as shareholders. Further the apprehension of the affectation of business of the running companies with appointment of administrators was held to be misplaced. Further it was submitted that in the said decision, the court clearly held as to what the APL has to do. There was a direction to the APL to make inventory of the estate and take possession of the same except which are under the possession of the Joint Special Officer. They shall submit

report of inventory within four weeks from the date of assumption of charge. Further with regard to the participation in the meetings of shareholders of the companies, they were directed to take lawful steps as shareholders in accordance with law which would mean that the provisions of the Companies Act have to be followed. Further in the said decision, it was held that the Joint Administrators will act ordinarily jointly, but in case of non-availability of any Joint Administrator remaining administrators or administrators will act, however ratification of the court is to be obtained latter at the earliest. Reference was made to the interim order passed by the Hon'ble First Court dated 22.12.2011, wherein the court recorded that the Learned counsels for the parties have principally agreed on the issue that an independent APL has to be appointed over the estate and the court should consider the constitution of APL as the three persons who have been nominated to constitute the APL by the first court are not acceptable to the appellants. Further the court has recorded the submissions of the learned counsels for the parties that only point which will be left for decision of the court is the power of APL vis-a-vis, the exercise of nature of rights relating to the shares which form the major part of the estate. Reference was made to the decision of the first court dated 23.08.2012 which was a decision rendered in the appeals arising out of the common judgment and order dated 27.08.2010 whereby the applications were disposed of putting the estate in the custody of three independent persons who would Act as a Joint Administrators pendente lite in and over all the estates left by the deceased. The learned senior counsel elaborately referred to the said

decision and submitted that the Division Bench has pointed out that the possession of an APL is similar to that of receiver with the distinction that the APL represents the estate for all purpose (except distribution) whereas the receiver does not represent the estate nor the parties but simply holds the estate for the benefit of the successful litigant. The Learned senior counsel laid much emphasis on the last three pages of the judgment and submitted that in seven places in the said judgment the court has used the words “ownership of shares and stocks”. Thus, it is submitted that controlling block of shares is where one has the majority ownership of shares. It is submitted that the in the last but one page of the judgment the first paragraph should not be read in isolation but should be read in conjunction with the earlier paragraphs which holds that the controlling block of shares is directly relatable to the ownership of those shares. It is submitted that at the relevant time Hon’ble Justice C.K. Thakkar, Former Judge of the Supreme Court was the administrator and after his resignation, the Hon’ble First Court by order dated 04.10.2012 appointed Hon’ble Justice R.V. Raveendran, Former Judge of the Supreme Court as the administrator. The letter sent by the APL to BCrL dated 27.12.2012, 08.07.2013 and 02.02.2014 were referred to and the reply given by BCrL to the APL dated 17.01.2013 wherein it was pointed out that BCrL is a listed company managed by Board of Directors elected with majority votes at the Annual General Meeting and the APL should resist any steps being taken to disrupt smooth functioning of the company which is the intention of the Birla Group and their nominees. Similarly, a letter was sent to the APLs by Bombay

Hospital Trust dated 30.01.2013 stating that the trust has been managed in accordance with the scheme and the Board of Management does not seek nor receive any guidance from any third party. However, should a proper suggestion be forthcoming the Board of Management may be open to consider that if it be in the interest of the public that the trust serves and consistent with the objects and proper administration of the trust.

34. Nextly, the learned senior advocate referred to the first interim report of the APL dated 15.10.2013 wherein in Annexure 14 list of assets of the PDB with the value as furnished by prepounder of will were annexed. It is submitted that from the annexure 14 to the said interim report it is clear that the property in public companies is the list of shares held by the estate. Thereafter the details of the five suits which were filed were placed before this Court and the prayer sought for in those suits. It is also submitted that BCRL has also filed a company petition in C.P No. 01 of 2010 before the CLB, Principal Bench in Delhi. Learned Senior Counsel nextly referred to the decision in the case of ***Priyamvada Devi Birla Versus Ajay Kumar Newar***<sup>10</sup> (Hon'ble Justice Jyotirmay Bhattacharya). After referring to the several paragraphs of the decision commencing from paragraph 111 it is submitted that control and management has a facet of holding shares and nothing can be done in derogation of the provisions of the Companies Act. It is submitted appeal has been filed against the said judgment. However, the learned senior counsel

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<sup>10</sup> 2016 SCC Online Cal 1541

seeks to rely upon certain findings rendered in the judgment as his arguments. It is further submitted that the probate court cannot issue an order of injunction against the third party and the jurisdiction is available only against a party to the proceedings who has caveatable interest. It is submitted that the Hon'ble Justice R.V. Raveendran resigned and Hon'ble Justice A.P. Shah was appointed by order dated 28.11.2016. Reference was made to the minutes of the 31<sup>st</sup> APL Committee meeting held on 21.07.2017 with particular reference to the decision of the APL on the objections raised for re-nomination of Directors. Subsequently, GA No. 1964 of 2018 was filed to constitute a new APL over the estate of PDB and for other reliefs in which the Hon'ble Division Bench passed the order on 10.04.2019 recording that Hon'ble Justice AP Shahi is not willing to continue and in his place Hon'ble Justice Mohit Shantilal Shah, Former Hon'ble Chief Justice of this Court was appointed to the APL Committee. The APL recorded its decision in the meetings held on 15<sup>th</sup> and 16<sup>th</sup> June, 2019 holding that the APL Committee having control over majority shareholdings in the companies in MP Birla Group of Companies including VTL and BCL, it does not support the resolution for reappointment of HVL as director of VTL and BCL; APL Committee supports in principle the resolution for payment of profit-based remuneration/commission to non-executive directors of UCL, VTL, BCL, and BCrL and certain other directions. It is submitted that this decision was rendered by two of the members of the APL and the third member puts up a dissent note. It is submitted that GA No. 1735 of 2019 has been filed to implement the decision of the majority APL and GA



No. 1761 of 2019 has been filed to set aside the majority decision of the APL. The Hon'ble Division Bench had rendered judgment dated 04.05.2020. The companies which were the appellants namely the BCL, BCrL and VTL are not parties to the proceedings before the learned single bench. The Division Bench held that the shareholder is not the owner of the assets of the company and the probate court does not decide the title of the properties being subject matter of the will and it only decides the genuineness of the will.

35. Nextly, the learned senior counsel referred to Section 2 (h) and Section 5 of the Indian Succession Act and Section 30 of the Hindu Succession Act to explain as to what is the property which can be bequeathed. On this aspect, reliance was placed on the decision of the Hon'ble Supreme Court in ***Rustom Cavasjee Cooper Versus Union of India***<sup>11</sup>. For the same proposition, reliance was placed on the decision in ***Tata Memorial Hospital Workers Union Versus Tata Memorial Centre and Another***<sup>12</sup>. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Howrah Trading Company Limited Versus Commissioner of Income Tax, Central, Calcutta***<sup>13</sup> to explain the position of a shareholder. This decision was referred to in ***J.P. Srivastava & Sons Private Limited and Others Versus Gwalior Sugar Company Limited and Others***<sup>14</sup>.

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<sup>11</sup> AIR 1970 SC 564

<sup>12</sup> (2010) 8 scc 480

<sup>13</sup> AIR 1959 SC 775

<sup>14</sup> (2005) 1 SCC 172

36. To explain what is the right of a shareholder in a company, reliance was placed on the decision of the Hon'ble Supreme Court in ***Life Insurance Corporation Versus Escorts Ltd. & Ors.***<sup>15</sup>. Reliance was placed on the decision of this Court in ***Murarka Paint & Varnish Works (Private) Ltd. Versus Mohanlal Murarka & Ors.***<sup>16</sup> and in the said decision among other things it was held that the law is that directors can be denuded of their powers of control and management either by alteration of the articles or by their removal. To further explain the rights of a shareholder in a company, reliance was placed on the decision in ***Shanti Prasad Jan Versus Union of India***<sup>17</sup>. The next aspect dealt with by the learned Senior Counsel is to explain as to what would mean by the word "control". It is submitted that "control" means ownership of shares. Reference was made to Sections 2 (27), 2(69) which defines "promoter", 2(69) (c) which deals with the separate category as defined in Section 2(27) which speaks of a right which is not found in section 2 (69) of the Companies Act, 2013. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Vodafone International Holdings BV Versus Union of India***<sup>18</sup> and in particular from Paragraph 99 of the said judgment. This decision is pressed into service in support of the proposition that controlling interest is inextricably linked to ownership / voting powers of the shares held in the company and personal influence is not a legal right and thus, not

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<sup>15</sup>(1986) 1 SCC 264

<sup>16</sup>1960 SCC Online Cal 181

<sup>17</sup> 1973 SCC Online Bom 71

<sup>18</sup> (2012) 6 SCC 613

enforceable in law. For the same preposition reliance was placed on the decision of the Hon'ble Supreme Court in **Chintalapati Srinivasa Raju Versus SEBI** <sup>19</sup>. Further, it is submitted that "control" is a "right". "In any manner" in the definition of "control" must be "legally enforceable right". In support of such preposition reliance was placed on decisions in **Arcelormittal India P. Ltd. Versus Satish Kumar Gupta & Ors.**<sup>20</sup>, **Technip SA Versus SMS Holding (P) Ltd. & Ors.**<sup>21</sup>, **State of Karnataka & Ors. Versus Kempaiah**<sup>22</sup>, **Vania Silk Mills (P) Ltd. Versus Commissioner of Income Tax, Ahmedabad** <sup>23</sup> and **Priyamvada Devi Birla, Rajendra Singh Lodha Versus Lakmi Devi Newar & Anr.** <sup>24</sup>. These decisions were also referred to explain the principle of *ejusdem generis*, *noscitur* and rule of last antecedent. To explain the concept of "control" further, elaborate reference was made to the decision in **Arcelormittal (Supra)** more particularly the findings of the Hon'ble Supreme Court in Paragraphs 48 to 56 of the said judgment.

37. It is further submitted that the concept of single directing mind and will are inapplicable to and irrelevant in determining the aspect of "control" within the meaning of Companies Act. The said concept only arises if the company is accused of wrong doing in which case the single directing mind or directing mind and will is sought to be identified in order to fix liability. The doctrine of

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<sup>19</sup> (2018) 7 SCC 443

<sup>20</sup> (2019) 2 SCC 1

<sup>21</sup> (2005) 5 SCC 465

<sup>22</sup> (1998) 6 SCC 103

<sup>23</sup> (1991) 4 SCC 22

<sup>24</sup> AIR 1973 Cal 450

identification does not apply to large listed companies. To explain the above proposition reliance was placed on the decision of the Hon'ble Supreme Court in **Sunil Bharti Mittal Versus CBI** <sup>25</sup> and **Reliance Natural Resources Ltd. Versus Reliance Industries Ltd.** <sup>26</sup>. Further, it is submitted merely being a promoter one cannot automatically control since the promoters do not have any such rights and being a promoter does not ipso facto means controlling himself by the person. In this regard, reliance was placed on the decision of the High Court of Bombay in **K.K. Modi Versus Securities Appellate Tribunal & Ors.** <sup>27</sup>. To explain the same proposition, reference was made to Sections 2(69), 7(6), 35, 42(10), 120(4), 168(3), 284(1), 300(1) and 340 of the Companies Act, 2013. Next, the learned Senior Advocate referred to Regulation 2(1)(q) of the Takeover Regulations which defines persons acting in concert and submitted that the definition clearly indicates that persons acting in concert requires two or more persons to act with the common objective or purpose. This itself predicates the exercise of control by at least two or more distinct persons. Thus, the estate of PDB alone does not exercise even de facto control over the listed companies of MP Birla Group. To explain "control" further once again the Learned Senior Advocate has drawn our attention to Paragraphs 48, 49 and 56 of the judgment in **Arcelormittal** and Paragraphs 45 to 47 of **Technip SA (Supra)**. The next limb of arguments of the learned Senior Counsel is by referring to what has been titled as "appellant's key". It is submitted that

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<sup>25</sup> (2015) 4 SCC 609

<sup>26</sup> (2010) 7 SCC 1

<sup>27</sup> 2001 SCC Online Bom. 969

though the learned Single Bench has held that Probate Court has no jurisdiction to issue any directions against third parties it has rendered/issued directions which is a fundamental flaw. The appellant had approached the Court as a propounder of the will and in the same proceedings an order is issued against him in third party entities. It is further submitted that none of the concepts allow them to vote as it should be based on a right that is share holding and there is no other way. In this regard, it is pointed out that in 13 places the learned Single Bench has pointed out the lack of jurisdiction of the Probate Court and inability to pass orders against third parties, however, in the impugned order a contra finding has been given which purports to pass drastic injunctions of a mandatory nature on third party companies / charitable societies. Further, the learned Single Bench in the impugned order directs the appellant / plaintiff No.1 who is a party in the capacity as propounder of a will and not in the capacity such as chairman / director to do or not to do several acts affecting the management and control of third party entities. Further, it is submitted that the learned Single Bench accepted the principle in **Howrah Tradings (Supra)** that only Members of the register of the Members of a company can vote. However, having accepted the aforesaid principle the learned Single Bench has held that if the contentions raised by the noticee companies are to be accepted by the entire concept "control", "promoter" or "promoter group" and "beneficial interest" appears to be superfluous. Further, it is submitted that the learned Single Bench accepts the principle in **Bacha Gazdar's** case (supra) that shareholders have no right over the assets of the

company. Having held so, the learned Single Bench proceeds to give contrary directions. Further, it is submitted on the findings rendered by the learned Single Bench on the contentions raised on behalf of the two Joint APLs, the Court has construed **Arcelormittal's** case to hold "control" or "de facto control" exists de hors shareholding or a "right" which is legally enforceable. It is submitted that the learned Single Bench has misconstrued the concept of "de facto control" as defined in Section 2 (27) of the Companies Act, 2013 which has been interpreted by the Hon'ble Supreme Court. The learned Single Bench had relied on one sentence in Paragraph 50 of the **Arcelormittal's** case without considering the paragraph in its entirety and the sentence which followed the line which had been corrected in the impugned order. The learned Single Bench has rejected the reliance placed on **Vodafone's** case despite the fact that the Hon'ble Supreme Court has categorically held in **Vodafone** that "control" is inextricably linked to ownership of shares or a "right" which is legally enforceable. The impugned order does not show how deep PDB in de facto albeit which comes to a finding at page 151 which is neither on evidence or reasoning, the learned Single Bench relies on the Paragraph 304 of the inter partes judgment dated 11.10.2007 without noticing the findings at Paragraph 301. Further, after referring to the decision in **Technip SA** it is submitted that even acting in concert it should be shown there is a right. Furthermore, the decision in **Hindustan Motors Ltd. Versus MRTP Commission** <sup>28</sup> under the MRTP Act where the definition of control is different from that of the definition

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<sup>28</sup> 1973 SCC Online Cal 56

in the Companies Act. It is further submitted that the APL committee never attempted to pierce the corporate veil and the learned Single Bench has also not done so. In the decision of the Company Law Board reported in **(2005) 128 Company Cases 145** it has been held that as to who controls the estate of PDB is a matter in the High Court and CLB cannot go into the said aspect hence, the petition seeking for an investigation was dismissed. The said decision was affirmed by this Court as reported in **(2006) 133 Company Cases 515 (Calcutta)**. There is no actual evaluation of the reasons of the decision sought to be approved and implemented by the impugned order. In fact the joint APLs' decision did not themselves come to any definite finding nor did they consider the evidence. In the impugned order de-linking control of ownership of shares and the findings in that regard, are fundamentally and patently misconceived, erroneous and bad in law. With regard to the alleged admission it is submitted that the so called admission of fact can at best bind the person making it not others. Finding of fact or admission of fact can be in a proceeding where there is jurisdiction. Notably none of the Lodhas were parties to the proceedings. The decision of the Hon'ble Supreme Court in **Sri Athmanathaswami Devasthanam Versus K. Gopalaswami Ayyangar** <sup>29</sup> was referred to wherein it was held that when the Court has no jurisdiction over the subject matter, the suit cannot be decided on merits. Further, when CLB decided it has no jurisdiction, the finding that PDB controlled more than 60% of the shares is not a finding of the CLB which itself held that it had no

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<sup>29</sup> AIR 1965 SC 338

jurisdiction. Therefore, it is submitted that the observation of the CLB cannot be elevated as if it is a finding of fact. That apart, control is a mixed questions of law and fact. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in **(2012) 6 SSC 687 (my notes page 31)**. Further, it is submitted that a client is not bound by any admission of the Counsel when it is not authorized. In this regard Reliance was placed on the decision of the Hon'ble Supreme Court in **Himalayan Corporation Group Housing Society Versus Balwan Singh & Ors.**<sup>30</sup> Further, the learned Senior Advocate once again referred to the judgment of Justice Kalyan Jyoti Sengupta and the affidavit filed by RS Lodha. Further, it is submitted that to the written submissions of the Counsel of RSL he has filed an affidavit denying of such allegations. It is further reiterated that APL was appointed only for 1260 shares and this prayer was granted and now at this juncture, they cannot expand the scope. On the decision of the two joint APLs it is submitted that it is not known as to why the two joint APLs should take sides. After the decision taken by the two APLs was taken by a Court receiver, the court would have struck it down. The finding of the learned Single Bench that the voting right should be guided by the APL committee, is erroneous. The directions issued in the penultimate paragraph of the impugned judgment in Paragraphs (a) to (c) would mean to state that the provisions of the Companies Act have to be ignored and HVL restrained from holding any office when there was no prayer sought for in that regard. In this regard reliance was placed on the decision of the Court of

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<sup>30</sup> (2015) 7 SCC 373



Appeal of California in the case of ***Estate of AH Winder***<sup>31</sup>. It is further submitted that whatever was the direction issued earlier which was set aside by the Hon'ble Division Bench headed by Hon'ble Justice Pinaki Ghose has now been passed as a decision of the two APLs. The APL committee being officer of Court can act pursuant to the directions of the Court and cannot act outside the probate jurisdiction, it must be independent, it cannot take sides and they should have filed a report before this Court and sought for orders from the Court. Further, once again referring to the decision of the Hon'ble Justice Kalyan Jyoti Sengupta and the decision of the Hon'ble Division Bench headed by Hon'ble Justice C.K. Thakkar it is submitted that there is nothing about the term "controlling the block of shares". It is further submitted that APLs committee is a joint APL and cannot act by majority. To support such proposition, reliance was placed on the decision of the Hon'ble Supreme Court in ***K. Leelavathy Bai & Ors. Versus P.V. Gangadharan & Ors.***<sup>32</sup> As noted above the various statutory provisions were referred to, to contend that the joint APLs could not have acted by majority and ought to have acted unanimously. Further it is reiterated that APLs being officers of Court are required to be impartial and should not enter into the arena of conflict or between the parties or wade into the merits of the case. To substantiate such proposition reliance was placed on the decision in ***L.K.M. Medical Trust Versus Charu***<sup>33</sup> and ***Shivram Antaiah Shetty Versus Chimanlal Ambalal***

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<sup>31</sup> 99 Cal.App. 2d 83

<sup>32</sup> (1999) 3 SCC 548

<sup>33</sup> 2008 SCC Online Bom 1210

**Trivedi** <sup>34</sup>. Further, it is submitted that significant beneficial ownership does not confirm a right to vote in this regard reliance was placed on the decision of the Hon'ble Supreme Court in **JP Srivastava (Supra)** and **Bal Krishnan Gupta & Ors. Versus Swadeshi Polytex Ltd. & Ors.**<sup>35</sup>. It is nextly submitted that Section 89 of Companies Act 2013 and Section 187C of the Companies Act, 1956 are para mataria. Further, a person need not make a declaration of beneficial interest under Section 187C or Section 89 he or she or his or her estate is precluded from ordinary beneficial interest. After referring to the various provisions of the Companies Act and the statutory provisions reliance was placed on the decision of the Hon'ble Supreme Court in **Ahmed Abdulla Ahmed Al Ghurair Versus Star Health and Allied Insurance** <sup>36</sup> and **P.R. Ramakrishna & Ors. Versus A. Mounaguruswami** <sup>37</sup>. Further, it is submitted that the controlling and management of trust property or property of a society vests with the trustees or governing bodies of the property. After referring to the provisions of the Indian Trust Act and the Societies Registration Act, reliance was placed on the decision in **Satyavart Sidhantalankar Versus The Arya Samaj** <sup>38</sup>. To support the argument that probate Court has no jurisdiction to pass orders against individuals or entities acting in different capacity, reliance was placed on the decision of the Hon'ble Supreme Court in **Chandrabhai K Bhoir Versus Krishna Arjun Bhoir** <sup>39</sup>. With the above

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<sup>34</sup> AIR 1987 Guj 30

<sup>35</sup> (1985) 2 SCC 167

<sup>36</sup> (2019) 13 SCC 259

<sup>37</sup> 1985 (57) Comp. Cases 477

<sup>38</sup> AIR 1946 Bom 516

<sup>39</sup> (2009) 2 SCC 315

submissions, the learned Senior Counsel concluded by submitting that joint APLs should be directed to act by unanimity and in case of dis-agreement to report to the Court for directions. All decisions taken by the majority of Joint APLs dated 19.07.2019 and 30.07.2019 and those which were sought to be implemented by the impugned order, are to be set aside. All decisions taken by the majority of the two APLs on the basis of the impugned order and consequential thereto are to be set aside. Joint APLs may take such actions as are necessary to preserve and protect the estate of PDB including in action as a shareholder in respect of the shares held in the name of the estate.

38. Mr. Mitra, learned senior advocate appearing for the second plaintiff, the appellant in APL No. 98 of 2020 categorized his submissions under seven topics which we will set out in seriatim. It is submitted that Section 247 of the Act has to be read harmoniously with Section 290 of the Succession Act, 1925. The Joint APLs have purported to exercise powers which PDB was to perceive to have and which did not flow from the legal ownership of PDB of any asset (more particularly the shares in joint companies and societies). On that premise, the joint APLs have been issuing several directions such as directing the companies and societies of the MP Birla Group to exercise voting rights in respect of shares owned by such companies in the manner decided by the APLs; giving directions to the companies to appoint and remove directors and to the trusts and societies to appoint persons named by them as trustees and members of the managing committee etc. The exercise of such

powers/directions is claimed to flow from the impugned judgment which has been relied on by the Joint APLs in their letters issued to the various companies including the letter dated 17.10.2020 issued to UCL. Thus, as per the stand taken by the Joint APL what flows from the above is that the estate of PDB pending grant of letters of administration with will annexed includes the aforesaid powers of PDB. It is submitted that the estate which the APL administers has to be the estate in respect of where all letters of administration is granted under Section 290 of the Succession Act. Prima facie findings on the scope and extent of the estate has to be after taking into consideration the fact that the expression “the estate of the administration” should be interpreted the same way in both the Sections 247 and 290 of the Succession Act which will also be relevant for the purpose of Section 273 of the said Act. Therefore, it is submitted that the court has to see whether letters of administration can be granted over the powers of PDB which usually perceived to have had as part of the estate and if it is so granted then in the Inventory and Accounts these assets would be included as Assent to Legacy would include these assets. Thus, it is submitted that the result of the above would be that whatever power the APL exercises will be the same power which ultimately be successors to the estate of PDB to exercise the consequences which would follow the report that the companies, societies and trust would have to follow the dictates of the representative of the estate of PDB presently the Joint APLs and thereafter either one of the groups. For all times to give that the directors could be appointed in companies as per the dictates of the representative of the estate of

PDB in utter disregard to the provisions of Section 151, 152, 161, 162, and 169 of the Companies Act, 2013. Similarly the trustees and members of the managing committee of the trust and societies would be appointed as per dictates of the representatives of the estate of PDB disregarding the provisions of the Constitution of the trust and societies. It is further submitted that the directions contained in sub para (a) at page 155 of the impugned judgment is that the plaintiffs No. 1, 2 and 4 and their family members would have to vote against the reappointment of HVL in respect of their personal shareholding in UCL, BRCL and VTL. Furthermore during the tenure of the Joint APLs the plaintiffs No. 1, 2 and 4 would have to always exercise voting rights in respect of their personal shareholding as per the dictates of Joint APLs and thereafter exercise voting rights as per the dictates of whoever ultimately represents the estate, their transferee, assignees etc.

39. The next topic dealt with by Mr. Mitra is regarding the extent of the estate of PDB. It is submitted that the extent of the estate of PDB is what is stated in the “affidavit of assets”, as amended, filed in T.S. No. 06 of 2004 and there is no scope for the court even to prima facie adjudicate the extent of the estate because the affidavit of assets except the valuation is the same in T.S. No. 06 of 2004 and PLA No. 242 of 2004. None of the defendants in their written statement filed in T.S. No. 06 of 2004 have raised any issue with regard to the affidavit of assets alleging that it is incomplete as it does not include PDB’s power in respect of shares not standing in her name. It is submitted that

the power which the testator/testatrix had even if legally cannot be part of the estate. In this regard, reliance was placed on the decision in ***Maurice Saleh Manasseh***<sup>40</sup> and the decision in ***Commissioner of Wealth Tax, Bombay Versus Mrs Nirmala D. Mehta***<sup>41</sup> It is further submitted that the testamentary court does not have jurisdiction in respect of assets not included in the affidavit of assets. For such proposition reliance was placed on the decision in ***Shyamal Kumar Banerjee and Others Versus Sunil Kumar Banerjee and Others***<sup>42</sup>.

40. It is submitted that if the Joint APLs are to exercise the powers which PDB as perceived to have i.e. not to flow from legal ownership of any asset, then by following the testator's arm chair theory they should exercise such power where PDB would have so exercised. It is submitted that in the notes filed on behalf of the plaintiff before the Joint APLs this aspect was fully explained and was elaborated with documentary evidence to the Joint APLs which was not considered by the Joint APLs and submissions in this regard made before the learned single bench was also not considered.

41. It is submitted by the respondents that there has been admission on the part of the plaintiffs on certain aspects which according to them would amount to estoppel/issue estoppel. In this regard, it is submitted that the plaintiff no. 2

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<sup>40</sup> AIR 1933 Calcutta 924

<sup>41</sup> 1990 Mah LJ 1225

<sup>42</sup> MANU/WB/0841/2004

was not a party to any of the proceedings where the alleged admissions were made that is either before the CLB or in the appeal arising out of the said order under Section 10F of the Act. In any event, it is submitted that the admission cannot confer or divest the title. To support such contention, reliance was placed on the decision of the Hon'ble Supreme Court in **Canbank Financial Services Limited Versus Custodian and Others** <sup>43</sup>. The next topic addressed by the learned senior advocate is with regard to the violation of principles of natural justice. In this regard, elaborate reference was made to the minutes of the meeting of the Joint APL held on 16.06.2019 and various events which took place during the course of the meeting etc. It is submitted that the plaintiff counsel had pointed out that the issue as to whether the Joint APL can take the decision by majority need not be decided before the Joint APLs and the meeting concluded on the said date and no submissions on the issue were either invited or made by either side nor the said issue was on the agenda of the meeting. However to the surprise of the plaintiff in the majority decision of the Joint APL dated 19.07.2019 several paragraphs were devoted to the aspect of majority decision making power of the Joint APLs with regard to the Joint APLs Mr. M.K. Sharma (MKS) one of the Joint APLs, in a part of his dissenting note has also expressly pointed out this factum.

42. Referring to the judgment of the Hon'ble Division Bench dated 23.08.2012 it is submitted that the said judgment does not contemplate the

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<sup>43</sup> (2004) 8 SCC 355

Joint APLs who are in the position of receivers, to take over and run any of the companies which are going concerns and such would be against the accepted legal principles, especially after coming into force of the Companies Act 2013. To support such proposition, reliance was placed on the decision in ***Kailash Chandra Datta Versus Sadar Munsiff, Silchar***<sup>44</sup>. It is submitted that only where a receiver can take over the running company is by having new directors appointed in place of the existing directors, in this regard reference was made to Section 179 of the Companies Act, 2013. Nextly, learned senior advocate referred to names of the new directors appointed by the Joint APLs and pointed out that such directions/appointments cannot be done contrary to the provisions of the Companies Act. Further it is submitted that non-reappointment of HVL, the director of the MP Birla Group of Companies would result in disruption in the management of such companies which was unanimously noted by the Joint APL at the meeting held on 21.07.2017. Similarly the names of the persons who are appointed by the Joint APLs to the various trusts and societies were also referred to. It is submitted that all such appointments could not have been made contrary to the provisions of the companies Act or the constitution of the trusts and societies.

43. It is submitted that in the present testamentary proceedings in the light of the earlier judgments dated 11.03.2005 and 21.12.2006 which was affirmed by the Hon'ble Supreme Court as reported in **2008 4 SCC 300** trusteeship and

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<sup>44</sup> AIR 1925 Cal 817



directorship are not heritable, that the Birla family members have separated long back and the co-share holder of a company is not right in the estate of other co-shareholders. Therefore, it is submitted that the learned judge ought not to have issued directions to the companies and societies to abide by the joint majority decision of the Joint APLs or to direct the plaintiffs to implement the majority decisions of the two Joint APLs and the learned single bench ought to have restricted the functions of APLs vis-a-vis as said to ensure whatever assets are mentioned in the affidavit of asset are not dissipated/transferred and to exercise powers legally flowing from ownership of shares only in case of established exigency.

44. It is submitted that the learned single bench had pre decided all the issues and the reasoning later given therefore was mere formality. In this regard, the learned Senior Advocate referred to the various paragraphs of the impugned order and submitted that all the paragraphs would indicate are only narration of events and there is no indication in the impugned order as to why the arguments of the plaintiffs appears to be self-contradictory and mutually destructive and therefore such findings rendered by the learned single bench in the impugned order are liable to be set aside.

45. Mr. Abhratosh Majumdar, learned senior advocate appearing for the appellant in APO No. 94 of 2020 elaborately took us through the findings of the

learned single bench and submitted that the findings have blurred the settled position of law with regard to the jurisdiction of the probate court. By placing reliance on the decision of the Hon'ble Supreme Court in ***Ghulam Qadir Versus Special Tribunal and Others***<sup>45</sup>, it is submitted that the probate court will go into the genuineness of the will and would not adjudicate on the title to the property. To explain the jurisdiction of the probate court, reliance was also placed on the decision of the Hon'ble Supreme Court in ***Krishna Kumar Birla Versus Rajendra Singh Lodha and Others***<sup>46</sup>. Next, the learned senior advocate referred to the minutes of the APL in the meetings held on 15<sup>th</sup> and 16<sup>th</sup> June, 2019. It is submitted that though the APL Committee in paragraph 34 of the minutes recorded that the committee has not attempted to take over the management and control of any of the listed companies and in fact, in the minutes of the meeting of the committee held on 21.07.2017 it was specifically observed that it is not possible for the APL Committee to virtually take over or take charge of the management of the listed companies which was also a view of the erstwhile Chairman of the APL Committee, the directions issued by the Committee by appointing directors in the various companies, goes contrary to the decision taken by the committee. Further by referring to paragraph 26 of the minutes, it is submitted that the committee had decided that it is not taking any final decision regarding what forms part of the estate of late Mrs. PDB but so long as the controversy between the parties is pending before the Calcutta High Court in Civil Suit Nos. 73 to 77 of 2010 and C.P No. 01 of 2010

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<sup>45</sup> (2002) 1 SCC 33

<sup>46</sup> (2008) 4 SCC 300

against the trusts, the APL Committee will have to proceed on the basis of the possibility that the estate of late Mrs. PDB has a majority share in the MP Birla Group of Companies including Tier 3 and Tier 4 companies also. It is pointed out that in the said decision the APL Committee has used the word “possibility” and the two decisions of the APL Committee are contradictory rather it is a blend of the possibility and impossibility. It is submitted that the question would be whether the APL Committee can take decisions on possibilities. It is further submitted that in paragraph 40 of the minutes, the APL Committee has decided that whenever necessary, the Committee may approach the High Court for appropriate directions by filing a report, but parties are also at liberty to approach the High Court for seeking appropriate directions and/or clarifications, so that as far as possible, the estate of late Mrs. PDB is not burdened with avoidable costs. It is submitted that the said decision clearly shows that the APL Committee was conscious of its limitations, but however had not approached this court for any directions but chose to unilaterally issue directions which is contrary to the provisions of the Companies Act.

46. Nextly, the learned senior advocate referred to the judgment of the Division Bench dated 23.08.2012 wherein the Hon’ble Division Bench held that the rights and powers of the general administrators over the estate of the deceased depends on the nature of the property both movable and immovable and the respective statutes which governs acquisition and enjoyment of such property. Further in so far as the stock and shares of the companies are

governed by the companies Act and in the light of the rules and regulations under the Companies Act there are two modes by which the shares of the companies can be obtained i.e. by transfer and/or transmission as provided under Section 108 of the Companies Act to be entered into the Registrar of Members. Further the Hon'ble Division Bench noted that the appellant/petitioners have specifically sought in their application for being appointed as APL to enable him to collect dividends paid against the shares and all other incomes of the estate which is one of the trait and characteristics of the different kinds of rights emanating from ownership of shares, stocks of a company as provided under the Companies Act, 1956. Further the Hon'ble Division Bench referred to the various provisions of the Companies Act pertaining to the propriety rights of ownership of stocks and shares like Section 87, 169, 172, 176, 187 and 188. The learned senior advocate submitted that if the judgment is read as a whole, it clearly shows that several provisions of the Companies Act had been taken note of and the legal aspect has been clearly brought out in the judgment however all the directions issued by the two Joint APLs are far beyond the provisions of the Companies Act. It is further submitted that while considering the present dispute, one has to keep in mind Section 247 of the Succession Act and the legal fiction is sought to be created but whatever be the legal fiction, it cannot travel beyond Section 247 of the said Act. In support of such contention, reliance was placed on the decision of the Hon'ble Supreme Court in ***Vineeta Sharma Versus Rakesh Sharma and***

**Others** <sup>47</sup>. Further it is submitted that the APL Committee cannot travel beyond the joint inventory report dated 15.10.2013. Reverting back to the judgment of the Hon'ble Division Bench dated 23.08.2012, it is submitted that the powers exercisable by the Joint Administrators are with regard to the shares and stocks owned by the testator and it is only such rights which flow from the ownership of the shares and enjoyed by the testator during her life time is the subject matter of the estate of the deceased. The learned senior advocate would submit that the findings recorded by the learned single bench in page 151 of the judgment is contrary to the decision of the Hon'ble Division Bench dated 23.08.2012. That apart, the learned single bench has travelled far beyond the prayers sought for in the applications as well as in this supplementary affidavit, and in this regard, the learned senior advocate has referred to the page 155 of the impugned judgment wherein the learned single bench has issued various directions/orders. It is submitted that several of the reliefs granted were without notice to the appellant and the appellant have been denied the right of fair hearing. It is submitted that the rule of fair hearing would equally apply in an administrative decision and to support such contention, reliance was placed on the decision of the Hon'ble Supreme court in ***Kanachur Islamic Education Trust (R) Versus Union of India (UOI) and Others*** <sup>48</sup>.

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<sup>47</sup> (2020) 9 SCC 1

<sup>48</sup> (2017) 15 SCC 702

47. Mr. Shyam Divan, learned Senior Advocate appearing for the appellant in APO No. 95 of 2020, Birla Corporation Limited submitted that the company is a public limited company, it is listed in BSE and NSE and is described by the respondents as the flagship company of the MP Birla Group. It is submitted that BCL is one of the India's leading cement manufacturers with an annual turnover of over Rs. 6,915 crores as at 31.03.2020 and its turnover has increased from 1343 crores in the year 2004-2005 to approximately Rs. 6915 crores (consolidated) in the year 2019-2020. The net worth of the company increased from Rs. 312.79 crores in the year 2004-2005 to Rs. 4806.3 crores in the year 2019-2020. Further BCL has an uninterrupted record of declaring dividend for the last 18 years and in the financial year 2019-2020 it had declared a total dividend of 75%. During 2004, the company had 29,825 shareholders/members holding 7,70,05,347 shares and Smt. PDB held 1260 shares of BCL during her life time. As of 31.03.2004, the shareholding of the promoters of the company comprising 26 companies, trusts, societies and individuals total 4,95,02,519 shares which is equivalent of 64.28% of the share capital of the company. As on 31.03.2020, BCL continues to have a total of 7,70,05,347 shares. The promoters comprises at present 23 companies and societies and one individual i.e. the estate of PDB holding a total of 4,84,34,191 shares equivalent to 62.90% of the total share capital. After elaborately referring to the genesis of the present dispute, it is submitted that the company is not a party to the suit, it was not a party before the learned Single Bench, however, the company appeared before the learned Single Bench through the

counsel in response to a notice issued pursuant to order dated 08.06.2020 which was issued pursuant to the observations of the Hon'ble Division Bench. It is submitted that the business or concern of a probate court is broadly under three heads namely to ascertain (i) where there is dispute (ii) whether the third party can come to court and (iii) where the APL has been put in place request for directions from the court. The case on hand according to the learned senior counsel would fall in the first category. In such circumstances, the APL ought not to be heard and if it is heard in the matter, it will not be impartial and as a matter of judicial policy, the APL should not be heard in the matter. Further the Companies Act will apply with full force. It is submitted that the learned Single Bench in the impugned judgment had laid down certain correct tests namely that the probate court cannot pass orders against the third parties, neither can they join in the probate proceedings and orders cannot be passed against the companies and charitable societies. In this regard, the learned Senior Advocate referred to certain paragraphs of the impugned judgment. Though, the learned Single Bench in about 13 places in the impugned judgment holds that the court lacks jurisdiction to issue directions against the third parties, the ultimate directions issued in the impugned judgment are contrary to the findings recorded. In this regard, the learned Senior Advocate referred to the pages 151, 152 and 155 of the impugned judgment. Therefore, it is submitted that once the court holds it lacks jurisdiction to pass the order against the entity, it could not have made any observations in regard to such entity after specifically holding that it would not go into those applications any

more. Therefore, the observation in this regard is a nullity as it has been made by the court which lacks jurisdiction. To support such contention, reliance was placed on the decision in ***Shri Athmanathaswami Devasthanam Versus K. Gopalaswami Ayyangar*** <sup>49</sup> and ***Hindustan Zinc Limited Versus Gujarat NRE Coke Limited*** <sup>50</sup>.

48. Nextly, the learned senior counsel referred to the prior background and submitted that in September 2004 six shareholders of BCL collectively holding about 0.0016% shares had filed proceedings against the company under Section 247/250 of the Companies Act, 1956 before the Company Law Board, Principal Bench, New Delhi in CP No. 58 of 2004 in which proceedings the promoter group shareholders constituting 63.7% (presently 62.9%) were arrayed as respondents. The petitioners therein sought for an investigation into the membership of the company in terms of Section 247 (1A) of the Companies Act, 1956, for determining the true persons who are financial interested in the success or failure of the company or who have been able to control or materially influence the policy of the company. In such proceedings, in CP No. 258 of 2004 none of the plaintiff or defendants in testamentary suits were impleaded as the parties. Ultimately by order dated 25.04.2005, the said petition was dismissed. Therefore, it is submitted that reliance placed by the defendants on the alleged admission of counsel for respondent qua the control of BCL is totally mis-conceived because the respondents before CLB in their

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<sup>49</sup> (1964) 3 SCR 763

<sup>50</sup> AIR 1999 Cal 179



replies, had denied any such control. An appeal preferred before this Court under Section 10A of the Act was dismissed by the judgment dated 24.08.2005. It is further submitted that in another proceedings under Section 10F of the Companies Act, 1956 arising out of the order dated 09.02.2011 passed by the Company Law Board, Principle Bench, New Delhi under Section 397/398 of the Act initiated by the Birla Education Trusts and others, the court in its judgment dated 10.05.2013 made certain observations which do not take away voting right of the promoters group shareholders or in any way cast upon them the duty to obey any direction of the estate/APL Committee. The observations do not require the company to change its register of members; each of the entities are independently managed by their respective Boards of Directors or Managing Committee. It is further submitted that on and after the judgment of the Division Bench dated 04.05.2020 in the present probate proceedings, after noticing the order of the Company Law Board and the judgment dated 10.05.2013 of the High Court in Section 10F jurisdiction it was held that the assets of the estate are as per the schedule of assets. It is submitted that in any event, any alleged admission by a counsel/an incidental recording by the court cannot deprive the entities of the promoter group of their statutory right to vote in respect of shares owned by them and whose names are reflected in the register of members in various companies or transfer of control to direct voting on the administrators of the estate of a deceased promoter shareholder. Reliance placed by the defendant on the correspondence between the APL and BCL during 2012, 2013 and 2014 to support their

contention regarding alleged controlling interest is mis-placed. BCL in its reply dated 17.01.2013 to the APL has not accepted the assertion of the alleged controlling interest and that they have taken a clear stand who were the shareholders of BCL are matters of record and nothing further or to the contrary was admitted. Therefore, replying or not replying to any further letter of APLs such as their letter dated 08.07.2013 is of no consequence. Further it is submitted that the unanimous inventory report of APL filed on 15.10.2013 was prepared on the basis of list of assets furnished by both sides and the said report till date is unchallenged and is conclusive.

49. Nextly, the learned senior counsel proceeded to explain about the position held by RSL and HVL in BCL. It is submitted that RSL was appointed as an Additional Director of BCL on 12.06.1991, the minutes thereof was signed by PDB and he continued to be the Director of the company until 1996 when he resigned on account of his appointment as the Director of State Bank of India. RSL continued to be a special invitee to various Board meetings of BCL. RSL was advisor to the Chairman, Smt. PDB from 1996 until 15.09.2001. RSL was reappointed as the Director and Co-Chairman of BCL at the meeting of the Board of Directors held on 15.09.2001 chaired by Smt. PDB. HVL became a Director of the company on 23.04.1996 and he was elected as the Chairman of the Company in 2009. HVL was reappointed after retiring by rotation in the Annual General Meeting of the company held on various dates. With regard to the performance of BCL, the learned Senior Advocate referred to

various figures and statistics to show that the performance of BCL has substantially improved and grown by the years. This submission is made to support the contention that 1206 shares in the company are safe and sound. Further it is submitted that the Board of Directors of the company consists of eminent persons who have achieved success and distinction in their respective professional career and the names of the directors and their credentials were placed before the court.

50. The learned senior counsel next proceeded to set out the broad heads of challenges to the impugned order in the following terms: (i) the court having held that it lacks jurisdiction to pass the order against the companies, it could not have proceeded to issue the impugned findings/observations/directions. (ii) the basic tenets of Companies Act have been contravened including the primacy of the Articles of Association, independents of the Board of Directors and sanctity of the Register of members, (iii) the impugned order is contrary to the established principles of testamentary law. (iv) the probate court exercises limited jurisdiction which is confined to ascertain the genuineness of the will. In exercise of its powers under Section 247 of the Indian Succession Act to preserve and protect the estate, an administrator's power or the probate court cannot be extended to injunct individual who are otherwise qualified under respective regulatory statutes which are complete codes in themselves from holding office in third parties entities (v) the impugned findings and the conclusions are contrary to the earlier findings rendered in various decisions of

this court dated 11.10.2007, 19.05.2016 and 04.05.2020 between the parties.

(vi) the impugned findings are contrary to the judgment dated 23.08.2012 rendered by the Hon'ble Division Bench presided over by Hon'ble Chief Justice J.N. Patel wherein it was categorically held that APL would have to apply to the company to get their names registered and the companies would consider such applications in terms of the provisions of law and its memorandum and Articles of Associations. It is submitted that the BCL is greatly prejudiced by the operation of the impugned findings as the APL Committee by majority decisions are seeking to exercise the voting right of BCL shares in other companies and to otherwise interfere with the affairs of the BCL. In this regard, various instances were referred to. It is submitted that the learned Single Bench refused to decide the issue raised by the BCL and in particular whether the two Joint APLs decision taken by majority should be implemented or whether the said two Joint APLs have rightly taken such decision. Having not decided the said issue, the learned Single Bench could not have made the impugned observations or issue in the impugned direction. After referring to the decisions in **2008 4 SCC 300, ILR 2007 (2) Cal 377** and **2016 SCC Online Cal 1541**, it is submitted that the observations in the impugned judgment are contrary to the findings which were rendered in the aforementioned decisions. Essentially in those decisions, it was held that the probate court cannot pass orders against the third parties; the probate courts jurisdiction is limited to examining the genuineness of the will and other consequential issues with regard to the testamentary capacity of the testator, due attestation of the will etc; the estate

of PDB is the owner of share of BCL only to the extent mentioned in the scheduled of assets of filed in T.S. No. 6 of 2004 and in the unanimous report of Joint APLs dated 15.10.2013 which is not in dispute; that the shareholder of a company is not the owner of the any of the assets of the company and the probate court cannot decide any question of title or ownership of property. In this regard, the learned senior counsel referred to the relevant provisions of the Companies Act, 2013, Rule 19 of the Companies (Management and Administration) Rules, 2014 and Section 2(a) and Section 247 of the Indian Succession Act, 1925.

51. Referring to Section 2(h) of the Indian Succession Act, it is submitted that a will means the declaration of intention of a testator with respect to this property which he desires to be carried into effect after his death. Thus, what is to be transferred/ disposed of by will is a property owned by a testator. It is submitted that this position is evident from Section 5 of the Indian Succession Act, 1925 and Section 30 of the Indian Succession Act, 1956. In support of such contention reliance was placed on the decision of the Hon'ble Supreme Court ***Rustom Cavasjee Cooper Versus Union of India***<sup>51</sup>. Thus, it is submitted that anything that is not a "property" or a "property owned by the testator" cannot be bequeathed by a will. With regard to the powers of the probate Court it is submitted that the probate Court has no substantive civil or company jurisdiction and its jurisdiction is limited to determination of

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<sup>51</sup> 1970 3 SCR 530

genuineness of will that is it does not determine title or any question as to the existence of the property. In this regard, reliance was placed on the decision in the case of **Kanwarjit Singh Dhillon Versus Hardy Singh Dhillon & Ors.**<sup>52</sup>, **Krishna Kumar Birla Versus Rajendra Singh Lodha**<sup>53</sup> and **Ramchandra Ganpatrao Hande alias Handegee Versus Vithalrao Hande**<sup>54</sup>. With regard to the position of an APL it is submitted that it is similar to that of a receiver with the distinction that the APL represents the estate of the deceased for all purposes except distribution. Reliance was placed on the decision in **Pandurang Shamrao Luad and Ors. Versus Dwarkadas Kallindas and Ors.**<sup>55</sup> It is submitted that the APL represents the estate of the deceased and in terms of Section 211 of the said Act the executor or administrator of a deceased person is his legal representative for all purposes and all the property of the deceased person vests in him as such and the meaning of “legal representatives” will have the same meaning as given in Section 2(11) of CPC. It is submitted that APL is appointed for a limited purpose of preservation and protection of estate. APLs being officers of Court are required to be impartial and should not enter into the arena and conflict between the parties. It is also well settled that the APLs are not appointed for the benefit of any of the parties and they should not interfere in the litigation between the parties and should not enter into the arena of conflict between the parties. In this regard, reliance was placed on the decision in **Lilavati Kirtilal**

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<sup>52</sup> (2007) 11 SCC 357

<sup>53</sup> (2008) 4 SCC 300

<sup>54</sup> AIR 2011 Bom 136= 2011(4) Mh.L.J. 50

<sup>55</sup> AIR 1933 Bom 342

***Mehta Medical Trust and Ors. Versus Charu K. Mehta and Ors.***<sup>56</sup> ,  
***Shivram Antaiah Shetty Versus Chimanlal Ambalal Trivedi and Ors.***<sup>57</sup>

and ***Woodroffe-Law Relating to Receivers***, 8<sup>th</sup> edition at page 236 and 237.

It is submitted that contrary to the above position of law APL has actively contested the applications. Apart from filing proceedings, such as a petition under Section 241/242 of the Companies Act alleging operation and mismanagement in respect of 3 subsidiaries VTL before the NCLT, Kolkata Bench more so when, the joint APLs do not hold a single share in the said subsidiaries of VTL. It is submitted that there has been a split verdict by the Bench, the Judicial member holding that the petitions are not maintainable and the technical member holding that the petitions are prima facie maintainable and the matter has been referred to the third member for decision (who affirmed the decision of the Judicial member). Further it is submitted that the special leave petition civil Dairy No. 27064 of 2021 before the Hon'ble Supreme Court challenging the judgment dated 22.04.2021 dismissing the contempt petitions filed by the group of defendants was disposed of without notice by order dated 04.02.2022. The learned Senior Advocate then proceeded to elaborately refer to the minutes of the APL committee dated 19.07.2019 and pointed out various discrepancies and decisions which are contrary to the minutes of the meeting. It is submitted that with regard to the trademark issue and logo, the said trademark and logo does not form part of the estate of PDB. Nextly, the learned Senior Advocate referred

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<sup>56</sup> 2008 SCC Online Bom 1210

<sup>57</sup> AIR 1987 Gujarat 30

to the pleadings made on behalf of BCL. The letter of APL to BCL dated 20.07.2012, and the reply of BCL to APL dated 17.07.2013 and the reply of BCL to APL dated 18.03.2014. After referring to the letter of the APL Committee dated 04.11.2020 addressed to the Board of Directors of BCL, it was submitted that APL is arrogating to themselves the power which is not available and it is contrary to the provisions of the Companies Act. The learned Senior Advocate then proceeded to submit with regard to the fundamental tenets of Company Law which include the independence of the Board of Directors, primacy of the articles of association and sanctity of register of members which requires adherence and cannot be deviated from on account of a testamentary dispute. In this regard, the observations made in ***Gower and Davies, Principles of Modern Company Law (8<sup>th</sup> Edition)***, ***Palmer's Company Law (24<sup>th</sup> Edition)*** were referred. Reliance was placed on the decision of the Hon'ble Supreme Court in ***Naresh Chandra Sanyal Versus Calcutta Stock Exchange Association Limited*** with regard to the importance of articles for the regulation and governance of the company's internal affairs. The definition of Member as defined under Section 2(15) of the Companies Act, 2013 was referred to and it is submitted that apart from the Board of Directors and the Members of the company, the Company Act does not recognize any entity which has a say in the company's affairs. Reliance was placed on the decision of the Hon'ble Supreme Court in ***LIC Versus Escorts Ltd.***<sup>58</sup> and ***Vodafone***

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<sup>58</sup> (1986) 1 SCC 264



***International Holdings Versus Union of India***<sup>59</sup>. The definition of “control” as defined under Section 2(27) of the 2013 Act, it is submitted that none of the ingredients of control is made out in favour of the estate of PDB. It is submitted that control is usually a consequence of the member’s share holding in the company; control is not an asset; it is their right emanating from certain factual conditions namely shareholding or management rights or share holders agreements or voting agreements or in any other manner. PDB’s estate on account of holding only 1260 shares of BCL accounting for a mere 0.06% of the total shareholding, cannot be said to be in “control” of the company. In this regard, paragraph 159 of the decision in ***Vodafone International Holdings BV*** was referred. Thus, it is submitted that control is inseparable from their share-holding of management rights or share holders agreements or voting agreements or in any other manner in terms of the definition of control in Section 2(27) of the 2013 Act. In the present case, the alleged control of PDB in her lifetime was on account of personal influence without any underlying majority share holding. The powers of the APL are limited to the estate of PDB which does not include his control in interest over the company. Further it is submitted that the lack of control in interest of the estate of PDB in BCL is evidenced, inter alia, by the reappointment of HVL to the Board and chairmanship of BCL on 25.08.2020, despite the APL committee voting against their resolution for appointment of HVL after discontinuing the shares referable to PDB’s estate in pursuance of the order dated 01.10.2020. Thus, by way of

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<sup>59</sup> (2012) 6 SCC 613

concluding submissions, the learned Senior Advocate submitted that no adverse directions can be issued against the company as it was not the party in the suit and therefore, the directions issued in the impugned judgment are liable to be set aside. No membership rights can be exercised by non-members and APL committee can only exercise voting and other membership rights with reference to the 1260 shares held by it and nothing beyond. In support of such contention reliance was placed on the decision in **Howrah Trading Co. Ltd. Versus CIT**<sup>60</sup>; **Balkrishan Gupta Versus Polytex Ltd.**<sup>61</sup> and **Killick Nixon Ltd. Versus Bank of India**<sup>62</sup>. It is submitted that during her lifetime PDB could not have exercised voting rights in respect of the shares held by any or all of the promoters as a matter of legal right. The APL acting as guardian of PDB's estate, cannot exercise the voting rights at company meetings in respect of shares held by various companies, trusts and societies of the MP Birla Group. To do so share holder should exercise powers beyond the scope of the estate and in flagrant violation of law. It is submitted that inclusion of an individual, company, trust, society in the promoter group does not mean that such entity is legally owned and controlled by anyone promoter as it only means that such individuals, companies, trusts, societies are associated with each other as stipulated in the SEBI Takeover Regulations and SEBI Disclosure Regulations. Further it is submitted that merely because there are cross holdings and chain holdings between the companies, trusts and societies

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<sup>60</sup> 1959 Supp (2) SCR 448

<sup>61</sup> (1985) 2 SCC 167

<sup>62</sup> (1985) 57 Comp Cas 831

forming part of the promoter group, cannot in law affect any member's statutory rights to exercise voting rights qua its share holding or permit/ enable the APL committee to exercise voting rights qua such member's share. The joint APLs are entitled to exercise rights as legal share holders only in respect of the shares recorded in their names in the company and not for anybody else. The shares held by BCL in other companies are the absolute property of the company, a decision in respect of which taken by BCL alone. It is submitted that even assuming if the estate of PDB held majority shares of the BCL, yet it cannot direct a company to act in a particular manner. This is so because a share holder does not have any interest in the assets of the company. This issue is fully covered by the judgment dated 19.05.2016 reported in **2016 SCC Online Calcutta 1541**. In this regard reliance is also placed on the decision in **Murarka Pain & Varnish works Pvt Ltd. Versus Mohanlal Murarka**<sup>63</sup>; **Jagadish Prasad and Anr. Versus P. T. Paras Ram and Ors.**<sup>64</sup> and **Subarban Bank Private Limited Versus Thariath and Anr.**<sup>65</sup> After referring to the decisions in **Vodafone International** and in the case of **Balkrishna Gupta** it is submitted that BCL can permit exercise of voting rights only to the persons whose names appear in the register of members. The company cannot deny voting rights to a recorded share holder/ member. After referring to the decision in **JP Srivastava Versus Gwalior Sugar Co Ltd.**<sup>66</sup> and **Bal Krishnan Gupta & Ors. (Supra)**, it is submitted that the estate of

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<sup>63</sup> AIR 1961 Cal 251

<sup>64</sup> AIR 1941 All 360

<sup>65</sup> AIR 1968 Ker 206

<sup>66</sup> (2005) 1 SCC 172

PDB is not a beneficial owner of the shares of the company. There is no record of significant beneficial ownership of the shares of the company with a depository in terms of Section 43 and 89 of the Companies Act, 2013. It is submitted that PDB during her lifetime had never made any declaration under Section 187 C of the Companies Act, 1956. Therefore the estate of PDB does not include any significant beneficial ownership of shares and the APL cannot go beyond the estate. In this regard, reference was made to the decision in the case of **Ahmed Abdulla Ahmed Al Ghurair Versus Star Health and Allied Insurance**<sup>67</sup> and **Sanjeev Mahajan Versus Aries Travels Pvt. Ltd.** judgment dated 04.02.2020 in CS(OS) No. 46 of 2020 in paragraphs 29 and 30. With regard to the contention that regarding “single directing mind” it is submitted that the concept of “single directing mind” and will are irrelevant in determining the aspect of control within the meaning of Companies Act. The said concept arises if a company is accused of wrong doing in which case the single directing mind is identified in order to fix liability. It is the means by which is attributed to the corporations on the principles of “alter ego” or “single directing mind” of the company. The said concept cannot arise in civil cases where there is no acquisition of wrong doing/ criminality/ fraud. To support such contention reliance was placed on the decision in **Sunil Mittal Versus CBI**<sup>68</sup>. Therefore, this concept of single directing mind has no application to testamentary proceedings. With the above submissions the learned Senior Advocate contended that the adverse directions and observations contained in

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<sup>67</sup> (2019) 13 SCC 259

<sup>68</sup> (2015) 4 SCC 609

the impugned order qua BCL and its affairs despite the Court holding that the probate Court has no jurisdiction or liable to be set aside.

52. Mr. Ranjan Bachawat, learned Senior Advocate appearing for the Birla Corporation Ltd. after elaborately submitting about the genesis of the entire dispute contended that the probate Court itself could not have taken the decisions which were taken by the APL, the order appointing APL did not give them such powers and the prayer in the application to execute such orders is not maintainable. Further, the learned Single Bench accepts in 13 places in the impugned judgment that orders cannot be passed against companies yet the directions issued in the impugned order are clearly inconsistent with the findings recorded by the Court. It is further submitted that the APLs have joined hands with the Birlas and approached the NCLT. Referring to the orders passed by the Learned Single Bench more particularly in page 98 it is submitted that the correctness of the decision of APL was not looked into. Having rendered several findings in favour of the companies in the penultimate portion of the impugned judgment several observations have been made and directions have been issued which is hurting the company and the consequences are numerous and they are against the interest of the company. It is submitted that BCL is not an asset of the estate of PDB, the share holding of PDB was limited to 1260 shares, and as such the scope of joint APLs is also limited to 1260 shares which were recorded in their names pursuant to an application made by joint APLs to BCL in terms of judgment and order dated

23rd August, 2012. The extent of share holding is admitted and acknowledged by both parties to the probate proceedings in the respective affidavit of assets filed by them. Under the articles and the provisions of the companies Act, 2013 BCL can only recognize the recorded holder of the shares and permit it to exercise voting rights in relation thereto. In this regard, Sections 47, 88 read with Section 2(55) of the Companies Act, 2013 were referred to. It is further submitted that GA No. 1735 of 2019 and GA No. 1845 of 2019 were filed by the Defendant Nos. 1(b) and 1(c) and ex parte orders were passed against BCL and other companies on 02.08.2019, 05.08.2019 and 09.08.2019 which had the effect of interfering with the validly convened Annual General Meeting of BCL and declarations of the results of the AGM. On an appeal filed by BCL and other affected companies the said order was set aside by the Division Bench by order dated 04.05.2020. The Hon'ble Supreme Court refused to interfere with the said judgment.

53. It is further submitted that in disposing of GA No. 1735 of 2019 and GA No. 1845 of 2019 the learned Single Bench fully accepted the contention of BCL and other companies that the probate Court has no power and jurisdiction to pass orders against the company. In this regard, several paragraphs/ pages of the impugned judgment were referred to. It is submitted that despite such findings the learned Single Bench made observations affecting BCL and share holders by giving the Joint APLs the right to interfere with the affairs of the company who are seeking to exercise voting rights in relation to share holders

not recorded in the name of PDB or her estate or the joint APLs on directing BCL to exercise its voting rights in other independent companies under the guidance of the APLs. The effect of such observations is that the defendants and two of three joint APLs have sought to nominate Directors in BCL to exercise voting rights in shares of other share holders of BCL including companies, charitable trusts and societies which are independent bodies governed by the respective documents and respective laws applicable to them. The two of the three joint APLs by majority decision are also seeking to exercise voting rights of BCL's shares in other companies and also otherwise interfere and intermeddle with the affairs of BCL. The manner in which such interference is caused was submitted before the Court. Further it is submitted that the defendants and two of the three joint APLs are seeking to enforce the stray observation mentioned in the impugned order by filing diverse proceedings and the details of those proceedings were also set out. The actions of the joint APLs acting by majority is not permissible either under the articles of association of company or the Companies Act, 2013 as the same would compel the company to prevent the recorded share holder from exercising their voting rights in relation to shares recorded in their names. Similarly, the company would be compelled to permit the persons who are not recorded share holders to exercise or control the exercise of voting rights in relation to shares standing in the name of others. Further, it is submitted that nomination of Directors by the two joint APLs is not permissible. As in terms of the provisions of the Companies Act, 2013 appointment of Directors could be made by

resolutions passed by the majority of share holder's voting at the AGM of the company.

54. It is further submitted that the share holders have no right over the assets and properties of the company. The estate of PDB holds only 1260 shares which is less than 0.002% of the shares of the company. However, even on the basis that the estate of 100 % shares of BCL, it has not legal right to the ownership and to exercise voting rights or shares held by BCL in other companies. This would be contrary to the well settled position that even a 100% share holder of a company cannot claim ownership of the assets and properties of the company. It is further submitted that the learned Single Bench despite refusing to decide various issues on the basis of which alone the joint APLs could have been given the power to intermeddle with the affairs of BCL and other companies. The learned Single Bench while taking note of the submissions on merit whether or not APL's decision should be implemented or whether the APL has rightly taken decision as APL or not was not gone into. Thus, the learned Single Bench having refused to decide such issues and in particular whether two joint APLs decision taken by majority should be implemented or whether the two joint APLs have rightly taken such decisions, the learned Single Bench could not have made observations on the strength of which it is now claimed by the respondents and the two joint APLs, the validly appointed Board of Directors of BCL is compelled to exercise its voting rights in the manner to be guided by the APL committee. It is further submitted that the



learned Single Bench having held that BCL/ company is not amenable to the jurisdiction of the probate Court, it upheld the joint decision of the two APLs to ensure that one person is continued as a Director of BCL. Similarly, the interpretation of the majority decision of the said two joint APLs would interfere with the resolutions already taken in the AGM of the company and communicated to the public and statutory authorities. The observations made by the learned Single Bench would create a situation where the company would be compelled to act in violation of Sections 47, 88 read with Section 2(55) of the Companies Act, 2013 and the articles of association by preventing the recorded share holders from exercising their voting rights over the shares and permitting a person who is not recorded share holder to exercise their rights. In terms of the said provision only a person whose name has been recorded as a member in the register of members of a company can exercise voting rights at the general meeting of the company. Similarly, appointment of Board of Directors is required to be made by resolutions passed by majority of shares at a general meeting of the company under Section 152 read with Section 162 of the Companies Act, 2013 and neither the Act nor the articles of association permit nomination of directors by any other person. It is reiterated that the observations made by the learned Single Bench are contrary to the findings which were rendered in the earlier stage of the present proceedings which are to be in effect (i) the probate Court cannot pass orders against third parties; (ii) probate Court's jurisdiction is limited to examine the genuineness of a will and other consequential issues with regard to testamentary capacity of the testator,

due attestation of the will etc.; (iii) the estate of PDB is one of the shares of BCL only to the extent as mentioned in the schedule of assets and the unanimous report of the joint APL dated 15.10.2013; (iv) that the share holder of a company is not the owner of any assets of the company and (v) the probate Court cannot decide any question of title or ownership of property. In this regard reference was made to the decision reported in **2008 4 SCC 300** (Para 57) and **2016 SCC Online Calcutta 1541** (Para 109, 110, 148, 154 and 159). It is further submitted that similar issues are involved in three other appeals preferred by UCL, BCL and BTL where there are minor differences in facts of those companies. It is further submitted that though PDB did not hold a single share in wholly owned subsidiaries, the APL has nominated themselves as directors. Thus, the APLs are trying to arrogate power unto themselves. It is submitted that though five complaints are made against HVL there is no allegation against the company and no letter was written to the company by the APL. After elaborately referring to the decision of the Company Law Board reported in **2005 128 Company Cases 145 (CLT)**, it is submitted that there is no admission of any control and the company has denied the allegation. Further there is no finding on the allegations made by the two APLs on HVL and virtually the two APL is now going on “overdrive mode”. It is submitted that two of the directors namely, Mr. Daga and Mr. Damani which according to the learned Senior Advocate are to be called as rogue directors and they are addressing the APL alleging that the company is acting against the two APL decision and virtually the two APL is shaking hands with the rogue directors.

The said rogue directors are wasting the money of the estate. The learned Senior Counsel then proceeded to refer to a various communications sent by APL and minutes of the meeting the views expressed by one of the members of the APL etc. It is further submitted that APL not only appointed but also removed the directors. It proceeded to act in a strange manner and all letters have been signed by Mr. ACC and all proposals emanated from Mr. ACC and the two APLs continues to say that their actions are authorised by Court. It is submitted that when the probate Court cannot appoint directors and trustees, no such rights will enure in favour of the joint APLs. The learned Senior Counsel referred to the decision of the Hon'ble Supreme Court in **Official Trustee, WB & Ors. Versus Sachindra Nath Chatterjee & Anr.**<sup>69</sup>. For the proposition that probate Court does not have jurisdiction to pass order as prayed for or granted before / by the learned Single Bench. For the proposition that the Court cannot delegate its judicial function to any other authority, reliance was placed on the decision in **Jute Corporation of India Ltd. Versus Sudera Enterprises Pvt. Ltd.**<sup>70</sup> For the same proposition reliance was placed on the decision of the Hon'ble Supreme Court in **P. Surendran Versus State by Inspector of Police** <sup>71</sup>.

55. Further it is submitted that stray observations are contrary to well settled principles of corporate jurisprudence/ provisions of the Companies Act.

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<sup>69</sup> AIR 1969 SC 823

<sup>70</sup> AIR 2000 Cal 152

<sup>71</sup> (2019) 9 SCC 154

Numerous attempts made over the last 19 years to interfere with the AGMs of the companies have been rejected earlier. It is submitted that in the impugned order direction has been issued to implement the decision of the two joint APL dated 19.07.2019 and 30.07.2019 without deciding the objections with regard to the jurisdiction and the powers of the joint APLs to pass such directions and without deciding the correctness thereof. It is further submitted that the cross-objections of the respondents are directed against the clear, unequivocal finding in the impugned order that the probate Court cannot extend its jurisdiction over a person or entity who is not a party to the proceedings. The appellant's appeal must succeed if the cross-objection fails. It is reiterated that third parties cannot intervene in probate proceedings unless they have caveatable interest and that is why no orders/ ought to be passed against non parties, especially when no final order can be passed against them or when no final orders can be passed reversing the effect of an interim order passed against third parties. Further it is submitted that only the grant of probate is *in rem* whereas the orders passed by the Court are *in personem*. Merely because the grant of probate operates *in rem*, does not ipso facto mean that the orders can be passed against third parties. Hence, it is submitted that the principle for which the decision in the case of **West Bengal Housing Development Board** <sup>72</sup> was cited is fully applicable in the present case as interim orders passed by the probate Court do not operate *in rem*. After distinguishing the decisions which were referred to by the respondents it is submitted that it is

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<sup>72</sup> (2016) 1 SCC 743

evident from the judgments relied on by the respondents that the testamentary Court will rarely, if at all, pass orders passed against third parties, will direct APL to file appropriate proceedings before the appropriate Civil Court to protect the properties of the estate. The same is restricted to cases where an APL has not been appointed or where there is no dispute in regard to the property belonging to the estate. Further, learned Senior Counsel also elaborated upon the contention that there is no admission made or recorded in the CLB judgment which were elaborated by Sri Khambata, learned Senior Advocate. It is thus submitted that the admission must be clear and unequivocal and they cannot override the statute. However, in the case on hand no such clear and unequivocal admission has been demonstrated. It is further submitted that in the applications filed by the respondents there is no pleading regarding the alleged significant beneficial ownership (SBO) of Smt. PDB in the share holding companies. Further, the claim of SBO raised by the two of the three joint APLs was rejected by the judicial member of the NCLT and due to different in opinion of the technical member the matter was referred to the third member and the judgment dated 07.02.2023 the learned third member approved the judgment of the judicial member and the claim of the two joint APLs of beneficial ownership was held to be misconceived. Further there was no declaration made during the lifetime of Smt. PDB or the erstwhile Joint APLs. In this regard, reference was made to Section 90 of the Act. Elaborate submissions were made on the conduct of the APLs (majority) and it is submitted that the two joint APLs have no power to adjudicate or take control of the companies and there is

no order of any court permitting them to act by majority. Further it is submitted that even the testamentary Court cannot direct public listed companies to appoint directors of its choice, give directions on the conduct of the AGM or permit an APL to exercise the voting rights of shares not recorded in the name or act in a manner contrary to the Companies Act or the articles of association of the company. It is submitted that the decision on 19.07.2019 including the directions to appoint directors, changing the status quo which has existed since 2005 is contrary to the previous decisions of the Joint APLs which held that it is not interested in taking over the management of public listed companies. In this regard, the minutes of the APL dated 21.07.2017 was referred to. It is further submitted that in tune with the unanimous inventory report joint APL's vote to the appellants seeking transmission of shares in the name of the Joint APLs for only 500 shares which was the consistent practice till the present proceedings. Therefore, the reversal of stance without any change in underlying facts is unjustified. Thus, it is submitted that some of the jurisdictional points which were urged by the companies before the learned Single Bench have not been dealt with in the impugned judgment namely, that a share holder including the one who holds 100% of shares cannot claim ownership of the properties of the company; directorship and trusteeship are not hereditary posts and cannot be subject of testamentary disposition; the Court in exercise of its testamentary jurisdiction or otherwise cannot pass orders prayed for by the respondents, even assuming that the testamentary court has power to pass such orders, the joint APLs do not enjoy the power of

the Court and has no power or jurisdiction to give the directions, whether by majority or otherwise; even if the testamentary court has wide powers as claimed by the defendants, the same have not been conferred on the joint APLs. With the above submission, Mr. Bachawat concludes.

56. Mr. Jishnu Chowdhury, learned Senior Advocate appearing for the appellant in APO NO. 89 of 2020, **Universal Cables Limited** submitted that no notice was directed by the Court to be served on the companies and this is in violation of principles of natural justice. Since, this may affect the way the companies functions the Court felt notice was not necessary. In the judgment of the Division Bench dated 04.05.2020 there is no order or direction against companies/ third parties. Referring to the decision of the Hon'ble Supreme court in **1996 3SCC 587** (Para 4) it is submitted that when a party is not impleaded to a proceedings it is a grave error. It is submitted that the established principle of probate jurisprudence are that the subject matter of the proceedings is the will; the defendants are who opposed the will and all other are third parties who have no scope for impleading themselves; the estate which belonged to the deceased must be mentioned in the affidavit of assets; and if the dispute regarding an estate or regarding title the probate court will not go into it as suit is the only remedy. To explain the duty of the probate Court reliance was placed on the decision reported in **1987 2 CHN 63** (Para 26). It is further submitted that control of the companies not forming part of the affidavit of assets, the learned Single Bench would not have issued

directions as contained in the impugned order. The two joint APLs cannot abrogate or override the basic tenets of Company Law. It is submitted that the Birla share holders tried all methods for 15 years and were unsuccessful and they have now come to the probate Court. If the order and direction issued by the learned Single Bench is to be allowed to be sustained, majority share holders will lose all their rights. The direction was issued by the learned Single Bench after recording that no order can be passed against the companies. However, contrary to such finding directions were issued. The APLs cannot adopt a partisan attitude and should be fair and the learned Single Bench appears to have been impressed by this partisan stand or submissions made by the two joint APLs. The learned Counsel in support of his submission referred to the decision in the ***InRe: Abha Rani Sinha***<sup>73</sup>.

57. Mr. S.K. Kapoor, learned Senior Advocate appearing for the first respondent in APO No. 92 of 2020 prefaced his submission by contending that the subject matter of the instant appeal are two decisions of the APL dated 19.07.2019 and 30.07.2019. The decision dated 19.07.2019 revolves on two issues, the first being the extent of estate of PDB and the second being the role of APL. On the first issue, the APL concluded that major part of the estate of PDB consisted of controlling interest in MP Birla Group through shareholding both directly and indirectly through cross and chain shareholding in various companies within the MP Birla Group. APL arrived at such findings based on

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<sup>73</sup> (2017) 4 CHN 114



admissions and in the decisions of the Company Law Board, the High Court and the Supreme Court. On the second issue, APL concluded that its role was determined by the judgment dated 23.08.2012 and that the role of APL could not be limited to being mere proxies of the estate of PDB attending AGMs of the shareholders and voting at such meeting and that the role to be played by APL did not run-counter to the provisions of the Companies Act, 2013. The APL also concluded that while taking decision, APL could act by majority. It is submitted that in the light of the conclusions arrived at by APL in its decision dated 19.07.2019, it decided that three members of APL who had already been appointed as Directors in five investment companies of MP Birla Group would continue to be the Directors therein, that Justice Karnik who had already been appointed as Director would continue to be the Director in UCL, VTL and BCL and would be appointed as the Director in three subsidiaries of VTL that Justice Devedhar would be appointed as Director in BCRL and he would be appointed as the Director in Hindustan upon vacancies arises.

58. It is submitted that the APL's decision dated 30.07.2019 revolves around exercise of voting rights with regard to the two resolutions proposed at the ensuing AGM of VTL, BCRL, UCL and BCL. The APL decided to object to reappointment of HVL and the payment of profit based remuneration to HVL and accordingly gave directions regarding the manner of exercise of voting rights to the constituents of controlling block of shares held by the estate in VTL, BRCL, UCL and BCL. The learned Single Bench by judgment dated

18.09.2020 upheld the decisions of the APL dated 19.07.2019 and 30.07.2019.

It directed the plaintiff to implement those decisions and restrain the plaintiffs from drawing any benefits personally from out of the assets of the estate; restrained the plaintiffs from interfering with the future decisions of APL (even if by majority) and restrained HVL from holding any office in any of the entities of MP Birla Group. By interim order dated 01.10.2010 passed in this appeal prayer for stay was refused but was clarified that the directions contained in the judgment dated 18.09.2020 by observing that the word implement in para (a) thereof means to abide by and directions contained in para (b) thereof would operate as restriction on HVL from holding any office in any of the entities of MP Birla Group on the strength of shares referable to the estate of PDB. It is submitted that contempt proceedings were initiated for violation of the order dated 01.10.2020 which was dismissed by the appeal court by order dated 24.04.2021. In the SLP therefrom, the Hon'ble Supreme Court by order dated 12.07.2021 has observed that the instant appeals should be decided without being bound by the observations in the order passed by the contempt petitions by the appeal court dated 22.04.2021. Further the order of the Hon'ble Supreme Court dated 04.02.2022 reiterates the order dated 12.07.2021. Thus, it is submitted that the order dated 22.04.2021 passed in the contempt proceedings is not a hurdle in deciding the present appeal. With this preface, the learned Senior Advocate proceeded to give a background of the charitable disposition of MPB and PDB. It is submitted that the father of MPB Shri Rameswar Das Birla had a charitable of mind and he executed a will

bequeathing his estate to charity. MPB and PDB took a vow at Tirupati and Kanchipuram which was witnessed by Guru Shankaracharya to bequeath their estate to charity. MPB and PDB executed mutual wills in 1981 bequeathing their estate to charities. In 1982, MPB and PDB executed mutual wills similar to those of 1981 but only increased the number of executors from 3 to 4. The charitable disposition of the couple has been recorded in the biography on the life of the MPB title "To man, To country and To God" authored by Dr. V Gaurishankar. In 1988, MPB and PDB executed five trusts bequeathing their estate to charity. In 1990, the MPB died. Thereafter the five trusts were perfected by PDB by nominating the beneficiaries. On 15.04.1999, just three days prior to the impugned will, PDB purportedly dissolved the five trusts. However, no document regarding revocation has been disclosed till date. On 18.04.1999, PDB purportedly executed the impugned will appointing RSL as executor and bequeathing the entire estate to him. On 27.06.2000, purported letter written by PDB to the Income Tax department stating that the five trusts have been dissolved. On 15.04.2003, the purported Codicil was executed by PDB. On 03.07.2004, PDB died. On 19.07.2004, RSL filed an application for grant of probate of the will dated 18.04.1999 and the Codicil dated 15.04.2003. It is submitted that all the above facts have been referred to in the judgment reported in **2006 2 SCC 757**. On 03.10.2008, RSL died and upon his death HVL and other heirs of RSL were substituted and the application for grant of probate was converted into Application for Grant of Letters of Administration with copy of the will annexed. It is submitted that in the amended application

HVL expressed willingness to abide by the directions contained in the impugned will of 1999. In this regard, the learned Senior Counsel elaborately referred to the various dates and events relating to the trusts which have also been furnished as annexure “A” in the written notes submitted on behalf of the first respondent.

59. It is submitted that the execution and the attestation of the impugned will of 1999 is shrouded by suspicious circumstances and the Birla's had challenged the will on several grounds including its due execution and attestation. Referring to Section 63(c) of the Indian Succession Act read with Section 68 of the Evidence Act. It is submitted that a will has to be attested strictly in the manner provided under the said provisions. Reliance was placed on the decision in **Janki Narayan Bhoir Versus Narayan Namdeo Kadam** <sup>74</sup> and **Babu Singh and Others Versus Ram Sahai alias Ram Singh** <sup>75</sup> for explaining the legal principle as to a valid attestation. It is submitted that the impugned will of 1999 has not been executed and attested in accordance with the aforementioned statutory provisions. Various other factual details were referred to as well as the affidavits filed by attesting witnesses. It is further submitted that even though the impugned will of 1999 is registered, the mere fact of the registration does not do away with the requirements of the attestation. For such proposition reliance was placed on the decision in

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<sup>74</sup> (2003) 2 SCC 91

<sup>75</sup> (2008) 14 SCC 757

**Bhagat Ram & Anr. Versus Suresh & Ors.**<sup>76</sup> and **Benga Behera & Anr.**

**Versus Braja Kishore Nanda & Ors.**<sup>77</sup>. It is submitted that there is a serious challenge as to the will of 1999 and the Codicil of 2003. It has been over 18 years since the death of PDB and HVL has not made any attempt to prove the impugned will and codicil. HVL has only attempted to delay the hearing of the testamentary proceedings and reap the benefits of the estate. In this regard, the learned Senior Advocate has referred to various factual details which according to the learned Senior Advocate are the dilatory tactics adopted by HVL.

60. The next aspect referred to by the learned Senior Advocate was regarding the extent of estate of PDB. It is submitted that the impugned will of 1999 proceeds on the basis that the estate has the right to control, manage and administer the MP Birla Group of companies, trusts and societies. The relevant portion of the will more particularly, paragraphs 3 and 4 therein were referred to. It is submitted that as per doctrine of election a pro pounder has to stand by the whole of the will and he cannot chose to accept the part of it and rejects other part. To support such contention, reliance was placed on the decisions in **C. Beepathuma Versus Velasari Shankaranrayana Kadambolithaya**<sup>78</sup>,

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<sup>76</sup> (2003) 12 SCC 35

<sup>77</sup> (2007) 9 SCC 728

<sup>78</sup> AIR 1965 SC 241

***Lyla Darius Versus Bakhtawar Lentin***<sup>79</sup>, ***Mirzban Versus Cedric Vaz***<sup>80</sup> and ***Bhagwat Sharan Versus Purushottam & Ors.***<sup>81</sup>

61. It is further submitted that in the amended application for grant of letters of administration the copy of the 1999 will annexed, HVL has agreed to abide by the direction contained in the sub clauses (i) to (iv) of Clause 4 of the 1999 will. In this regard, the averments in the application set out in paragraph 19(C) was referred to. It is further submitted that with regard to the contention of the 1999 will, the appellants have contended that it is permissible to sever the portion of the will which is illegal and as such the portion of PDB's will which bequeaths her controlling interest in MP Birla Group can be severed and probate can be granted to the balance portion of the will. For the doctrine on severability, the appellant relied upon the decisions in ***Bajrang Factory Limited Versus UOC & Ors.***<sup>82</sup> and ***Anil Kak Versus Kumari Sharada Raje & Ors.***<sup>83</sup> It is submitted that this argument is an argument in desperation. The said judgments are of no assistance to the appellants. If severed, nothing will be left in the will of 1999 as at a threshold and at any stage proceeds on the basis that estate has right to control manage and administer the MP Birla Group of companies, trusts and societies. Further such contention of the appellant is absolutely contrary to the undertakings of HVL as contained in

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<sup>79</sup> (2007) 1 Maj LJ 545

<sup>80</sup> (2015) 2 Mah LJ 184

<sup>81</sup> (2020) 6 SCC 387

<sup>82</sup> (2007) 7 SCC 183

<sup>83</sup> (2008) 7 SCC 695

paragraph 19C of the amended application for grant of letter of administration.

With regard to the extent of estate it is emphatically submitted that this issue is an admitted issue and concluded issue and cannot be reopened. It is submitted that it has already been concluded by series of judgments passed by the Company Law Board by Division Bench of the High Court by the Single Bench of the High Court and the Hon'ble Supreme Court that the estate of PDB holds majority controlling shareholding in MP Birla Group. HVL and RSL and the companies/trusts/societies forming part of MP Birla Group were parties to such judgment. HVL/RSL and companies/ trusts/ societies have also made admissions to the same before in the said proceedings. As such reopening of this issue by HVL or other heirs of RSL and company/trusts/societies is barred by principles of res judicata and estoppel. Thereafter the learned Senior Advocate proceeded to elaborately refer to the details of the judgments and orders and notes containing the admissions of HVL/RSL/Companies/Trusts/Societies on this issue and also referred to the judgment/orders/notes which in the submission of the learned Senior Counsel has concluded this issue. Thus, it is submitted that based on the admitted and concluded issues, the APL by its decision dated 19.07.2019 has rightly concluded that major part of the estate of PDB consists of controlling interest in MP Birla Group of companies through shareholdings both directly and indirectly through cross and chain shareholding in various companies within the MP Birla Group. Therefore, it is submitted that the learned Single Bench has rightly held that it is an admitted position that the majority controlling

block of shares in the MP Birla Group is an asset of the estate of the PDB and the same should not be interfered with. It is submitted that admission is best evidence and does not require any further corroboration and in this regard referred to the Section 59 of the Evidence Act, 1872. It is submitted that the appellants have tried to come out of such admission and concluded issues by raising desperate and frivolous contentions. The contentions thereon were referred to and relied on. The learned Senior Counsel referred to the following decisions on the question of estoppel and res judicata:

- ***Dwijendra Narain Roy Versus Joges Chandra De & Ors.*<sup>84</sup>**
- ***Mumbai International Airport Pvt. Ltd. Versus Golden Chariot Airport & Anr.*<sup>85</sup>**
- ***Hope Plantations Ltd. Versus Taluk Lank Board*<sup>86</sup>**
- ***Bhanu Kumar Jain Versus Archana Kumar*<sup>87</sup>**
- ***Ishwar Dutt Versus Collector Land Acquisition Collector & Anr.*<sup>88</sup>**

62. The next submission of the learned Senior Counsel was on the scope of Section 247 of the Indian Succession Act, 1925. It is submitted that APL appointed under Section 247 is a limited “grant” in as much as it is limited in duration; no right to dispute the estate and it is subject to immediate control of the court and acts under its directions. APL appointed under Section 247 has all the rights and powers of a general administrator. APL is legal representative of the deceased and the estate vests with them as such. In this regard,

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<sup>84</sup> AIR 1924 Cal 600

<sup>85</sup> (2010) 10 SCC 422

<sup>86</sup> (1999) 5 SCC 590

<sup>87</sup> (2005) 1 SCC 787

<sup>88</sup> (2005) 7 SCC 190



reference was made to Section 211 of the Indian Succession Act. The following decisions were referred to support such contention:

- ***Nirod Barani Debi Versus Chamatkarini Debi***<sup>89</sup>
- ***Pandurang Shamrao Laud & Ors. Versus Dwarkadas kalliandas & Ors.***<sup>90</sup>
- ***William Harold Gibbs Versus Deva Prosad Roy***<sup>91</sup>
- ***Atula Bala Dasi Versus Nirupama Devi***<sup>92</sup>
- ***Sushanta Kumar Nandy Versus Prasanta Kumar Nandy***<sup>93</sup>
- ***Shernaz Faroukh Lawyer Versus Manek Dara Sukhadwalla***<sup>94</sup>

63. To explain the implied powers of the court, the following decisions were referred to:

- ***Chaturbhai M. Patel Versus Union of India & Ors.***<sup>95</sup>
- ***Income Tax Officer, Cannanore Versus MK Mohammed Kunhi***<sup>96</sup>
- ***Savitri w/o Govind Singh Rawat Versus Govind Singh Rawat***<sup>97</sup>

64. For the contention that proceedings under Section 247 are in the nature of administrative proceedings, the following decisions were referred to:

- ***Benode Bihari Bose & Ors. Versus Srimati Nistarini Dassi & Ors.***<sup>98</sup>
- ***Balkishan D. Sanghvi Versus Kiron D. Sanghvi & Ors.***<sup>99</sup>
- ***Babulal Khandelwal & Ors. Versus Balkishan D. Sanghvi & Ors.***<sup>100</sup>

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<sup>89</sup> AIR 1915 Cal 565

<sup>90</sup> AIR 1933 Bom 342

<sup>91</sup> (1950) 85 CLJ 280 at 282

<sup>92</sup> AIR 1951 Cal 561

<sup>93</sup> (2001) 2 Cal LT 307

<sup>94</sup> 2018 SCC Online Bom 6830

<sup>95</sup> AIR 1960 SC 420

<sup>96</sup> AIR 1969 SC 430

<sup>97</sup> (1985) 4 SCC 337

<sup>98</sup> 32 IA 193

<sup>99</sup> (2006) 4 Mh. LJ 273

65. With regard to the right and power of APL it is submitted that the same is laid down under Section 247 of the Act and in the instant case, it has been laid down by the judgment of the Division Bench dated 23.08.2012 and the said judgment has become final. It has been held that APL has all the rights and powers of general administrators and the estate of PDB as vested in the APL. The said judgment also holds that the estate of PDB holds majority controlling block of shares in MP Birla Group and in the said judgment APL has been directed, inter alia, to do not being a mere spectator but exercise all the rights and powers and privileges incidental to vesting of estate including the controlling block of shares. The relevant paragraphs of the judgment dated 23.08.2012 were elaborately referred to. It is therefore submitted that APL by its decision dated 19.07.2010 has rightly concluded that the role of APL has already been determined by the judgment dated 23.08.2012 and it cannot be limited to being mere proxies of the estate of PDB attending AGMs of the shareholders and voting at such meetings and that the role to be played by APL did not counter to the provisions of the Companies Act. In this regard several paragraphs of the decision of the APL dated 19.07.2019 were referred to.

66. The next aspect which was dealt with by the learned Senior Counsel is with regard to the initial stand of the appellants before the APL. It is submitted that HVL/RSL and the companies/trusts and societies forming part of MP Birla

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<sup>100</sup> (2008) 10 SCC 485

Group understood the scope and effect of the judgment dated 23.08.2012 and initially acted in terms thereof but subsequently created hurdles in the way of administration of estate by APL. The companies responded to the letters of the APL wherein they were directed to comply with the directions issued in the judgment. The appointments of the directors to the various companies during the tenure of the Former Hon'ble Judges were referred to. It is submitted that all the appointments as the Directors were made in due compliance of judgment dated 23.08.2012 and the provisions of the Companies Act, 2013 having due regard to the fact that the estate holds the controlling block of shares in MP Birla Group and all such appointments were made without any objections and in fact with consent of HVL and the concerned companies. Further, APL also supported reappointment of the HVL as the director in various companies as the HVL and concerned companies were complying with the directions of the APL for the protection and observation of the estate. However, after being reappointed as the Director with the support of APL, HVL started creating hurdles in the administration of the estate. In this regard, various dates and events were referred to stating that those were the hurdles created by HVL. It is submitted that in the background of such facts APL took impugned decisions dated 19.07.2019 and 30.07.2019 in order to protect and preserve the estate in accordance with the judgment dated 23.08.2012 and the provisions of the Companies Act, 2013. With regard to the submission made by the appellant, it is contended that there is no dispute regarding the title of PDB for the reasons that it is an admitted fact and concluded issue that the estate

of PDB has majority controlling block of shares in MP Birla Group. Secondly, the testamentary court while exercising its jurisdiction to preserve and protect the estate under Section 247 can prima facie even decide the questions of title. It is submitted that the appellants placed reliance on the decision in **Ram Chandra Ganapathrao Henda** (supra) This case deals with the scope of Section 269 and holds that powers of court to protect the property under Section 269 is not available to HVL. This case does not deal with the power of court to protect and preserve the estate under Section 247 as admittedly no prayer was made for appointment of APL in the said case. Further it is submitted that the appellants cannot contend that the estate has only 1260 shares in the BCL directly or 16.04% shareholding in BCL through investment companies and not majority shareholdings of 62.90%. It is also very strange why a possible beneficiary wants a estate to be the smaller extent than of an admitted and concluded larger extent. The APL by the impugned decision dated 19.07.2019 has rightly concluded that major part of the estate of PDB consists of the controlling block of shares in MP Birla Group through cross and chain shareholding in various companies in the MP Group. The learned Single Bench has rightly upheld the APL decision both on the ground of role of APL as well as the extent of the estate and the decision dated 30.07.2019 and the same should not be interfered in the instant appeals. Finally the learned Senior Advocate referred to the conduct of HVL which was termed to be mala fide. HVL tried to delay the testamentary proceedings by raising frivolous allegations and in this context, the Hon'ble Supreme Court was compelled to observe that HVL

was trying to get a second bite on the cherry. In this regard, various dates and events were referred to by the learned Senior Counsel and also to the orders passed by the court and in particular the orders passed by the Division Bench dated 28.04.2017 wherein the court observed that the appeals which were filed were frivolous only with a view to delay and protract the testamentary proceedings. They have filed with the aim of delaying and proceeding with the rights of the contesting defendants of the testamentary suit. The appellants (therein) have raised the bogey regarding the right of the defendants to contest the testamentary suit only with a view to defeat and delay the proceedings. Thus, it is submitted that PDB was admittedly in the control of the entire estate. RSL after death of Smt. PDB was in control of the entire estate. HVL said that he will do that all that his father would do and now he has made a somersault by contending that the estate is in dispute. The estate which is 62.92% has to be protected absolutely. The controlling block is within the said 62.90%. There has been no violation of the provisions of the company law including the procedures for nominating of directors. In this regard, Section 2(27) of the Companies Act, 2013 was referred to and submitted that it is an inclusive definition. With the above submission, Mr. S.K. Kapoor concluded his arguments.

67. Mr. S. N. Mookherjee, learned Senior Advocate appearing on behalf of the Respondent No. 2 in APO No. 92 of 2020 after elaborately referring to the subject matter of the appeal, proposed to categorize his submissions under

primarily 5 heads namely, extent of estate; the correctness of the directions issued by the APL dated 19.07.2019 and 30.07.2019 that directions issued by the APL dated 19.07.2019 and 30.07.2019 are in accordance with the provisions of the Companies Act and regarding the judgment and order passed by the learned Single Bench. On the first aspect with regard to extent of the estate, it is submitted that it is an admitted fact and a concluded issue that the estate of PDB holds the majority controlling block of shares in MPB Group. However, some of the materials and proceedings relating to testamentary proceedings containing such admissions and conclusions which had already been covered by the submissions made on behalf of Respondent No. 1 and the same were reiterated briefly. It is further submitted that details of some other materials and proceedings particularly company proceedings and statutory disclosures made under the provisions of the Companies Act and SEBI Regulations containing such admissions and conclusions are vital. It is submitted in CP No. 58 of 2004 filed by Gouri Shankar Kayan, a company proceedings, records clear and absolute admission and findings that the estate of PDB holds majority controlling share holding in MPB Group. All companies, trusts and societies forming part of MPB Group were parties to CO 58 of 2004 however, RSL and HVL were not parties. On 14.09.2004 an interim order was passed in CP 58 of 2004 which was a composite order in two company petitions. On 25.04.2005 CP 58 of 2004 was dismissed declining to investigate on the ground that the estate of PDB was in control of BCL. In the said proceedings, the companies, trusts and societies forming part of MPB Group

admitted that the estate of PDB was in control. In this regard, the relevant paragraphs of the order dated 25.04.2005 in CP 58 of 2004 were referred to. It is submitted that the said order dated 25.04.2005 was challenged in an appeal filed under Section 10F of the 1956 Act which was dismissed by order dated 24.08.2005 and as against the said order no appeal has been filed. Thus, it is submitted that those orders have not attained finality, the companies/ trusts/ societies forming part of MPB Group cannot reopen the same by reason of principles of res judicata and estoppel and are bound by such findings. Further, the orders dated 25.04.2005 and 24.08.2005 is an adjudication as to who was in control and this adjudication was relied upon in the subsequent company proceedings. With regard to the contention raised by the appellant that RSL/ HVL were not parties to CP 58 of 2004 and therefore, the orders are not binding on them, it is submitted that the said contention that of the appellant is misconceived and baseless for the reasons that the companies, trusts and societies were parties in CP 58 of 2004 and admittedly RSL/ HVL were in control of such companies, trusts and societies; during final hearing of CP 57 of 2004 RSL had relied upon the orders dated 25.04.2005 and 24.08.2005 passed in CP No. 58 of 2004 and appeal therefrom. The relevant portions of the final order dated 19.10.2009 passed in CP No. 57 of 2004 were referred to. Therefore, it is submitted that the submissions of the appellant that admissions binds the maker only and admissions made by companies are not binding on HVL is misplaced. It is further submitted that the statutory disclosures regarding share holding pattern made by the companies forming

part of MPB Group contained complete knowledge of the testamentary proceedings and admission that the estate of PDB holds majority controlling block of shares in MPB Group. Regulations 3, 10, 11, 12, 15, 16 and 27 of the SEBI Takeover Regulations, 1997 mandates that acquisition of shares amounting to 15% or more but less than 75% in a target company cannot happen unless there is a public announcement to acquire shares. It also recognizes acquisition of control of a target company other than through acquisition of shares or voting rights. However, it provides that if acquisition is by reason of succession, the acquisition of such shares is exempted from application of the Takeover Regulations. It is submitted that Section 21 of the Securities Contract (Regulation) Act, 1956 provides that a listed company has to comply with conditions of the listing agreement with the stock exchange and in case of non-compliance the company will be delisted. In case of delisting a company is bound to offer buy back of shares. As per Clause 35 of the listing agreement the company has to disclose its share holding pattern (being promoter, non-promoter holding, etc.) at the end of every quarter. These disclosures are statutory disclosures to keep the public informed. It is submitted that RSL/ HVL in the matter of acquisition of shares held by the estate of PDB have admitted the application of the SEBI Takeover Regulations but have sought exemption under Regulation 3(G) by alleging that the mandate of the 2004 Regulation was not application since acquisition was by way of testamentary succession. Before the death of PDB the share holding pattern disclosed by BCRL and BCL as on 30.06.2004 gave the break up of the



promoter's share holding of 66.44% and 64.28% respectively. There is no note in the disclosure. After the death of PDB the share holding disclosed by BCRL as on 30.06.2006 gave the breakup of promoter's share holding of 66.35% and there is a note in the disclosure regarding such fact. After the death of RSL the share holding pattern disclosed by BCRL and BCL as on 31.12.2008 gave the breakup of the promoter's share holding of 66.35% and 62.90% respectively and there is a note in the disclosure recording the facts. After the appointment of APL on 23.08.2012 the share holding pattern disclosed by BCRL and BCL as on 30.09.2012 gave the breakup of the promoter's share holding of 66.35% and 62.90% respectively and there is a note in the disclosure recording the facts. After the dismissal of the special leave petitions on 26.11.2012 the share holding pattern disclosed by BCRL and BCL as on 31.12.2012 gave breakup of the promoter's share holding of 66.35% and 62.90% respectively. Suddenly there is no note in the disclosure. Thus, it is submitted if the shares held/controlled by the estate of PDB was restricted to only those shares which were directly held in the name of PDB and not majority share holding (example 1260 shares as opposed to 62.90% in BCL), then there was no question of taking benefit of exemption or for giving the note in the statutory disclosures. In this regard, the learned Senior Advocate referred to Regulations 10, 11 and 12 of the SEBI Takeover Regulations, 1997. It is submitted that companies would not have claimed exemption from the application of Regulation 10 if what was being acquired was only 1260 shares. This is because Regulation 10 applies only to acquisition of shares of voting rights which entitled the acquirer to 15%

or more of the voting rights of the company. Similarly, the companies would not have claimed exemption from application of Regulation 11 if what was acquired was only 1260 shares. This is because Regulation 11 only applies when a person has acquired 15% or more but less than 75% of shares or voting rights in a company and has acquired additional shares or voting rights entitling the person to exercise more than 5% of the voting rights in the company. Further Regulation 11 applies when a person had acquired 75% of the shares or voting rights in a company and has acquired additional shares or voting rights in the company. The acquisition under Regulation 9 and 10 may be direct and indirect acquisition. The companies would also not have claimed exemption from application of Regulation 12 if what has been acquired was only 1260 shares. This is because Regulation 12 applies only when a person acquires “control” over a company. The same is irrespective of whether there has been any acquisition of shares or voting rights in a company. This would only be possible if the estate of PDB was in “control” of the MPB Group or companies or else no exemption would be sought from Regulation 12. It is further submitted that the nature of directorship (whether independent or non-independent) shows whether the director’s part of the controlling share holding group/ promotional group or a mere director. In this regard, Clause 6.5 of Kumar Mangalam Birla Committee on corporate governance was referred to which defines independence in relation to independent directors. Clause 49 of the listing agreement was also referred to which defines “independent director” as a non-executive director. It is submitted that during the lifetime of PDB she

was described as Chairman, promoter non-executive director while RSL was described as independent non-executive Director. After the demise of PDB from April, 2005 RSL/HVL were described as non-executive Director and the word “independent” was missing nor as “non-independent non-executive director”. On the basis of the admitted fact and concluded issue that estate of PDB holds majority controlling block of shares in MPB Group, RSL/ HVL and the companies have derived several benefits such as avoided investigation under Section 247/250; avoided application of Takeover Regulations; avoided appointment in the APL in the first round and insulated themselves from all allegations of wrongful usurpations of control of BCL made in CP No. 1 of 2010 on the basis of the stand that all matters relating to the estate had to be decided by the testamentary Court. Nextly the learned Senior Advocate referred to the contention of the appellant regarding the extent of the estate. By referring to the affidavit of assets and the unanimous inventory report prepared by the APL and the judgment of the Division Bench dated 04.05. 2020 and also the earlier Division Bench judgment passed in the first round dated 11.10.2007. The contention of the second respondent with regard to the extent of estate is that the controlling block of shares in MPB Group is reflected in the affidavit or assets filed by the Birlas which has been valued at Rs. 2400 crores approximately opposed to the affidavit of assets filed by Lodhas which has been valued at Rs. 4 crores approximately. The document dated 15.10.2013 is not an inventory of assets of the estate. It is only an interim report of the APL. This will be evident from the fact that even after 2018 grievance of HVL was that

inventory was not completed by APL and this will be evident from the judgment of the Division Bench dated 23.08.2012 and that the document dated 15.10.2013 says it is an interim report and not an inventory report. Even after 2013 HVL has complained that inventory had not been completed by APL in different proceedings, letters etc. It is further submitted that the affidavit of assets is not conclusive as to the extent of the estate. It is filed in specific format for the purpose of revenue (Court fees). This was also the argument of RSL at a prior stage of the proceedings. In this regard, the written notes filed by RSL before Hon'ble Justice Sengupta in the first round for appointment of APL was referred to and also that the same was the stand taken before the Division Bench in the first round for appointment of APL. In this regard reliance was placed on the decision in ***Chanan Devi Versus Des Raj***<sup>101</sup>, ***In Re: Anita Rewal***<sup>102</sup> and ***In the Goods of: Manindra Nath Dutt***<sup>103</sup>. It is further submitted that paragraph 6(d)(1) of the judgment of the Division Bench dated 04.05.2020 relied on by the appellants for the proposition that the estate is the owner of only the shares disclosed in the affidavit of assets, does not support the appellants as has been contended. Even in paragraph 5 of the order dated 04.05.2020 it was held that the findings made in the order were only for the purpose of the said appeals and the Hon'ble Single Judge shall not be influenced by any findings made in the said order. In any event, the Hon'ble Supreme Court by order dated 11.05.2020, filed against the judgment of the

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<sup>101</sup> AIR 1965 P&H 138

<sup>102</sup> AIR 1980 Del 57

<sup>103</sup> 2003 SCC Online Cal 531

Division Bench dated 04.05.2020, had directed the learned Single Bench to decide the issue of jurisdiction together with merits. It is submitted that paragraph 301 of the Division Bench judgment dated 11.10.2007 was relied upon the appellant however, this paragraph must be read along with paragraphs 259, 304, 310. It is submitted that it is an admitted fact that Lodhas have come in control of MPB Group because of PDB and the impugned will of 1999. It has been admitted by RSL, HSL and the companies forming part of the estate of PDB that the entry of RSL and HVL and into a subsequent control over MPB Group was the reason of PDB and the impugned will of 1999. This will be evident from the pleadings of HVL and the companies and written notes of RSL in the proceedings before the High Court in an appeal filed from the interim order dated 15.10.2008. The next aspect dealt with by the learned Senior Counsel is with regard to judicial estoppel. It is submitted that in several judgments it has been admitted and concluded that the estate held majority controlling block of shares in MPB Group. Having taken advantage of such admissions and findings and having accepted the decisions of this Court and those of CLB regarding their shares being part of the estate, the appellant is estopped from taking an alternative or contrary stand by alleging that the estate owns and controls only 1260 shares in BCL. To explain the concept of judicial estoppel qua the facts of the case the learned Senior Advocate referred to the decisions in ***Helmand Versus Gerson*** <sup>104</sup>, ***New Hampshire Versus***

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<sup>104</sup> 105 F.3d 530 9<sup>th</sup> Cir. 1997

**Maine** <sup>105</sup>, **Surendra Nayak Versus AM Mohammad Shafi** <sup>106</sup> and **The Director General of Police Tamil Nadu, Chennai Versus R. Manikandan** <sup>107</sup>.

68. Nextly, the learned Senior Advocate proceeded to distinguish the judgment cited by the appellants on admission and estoppel. It is submitted that the ratio of the judgments in **Ambika Prasad Thakur, Canbank Financial Services** and **Prem Nath Chopra** are not applicable to the facts of the case on hand as in the present case the extent of the estate has already been decided by orders passed in competent proceedings. Such adjudications have been accepted and acted upon by the parties including the appellants. These statutory disclosures made by the companies forming part of MPB Group also contain complete knowledge of the testamentary proceedings and the admission that the estate of PDB holds majority controlling block of shares in MPB Group. It is further submitted that the judgment dated 19.05.2016 reported in **2016 SCC Online Calcutta 1541** also holds that it has been settled by several decisions of the High Court that the controlling power over the MPB Group and companies is a valuable asset of the estate of the PDB. The Court further held that such adjudications are binding not only upon the parties but also upon the Court. The decision in **Ambika Prasad Thakur** is not applicable to the case on hand as the said case is in relation to a suit for

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<sup>105</sup> 2001 SCC Online US SC 50

<sup>106</sup> ILR 2016 Kar 4162

<sup>107</sup> 2017 SCC Online Mad 27091

possession of certain lands and the defendants in the said case disputed the plaintiff's title to the lands. Further, in the said case the plaintiff did not raise the claim of title on the basis of any admission. The basis on which the plaintiff's claim to have title was not proved. Further, the High Court found that the admission made was a weak admission and under suspicious circumstances. It is submitted that the decision in **Canbank Financial Services** is distinguishable as in the said case there was no title claimed on the basis of any admission. The order passed by the Hon'ble Supreme Court in **Prem Nath Chopra** was sought to be distinguished on the ground that in the said case it was held that non-questioning of inheritance would not confer as the same is governed by the relevant laws of succession. The decision in the case of **Narayan Bhagwantrao Gosavi Balajiwale Versus Gopal Vinayak Gosavi & Ors.**<sup>108</sup> relied on by the appellant will have no application to the facts of the present case as the question involved in the said case was whether a deity was mere family/ private deity or whether there was a religious and charitable endowment of a public character in favour of the deity. The Court in the said case in fact decided the question of title on the basis of admission. Therefore, it is submitted that this case is in favour of the respondents as it recognizes that admissions can be relied upon as evidence.

69. It is submitted that the appellants have tried to indicate the distinction between admission and estoppel and to support their contention that

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<sup>108</sup> AIR 1960 SC 100

admission do not ipso facto give rise to estoppel they relied upon the decision in ***Chhaganlal Keshavlal Mehra (supra)***. In this decision the case recognizes that admissions are good evidence unless withdrawn or are proved to be mistaken. In the case on hand, there is no withdrawal of any admission nor have such admissions been proved to be mistaken. Furthermore, the doctrine of estoppel will apply in the present case as admissions as to the extent of the estate and adjudications have been accepted and acted on by the appellants and the appellants have derived benefit on that basis. It is further submitted that the appellants have also contended that there cannot be an estoppel on a mixed question of fact and law and as such there cannot be an estoppel on the question of control and relied upon the decision in ***State of Rajasthan Versus Bundi Electric Supply Co.***<sup>109</sup> The said case is of no assistance to the appellants since in the case on hand there has been an adjudication as to the estate of PDB having control over the MPB Group. In any event, the control is a question of fact. Furthermore, the appellants in the case on hand have derived benefits on the basis of the representation and admissions as well as adjudications that the estate of PDB is in control of the MPB Group of companies and thus, they are estopped from claiming otherwise. The appellants have contended that there is no estoppel against law and relied on several decisions. Such contention has no relevance in the present proceedings as it has already been indicated that control is a question of fact and in the present case, it has already been adjudicated the control over the MPB Group

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<sup>109</sup> AIR 1970 Raj 36



and companies vest in the estate of PDB. The appellants contended that the issue of estoppel applies only to criminal proceedings and relied on the judgment in **Masud Khan Versus State of Uttar Pradesh**<sup>110</sup>. The said contention is of no relevance.

70. The respondents have relied on the principles of judicial estoppel and also contended that a party cannot approbate or reprobate. There is no dispute to such contention of the respondents. The next aspect dealt by the Learned Senior Advocate is with regard to the directions of the APL dated 19.07.2019 and 30.07.2019. It is submitted that those directions are within the jurisdiction to the court under the provisions of the Indian Succession Act particularly, Section 247. It is submitted that APL or the testamentary court while exercising its jurisdiction to preserve and protect the estate under Section 247 can prima facie, even go into the issue of title. In support of such contention the decisions were relied upon:-

❖ **Atula Bala Dassi Versus Nirupama Devi**<sup>111</sup>

❖ **Shoilesh Chandra Mustafi Versus Amal Chandra Mustafi**<sup>112</sup>

❖ **In the Goods of: Om Prakash Maniyar**<sup>113</sup>

71. The appellant placed reliance on the decision in **Ramchandra Ganpatrao Hande** for the proposition that probate court does not go into the

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<sup>110</sup> (1974) 3 SCC 649

<sup>111</sup> AIR 1951 Cal 561

<sup>112</sup> AIR 1958 Cal 701

<sup>113</sup> 2021 SC Online Cal 3066

issue of title and this judgment has no application to the facts of the case on hand as in the said case the court was not dealing with the proceedings under Section 247 but was dealing with proceedings under Section 269. The court therein did not deal with the powers of the court to protect and preserve the estate under Section 247 and admittedly no prayer was made for appointing APL. It is further submitted that even during the pendency of the instant appeal some of the appellants have admitted before the NCLT that issue regarding scope, title and extent of estate can be decided and in fact, the pending adjudication before the APL Committee and the High Court in proceedings under Section 247 of the 1925 Act. The contention of the appellant that the direction of APL is without jurisdiction, is barred by Section 430 of the Companies Act, 2013 is wholly mis-conceived, baseless and also contrary to the earlier stand of the appellant before the CLB as well as the High Court. As could be seen from the judgment dated 10.05.2013 in ACO No. 42 of 2011 (Birla Education Trusts Versus Birla Corporation Limited) Furthermore it is submitted that the Hon'ble Supreme Court in ***Aruna Oswal Versus Pankaj Oswal***<sup>114</sup> held that the disputes relating to inheritance can only be decided by the Civil Court. It is submitted that the probate court can pass the orders of injunction/directions in exercise of its inherent powers of protection and preservation of the estate. To support such contention, the following decisions were referred to and relied on:-

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<sup>114</sup> (2020) 8 SCC 79

- ❖ *Unreported Judgment of Single Judge of Bombay High Court*  
– ***Davinder Kaur Amardeep Singh Chadha Versus Inderjeet Singh Amardeep Singh Chadha;***
- ❖ ***Inderjeet Singh Amardeep Singh Chadha Versus Davinder Kaur Amardeep Singh Chadha***<sup>115</sup>
- ❖ ***Vasant Narayan Sardal Versus Ashita Tham & Others.***<sup>116</sup>;
- ❖ ***Radhika Bhargava & Others Versus Arjun Sahagal & Others***<sup>117</sup>
- ❖ ***Kulbir Singh Versus State & Others***<sup>118</sup>;
- ❖ ***Amarendra Dhwaj Singh Versus Prem Kumar Singh***<sup>119</sup>;
- ❖ ***Kusheshwar Purbey Versus Shri Shri 108 Ram Janaki Jee and Others***<sup>120</sup>;
- ❖ ***In Re: Goods of Stanley Austin Cardigan Martin***<sup>121</sup>;
- ❖ *Final Order of the Calcutta High Court dated 14.03.2023 (In the Goods of: Om Prakash Maniyar) – para 129-133- holds that not only probate court is competent to prima facie determine questions of title, but is also competent to pass injunctions against third parties to protect the estate in*

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<sup>115</sup> 2019 SCC Online Bom 702

<sup>116</sup> 2018 (5) Mh.LJ. 142

<sup>117</sup> AIR 2019 Bom 68

<sup>118</sup> (1993) 27 DRJ 267

<sup>119</sup> 2012 SC Online Pat 1215

<sup>120</sup> 2011 SCC Online Pat 862

<sup>121</sup> AIR 1939 Cal 642

*exercise of jurisdiction under Section 247 of the Indian  
Succession Act, 1925.*

72. The judgment reported in **2016 SCC Online Cal 1541** relied on by the appellants has no application for the reason that the judgment was delivered when APL was defunct. The subject matter of challenge was also different, no rights of shareholders were involved in the said case. It is submitted that several paragraphs of the judgment supports the case of the respondents that inter alia the majority shareholding of MP Birla Group is part of the estate, that controlling interests can direct the shareholders to vote in a particular manner, that APL can take steps of protection of the estate and exercise control in accordance with the Companies Act by removing directors. No appeal has been preferred by the appellants from the aforesaid findings of the order dated 19.05.2016. On the other hand, the respondents have preferred appeal on other grounds and the same is pending. Thus, the appellants having accepted jurisdiction are therefore bound by the findings rendered therein.

The next aspect dealt with by the learned Senior Advocate is with regard to whether the directions issued by the APL are in accordance with the provisions of the Companies Law. The contention that APL can exercise voting rights only in respect of shares which are registered in the name of PDB for example 1260 shares and not 62.90% in BCL is incorrect as it ignores the fact that the name entered in share register is not only the manner there can be ownership of the shares. There is a concept of true ownership of shares that is real and

beneficial ownership. Law also provides for investigation to determine who is the true ownership of the shares. In support of such contention, reliance was place on the:-

❖ ***Taylor Versus The Midland Railway Company***<sup>122</sup>

*Affirmed by House of Lords in The Directors & Others of the Midland Railway Company Versus Robert John Taylor*<sup>123</sup>

❖ ***Binney Versus The Ince Hall Coal and Cannel Company***<sup>124</sup>

❖ ***Bank of NT Butterfield & Son Limited Versus Golinsky***<sup>125</sup>

73. The Cohen Committee in the year 1945 gave its report observing that big businesses seldom disclose their true owners and to ensure transparency, the Committee recommended voluntary disclosure by the company as to its true owner and investigation proceedings for determination of true ownership. The suggestions of the Committee were adopted in the UK Companies Act, 1948. In the Indian scenario initially, there was no concept of true/real/beneficial owner of shares and the name registered in the members register of a company was only considered to be the owner of a share. Sections 29, 30 and 33 of the Companies Act 1930 were referred to. It is submitted that in spite of such restrictions the courts recognized equitable/beneficial interest in shares in the decisions reported in **AIR 1931 Bombay 269**. It is further submitted that in the year 1952 the Bhabha Committee gave its report suggesting in roads as to the ownership of shares beyond register of members by providing for

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<sup>122</sup> [1860] 8 WLR 401

<sup>123</sup> [1862] 11 ER 624

<sup>124</sup> [1866] 35 L.J. Ch. 363

<sup>125</sup> [1926] A.C. 733

investigation into real ownership of shares. The Companies Act, 1956 also made inroads into ownership of shares beyond register by providing for investigation into real ownership of shares and in this regard referred to Sections 153, 247 and 250 of the 1956 Act. The amendments to the Companies Act made in 1960, 1963, 1974, 1998 and 2013 were also referred to. It is submitted that the court also recognizes that beneficial interest must be protected as was held in the judgment in ***Damien Subsidies and Kuries Limited Versus Jode Pulicken***<sup>126</sup>. It is further submitted that the report of the Company Law Committee, February 2016, recognizes beneficial interest and ownership of shares and significant influence. This led to the amendment of the Companies Act, 2013 by amending Act 2017 by which Section 89 was amended by inserting definition of beneficial interest and Section 90 was substituted. The Companies (Significant Beneficial Owners) Amendment Rules, 2019 was thereafter introduced. Thus, it is submitted that the courts have always recognized interests in respect of shares/beneficial interests in shares. Both the Companies Act, 1956 and the 2013 Act recognized the concept of beneficial interest in shares. The contention of the appellant that beneficial interest cannot be recognized as provisions of constructive trusts contained in Section 94 of the Trusts Act 1882 as it has been repealed by the provision of Benami Property Transaction Act, 1988 is wholly mis-placed as repealed of Section 94 does not put in pressure on the court in recognizing the trusts. The contention of the appellant that controlling interests can arise only out of

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<sup>126</sup> (2007) 137 Comp Cas 288

actual ownership of shares and there is no concept of controlling interests is the contention which is mis-placed as true/beneficial/real ownership of shares can lie beyond the share register, it is not necessary to have shares registered in the name of such owner in order to exercise control in respect thereof and this will be evident beyond the definition of “control” as defined under Section 2(27) of the 2013 Act and the SEBI Takeover Regulations, Regulation 2(e) which also defines “control”. It is submitted that the above definition of control is inclusive and not exhaustive. To explain the general rule of statutory interpretation, reliance was placed on the following decisions:-

- ❖ ***CIT, Andhra Pradesh Versus Taj Mahal Hotel, Secuderabad***<sup>127</sup>
- ❖ ***Mamta Surgical Cotton Industries, Rajasthan Versus Assistant Commissioner, (Anti-Evasion), Bhilwara, Rajasthan***<sup>128</sup>
- ❖ ***Board of Trustees of the Port of Mumbai Versus Byramjee Jeejeebhoy Private Limited & Another***<sup>129</sup>
- ❖ ***Rachapudi Subba Rao Versus Advocate General, Andhra Pradesh***<sup>130</sup>

74. It is submitted that the appellants relied upon the decision in **Vodafone** for the proposition that control linked to shareholding and the controlling

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<sup>127</sup> [1971] 3 SCC 550

<sup>128</sup> (2014) 4 SCC 87

<sup>129</sup> (2011) 5 SCC 128

<sup>130</sup> (1981) 2 SCC 577

interests is an incident of majority shareholding. The judgment in **Vodafone** is not applicable to the present case because the definition of control was not considered and it was the matter of revenue law as to whether the capital gains tax would be applicable in India in case of transfer of ownership of an Indian entity by virtue of purchase of shares in Cayman Island by a Dutch company. Even the judgment relied on by the appellant in **Arcelor Mittal** holds that control defined in Section 2(27) of the 2013 Act can be acquired *de juri* as well as *de facto* and this shows that control of ownership can be ascertained by looking beyond the share register. In this regard, reliance was also placed on the decision in **Hindustan Motors Versus MRTD Commission** <sup>131</sup>. The contention of the appellant that since no declaration for beneficial interest has been made under Section 187 C of the Companies Act, 1956, therefore there can be no enforcement of beneficial interest is incorrect and the proposition is of no significance in view of the fact that it is now an admitted and concluded issue that the estate of PDB holds controlling block of shares in MP Birla Group. In any event, of declaration under Section 187(C) of the 1956 Act, does not distinguish the beneficial interests. The decisions relied on by the appellant in **Sanjeev Mahajan, Ahmed Abdulla** and **P.R. Ramakrishna** were sought to be distinguished on facts. With regard to the submission of the appellant that control beyond the share register is a matter of personal influence which is not heritable property, it is submitted that this submission has lost its force in view of the fact that it is now an admitted fact and a concluded issue that the

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<sup>131</sup> AIR 1973 Cal 450



estate of PDB holds the controlling block of shares in MP Birla Group. In the decision reported in **2016 SCC Online Calcutta 1541** in paragraph 131 the court recognizes that control is a heritable right and no appeal has been filed against the said findings. The judgment relied on by the appellant in **Canbank Financial Services Limited** also holds that the beneficial interest can be transferred. The contention of the appellants PDB exercises control over MP Birla Group as a matter of personal influence, has been raised for the first time while contempt proceedings were being heard in the instant appeal. This has not been case in any of the pleadings filed by RSL or HVL.

75. The contention of the appellant that the APL decision dated 19.07.2019 and 30.07.2019 are contrary to the provisions of the Companies Act, 2013 is untenable. It is submitted that in the past requests were made by APL to appoint nominees of APL as Directors in the MPB Group of companies and the same was duly complied with by the appellants without any objection. The details of such appointments were referred to. The APL decision dated 30.07.2019 is a direction on the shareholders being Tier 1, 2, 3 and 4 companies, trusts and societies of the four manufacturing companies as to the manner of voting in the general meeting of the four manufacturing companies. The shareholders have already been identified as part of the controlling block of shares which forms part of the estate. Out of these shareholders only the four manufacturing companies and one society (Shreyas Medical Society whose locus to file the appeal disputed) and none of the other shareholders have

challenged the APL decision of 19.07.2019 and 30.07.2019. The APL decision dated 30.07.2019 is a direction upon the shareholders of four manufacturing companies and not upon the manufacturing companies themselves. The provisions and/or the cases relied on by the appellant shows that the “*cestui qui trusts*” (beneficial owner) can give directions upon the register owners/shareholders (trustee) to exercise voting rights in a particular manner. In this regard, the learned Senior Advocate referred to the following decisions which would support the case of the respondent:-

- ❖ ***Mathalone Versus Bombay Life Assurance Company Limited***<sup>132</sup>
- ❖ ***Howrah Trading Company Limited Versus Commissioner of Income Tax, Central Calcutta***<sup>133</sup>
- ❖ ***J.P. Srivastava and Sons (P) Limited and Others Versus Gwalior Sugar Company Limited and Others***<sup>134</sup>
- ❖ ***Killick Nixon Limited Versus Bank of India***<sup>135</sup>
- ❖ ***Bal Krishnan Gupta and Others Versus Swadeshi Polytex Limited and Others***<sup>136</sup>

76. It is further contended that the direction given by the APL are in consonance with the judgment dated 23.08.2012 of the Division Bench appointing the APL which has become final due to dismissal of the special leave

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<sup>132</sup> AIR 1953 SC 385

<sup>133</sup> AIR 1959 SC 775

<sup>134</sup> (2005) 1 SCC 172

<sup>135</sup> (1985) 57 Comp Cas 831

<sup>136</sup> AIR 1985 SC 520

petition by order dated 26.11.2012. In the special leave petitions, HVL took a specific plea that the order dated 23.08.2012 will result in taking over of management of companies of MPB Group by the APL. It is relied on by the appellant to support the contention that the directions given by the APL are not in consonance of the Companies Act were distinguished by referring to the facts of each case.

77. The appellant contended that the order of the learned Single Bench purports to lift the corporate veil. It is submitted that according to the respondents there is no need to lift the corporate veil in the instant appeal since it is admitted fact and concluded issue that the estate holds controlling block of shares in MPB Group and hence the decisions relied on by the appellant in this regard, have no application to the present case. Furthermore there is no straight jacket formula to apply the doctrine of lifting of corporate veil. In **Balwant Rai Saluja** case the decision in estoppel was noted. Therefore, it is submitted that it depends on the facts of the case whether the corporate veil will be lifted or not. Further it is submitted that even the testamentary court have passed order directing lifting of corporate veil and to support such contention the decision in **In the Goods of: Kamal Kumar Mitra**<sup>137</sup> and **Niranjan Lal Todi and Others Versus Nandlal Todi and**

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<sup>137</sup> (2008) 3 CHN 384

**Others** <sup>138</sup> referred. Thus it is submitted that the order and directions issued by the learned Single Bench cannot be interfered.

78. Mr. Ratnanko Banerjee, learned Senior Advocate appearing for the respondent No. 3 submitted that in addition to what has been stated in the written notes submitted on behalf of the third respondent, in order of avoid overlap the third respondent is adopting the written notes filed on behalf of the respondent Nos. 1 and 2. It is submitted that the cross objections filed by the respondent against the judgment of the learned Single Bench should be allowed for the reason to protect and preserve the estate for the ultimate beneficiaries which is the paramount duty of the testamentary court and the testamentary court can pass orders against the third parties in exercise of power under Section 247 of the Act. It is further submitted that as contended by the second respondent, the decision in **2016 SCC Online Calcutta 1541** has no application. Further it is submitted that the company/trusts and societies forming part of the estate of PDB and MPB Group cannot be regarded as third parties. This is more so because of the controlling block of shares mechanism scenario. It is submitted that in the first round for appointment of APL, RSL had given undertakings regarding MPB Group companies in order to avoid the appointment of the APL and at subsequent stage HVL agreed to abide by such undertakings. Therefore, they should not be permitted now to the contrary or for the company to take a contrary stand. It is further submitted

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<sup>138</sup> 2010 SCC Online Cal 2120

that the objection of the appellants regarding directions on third parties was raised by the appellant in the second round for appointment of APL before the Division Bench presided over by Hon'ble Chief Justice J.N. Patel but was not accepted by the Division Bench in its order date 23.08.2012. Further it is submitted in this very testamentary proceeding, in the past at the instance of the plaintiff the court has issued directions against the third parties. It is submitted that other than four manufacturing companies namely BCL, BCRL, UCL and VTL and one society none others have challenged the direction issued by the learned Single Bench. It is submitted that the APLs can act by way of majority if they fail to achieve unanimous decision. In a multi member body the decision by majority is the rule and decision by unanimity is the exception. Decision by unanimity can be mandated only when explicitly provided. In this regard, the following decisions were referred to:

- ***Election Commissioner of India Versus Dr. Subramaniam Swamy***<sup>139</sup>
- ***State of Madhya Pradesh Versus Mahendra Gupta***<sup>140</sup>

79. It is submitted that if decision is not permitted by majority there will be absolute stalemate in administration of the estate by APL. In the past, decision of the APL by way of majority have been accepted and implemented by the appellant. It is submitted that Joint APL means anybody which is not a single member body. In a Joint APL all members of the APL have to act jointly that is each of them has to apply his minds on all issues but the decision ultimately

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<sup>139</sup> (1996) 4 SCC 104

<sup>140</sup> (2018) 3 SCC 635

reached by Joint APL may be unanimous or by majority and Joint APL cannot mean operating necessarily by unanimity. It was contended by the appellant that the respondents have made an application in the GA No. 1964 of 2018 praying for permission for APL to act by majority which was not granted and hence deemed to have been rejected. This contention is wholly misplaced in the light of the prayer made in para (c) of the said application and the relief which was granted by the order dated 10.04.2019 which was much beyond the prayer. Therefore, it is submitted that unanimity in decision for working of APL is not possible is also proved from the fact that after the decision dated 19.07.2019, Mr. MKS, the nominee of HVL has not agreed to any of the decision of APL. The court ordered is for administration, preservation and protection by the Joint Administrators but not unanimous decision by Joint Administrators. The contentions of the appellant that the reliance on the C.S. No. 73 to 77 of 2010 by APL in his decision dated 19.07.2019 is an extraneous consideration is an incorrect submission and in this regard the relevant facts in the civil suits were referred to and it was submitted that in any event CS No. 73 to 77 of 2010 are not adverse to the interest of the estate or the title of the testator. Further the defendants in the testamentary suit are not parties in CS No. 73 to 77 of 2010. It is submitted that HVL is in a position of conflict of interest realising that he will not be able to prove the will because of difficulty in proving the attestation and reached the estate via the will reach, he is creating a ditto to the estate. HVL is not a contrary to the will but denying extent of estate. HVL is a legal and wrongful control of all the manufacturing

companies and in the Board of Company that to in the position of Chairman. HVL is acting detrimental to the interest of the estate as is recorded in the APL decision dated 30.07.2019. Therefore, it was submitted that the cross objection against the impugned judgment to the extent it holds that the testamentary court has no jurisdiction to pass order over persons or entities who are not parties should be allowed and judgment should not otherwise be interfered with and should be continued. HVL should not be permitted to be in control of the estate as has been director by the learned Single Bench.

80. Mr. C. A. Sundaram, learned Senior Advocate appearing for the majority members of the APL Committee after setting out the background facts, first dealt with the shareholdings in the MP Birla Group. It is submitted that there are 33 companies in the MP Birla Group and a chart was placed before the court giving details of the companies which have relevance for the present litigation. It is submitted that the PDB estate has direct majority shareholding in only two companies, East India Investment 72.47% shares and Gwalior Webbing 50.43% shares and in all other companies PDB estate has indirect control over majority shareholdings in the companies in the MP Birla Group through chain holding, cross holding and interlocking of shares. It is submitted that by the judgment dated 28.08.2012, APL was appointed for the PDB estate having controlling block of shares in the companies in the MP Birla Group and not for merely the two companies East India and Gwalior Webbing. Punjab Produce Trading Company Private Limited (PPT) has been acting as lead

promoter on behalf of the promoter/promoter's group of all the four listed companies of MP Birla Group in terms of the provisions of the SEBI Takeover Regulations. Accordingly, PPT has been making annual disclosures about the names shareholdings details of the entities in MP Birla Group holding shares in all the four listed companies of the group from 1997 onwards, till 2021. These disclosures are made with a National Stock Exchange and Bombay Stock Exchange where the shares of BCL, UCL, VTL and BCRL are listed. It is submitted that the listed companies themselves have also been acknowledging in their annual accounts being published every year by the respective Boards of Directors under the de facto control of RSL/HVL that the respective companies are part of the MP Birla Group. Annual accounts of BCL is a flagship company, published year after year also expressly states that 62.90% shareholding is with the promoters. It is submitted that after considering the shareholdings, this court has held in two cases that PDB estate has control over the flagship company of the group of the BCL. In various methods from 2005 onwards, the CLB and this court have held that PDB was exercising control over the flagship company of the group, BCL, by exercising control over group entities, holding 62.90% of shares even though PDB's direct shareholding in the company was misniscue. It is submitted that all major companies and charitable societies were party respondents in the company petition filed by the Gouri Shankar Kayan. The entities at respondent no. 1 to 28 themselves during the time when RSL was in control through their common learned Senior Counsel made an admission which was recorded by the CLB in the order dated 25.04.2005. The



said decision of the CLB was affirmed by this court by judgment dated 24.08.2005 reported in **(2006) 133 Company Cases 515 (Cal)**. Further similar view was taken in the judgment dated 10.05.2013 (Birla Education Trusts Versus Birla Corporation Limited).

81. Nextly, learned Senior Advocate referred to the list of charitable societies in MP Birla Group having shares in BCL and having their registered office in Birla Building, Kolkata where the registered offices of BCL and many other companies in MP Birla Group are situated. It is submitted that when the appointment of APL was under consideration, HVL contended that the court should confer on the APL only the power to open bank accounts and collect dividends to be received on the shares held in PDB's name and all other income of PDB estate and to file income tax returns for the estate. HVL also submitted that there is no necessity for conferring powers on APL to get the shares of the deceased recorded in their names and to take over the responsibility of running the MP Birla Group of companies. The Hon'ble Division Bench by judgment dated 23.08.2012 rejected the contentions of HVL and held that the three member APL (two members nominated by the rival parties and one Former Judge) shall be entitled to exercise all the rights and powers of general administration over estate of the deceased. Further the Division Bench specifically observed that nothing prevents the APL in their capacity as representatives of the beneficiaries to exercise all such rights which flow from the ownership of the shares and so enjoyed by the deceased during her

lifetime. Further it was held that it is not disputed that the deceased had controlling block of shares in MP Birla Group of Companies.

82. It is submitted that Section 89 and 90 of the Companies Act, 2013 read with Companies (Significant Beneficial Owners) Rules, 2018 contained a scheme to deduct the ultimate holder of the shares whose name does not appear in the shares of the PDB for the shares in the reporting company but who is the ultimate beneficiary owner of such shares through a web of companies by chain holding or by cross holding in a series of companies. In this regard, the report of the Company's Law Committee of February, 2016 was referred. It is further submitted that the first meeting of the present APL Committee was held on 28.04.2019 where Mr. ACC brought the attention of the Committee on the issue of significant beneficial ownership of the PDB estate in the MP Birla Group and new rules framed in the year 2018. The APL Committee after hearing the learned advocates for the parties and after considering the details of shareholdings in all companies took a decision on 09.12.2019 holding that during the pendency of the probate suit, administrators pendente lite representing the PDB estate are significant beneficial owners of the majority shares in all the companies in MP Birla Group, in their capacity as administrators and not in their personal capacity. In the said process, the APL Committee considered the scope and ambit of the estate of PDB. It was held that the majority part of the estate of PDB consisted of all controlling interest as in the MP Birla Group through shareholding both

directly and indirectly. The APL Committee categorically, quantified and determined the percentage of shareholdings in all 33 companies of MP Birla Group over which PDB exercises control and after her demise estate of PDB is the significant beneficial owner. In conformity with the majority decision of the APL dated 09.12.2019 forms of significant beneficial owners. It is submitted that not only the five investment companies but all the companies except those under the de facto control of HVL have accepted such forms and upheld corresponding forms on the portal of the Ministry of Corporate Affairs within the extended time limited on the 31.12.2020. The register of companies has accepted such forms and the same are reflected on the official website. Therefore, it is submitted that it is a matter of the part that the APL representing the estate of PDB are significant beneficial owners of the majority shares in the company in MP Birla Group in their capacity as administrators and not in their personal capacity. It is submitted that it is only those companies under the de facto control of HVL which have, contrary to the judgments and orders of the CLB and this court not accepted the SBO declarations filed by the APL Committee through its majority members. The prayer for stay of the decision of the majority APL dated 09.12.2019 in G.A No. 93 of 2020 was not granted.

83. It is submitted that in the judgment dated 18<sup>th</sup> September, 2020 the probate Court after considering the provisions of Section 90 of the 2013 Act held that the APL Committee has the power to exercise control which PDB was

exercising during her lifetime over the companies in the MP Birla Group. In the said decision it was further held that APL Committee is within its power to ask all entities which are under the control of PDB to exercise their voting rights in the group companies under the control of PDB in the manner considered by the APL Committee as beneficial to the interest of the PDB estate. The probate Court further held that now such entities would exercise their voting rights flowing from their share holding in the companies controlled by PDB in the manner be guided by the APL Committee. It is submitted that HVL and the listed companies contended that during the lifetime of PDB, who was the Chairman of the listed companies, had not filed any declaration under Section 187C of the 1956 Act read with the 1975 Rules and therefore, the APL Committee cannot have a better right or interest than what PDB had. This contention was raised by HVL before the APL Committee and by majority decision dated 09.12.2019 the same was rejected. By explaining the distinction between Section 187 C of the 1956 Act read with 1975 Rules on the one hand and Sections 89 and 90 of the 2013 Act read with SBO Rules, 2018 on the other hand. It is submitted that the provisions under the old Act required disclosure of beneficial interest where a registered holder of shares was a benamidar of the real owner. The holder's shares in the entities in MP Birla Group were benamidar and therefore, PDB was not required to file any declaration under the provisions of the old Act. On the other hand, the object underlying the scheme of the new Act could be culled out from the report of the Companies Law Committee of February, 2016. The learned Senior Advocate

then proceeded to elaborately discuss about the various decisions taken by the APL Committee and challenged such decisions by the Lodhas before the probate Court and the applications which were filed by the defendants seeking implementation of the majority decision of the APL. With regard to the impugned judgment the Court rightly held that the APL Committee can decide by majority. In this regard, reference was made to the judgment of the Hon'ble Supreme Court in ***State of MP Versus Mahendra Gupta***<sup>141</sup>. It has held that the APL Committee has the power to exercise the control which PDB was exercising during her lifetime over the companies in the MP Birla Group, Namely all such powers and perform of such acts as PDB would have exercised had she been alive. Thus, it is submitted that reasoning given by the learned Single Bench are perfectly valued and more particularly, the probate Court has enjoined HVL from holding any office in any of the entities in MPB Group during the pendency of the suit. With regard to the interim order passed by the Division Bench on 1<sup>st</sup> October, 2020 it is submitted that the Hon'ble Division Bench declined granting any interim stay of the judgment by assigning reasons and the subsequent clarifications which were issued by the Division Bench have to be read and understood in the light of the cogent reasons given for declining grant of ad interim stay. More particularly, Paragraphs 18 and 19 of the interim order dated 1<sup>st</sup> October, 2020. Learned Senior Advocate then proceeded to refer to various developments after the Division Bench order with regard to the conflict of interest between the estate of PDB and HVL. The

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<sup>141</sup> (2018) 3 SCC 635

factual aspects have also been elaborately set out in the written submissions of the majority APL Committee. Therefore, it is submitted that HVL and the other entities in the MPB Group may be directed to act in conformity with the judgment and order dated 18.09.2020 of the probate Court. To clarify that the issues are referable to the estate of PDB is 62.90 shares in Birla Corporation Limited; to restrain HVL and listed companies from taking action to alter to the prejudice of PDB's estate the controlled structure over 62.9% in BCL which was recognized by the judgment dated 10.05.2013. With the above submissions, the learned Senior Counsel concluded.

84. Mr. Kishore Dutta, learned senior advocate appearing for the minority APL Committee member submitted that the ingredients of Section 247 are broadly three in number namely (i) there should be pending proceedings (ii) it should be for administration of the estate of the deceased and (iii) subject to the immediate control and the word "immediate control" means direct control of the court. It is submitted that the APL Committee is a multi-member body and there is every possibility of a dissent occurring and if such dissent occurs or any difference of opinion arises then the APL Committee had to approach the court for appropriate directions. The learned senior advocate referred to the minutes of the meeting of the APL held on 07.12.2012 wherein it has been recorded that two administrators viewed the matter from different perspective and therefore it was agreed that they should give further thought to the matter and give their respective views and suggestions in writing so that the committee of administrators can together examine such views/suggestions and

arrive at a consensus. Referring to the meeting of the APL held on 20<sup>th</sup> and 21<sup>st</sup> April, 2013, it is pointed out that in regard to second tier holding companies and operating companies in MP Birla Group, also the trusts/institutions in MP Birla Group, different and divergent views and suggestions were made by the two members of the APL and unanimity could not be achieved. The minutes of the meeting of the APL held on 09.08.2013 was referred wherein it has been recorded that the two members of the APL made various suggestions and in view of the different views, the third member of the Committee stated that an application will be filed before the High Court for clarification and directions. Similarly, the minutes of the meeting held on 16.11.2013 was referred wherein on one of the issues, the two members of the APL had divergent views and it was decided to discuss the matter further to arrive at a consensus. Thus, it is submitted that the APL Committee members have to act in unanimity and in the event of the divergent view, the committee has to approach the court seeking for appropriate directions and cannot issue unilateral directions stating that those directions are by majority of the APL Committee members. In this regard, reference was made to the directions issued by the Hon'ble Division Bench in the judgment dated 23.08.2012 wherein the court has recorded that the parties for the purpose of administration of the estate have agreed to appointment of three member Committee as the Joint Administrators, they shall be entitled to exercise of the rights and powers of general administrators over the estate of the deceased other than the right of distributing such estate and therefore there was a direction issued to the Joint Administrators (i) to

prepare and file an inventory of the asset of the estate and appraisal of the value of such asset and (ii) to take over possession of the assets of the estate in the manner provided under law considering the nature of the property. Therefore, it is submitted that the APL Committee cannot act by majority but can act by consensus and in the event of their difference in opinion, they have to approach the court for necessary directions. Further by referring to the list of assets, it is submitted that there is no difference or dispute except the valuation of the shares of two of the companies namely East India Investments Company Private Limited and Gwalior Webbing Company Private Limited and in all other respects, the assets declared in the list of assets are identical. Once again, reverting back to Section 247 of the Succession Act, it is submitted that the words “immediate control” assumes significance and that would mean that it is the direct control over the estate and the administrators are under the direct control of the court. Further it is submitted that majority view cannot always be the correct view and the decisions as to whether the estate can exercise rights over the Tier 1 and 2 companies or the other companies in the other tiers cannot be left to the decision of the APLs. The learned senior advocate referred to the submissions made by him before the learned single bench wherein it was submitted that members constituted body called administrators cannot be segregated so as to form a majority or minority view and law demands that this body must give one decision jointly and if they cannot act together and fail to rule in unanimity, they should come before the court for necessary directions and/or clarifications. In support of such



contentions, reliance was placed on the decision in ***Lilavati Kirtilal Mehta Trust and Others Versus Charu K. Mehta and Others***<sup>142</sup>, ***K. Leelavathy Bai and Others Versus P.V. Gangadharan and Others***<sup>143</sup> and ***Mohinder Singh Gill and Others Versus The Chief Election Commissioner, New Delhi and Others***<sup>144</sup>. Further the learned senior advocate referred to that portion of the impugned judgment wherein the learned single bench has taken note of the notes of arguments submitted by him wherein he had pointed out that Mr. MKS was appointed by a Division Bench of this court upon being nominated on behalf of the plaintiff by order dated 19.01.2012. Mr. MKS, as an officer of the court had confined himself to bring to the notice of the court the factual matters relating to the administration of the estate of the deceased/PDB whose last registered will is the subject matter of the testamentary proceedings. It was pointed out that one of the trusts on receiving letter from the APL raised their objections stating that APL have no manner of control or say in respect of its affairs, assets and properties and it is guided by its own trustees and Board of Trustees. It is submitted that the APL Committee had requested the plaintiff to hand over the share certificates in respect of shares held by the estate which ought to have been with Mr. RSL as the executor. The request was complied with and thereafter the APL Committee applied for recording of their names as Joint members representing the estate of the deceased however this was the only in respect of the shares held in the

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<sup>142</sup> (2009) 2 Maharashtra Law Journal 340

<sup>143</sup> (1999) 3 SCC 548

<sup>144</sup> (1978) 1 SCC 405

name of the PDB and nothing else. Further it is submitted that the APL in the last eight years till the appointment of new Hon'ble third member has never sought to exercise any voting right over any shares not forming part of the estate of the deceased and whatever votes were cast by the APL committee were only in respect of the shares of PDB as would appear from the affidavit of assets. Further it is submitted that the three Joint APLs prepared and signed the unanimous inventory report dated 15.10.2013 which was supplied to the parties and ever since then, none of the parties have questioned the contents of the said inventory report nor raised any objection. Therefore, at this juncture any other interpretation being sought to be given which is contrary to the unanimous report is not sustainable. Further it is submitted that earlier the APL Committee held 23 meetings and acted without any exception only to decide to act when all three members had unanimously agreed on the manner of acting. Further it is submitted that the APL Committee had never passed any direction to any of the listed companies to appoint any person as the director. The APL Committee does not have the right to nominate any director on the board of the companies by a reason of any law or agreement and any contrary assertion is not correct. Further the shareholders of companies or administrators must act jointly unless law gives them the power to decide by majority. The Joint administrators are not allowed by the Succession Act to decide by majority. The learned senior counsel referred to the various provisions of the Act which provides the manner of decision to be taken under those statutes and it is submitted that in those statutes where it provides the

decision should be of a simple majority or of 2/3<sup>rd</sup> majority, it is always to be presumed that the decision should be unanimous. It is submitted that the learned single bench has accepted the legal position that the administrator pendente lite is under the immediate control of the court. It is submitted that the learned single bench had observed that the parties have accepted and having subjected themselves to the jurisdiction of the APL Committee acting by majority, they cannot agitate the same at this juncture is an incorrect proposition as the learned single bench had failed to note that in terms of Section 247 of the Act, the obligations is on the court and the court cannot lose control of the matter. It is further submitted that in GA No. 1964 of 2018 filed by the defendant clarifications of the judgment and order dated 23.08.2012 was sought for that in case of divergence of opinion amongst the members of the newly constituted committee of administrators pendente lite, the decisions should be taken on the basis of majority. The Hon'ble Division Bench by order dated 10.04.2019 while disposing of the applications ordered that for effective functioning of the APL Committee, which shall consists of Hon'ble Member and two nominees of the respective parties, there was a direction to the two nominees to render the fullest cooperation to the Hon'ble Member in order to enable His Lordship to effectively discharge his duties for the purpose of smooth administration of the estate and also to prevent any stalemate in the process of such smooth administration. Thus, the order passed by the Hon'ble Division Bench did not endorse as to whether the APLs can act by majority in the event of the divergence of opinion.

85. Nextly the learned senior advocate has drawn our attention to the dissenting decision of Mr. MKS recorded by him in various decisions wherein Mr. MKS had specifically pointed out that the estate of the deceased cannot extend beyond the direct shareholding of PDB. Further it was specifically recorded that the APL can only administer and cannot adjudicate as to whether the Tier 3 and Tier 4 companies would form part of the estate or not. In this regard, the dissent note of Mr. MKS dated 31.07.2019 was also referred to. With regard to the appointment of the persons in trusts and charitable societies, the minutes of the APL Committee meeting held on 25.11.2020 was referred to wherein the dissent note of Mr. MKS has been recorded in paragraph 7.3 wherein Mr. MKS has stated that trusts and societies are not under the control of the PDB's estate and thus the APL Committee cannot issue any directions to the trusts and societies much less make nominations of the persons to be appointed on these trusts and societies. In this regard, the rules and regulations of one of the societies namely Shreyas Medical Society was referred to and the various clauses in the rules and regulations of the said society to demonstrate that the society is governed by their own rules and regulations and the trustees who were appointed were entitled to continue for life unless they resign or become legally incompetent to hold the office of the trustees. Further the powers of the managing committee having been clearly delineated in the rules and regulations, the same cannot be ignored by the APL. Further, a combined reading of the Rules 21, 27 and 28 of the Rules and

Regulations of the Shreyas Medical Society, it is clear that there is no heritable right for PDB and therefore the trusts and societies cannot be the subject matter of control by the APL Committee. The minutes of the meeting of the APL Committee held on 22.02.2022 was also referred to show as to how Mr. MKS had dissented from the opinion of the two members of the APL. Further with regard to the very same medical society, it is submitted that the like other charitable societies which are shown as part of the promoters group and are shareholders in Birla Corporation Limited (BCRL) and these societies altogether hold 14% shares in BCRL and has shareholding in other manufacturing companies namely VTL, UCL, BCL and HGCL. Shreyas Medical Society as also other charitable society has two organs of internal management namely the Board of Trustees and the Managing Committee and the members of the societies are appointed by the managing committee. The properties of the society vests in the trustees; the affairs of the societies have been entrusted with the managing committee; the trustees are appointed by the existing trustees and the trustees inter alia nominate the members of the managing committee. PDB during her life time was a trustee and member of the managing committee and in terms of the clauses 18 and 28 of the rules and regulations of the trust upon her death, she ceases to a member of the trust. Further even during the life time of PDB, she did not enjoy any special powers as trustees or member of the Managing Committee and none of the trustees or members of the managing committee will have any special power to direct the society to act in a particular manner. Further trusteeship and the membership

of the managing committee are not heritable. The assets and properties of the societies including the shares held by the society in different companies are owned by the society and the decision in respect thereof can be taken only by the trustees/managing committee as the case may be, in terms of its rules and regulations and not otherwise. It is further submitted that the two of the members of the APL have given directions to the societies to appoint persons as trustees and members of the managing committee on the pretext that the estate has control over the society. It is submitted that there is no provision in the rules and regulations of the societies permitting the estate of PDB to appoint the trustees or members of the managing committee or to control or to give directions in respect of asset of the societies. There is no order of any court permitting the APLs to appoint trustees and members of the managing committee in the society and APLs cannot give directions to the trustees or members of the managing committee to appoint persons of their choice in their societies. These societies are charitable entities and cannot form part of the estate of a private individual. The societies or the assets of the societies have not been shown to be part of the estate of the PDB in the affidavit of assets. The APLs are appointed to administer the estate of PDB only and are not appointed on the assets and properties of the third parties or the promoter group or MP Birla Group. Therefore, the directions issues by the two Joint APLs to the charitable societies to appoint persons as trustees and members of the managing committee are beyond their competence and authority. With regard to the legal expenses incurred by the APLs, it is submitted that the

crores of money are being spent for litigation and other legal expenses which erode the estate and this aspect was highlighted by Mr. MKS in the meeting of the APLs held on 30.07.2020 wherein it was pointed out that the estate should not be required to be pay legal fee of the counsel engaged by the two members of the committee and if the decision is being challenged, they have to remain neutral and let the higher judicial authorities decide the matter without seeking to justify their decision before the court by engaging counsels and putting the appearance. Similar such objection was raised and was recorded in the minutes of the meeting of the APLs held on 23.07.2020 and 30.07.2020 and also recorded in the minutes of the meeting held on 04.08.2021. Therefore, it is submitted that the administrators should not come to court and canvass the case of one of the parties and they should not be shown to championing the case of the one of the parties. This aspect was reiterated by Mr. MKS in his letter dated 07.12.2022 addressed to the two members of the APL.

86. The learned Senior Advocate referred to the summary of the report dated 19.02.2011 of Mr. MKS one of the joint APLs of the estate of PDB and the relevant events. The first part of the report deals with the events during the period 2012-2014 and the sum and substance of the events being that all decisions of the APL were taken unanimously. The inventory of assets was carried out and interim report was filed. The shares as per the affidavit of assets of both the parties were as stated to be the assets of the estate. Only in two companies the estate of PDB had majority control and as an interim

measure names of two of the Joint APL were proposed for appointment as the directors only in those two companies. After following the due process under the Companies law the said two companies appointed the two APLs as the directors. No process under the companies act was sought to be subverted in the manner of these appointments and these appointments were done by following the provisions of the companies act and not by by-passing them. No directions was given to any company/trusts/societies to vote in a particular manner as these entities were treated as distinct and separate from the parties to the suit.

87. The second part of the report deals with events during the period 2016-2018. During this period, repeatedly prayers were made by the defendant and their nominee APL that the Joint APL should not support resolution for the reappointment of HVL as director whenever he comes up for voting. The Committee in its minutes dated 21.07.2017 unanimously signed by all the three APLs rejected the prayer not to support the re-election of HVL. No direction was given to any trusts or societies or companies on the manner of voting. The plaintiff before the committee as recorded in minutes dated 21.07.2017 explained the shareholding pattern to show that the estate does not have directly or indirectly majority shareholding of the Tier 3 and 4 companies and the estate only has direct majority shareholding in tier 1 companies and indirect majority shareholding in Tier 2 companies. Since there was a wrong recording in the minutes dated 21.07.2017 on being brought to the notice by the plaintiff, in the next meeting of the APLs on 25.08.2017, the



same was also once again informed and this fact was recorded in the minutes of the meeting dated 12.03.2018. Wrong recording was with regard to the submissions allegedly made by the counsels for the plaintiff that HVL shall cause appointment of a nominee of the APL Committee in the subsidiary of VTL. The learned counsel had also submitted that it is for the Nomination and Remuneration Committee and Boards of the respective listed companies to propose whom the companies will appoint as directors and it is ultimately for the shareholders to vote on such resolution. In terms of the liberty granted by the court in the order of appointment dated 23.08.2012, the plaintiffs challenged certain recordings and decisions of the APL Committee in the meeting held on 12.03.2018 and 05.04.2018 and in such application no relief was sought for removal of any APL member. The third limb of the report deals with the events from the year 2019 and it is submitted that Mr. MKS had not signed the decision taken in the meeting of the APLs held on 19.07.2015 and had submitted his dissent note. Apart from the statement regarding extent of estate, it was pointed out by Mr. MKS that no hearing was given to the parties with regard to the conduct of proceeding by the APL committee by majority. In this regard, various pages of the compilation of annexures with a report of Shri MKS were referred to. It is further submitted that the next decision of the two Joint APLs by majority, if taken on 31.07.2018 regarding appointment of directors in the public listed companies to which Mr. MKS has given a separate dissent note. These two decisions are subject matter of GA Nos. 1735, 1845, 1761, and 1786 of 2019 which culminated in the impugned judgment. It is

submitted that there are more than 10 subsequent decisions from August 2019 of the two Joint APLs which have been challenged by the plaintiffs which are pending adjudication. After passing of the impugned judgment, the two Joint APLs have passed several directions on an from 08.10.2020 namely (a) directing appointment of directors in Tier 1 and 2 companies (b) appointment of director in tier 3 and 4 companies (c) removal of directors from Tier 1 and 2 companies (d) HVL has ceased to be a director in the companies and the trustee of the trusts/member of the managing committee of societies and (e) appointment of trustees and members of managing committee. Thus, it is submitted that two APLs have assumed unto themselves a remit over all these companies, trusts and societies. The two Joint APLs have convened and held 21 board meetings of AGMs and EGMs of Tier 1 and 2 companies in some cases on short notice contrary to the provisions of the Companies Act. In some of the meetings, the Hon'ble APL member declared himself to be the Chairman without following provisions of the Companies Act and over riding the objections of the majority of the directors of such board meetings. Such actions of the two APLs have also been challenged by way of applications in the present appeals by the plaintiff. Lastly the learned senior advocate referred to the judgment of the learned single bench of this court in GA No. 3732 of 2008 dated 27.08.2010 and it is pointed out that the directions issued will clearly show that the APLs have to act by consensus and though the matter was carried on appeal before the Hon'ble Division Bench, the directions issued in

the said order dated 27.08.2010 continues to remain valid and binding. With this Mr. Dutta concluded his submissions.

88. Mr. Khambatta, learned Senior Advocate appearing for the appellant classified his reply submissions broadly under eight heads. Firstly, with regard to the alleged admissions which was sought to be heavily relied upon by the learned Senior Advocates for the respondents, secondly, as to whether the affidavit of assets could be brushed aside; thirdly, that the estate of Smt. PDB was never a beneficiary of the societies and trusts; fourthly, with regard to the piercing of the corporate will; fifthly, with regard to the control as envisaged under the Companies Act with particular reference to Section 2(27) of the said Act; sixthly, as to whether the APL Committee can pass directions; seventhly with regard to the will and lastly with regard to the allegations made against HVL.

89. It is submitted that title and property including shares cannot be passed on by admission. If admissions are to be seen, then all admissions are to be looked into more particularly, the admissions in pleadings in court which has to be placed in a higher pedestal. The plaint filed in Civil Suit No. 73 of 2010 by Birla Group was referred to. With particular reference to paragraphs 74, 75, 167 and 168 and also the prayer sought for in suit as mentioned in paragraph 201. Reference was also made to the prayer sought for in G.A No. 3714 of 2008

in PLA No. 242 of 2004 wherein prayer “C” was for a direction to the administrator pendente lite and/or receiver to be directed to take all decisions and exercise all his rights in respect of shares holdings of Birla Group in the Companies referred to in Annexure “C” to the said application. Reference was made to the judgment of the Division Bench in PLA No. 242 of 2004 dated 23.08.2012 and it was submitted that the Division Bench held in so far as the stocks and shares of the Companies are governed by the Companies Act and in the light of the Rules and Regulations under the Companies Act there are two modes by which the share of a company can be obtained that is by transfer and/or transmission as provided under Section 108 of the Companies Act to be entered into Registrar of Members. Noting the fact situation, it was held that stocks and shares which forms major part of the estate left by the deceased are subject matter of administration of the estate and the only manner which can be administered is by exercising propriety rights in the shares except distribution to the beneficiaries till the final adjudication of the matter.

90. It is further submitted that the “controlling block of shares” is a vague expression and referred to paragraphs 31 and 34 of the decision reported in **2005 4 CHN page 545 (PDB Versus Laxmi Debi Newar)** On the same issue reference was made to the observations made by the Division Bench in the case of **RSL Versus Ajay Kumar Mewar reported in <sup>145</sup> 2007 2 Calcutta Series 377** and paragraph 301 of the judgment was referred to wherein it was

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<sup>145</sup> (2007) 2 Calcutta Series 377

observed that the nature of the estate, mostly are the controlling block of shares held by PDB at the time of her death which has also been disclosed in the affidavit of assets and there is no dispute in respect of such shares of PDB nor any allegations have been made that RSL failed to disclose the number of shares by the respondents as an executor RSL took possession of the said shares and there is no allegations that he has failed to collect these assets. Further in paragraph 304 of the judgment, the court had pointed out that after perusing the material placed on record and the facts of the case, the court had come to the conclusion that the vastness of the estate is nothing but controlling block of shares in the MP Birla Group of Companies.

91. Once again turning back to the judgment of the Division Bench in APO No. 244 of 2011 dated 22.12.2011 wherein the Division Bench observed that the court failed to understand the hesitation on the part of the appellants therein in permitting the Joint Administrators to approach the various companies of which the deceased owns and possess shares and stocks to get themselves recorded as representatives of the estate of the deceased appointed by the court and to take all necessary steps to enjoy rights and privileges, incidental to the ownership of the shares and stocks which consists of controlling interest in MP Birla Group of Companies and safeguard the interest of the ultimately beneficiaries. Thus, it is submitted that it is the shares and the stocks which gives the controlling power and nothing else. It is submitted that there is a vast difference between estoppel and admissions and even assuming there is an admission, it cannot override the orders of the court. In

this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Chhaganlal Keshavlal Mehta Versus Patel Narandas Haribhai*** <sup>146</sup> wherein the Hon'ble Supreme Court held that difference between an admission and estoppel is marked one. Admissions being declarations against the interests are good evidence but they are not conclusive and parties always had liberty to withdraw admissions by proving that they are either mistaken or untrue but estoppel creates an absolute bar. The scope of estoppel as defined under Section 115 of the Evidence Act was also explained by referring to para 23 of the said judgment. Reliance was also placed on the decision of the Hon'ble Supreme Court in ***Employees State Insurance Corporation Limited Versus Union of India*** <sup>147</sup>, for the proposition, that concession given by the counsel before the court or the tribunal being a concession in law and contrary to the statutory rules such concession is not binding on the state for the reasons that there cannot be any estoppel against law. Reference was made to the decision of the Hon'ble Supreme Court in ***Director of Elementary Education, Odisha and Others Versus Pramod Kumar Sahoo*** <sup>148</sup>. It is submitted that if there is a mixed question of fact and law there cannot be an estoppel in such a matter and to support such proposition, reliance was placed on the decision in the case of ***State of Rajasthan Versus Bundi Electric Supply Company Limited*** <sup>149</sup>. It was further submitted that the alleged

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<sup>146</sup> (1982) 1 SCC 223

<sup>147</sup> (2022) SCC Online SC 70

<sup>148</sup> (2019) 10 SCC 674

<sup>149</sup> 1969 RLW 473

admissions are much before 2013 when the Companies Act, 2013 came into force.

92. Nextly, the learned Senior Advocate proposed to deal with the decisions relied on by the learned Advocate General. Referring to the decision in ***Helfand*** (supra) after referring to the paragraphs 2 to 6 of the said judgment, it is submitted that the law is different in India and the decision can be of no assistance to the respondents. With regard to the decision in ***New Hampshire Versus Maine***, it is submitted that the decision was purely a factual question on estoppel and there was no decision of law laid down in the said judgment. With regard to the decision in ***Shri Surendra Nayak***, referring to paragraphs 12 and 15 of the judgment, it is submitted that the judgment purely dealt with the facts of the said case which are distinguishable. Similarly, the decision in the case of ***Directorate General of Police Versus R. Maninkandan***, the findings rendered by the court more particularly in paragraph 45 of the judgment would show that the judgment is purely on factual assertions and nothing on law.

93. The learned Senior Counsel now proceeded to deal with the decisions relied on by Mr. S.K. Kapur learned Senior Advocate appearing for the respondent. With regard to the decision in the case of ***Dwijendra Narain Rai***, it is submitted that in the said decision, the plea of estoppel was on facts and

for which purpose paragraphs 3 to 5 of the judgment were referred to. With regard to the decision in **Mumbai International** after referring to the paragraphs 41, 45, 50 and 51 of the judgment, it is submitted that in the said case the second proceedings grew out of the earlier judgment which is not the case in the present appeal. With regard to the decision in **Hope Plantations Limited**, after referring to paragraphs 26 and 31 of the decision, it is submitted that the issue should have been finally determined. In the facts and circumstances of the case on hand, the CLB did not have jurisdiction to decide the extent of the estate of PDB. With regard to the decision in **Bhanu Kumar Jain** after referring to paragraphs 30 and 31 of the judgment, it is submitted that the issue should have been decided against the party and if so, he would be estopped from raising the same in the later proceedings. With regard to the issue estoppel, it is submitted that the previous court of competent jurisdiction should have taken a decision; the previous court should have finally determined the issue; same parties cannot re-agitate the same issue and subsequent proceedings must arise/grow out of the judgment in the former proceedings. To support such proposition, reliance was placed on the decision in the case of **Masud Khan Versus State of Uttar Pradesh** <sup>150</sup> wherein the Hon'ble Supreme Court held that the issue of estoppel arises only if the earlier as well as the subsequent were criminal proceedings and the concept of issue estoppel would also apply in criminal proceedings. To explain the concept

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<sup>150</sup> (1974) 3 SCC 469



better, once again reference was made to the decision in ***Hope Plantation Limited*** by referring to paragraph 26 of the said judgment.

94. The learned Senior Advocate next proceeded to deal with each of the alleged admissions which have said to have been made by the appellant. Reference was made to the decision of the CLB in the case of ***Gauri Shankar Kayan*** wherein the contention raised on behalf of the respondent therein as well as the petitioner have noted in paragraph 5 and in paragraph 8, the scope of Section 247(1A) of the 1956 Act was discussed. However, CLB had no jurisdiction to decide the extent of the estate. Furthermore, the CLB proceedings is not between the same parties, the present proceedings does not grow out of the decision of the Company Law Board, the extent of estate of PDB was not finally determined by Company Law Board and the representation which was recorded by the CLB was made on behalf of the company and not by RSL or HVL. The representation was made to the petitioner before the CLB who is Gauri Shankar Kayan and based on the representation, the parties did not alter their position adverse to their interests. Thus, it is submitted the question would be will the party believe the representations to be brought and when they themselves filed a suit saying that the trusts/societies are different will go to show that no such party believed the representation to be true. Further it is submitted that “control” being a mixed question of fact of law the question of estoppel or issue estoppel would not arise. Further it is submitted that the decision of this court reported in ***133 Company cases 515 (Cal)*** was

independent decision given by the High Court and in this regard, the learned Senior Advocate referred to the paragraphs 37, 38 and 43 of the judgment. Further the decision was much before the judgment of the Hon'ble Division Bench.

95. The Learned Senior Advocate referred to the decision of the Hon'ble Division Bench in APO No. 95 of 2019 dated 04.05.2020 wherein it was pointed out that the controlling block of shares of the deceased and/or her estate is as disclosed in the affidavit of asset. Referring to the decision cited by the learned Advocate General of the CLB dated 19.10.2009 in C.P No. 57 of 2004, it is submitted that the CLB has noted that since the company as well as HVL have now taken the stand that shares held by respondent share holding companies are not part of the estate of PDB, the CLB noted that whatever might be the stand of the respondents, CLB had held in 247/250 proceedings that shares held by the respondent share holding companies forms part of the PDB estate and on appeal the High Court upheld the decision of the CLB. That the respondent did not file any appeal against the said order and as such in so far as they are concerned, the said order had become final. Further the CLB recorded the arguments of Mr. Chatterjee, who submitted that "whatever may be my averments in para 12, the CLB has to take note of its decision in 247/250 order". It is submitted that the statement of the learned counsel is contrary to the affidavit filed by RSL and ultimately the petition was dismissed as not maintainable in the spirit under Section 399 of the 1956 Act.

96. The learned Senior Counsel referred to the shareholding pattern more particularly note 4 in the shareholding pattern. The annual report and accounts of Birla Group Corporation Limited 2003-2004 was referred to wherein in clause 2 the names of the Board of Directors and the categories has been mentioned. Reliance was also made to the annual report and accounts for 2004-2005 of Birla Corporation Limited wherein RSL who was the Co-Chairman was shown in category of “non-executive” and HVL was also shows as “non-executive”. Therefore, it is submitted there is no admission as alleged by the respondent. It is further submitted that in the written submissions filed before the learned Single Bench (Hon’ble Justice Kalyan Jyoti Sengupta) does not specifically mention that the controlling block of shares are those mentioned in the affidavit of assets. Similar submissions have been made in the written submissions before the Division Bench that the controlling block of shares is as disclosed in the affidavit of assets. The learned Senior Counsel referred to the averments set out in the affidavit of asset filed by the RSL in G.A No. 4375 of 2004 wherein it was stated that the estate of the testatrix does not directly or indirectly hold majority block of shares in Universal Cables Limited, from the Birla Corporation Limited or Vindya Tele Links Limited for charitable societies and trusts are not part of the estate of the testatrix which are managed by the respective Managing Committee and trustees of the societies or trusts and for these reason, the Birla’s in their application for probate of the alleged wills of 1982 have filed the affidavit of assets and have not mentioned

therein any of the societies or trusts. Further it has been stated that the companies are separate legal entities controlled by their Board of Directors and there were specific denial to the allegations that the shares owned by the testatrix includes the affairs of the companies. Further there was a specific denial that the affairs of the estate of the testatrix includes right to control the affairs of Birla Corporation Limited and/or its assets or properties. Further it has been specifically denied that the testatrix acquires or exercise control over any of the companies subsequent to the death of MP Biral. Further it was denied that the estate of the testatrix comprises of control over other alleged Birla companies as sought to be alleged. Therefore, it is submitted that the stand taken by RSL has been taken by HVL and there is no inconsistency. The Hon'ble Division Bench in the judgment rendered during 2007 considered all these aspects and held that the controlling block of shares is as disclosed in the affidavit of assets. However, in the first interim report of the APL Committee reference has been made to the judgment of the Division Bench dated 23.08.2012 wherein direction was issued to the Joint Administrator to prepare and file an inventory of assets of the estate and appraisal of the value of such asset and to take over possession of the assets of the estate in the manner provided under law considering the nature of the property. Further it has been stated that the list of assets of the deceased PDB that the value thereof as furnished by the pro-pounders of the will and by their opponent was produced along with the report as Annexure 14. Further in the report it has been stated that the APL applied for and correspond with various companies in which the

deceased held shares for according change in representation of the estate and in pursuance of shares enumerated in Annexure 15 therein have been recorded in the names of the members of the APL Committee representing the estate of the deceased. Reference was made to the decision in the case of **Birla Education Trust and other Versus Birla Corporation Limited** APO No. 154 of 2011 dated 10.05.2013 wherein the court held that the jurisdiction to decide the issue largely shifted from the domain of the CLB to the Probate Court and the courts for trial of suits. Further the court held that it will not be proper for it to pass any order or express opinion pertaining to the estate of PDB. This decision was commented upon by the Division Bench in its judgment dated 04.05.2020 and the arguments based on the decision in 10.05.2013 was considered and rejected.

97. It is further submitted that some of the paragraphs of the judgment reported in **2016 SCC Online Cal 1541** were referred to by the respondents. However, the findings with regard to the controlling interest has been rendered by court from paragraph 129 of the judgment wherein it was held that exercising of controlling power by the promoters is controlled and/or regulated by the provisions of the Companies Act and controlling power cannot be exercised according to the whims of the promoters. Further the court held that the testamentary court while in seisin of the probate proceedings cannot pass any direction encroaching upon the jurisdiction of the Board of Directors for taking over of the company by purchasing its shares. Therefore, it is submitted

if the probate court had no power to do so, the APL Committee shall also have no power to do such things. With regard to the jurisdiction of the Probate Court, reference was made to the decision of the Hon'ble Supreme Court in ***Babulal Khandelwal and Others Versus Balkrishna D. Sanghvi and Others***<sup>151</sup>. For the proposition that a probate proceeding is not a suit in which there is property in dispute as contemplated by Rule 1 of Order 31 CPC and the only question in controversy in such proceedings is that of representations of the estate of the deceased and no question of title thereto i.e. the title of the deceased or of the conflicting titles alleged by the parties to the proceedings can be investigated by the court, reliance was placed on the decision of the Division Bench of this Court in ***Nirod Barani Debi Versus Chamatkarini Debi***<sup>152</sup>. With regard to the decision relied on by Mr. Kapur reported in **2018 SCC Online Bombay 6830**, after referring to paragraphs 79, 95 and 96, it is submitted that in the said case the deceased was a Parsi and Section 269(1) is fully applied and the decision is in opposite. Thus, it is submitted when the APL is appointed and they want to preserve and protect the estate they have to approach the court. The decisions reported in **2021 SCC Online 1065**, **1939 SCC Online Cal 326** (relied on by the learned Advocate General) **1957 SCC Online Cal 179**, (relied on by the learned Advocate General) decision reported in **2001 Calcutta Law Journal 640 (DB)** and the decision reported in **2019 SCC Online (Bom) 702** were also dealt with. For the proposition that the shareholders acquire no rights in the assets of the company reliance was

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<sup>151</sup> (2018) 10 SCC 485

<sup>152</sup> 1914 SCC Online Cal 30 (DB)

placed in the decision of the Hon'ble Supreme Court in **63 Moons Technologies Limited and Others Versus Union of India** <sup>153</sup> (paragraph 106). The decisions relied on by the learned Advocate General reported in **2008 SCC Online Calcutta 208** and **2010 SCC Online Calcutta 2120** were referred to and submitted that those were not cases relating to piercing of the corporate will. It is further submitted that personal interest is not species of property. After referring to the decision, reliance was placed on the decision of the Hon'ble Supreme Court reported in **2007 7 SCC 183**. To explain the concept of control the decision of the Hon'ble Supreme Court in **2012 6 SCC page** in the case of Vodafone was also referred to. Reliance was also placed in the decision of the Hon'ble Supreme Court in **2018 7 SCC 443** and **2019 2 SCC page 1**.

98. Nextly, learned Senior Advocate referred to the definition of promoter as defined under Section 2(69) of the Companies Act. It is submitted that bequeathable property cannot be personal influence. Extensively various paragraphs of the impugned judgment were referred to and it was pointed out that the matter still is in the testamentary jurisdiction and not a regular suit. The learned Senior Advocate referred to one of the prayers made in G.A No. 1964 of 2018 wherein an order clarifying the judgment and order dated 23.08.2012 was sought for in case of divergence of opinion among the members of the newly constituted Committee of Administrator Pendente Lite, the

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<sup>153</sup> (2019) 18 SCC 401

decision should be taken on the basis of majority. The order passed by the Division Bench dated 10.04.2019 was with a view to avoid stalemate and the court intended that the APL act in unanimity.

99. Nextly, the learned Senior Advocate referred to the decision of the APL Committee in the meeting held on 15<sup>th</sup> and 16<sup>th</sup> June, 2019. By referring to various paragraphs of the decision, it was pointed out that there is gross inconsistency in the decision taken. With regard to the plea of prejudice, reference was made to the decision of the Hon'ble Supreme Court in **Keshav Kumar Birla Versus RSL** <sup>154</sup>. Thus, in conclusion it was submitted that all decisions by the majority APL Members must be set aside. With the above submissions, Mr. Khambatta learned Senior Advocate concluded his reply.

100. Mr. Bachawat, learned Senior Counsel in his reply submission reiterated that companies are separate legal entities. So far as the allegation that there has been admission before the CLB, it is submitted that the same is incorrect as all the averments were in the petition and CLB decided based on petition and cannot be stated to be an admission. Further the other side did not attempt to show any arithmetic control which stops with tire 2 companies. There is no order passed by any Court prior to the impugned order giving any right over the trusts and societies. The term used in the impugned order is "entities". It is submitted that the beneficial ownership declaration was filed on

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<sup>154</sup> (2008) 4 SCC 300



30.12.2020 when the appeal was pending. The companies must agree and then only filing can be done and the Directors did not have any knowledge of the same. Furthermore, there was no pleading on beneficial ownership and there is no petition filed in that regard. The orders passed by the NCLT and NCLT, Ahmadabad Bench were also referred to. It is submitted that interim orders in probate proceedings operate *in personem* and not *in rem*. The various decisions relied on were sought to be distinguished on facts. With regard to the powers and authority of APL, it is submitted that when Hon'ble Chief Justice R.V. Raveendran was in the committee an application was filed seeking clarification with regard to the powers of the APL. However, subsequently His Lordship resigned and thereafter the application was disposed of. However, the reconstituted APL Committee did not seek for any such clarification from the Court.

101. Mr. S. N. Mookherjee, learned Senior Counsel in his reply submissions would contend that the question would be as to what extent title can be gone into in a proceedings under Section 247 of the Act; whether any orders of injunction can be passed against third parties; whether after APL can there be an order of injunction against third parties; whether the extent of estate can be determined in these proceedings; whether the extent of the estate was determined anywhere else. It is submitted that these are some of the broad issues which would arise for consideration in the present set of appeals. It is submitted that the order passed by the CLB was upheld in an appeal filed

under Section 10F of the Act on the ground no question of law is involved and it is a question of fact. In this regard, the findings recorded by the CLB were referred to. It is submitted that after 16 years there is a new stand taken with regard to the extent of the estate. Learned Senior Advocate referred to certain decisions for the proposition that no title can be claimed based on admission. The various decisions relied on by Mr. Khambata were sought to be distinguished.

102. Mr. C.A. Sundaram, learned Senior Advocate appearing for the majority APL reiterated the submissions made earlier and in particular, submitted that Section 89 does not cover the field occupied by Section 90 of the Act. The estate was both under the direct and indirect control of Smt. PDB. Further, it is contended that the concept of indirect control is not foreign to the Companies Act.

103. Upon a scrutiny of the materials, certain dates acquire relevance.

|                |                                                                 |
|----------------|-----------------------------------------------------------------|
| July 3, 1982   | MP Birla and Priyamvada Devi Birla (PDB) executed mutual Wills. |
| July 30, 1990  | MP Birla died.                                                  |
| April 18, 1999 | Present Will executed by PDB.                                   |
| July 3, 2004   | PDB died.                                                       |

## REPORTABLE

|                   |                                                                                                                                                                    |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| July 19, 2004     | PLA 204 of 2004 filed by Rajendra Singh Lodha (RSL) for probate of 2019 Will (on contest, converted to Title Suit No. 6 of 2004).                                  |
| August 17, 2004   | PLA 242 of 2004 filed by executors for probate of 1982 Will of PDB.                                                                                                |
| October 3, 2008   | RSL died.<br>Harsh Vardhan Lodha (HVL) took over and converted probate proceeding to Letters of Administration Proceeding.                                         |
| December, 2004    | Birla heirs filed APL application.                                                                                                                                 |
|                   | Two fresh applications for APL by Birla heirs (executor of 1982 Will of PDB).                                                                                      |
| August 27, 2010   | Three-member APL Committee formed.                                                                                                                                 |
| December 22, 2011 | Division Bench (in HVL appeal on APL rights + composition) – two persons from each side + one former Judge as third members of APL ('Umpire' modified by consent). |

Out of the labyrinth of arguments advanced, the following broad issues and sub-issues emanate for adjudication in the present case.

**1. Powers of Probate Court under Section 247, Succession Act –**

- i)** Question of title;
- ii)** Third party injunction.

## **2. Extent of PDB Estate –**

- i)** Only shares or ‘controlling interest’;
- ii)** ‘Controlling interest’ meaning;
- iii)** Whether the issue of extent of Estate barred by *res judicata* and/or barred by *estoppel* against HVL.

## **3. APL (Administrator Pendente Lite) powers –**

- i)** How far APL can interfere in Company affairs;
- ii)** Whether APL decisions have to be unanimous or majority view prevails.

### **Decision with reasons:-**

104. **Issue 1. i)** - It is well-settled that a Probate Court or a Letters of Administration Court cannot finally adjudicate issues of title. It is purely within the domain of a competent Civil Courts to decide such issues. However, in order to decide an application under Section 247, Succession Act, the Probate Court may very well decide, *prima facie*, the extent of the Estate of the deceased. For such purpose, the Probate Court can definitely decide, although tentatively, as to the extent of the property of the deceased. Such adjudication on the Estate of the deceased, however, does not tantamount to a final adjudication of the title over the property.

105. In **Kanwarjit Singh Dhillon Versus Hardy Singh Dhillon and Others** <sup>155</sup>, the Hon'ble Supreme Court held that it is well settled law that the functions of a probate court are to see that the will executed by the testator was actually executed by him in a sound disposing state of mind without coercion or undue influence and the same was duly attested. It was therefore not competent for the probate court to determine whether the person had or had not the authority to dispose of the suit properties which he purported to have bequeathed by his will. The probate court is also not competent to determine the question of title to the suit properties nor will it go into the question whether the suit properties bequeathed by the will were joint ancestor's properties or acquired properties of the testator. In **Ishwardeo Narain Singh Versus Kamta Devi and Others** <sup>156</sup> it was held that the only issue in a probate proceeding relates to the genuineness and due execution of the will and the court itself is at the duty to determine it and preserve the original will in its custody. The Succession Act is self-contained code in so far as the question of making an application for probate, grant of approval of probate or an appeal carried against the decision of the probate court. The probate proceedings shall be conducted by the probate court in a manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executors and valid execution of the will. Thus, it does no more than establish the factum of the will and the legal character of the executors. The probate

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<sup>155</sup> (2007) 11 SCC 357

<sup>156</sup> AIR 1954 SC 280

court does not decide any question of title or of existence of the property itself. Further in **Kanwarjit Singh Dhillon**, it was held that probate of the will granted by the competent probate court would be admitted into evidence that may be taken into consideration by the civil court while deciding the suit for title but grant of probate cannot be decisive for declaration of title and injunction whether at all the testator had any title to the suit properties or not. In **Krishna Kumar Birla Versus Rajendra Singh Lodha and Others**<sup>157</sup>, the Hon'ble Supreme Court held that the jurisdiction of the probate court is limited being confined only to consider the genuineness of the will. The question of title arising under the Succession Act cannot be gone into in the probate proceedings. Conception of a will relating to the right title or interest of any other person is beyond the domain of the probate court. The Division Bench of this court in **Shri Dinendra Kumar Bose Versus Shri Tapan Kumar Bose**<sup>158</sup> held that in an application for grant of probate, it is not open to the trial court to go into the question relating to a title. Whether the testatrix had the title to the property or not basically is a question to be decided by the civil court since after proceedings relating to adjudication of a civil dispute between the two sets of adverse parties. Further it was held that grant of probate by itself does not confer any right or title upon any person in respect of any property since all such questions are subject to adjudication by an appropriate civil court. In the light of the above settled position, we cannot approve the findings rendered by the learned Single Bench having ventured to go into the entitlement of the

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<sup>157</sup> (2008) 4 SCC 300

<sup>158</sup> 2000 SCC Online Cal 130

estate to exercise control over tier 3 and 4 companies of the MP Birla Group. If we examine the judgments relied on by the respondents, we find that in **Babulal Khandelwal**, the Hon'ble Supreme Court has brought out the distinction between a probate proceeding and an administration suit and it was held that in an administration suit, the extent of the estate of a deceased can be decided and not the right and title of the parties and the probate court does not decide any question of title or even the existence of the properties itself. In the judgment of the High Court of Bombay in **Balkrishan D Sanghvi** would go to support the case of the appellant on facts it is seen that the judgment arose out of an case pertaining to an administration suit and not to the probate proceedings.

106. **Issue 1. ii)** – Third party injunctions can be granted in exceptional cases by the Probate Court, for the limited purpose of protecting the Estate. However, the internal affairs of third party companies cannot, under normal circumstances, be interdicted by a Probate Court.

107. This sub issue relates to third party injunctions which can be further sub-divided and the power of the court to grant injunction is also required to be considered. In **Nirod Barani Debi Versus Chamatkarini Debi**<sup>159</sup>, the Hon'ble Division Bench held that it is essential for application of Order 39 Rule 1 CPC that the property dispute in the suit is in danger of being wasted,

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<sup>159</sup> 1914 SCC Online Cal 13

damaged or alienated by a party of wrongfully suit in execution of a decree. Consequently, the application for injunction must satisfy the court that the proceedings is a suit in which there is property in dispute and the property is in danger of being wasted, damaged or alienated. It was further held that the question, consequently, arises whether the proceedings for the probate of a will or for letters of administration may rightly be held to be a suit in which property is in dispute. In the opinion of the court, the answer was in the negative. After referring to several other decisions, it was held that the only question in controversy in a proceeding in a probate court is that of representation of the estate of the deceased and no question of title thereto, i.e. the title of deceased or the conflict in title alleged by the parties to the probate proceedings can be investigated by the court. Further the court held that they do not lay down the proposition that the court is not competent, because it is a probate court to grant injunction in any circumstances. It was held that the proper procedure to follow in cases of this description is for the aggrieved party to apply to the court for the appointment of an administrator pendente lite (APL) under Section 34 (presently Section 247). It was further held that by virtue of the provision by which the administrator pendente lite is appointed, they take charge of the entire estate of the deceased. It was further held that when it is brought to the notice of the court that a party in possession is about to deal with the movable properties; unless an injunction is granted, the appointment even of an administrator pendente lite may become fruitless, under such circumstances, the court has ample authority either under the



statutory powers or in the exercise of its inherent jurisdiction to make a temporary order so as not to defeat the ultimately order which the court is competent to make. In ***Atula Bala Dasi and Ors. Versus Nirupama Devi and Anr.***<sup>160</sup>, it was held that it is open to the probate court not only to appoint an administrator pendente lite (APL) but also to issue an order of injunction, temporary in character, pending the appointment of an administrator pendente lite and if such powers are exercised in probate cases by the probate court, there is no reasonable chance of any property being dissipated pending the actual grant of probate or the appointment of an administrator.

108. The learned Senior Advocate appearing for the respondents had relied upon several decisions of the Hon'ble Supreme Court as well as other High Courts to support their contention that injunction can be granted by the probate court. On going through the facts of each of those cases, we find that in all those cases, the orders of injunction were granted pending appointment of APL which was in the light of the judgment of the Division Bench of this court in ***Atula Bala Dasi***. Thus, having taken note of the above legal position, the next issue to be considered under this head is whether the probate court can pass orders against the third parties. We need not labour much on this issue as the learned Single Bench has rightly noted the proposition of law in this regard and held that the companies not being the parties, they are not amenable to the jurisdiction of the probate court. While considering whether

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<sup>160</sup> 1951 SCC Online Cal 40

the companies can be joined as the party defendant, the court held that the noticee companies can neither be joined as a party defendant nor can any order of restrain be passed against such companies who is not a party to the proceedings. Further the court held that it cannot extend its jurisdiction to a person who is not a party to the present proceedings. Further the probate court cannot extend the jurisdiction over a person or entity who is not a party to the proceedings. Further it was held that since the noticee company being not the party to the proceedings no order can be passed against it. The respondents have filed the cross objection against these findings recorded by the learned Single Bench which needs to be rejected. In the decision reported in **2016 SCC Online Cal 1541**, Hon'ble Court observed that the court has no hesitation to hold that probate court cannot pass any injunction order against the third parties as third parties who has no caveatable interest in the probate proceedings cannot be allowed to be added as a party in the probate proceedings and also for the reason that no order can be passed affecting the right of the stranger without adjudication of his rights in the probate proceedings is impossible as probate court cannot decide any foreign issue unconnected with the probate proceedings. To be noted that though appeals are pending against the said decision, there is no order of stay. The decision relied on by the respondent reported in **AIR 1938 Calcutta 642** has been rightly distinguished by the learned Senior Advocate for the appellant to be inapplicable to the facts of the case on hand as in the said case, no APL had been appointed and the facts of the said case was also that the injunction

which was sought for against the person was not a stranger to the probate proceedings.

109. **Issue 2. i)** – To decide the extent of the Estate of the deceased, the court has to ascertain the powers which could be exercised by the deceased testatrix herself. The powers of the probate court while appointing an administrator pendent lite (APL) are co-extensive with the powers of the testator/testatrix. As a necessary corollary, the powers of an APL formed by the probate court cannot exceed such limits.

110. With regard to the shares in several companies, PDB's powers were restricted to her ownership of the particular shares in different companies as mentioned in the affidavit-of-assets. In such context, the expression 'controlling interest' should not be confused with 'personal influence' of the testatrix. Whatever might have been the "personal influence" of the deceased testatrix, the same was intangible and restricted to herself. The charisma or personal influence of the deceased might have helped her in carrying out her will in the affairs of the companies, but do not comprise of tangible incidents of her property or Estate.

111. Thus, it cannot be said that her personal influence is, in any manner, a part of the Estate.

112. Now coming to the issue of “controlling interest”, it has been argued extensively that PDB had control over the affairs of the second, third and even forth tier companies by virtue of her shareholdings in the Tier-1 companies. However at the ground level, such influence is only theoretical, as an incident of her actual shareholdings in the Tier-1 companies.
113. The mathematical advantage which PDB might have had by virtue of her majority shareholding in the Tier-1 companies, could only be translated to assertion of influence in the Tier-2, Tier-3 and Tier-4 companies of actual presence of PDB in the shareholders’ meetings and other exercises for the PDB participated by virtue of her actual shareholding.
114. Definitely, it was open to PDB, as majority shareholders in Tier-1 companies to attend the shareholders’ meetings and assert her influence by virtue of voting rights or otherwise, as a part of the incidental rights of a shareholder. However, without actual participation in voting and other decision-making processes, such advantage would merely be inchoate.
115. As a natural corollary, the APL to be appointed by the Probate Court for looking after and managing the Estate of the deceased, steps into the shoes of the deceased and does not have an iota of right or power more than the deceased herself would have.

116. Hence, at best, the Probate Court can direct the APL, personally or through its appointees, to register itself or its agents as members of the companies in the capacity of owners of the shares actually owned by PDB in such companies. Upon such registration, the APL and/or its nominees would function as shareholders in such companies and have all the incidental rights and controlling power which PDB would have had by virtue of such shareholdings, including voting rights, participation rights in decision-making processes and meetings, etc. However, the Probate Court cannot go an inch further than that in interfering with the business of the companies.

117. It is contended by the learned Senior Advocate appearing for the respondent that it has been concluded by a series of judgments passed by the Company Law Board, High Court both Single Bench and Division Bench and the Hon'ble Supreme Court that the estate of PDB holds majority controlling shareholding in MP Birla Group. In this regard, reference was made to the interim order dated 23.03.2005 reported in **2005 4 CHN 544**. In the said decisions, three applications were taken out by Smt. Laxmi Devi Newar and another (defendants 1 and 2) and jointly by four persons K.K. Birla and three others for appointment of administrator and/or a Committee headed by an independent and impartial administrator to appoint in and over the estate left by the PDB and also for an order of injunction restraining the pro-

pounder/plaintiff from dealing with, disposing of any of the asset or properties of the deceased and/or exercising any right and control of the companies. The three other applications were taken out by the plaintiff RSL for dismissal of the applications for the interlocutory relief as mentioned above. Emphasis was laid on the observations/findings recorded in paragraphs 3 to 36 of the judgment. It is submitted that the learned Single Bench in the said interim order had held that the majority shareholding is the controlling block of shares which constitutes undefined and unspecified right or status which has got far reaching effect in the affairs of the company and the same is nothing short of the property in real sense. That it is an admitted position that Lodha has already got possession of the majority of shares of the holding companies from the said deceased (PDB) and by the mechanism of interlocking shareholding. Ultimately it was held that at the relevant stage appointment of an administrator pendente lite is not called for and the interim order which was granted was directed to continue till the disposal of the application.

118. Firstly, we need to note that the above observations were made by the learned Single Bench in the interlocutory applications at an interim stage and it is not a final adjudication of the facts. In paragraph 30 of the judgment, the learned Single Bench has recorded that it is seriously disputed about the extent of the properties of the deceased as defined in Section 211 of the Indian Succession Act, vests in Lodha in reference to the affidavits of assets. After noting the submissions on either side, the court held that a Hindu testatrix or

testator cannot dispose of anything or otherwise that is mentioned in the provisions of Section 30 of the Hindu Succession Act. It was further held that disposition of properties means an act by which property can be transferred by executing a deed *intervivos* in case of immovable property or interests therein, by a party in possession in case of movables. It was held that there is no dispute as regards, the transferability character of the movable and immovable properties including shareholders. The argument that shareholders stand at a different footing from that of a company which is a separate legal entity was accepted. However, the contention that the properties which are described in the affidavits of assets can be said to be the properties as mentioned in Section 211 of the Act was held to be not acceptable. Further the court held that the description in the affidavits of assets affirmed by the RSL cannot at that stage be an exhaustive one as there may be properties of any description remaining undiscovered or untraced. Therefore, the “estate” of the said deceased should be the properties both movable and immovable which have been stated in the affidavit of assets of RSL or which might be discovered by the inventory or otherwise.

119. The next question considered by the court was whether the majority of the shareholding held by the PDB by which she used to control either directly or indirectly or indirectly MP Birla Group of companies or any other companies assumes any significance in relation to the shares structure and administrative affairs of the companies. The argument, with a single or group of shareholders

not forming majority that is no impact on the affairs of the company as they do not have separate or significant character or position in the companies except the right to get dividend and on dissolution to have ratable distribution of the surplus assets, but the majority shareholders in one hand is really something more than holder of individual or minority shareholders was accepted. Further it was held that the strength or impact of majority shareholding cannot be perceived in the affairs on the fate of the companies. But if one sees the provisions of the Companies Act regarding formation of Board of Directors who are really responsible for control, management and affairs of the company, it is to be found that a person holding major shares really control the affairs of the company. After referring to Section 255 of the Companies Act, it was held that the Directors of a company are appointed in the AGMs of all the shareholders. It is quite natural the majority shareholdings will have a decisive role in the matter of appointment of Directors. All the powers of the company are exercised by the Board of Directors as conferred under the provisions of Section 291 and 292 of the Companies Act. It was therefore held that the Directors appointed by majority are the de facto controller and manager of the company. It was further held that the majority shareholdings to put differently controlling block of shares, constitutes undefined or unspecified right or status which has got far reaching effect in affairs of the company and the same is nothing short of property in real sense. After recording the above findings, the court held that it is an admitted position that the RSL has already got possession of majority of the shares of the holding companies from the PDB



and by the mechanism of interlinking shareholding with other groups of companies, the entire MPB group can in fact be controlled and managed either by RSL himself or his nominee. Further it was held that from the affidavits of assets furnished by the pro-pounder RSL, it appears properties are of different character and nature namely majority shareholding of four companies of MPB group co- ownership in the immovable properties. Thus, a cumulative reading of the view taken by the learned Single bench in the aforementioned interim order is that the shareholders stand on a different footing from that of the companies which is a separate legal entity. The description in the affidavits of assets affirmed by RSL cannot be an exhaustive one as there may be properties of any description remaining undiscovered or untraced and therefore, the estate of the deceased should be the properties both movable and immovable which have been stated in the affidavits of assets of RSL or which might be discovered by inventory or otherwise. That a single or group of shareholders not forming majority there is no impact in the affairs of the company as they do not have separate or significant character or position in the company except the right to get the dividend. Formation of the Board of Directors who are really responsible for control, management and affairs of the company, it is to be found that a person holding major share really controls the affairs of the company. The majority shareholding will have a decisive role in the matter of appointment of Directors and all the powers of the company are exercised by the Board of Directors as conferred under the provisions of Section 291 and 292 of the Companies Act, read the observations regarding the majority

shareholdings or the controlling block of shares which was held to constitute undefined or unspecified right or status has to be read in conjunction with the other observations made by the court which will go to show that it is the Board of Directors who are really responsible for control, management and the affairs of the companies and a person holding major shares controls the affairs of the company. Therefore, it would be incorrect to interpret a couple of sentences in paragraph 34 and 35 of the judgment to come to a conclusion that the court affirmed that the majority shareholdings or in other words controlling block of shares constitutes undefined or unspecified rights or status and that RSL got possession of majority of shares of the holding companies from PDB and by the mechanism of interlinking shareholdings with other group of companies. In any event this was only a prima facie view recorded by the learned Single Bench while passing an interim order in an interlocutory application. Therefore, the observations contained therein cannot be taken to be a final finding on facts and consequently this decision cannot be pressed into service to contend that the extent of the estate is an admitted and concluded issue.

120. Nextly, the decision of the learned Single Bench reported in **AIR 2006 Calcutta 259** was referred to for the same proposition. This, an interim order passed in the very same applications namely GA No. 4375 of 2004 and 4376 of 2004 in T.S. No. 06 of 2004 in PLA No. 204 of 2004. The court considered the prayer in the applications made by the caveatrix for appointment of administrator and held that the same cannot be considered for if granted, that

would amount to taking over of management and control of separate juristic bodies by the probate court as it has no jurisdiction to do. However, the prayer for APL can be considered. The observations made in paragraphs 32, 33, 66, 71, 73 and 75 were referred to contend that the extent of the estate has been conclusively determined. A careful reading of the decision more particularly from paragraphs 26 onwards, we find that the observations in paragraphs 32 and 33 of the judgment appear to be the stand taken by the parties, as the decision in the case commences from paragraph 34 of the judgment. Even assuming the observations made in the aforementioned paragraphs are to be taken as a finding, the court has not rendered a definite ruling on what is “controlling interest” as the court at the very threshold had rejected one of the prayers on the ground that if it is granted, it would amount to taking over and control of separate juristic bodies by the probate court as it has no jurisdiction to do so. Therefore, the observations contained in the order are to be read in such a manner to aid and support the ultimate relief that was granted namely the appointing of four administrators. This is further clear from the observations made in the paragraph 75 of the order wherein the court after appointing the four administrators directed that they shall take charge and control of all the shareholding of PDB in all the companies and they should function under law by virtue of the controlling shareholding of all the companies left behind PDB and they shall take steps for rectification of all the share registers of the companies recording their names. Further the court held that the administrators shall immediately make an enquiry as to the dealings

of RSL vis a vis dividends and investment of the dividends and submit a report to the court and that the administrators shall place themselves in the Board of Directors wherever it is possible by virtue of shareholdings. Therefore, to interpret the word “controlling interest” de hors shareholding would fall foul of the provisions of the Companies Act. Therefore, this decision also cannot be pressed into service to hold that the issue relating to the extent of estate is a concluded issue.

121. The next decision which was relied on in the case of **Rajendra Singh Lodha Versus Ajay Kumar Newar AIR 2007 2 Calcutta 377 (DB)**. In the said decision while considering the order passed by the first court, the Hon'ble Division Bench observed that it has been held that there was no mismanagement of the estate of the deceased in the hands of RSL excepting the fact that the learned Single Bench appointed the administrator over controlling block of shares held by PDB and further directed that the said shares should be transferred in their own names and be rectified in respect of shares registered of the companies for recording their names. Further it was observed that in the order passed by the Single Bench powers as has been given to the administrators to record their names in respect of the shares left by the PDB in their own names and after rectifying the share registers, all voting rights have been given to them and further by virtue of the said order, it has been directed that they will be Directors of those companies.

122. Further the Division Bench stated that the only question is whether any material is disclosed before the court for appointment of APL over the controlling block of shares that MP Birla Group of Companies. Further the fact that there were four manufacturing companies in MP Birla Group of Companies in which the shares are held by various investment companies and other companies within the group was noted. Further it was held that all the four manufacturing companies are listed companies and the shares are held by the members of the public and none of the companies are before the probate court are party to the application for appointment of APL. Further it was held that it is also a fact that no notice of the application was given to the public shareholders by issuing a general notice and therefore the submissions was made before the Bench that number of members of public will be affected by such appointment. It was therefore held that the court does not have any doubt in its mind that without giving notice to the shareholders in the probate proceedings, the court has no power to appoint APL over the said controlling block of shares. After perusing the material placed on record, the Division Bench observed that they are not able to find out any document which will suggest or can act in favour of such appointment on the controlling block of shares. Further it was held that the order of the learned Single Bench had the effect of dislodging the present board as the management without considering the provisions of the Companies Act and therefore the order is contrary to the provisions of the Companies Act. Further it was held that the probate court has

no jurisdiction to pass such an order and accordingly the order of the learned Single Bench appointing APL over the controlling block of shares was set aside. Further it was held that the nature of the estate, mostly are the controlling block of shares held by the PDB at the time of her death which has been disclosed in the affidavit of assets and there is no dispute in respect of such shares of PDB by the respondent therein nor any allegations have been made that RSL failed to disclose the number of shares by the respondent therein, as an executor took the possession of the said shares and there is no allegation that he has failed to collect the assets. Further it was observed that the vastness of the estate is nothing but the controlling block of shares in the MP Birla Group of companies and in the fact and circumstances of the case, it does not call for an appointment of APL when it is a settled law that administrator/receiver should be not appointed over a running business. Thus, a careful reading of the said decision would show that the issue regarding “controlling interest” was not conclusively decided.

123. The next decision which was referred to was that of the Company Law Board in **Gouri Shankar Kayan**, the petitioners therein contended that RSL was in control of Respondent Nos. 1 to 28 therein and it will be a breach of Takeover Court Regulations. In terms of the Takeover Regulations any acquisition of shares by transmission or succession or inheritance is not covered by the court and therefore neither legally nor the fact is there any

scope to invoke the provisions of Section 247(1A) and therefore the petition should be dismissed.

124. In the rejoinder submissions made on behalf of the petitioner therein, it was argued that since shareholders controlling 63% shares in the company has expired it is very necessary to find out as to who controls these shares and the same can be found out only by investigation. Since the company is a public limited company, public interest is involved as the shareholders have interest in knowing as to who controls majority shares in the company. The court however pointed out that even though the petitioner therein have alleged in the petition that RSL is claiming control of respondent Nos. 1 to 28, which contention was denied in the replies filed by the respondent. Further the CLB observed that in the said case, the facts sought to be found out relate to over 60% shares in the company and if the membership relating to these shares cannot be ascertained without investigation, then certainly investigation can be ordered. It is further observed that it is an admitted fact that before the demise of PDB even though her direct shareholding in the company was negligible, by virtue of her controlling respondents 1 to 28 therein which held/hold over 60% shares in the company, PDB was not only materially interested in the company and was also able to control the company. Thus, it could be seen that CLB took note of the fact that the direct shareholding of PDB in the company was negligible. However, proceeded to make an observation, that by virtue of her

controlling respondents 1 to 28 therein which held over 60% shares in the company, PDB was able to control the company.

125. Firstly, the decision was rendered in an application filed before the CLB where the petitioner therein sought for an investigation into membership of the company in terms of Section 247(1A) of the Companies Act 1956 for determining the true persons who are financially interested in the success or failure of the company or who have been able to control or materially influence the policy of the company. This petition was dismissed holding that no case has been made out to order an investigation in terms of Section 247(1A). To be noted that the order came to be passed in an application under the Companies Act, 1956 and does not in any manner concern a probate proceeding. Ultimately, the petition also stood dismissed. Therefore, any observations rendered by the Company Law Board cannot be said to be a final conclusion on the extent of the estate of the deceased. The said decision was carried on an appeal before this court under Section 10F of the Companies Act, 1956. The Hon'ble Court after taking note of the essential ingredients of Sub Section 1(A) of Section 247 held that the CLB should not direct a roving phishing investigation at the behest of persons who have some ulterior intent in seeking investigation for example, to stop the shareholders from exercising their rights as shareholders, including their right to vote as admitted in the said case.



126. The first sentence in paragraph 45 of the judgment reported in **2006 133 Company Cases 515 (Calcutta)** was strongly relied upon wherein the Hon'ble Court observed that the CLB rightly recorded the findings that the estate of PDB was in control of the majority shares of the companies. However, in paragraph 45 of the judgment, the Hon'ble Court has also held that it was not necessary for the CLB to record a finding on the true persons in control of the estate of PDB or to order an investigation for the reasons which have been set out, in view of the case made out by the parties. Further the Hon'ble Court upheld the observation of the CLB that Section 247(1A) could not be invoked to determine the person entitled to control the estate, which was an issue before this court in the testamentary jurisdiction and therefore does not call for interference in appeal. Ultimately, the Hon'ble Court held that there is no question of law which requires decision of this court in the appeal, and the appeal was accordingly dismissed. Therefore, we find that nothing flows out of the decision to support the proposition that the extent of the estate or "controlling interest" was finally adjudicated and decision rendered. Above all, the decision arose out of an appeal under Section 10F of the Companies Act and the court noted that the issue is in the testamentary jurisdiction of this court, and Section 247(1A) could not be invoked to determine the persons entitled to control the estate. Therefore, we find that the decision cannot be of assistance to the respondents to support their contention that the extent of the estate has been finally determined.

127. The next decision which was relied on was in PLA No. 242 of 2004 dated 23.08.2012 of the Hon'ble Division Bench. This judgment was rendered in appeals arising out of a common judgment and order of the learned Single Bench dated 27.08.2010 in GA No. 3714 of 2008 and 3718 of 2008 in PLA No. 242 of 2004. The learned Senior Advocates appearing on either side placed heavy reliance on the findings/observations of the Hon'ble Division Bench in the four pages of the judgment which was in fact, dissected several times. We will examine the observations/findings recorded by the court to ascertain as to what was the impact of the findings on the aspect relating to the extent of the estate/"controlling interest". The Hon'ble Division Bench pointed out that the rights and power of the general administrator over estate depends on the nature of properties both movable and immovable and the respective statute which governs acquisition and enjoyment of such property. Therefore, the Hon'ble Division Bench was categorical in its finding that the impact of the respective statutes was prime as the same will govern the acquisition and enjoyment of said property. Further the Division Bench made it amply clear that in so far as the stocks and shares of the companies they are governed by the Companies Act. It pointed out as to what are the modes by which the shares of a company can be obtained and it was held that the only manner the stocks and shares can be administered is by exercising propriety rights in the shares except the distribution to beneficiaries till final adjudication in the matter. There is one more observation that in respect of the stocks and shares it can be administered in exercising propriety rights. Further the contention of

the appellant therein was noted for appointment of an APL to enable him to collect the dividends paid against the shares and all other income of the estate which is one of the trade and characteristic of the different kinds of rights emanating from the ownership of shares, stocks of the company as provided under the Companies Act. The propriety rights of ownership of shares under the various provisions of the Companies Act were set down. Further it was held that considering the fact that the Joint Administrators appointed by the court will be required to administer property of the deceased including the shareholding and stocks held by the deceased in various companies with the purpose of its protection and preservation, it cannot be said that the Joint Administrators would be mere spectators, if they are expected and/or permitted to collect dividend accruing out of the shares and stocks and there is no reason why they should not be eligible and entitled to other privileges incidental to the ownership of such shares and stocks according to the exigencies found to exist as representatives of the beneficiaries till the matter is finally decided by the court, in the capacity as APL. Further the court observed that nothing prevents the APL to exercise all the rights and powers and privileges incidental to the ownership of the shares and stocks, except that of distribution. Thus, in several places, the Hon'ble Division Bench has emphasised that the rights and privileges exercisable are incidental to the ownership of the shares and stocks and therefore a different meaning cannot be given nor the decision can be understood to mean that de hors ownership rights in shares and stocks, the APL will be entitled to exercise the rights,

power and privileges. Much emphasis was made by the learned Senior Counsel on the word “all” used in the judgment but the said word has to be read in conjunction with the words following it and if read together, it shows that all the rights powers and privileges ought to be incidental to the ownership of shares and stocks and not otherwise. This is amply clear from the next paragraph of the judgment wherein it was held that even though they are appointed by the court as APL nothing prevents them in their capacity as the representatives of the beneficiaries to exercise all such rights which flow from the ownership of shares and so enjoyed by the deceased during her lifetime. Further it has been held that in order to enjoy certain rights flowing from the shares and stocks of the companies held by the deceased, the APL will have to apply to the respective companies to obtain such benefits namely in case the company comes out with rights issue and/or bonus shares which otherwise can only be subscribed by the shareholder and therefore as the representative of the shareholders, they can apply to the company to subscribe for such shares in their capacity as the representative of the deceased in the estate and not as owner in their own name. Further it was made clear that in order to enjoy rights incidental to the ownership of shares an application will have to be made to the company as required by law to record their name in the register of members and companies will have to consider such an application in accordance with the Articles of Association and the provisions of law which governs the same. Further the Hon’ble Division Bench refrained from discussing the various factors of such exercise of rights of ownership of shares

by the Joint Administrator as it was thought it is best that it is left to the discretion and wisdom and according to the exigency found to exist and in such an event, it would always be open to the parties if they are aggrieved to approach the probate court as the Joint Administrators are subject to immediate control of the court and shall act under its directions. Further the court observed that it is not disputed that the deceased has controlling block of shares in MP Birla Group of companies and if the rights flowing from such shares are kept in abeyance during the pendency of the suit it may be detrimental to the interest of the company as a whole as the companies may be managed by the minority shareholders and or suffer at the hands of vested interest. Thus, a careful and cumulative reading of all the findings/observations, the correct interpretation would be that the controlling power is the proprietary rights of ownership of stocks and shares. Furthermore the court also specifically held that the APL has to apply to the company as required under by law to record their names in the register of members and the companies will have to consider such an application in accordance with the Articles of Associations and the provisions of law which governs the same. Therefore, no extraordinary power was granted to the APL and they were to abide by which the dictates of the Companies Act. Therefore, it would be incorrect way of interpreting the judgment to pick up a few words and sentences to hold that the controlling block of shares would mean the rights over shares which were not standing in name of the deceased. Thus the court having in several places categorically held that the APLs who have been

appointed to represent the estate of the deceased are entitled to take all steps to enjoy the rights and privileges incidental to the ownership of the shares and stocks which consists of the controlling power in MP Birla Group of companies and safeguard the interests of the ultimate beneficiaries, the words “controlling power” cannot be read in isolation but has to be read in conjunction with the other findings recorded by the court which categorically holds that controlling power flows from the ownership of the shares and stocks. Therefore, the observations/findings rendered by the court would go support the case of the appellant rather than the respondents.

128. The next decision which was referred to is the decision reported in **2016 SCC Online Calcutta 1541**, the court after taking note of the definition of control as defined under Section 2(27) of the Act held that “control” is a mixed question of law and facts. Ownership of shares made in certain situation, result in the assumption of an interest which has the character of a controlling interest in the management of the company. A controlling interest is an incident of ownership of shares in a company, something which flows out of holding of shares. The controlling interest is therefore not an identifiable or distinction capital asset independent of the holding of the shares. A control of a company resides in the voting power of the shareholders and the shares represent an interest of shareholder which is made up of various rights contained in the contract embedded in the Articles of Association. It is that right of a shareholder may assume the character of a controlling interest where

the extent of shareholding enables the shareholding to control the management. Shares and the rights which emanates from contract well flow together and cannot be dissected. In fact, the share in the companies consists of congeries of a right or liability which are the creation of the Companies Act and the Memorandum and Articles of Association of the company. Thus, control and management is a facet of holding shares. Further it was held that in view of several decisions of the court at various interlocutory stages in the probate proceedings, it has now been settled that the exercise of controlling power over MP Birla Group of companies is an valuable asset of the estate of PDB and such finding arrived at different stages of the interlocutory proceedings is not only binding upon the parties but also binding upon the court and therefore the court held that controlling power is an important and valuable asset belonging to the estate of the PDB. Further it was held that the exercise of controlling power by the promoter is controlled and/or regulated by the provisions of the Companies Act and controlling power cannot be exercised according to the whims of the promoters. Further it was held that if the promoter hold majority shares then they are several remedies prescribed under the Companies Act to enforce the decision which by not approving the decision of the Board of Directors and they may also initiate process of removal of the Directors and appointment of the Directors of their choice in the place of the main directors. But no such step can be taken without following provisions of the Companies Act. That the court in a probate proceeding cannot pass any directions encroaching upon the jurisdiction of the Board of Directors or taking

over of the manufacturing units by purchasing its shares. Further the court categorically held that the APL should be made agree so that the APL can exercise its power of control over the management of BCL by following provisions prescribed under the Companies Act and in case APL fails to discharge its duties, probate court can pass necessary directions upon APL for taking steps in accordance with law. Further the probate court at best can pass necessary directions upon APL to initiate appropriate proceedings before the appropriate forum for seeking appropriate reliefs and in accordance with law and it is only that appropriate forum which can pass appropriate order after adjudicating the rights of the parties including that of a stranger. Thus, it is clear that it is extent of the shareholding which enables the shareholders to control the company and any other interpretation will fall foul of the definition of control as defined under Section 2(27) of the Act.

129. In the judgment of the Hon'ble Division bench dated 04.05.2020, arising out of an intra court appeal, the Division Bench while considering the jurisdiction of probate court took note of the order dated 10.05.2013 which was heavily relied upon by the respondents contending that the probate court should decide all issues as to the control of interest comprises in the estate and its effect with regard to the third-party companies wherein such shares are held. The Division Bench held that they could not gather from such judgment any convincing findings to the said effect and accordingly the contention of the respondent was rejected.



130. **Issue 2. ii)** – Controlling interest in the present context, can only mean the incidental rights, including voting rights, rights of participation in shareholders' meetings and other decision-making processes which PDB would have had by virtue of her shareholdings in the respective companies.

131. This sub-issue pertains to the meaning of “controlling interest”. The majority Joint APLs have accepted the contention of the respondents that PDB held controlling interest in all the companies in MBP Group i.e. tire 3 and 4 companies by virtue of such share holding in tire 1 and 2 companies. The respondents have supported the findings of the majority Joint APLs by contending that PDB enjoyed de facto control de hors actual share holding in the companies and such de facto control exercised by PDB is part of the estate of PDB. To be noted that in the 1956 Act “control” was not defined, and was introduced in 2013 Act. In **Vodafone International** the Hon'ble Supreme Court held that “control” is a mixed question of law and fact. Ownership of shares may, in certain situations result in the assumption of an interest which has the character of a controlling interest in the management of the company. A controlling interest is an incident of ownership of shares in a company something which flows out of the holdings of such shares. A controlling interest is therefore not an identifiable or distinct capital asset independent of the holding of shares. The control of the companies resides in the voting powers of the share holders and the share represents an interest of a share holder which

is made up of various rights contained in the contract embodied in the articles of association. Further, it was held that the right of a share holder may assume the character of a controlling interest where the extent of a share holding enables the share holder to control the management. Shares and rights which emanate from them, flow together and cannot be dissected. Further, it was reiterated that shares represent congeries of rights and controlling interest is an incident of holding majority shares. Control of a company vests in the voting powers of its share holders. Further, it has held that a company is a separate legal persona and the fact that all its shares are owned by one person or by the parent company has nothing to do with its separate legal existence. In none of the authorities have the assets of the subsidiary have been held to be those of the parent unless it is acting as an agent. Thus, even though a subsidiary may normally comply with the request of a parent company it is not a puppet of the parent company. The difference is between having power or having a persuasive position. Further, it was held that the legal position is well settled, namely, that even though a subsidiary may normally comply with the request of a parent company, it is not just a puppet of the parent company. The difference is between having the power and having the persuasive position. A great deal depends on the facts of each case. At this juncture, it would be relevant to take note of the definition of “control” as defined under Section 2(27) of the 2013 Act. It states that control shall include the right upon majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or

indirectly, including by virtue of their share holding or management rights or share holders' agreements or voting agreements or in any other manner. In **Chintalapati Srinivasa Raju** the Hon'ble Supreme Court held that even though definition of "control" in 1997 Regulation is an inclusive one, yet the definition shows that control must mean a right to appoint majority of directors as a share holder or to control management or policy decisions by persons in any manner. Thus, to state that a person exercises control, the true meaning and colour to be given to the words in the definition of "control" in Section 2(27) should mean that there should a right and this would be the correct way of interpreting the meaning of the "control" as defined under Section 2(27) of the 2013 Act. The argument of the respondents is that it is an inclusive definition, as the definition of control states that "control shall include the right....". In **Reserve Bank of India** the question which fell for consideration is a "prize-less chit" a "prized chit". While deciding the question the Hon'ble Supreme Court decided the significance of the word "includes" and what an inclusive definition implies. Both the parties to the litigation placed reliance on the decision of **Dilworth Versus Commissioner of Stamps**<sup>161</sup> wherein it was held that the word "include" is very generally used in interpretation clauses in order to enlarge the meaning of the word or phrases occurring in both of the statutes and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation clause declares that they

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<sup>161</sup> (1899) AC 99

shall include. It was further held that the word “include” is susceptible of another construction, which may become imperative, if the context of the act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to “mean” and “include” and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act must invariably be attached to these words or expressions. Therefore, the bone of contention is not as to whether the definition of the word “control” is an inclusive definition or an exhaustive definition but what is most important to note in the definition of the word “control” is that there must be a right to appoint majority of Directors or a right to control the management or policy decisions exercisable by a person or person acting individually or in concert directly or indirectly, including by virtue of their share holding or management rights or share holders’ agreements or voting arrangements or in any other manner. Therefore, the word “right” as contained in Section 2(27) of the Act is of utmost importance and the definition of the word “control” cannot be read to mean something de hors the existence of a right.

132. On going through the order impugned in this appeal we find that the Learned Single bench had held that no order can be passed against the companies. It has also been held that the Court is not deciding any of the points urged by the companies. Further, the companies would exercise voting rights flowing from their investment in the companies controlled by PDB in the

manner to be guided by the APL committee. Further, the learned Single Bench was of the clear view that it is not deciding any of the points urged by the companies and also recording a finding that no order can be passed against the companies, in our view the observation that “the companies controlled by PDB in the manner to be guided by the APL committee” is contrary to the other findings recorded in the impugned order. Therefore, this finding appears to be clearly inconsistent with the findings recorded by the learned Single Bench in more than one place in the impugned order. When such inconsistent findings were tested by the Hon’ble Supreme Court they have been interfered with and the orders have been set aside and one such being in the case of **Narain Prasad Aggarwal (D) By Lrs Versus State of MP**<sup>162</sup>. At this juncture, we note that in the impugned order the learned Single Bench has accepted the proposition that there was no dispute that a company can only recognize the share holders whose name is in the register of members and cannot recognize any other person. Such argument made on behalf of BCL was accepted by the learned Single Bench. There appears to be no serious challenge to this proportion which was accepted by the learned Single Bench in the cross-objections which have been filed by the respondents. As pointed out earlier the learned Single Bench has held that it is not deciding any of the points urged by the companies. If that be so, the court without deciding on its jurisdiction over the companies and recording a specific finding, in our view could not have issued directions as to how and in what manner the companies had to function

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<sup>162</sup> (2007) 11 SCC 736

and they have to be guided by the APL committee. On a reading of the impugned order we find that the objection raised with regard to the jurisdiction of the powers of the Joint APLs to pass directions has not been decided. Further, direction has been issued to implement the directions of the two Joint APLs. The effect of the directions issued by the learned Single Bench has been demonstrated before us. If the directions of the two Joint APLs dated 19.07.2019 and 30.07.2019 are to be implemented, it would give power to the two Joint APLs to directly appoint Directors in the companies and compel the companies to implement all decisions on the two Joint APLs with regard to the manner in which the listed companies would exercise voting rights in respect of its share holder. In the earlier portion of the judgment we have noted the decision of the Hon'ble Supreme court reported in **AIR 1955 SC 74** to the effect that the company and its share holders are separate and distinct and the assets of the company do not belong to the share holder and even a 100% share holder is not the owner of the company. The appellant companies had contended that the directions issued against the company in the impugned judgment may take away statutory rights of the company with regard to its assets and it in effect permits a outsider to deal with the assets of the company which in our opinion cannot be permitted. In the inter parties decision in **Priyamvada Devi Birla Versus Harsh Vardhan Lodha and Ors.**<sup>163</sup>, the first question which was taken up for consideration by the Court was the extent of the jurisdiction of the probate Court and/or its duties pending consideration

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<sup>163</sup> 2016 SCC Online Cal 1541

for such grant. It was pointed out that while deciding a contentious cause relating to a probate proceedings the only and/or primary duty of the probate Court is to examine the genuineness of the will and while examining the genuineness of the will, the Court is required to consider whether the will was duly executed by the testator and/ or testatrix consciously or not; whether the execution of the will by the testator and/or testatrix was duly attested by two witnesses or not; whether there was a suspicious circumstances under which the will was executed by the testator or the testatrix unconsciously and whether the will is the last will of the testator or not. It was further pointed out that if the testamentary court after examining the pleadings of the parties and their evidence come to the conclusion that the will was duly executed by the testator and/or testatrix consciously out of his/ her free will and at the time of execution of the said will, the executor/ executrix was physically fit and mentally alert and execution of such will was attested by two attesting witnesses and this was the last will of the testator and/ testatrix and there was no suspicious circumstances under which such will was executed, then the testamentary court will grant probate of the said last will. On the contrary if the court finds that the will was not duly and consciously executed or the will was not properly attested or this was not the last will of the testator or there was suspicious circumstances under which such will was executed and the suspicion could not be removed from the mind of the Court, then the Court will have no other alternative but to dismiss the suit. This was pointed out to explain the extent of jurisdiction which the probate court exercises while

considering the plaintiff's prayer for grant of probate to the will of the testator/testatrix. After rendering the above finding with regard to the jurisdiction of the probate Court, the Court held that it has not hesitation to hold that the probate Court cannot pass any injunction order against the third party as third party who has no caveatable interest in the probate proceedings cannot be allowed to be added as party in the probate proceedings and also for the reason that no order can be passed affecting the right of the director without adjudicating the right and adjudication of the rights in the probate proceedings is impossible as the probate court cannot decide any foreign issue unconnected with the probate proceedings.

133. The other finding rendered by the court in the very same decision is with regard to the role of HVL. The court pointed out that HVL was a party to the probate proceedings as he is one of the plaintiffs in the probate suit and he is an applicant for grant of letter of the administration as legatty under the will and he is in capacity as the Chairman of the Board of Directors of BCL. The court held that HVL in capacity as the Chairman of the Board of Directors in BCL cannot be mixed up with the capacity as legatty under the will. The court posed the question to itself as to whether the directions which was sought for by way of injunction against the HVL is legatty under the will and the answer to the said question was "no". The court reasoned out by observing that HVL is not a party in his capacity as the Chairman of the Board of Directors of BCL, no directions can be passed against HVL in the capacity of being Chairman of



the Board of Directors of the said company. Accordingly, it was held that no directions can be passed either for production of relevant documents relating to the proposed deal (subject matter therein) of HVL as a legattly nor any injunction order can be passed against HVL in his capacity as the Chairman of the Board of Directors. It was further held that though HVL became the Chairman of the Board of Directors of the said company by virtue of his interest flowing from the will but still the position that of a Chairman of Board of Directors of the company cannot be linked with the position as legattly under the will. Further the court unequivocally held the decision taken by the Board of Directors cannot be the subject matter of scrutiny of the probate court. The court quoted with approval the decision of the High Court of Kerala in the case of **Cochin Malabar Estate and Industries Limited and Another Versus P.V. Abdul Khader** <sup>164</sup> wherein it was held that even company court cannot interfere with the day to day business management of the company. Following the said decision, probate court held that the probate court cannot regulate as day to day business policy of the company and it has no jurisdiction to entertain the application for the relief as prayed for before it as the same cannot be granted by the probate court under the provisions of the Indian Succession Act. In support of such conclusion, the court referred to and relied upon the decision of the Hon'ble Supreme Court in the case of **Official Trustee Versus Sachindra Nath Chatterjee** <sup>165</sup> wherein the Hon'ble Supreme Court approved the Full Bench decision of this Court in **Hriday Nath Roy**

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<sup>164</sup> 114 Company Cases 777

<sup>165</sup> AIR 1969 SC 823

***Versus Ram Chandra Barna Sarma*** <sup>166</sup>. In the said decision the court has dealt with the question as to what is meant by the jurisdiction. It was held that the court can be held to have jurisdiction to decide the probate matter it must not only have the jurisdiction to the suit but must also have an authority to pass the order sought for. It was further held that it is sufficient that it had some jurisdiction in relation to subject matter of the suit and in order to hold that the court has jurisdiction to decide the issue, the jurisdiction must include the power to decide the question at issue.

134. Ultimately the court concluded that the decision of the Board of Directors has no subject to the control of the promoters controlling the power over the management of the said company and since the probate court cannot pass any direction and/or injunction order against any person who is not a party to the probate proceedings and further since no adjudication of a foreign issue is possible before the probate court in the absence of any party who has no caveatable interest in the probate proceedings the relief claimed by the applicant therein was not granted.

135. At this juncture, it will be worth reiterating the finding recorded by the Hon'ble Division Bench in the decision reported in ***ILR 2007 2 Cal 377***. The Hon'ble Division Bench after considering the materials which were placed

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<sup>166</sup> ILR (1921) 48 Cal 138

before it and also the pleadings and after perusing the order passed by the learned Single bench held that implication of taking over of the voting rights and the right of control of 38 companies has nothing to take over the control of the companies in other words, to take over the management of the said companies. Therefore the Division Bench held that the effect of the order to dislodge the Board/management without considering the provisions of the Companies Act, is not sustainable. Further the Hon'ble Division Bench noted the specific provisions in the Companies Act setting out the methods for rectification of the share register and to dissolve the Board of Directors, which has to be done as laid down under Section 397, 398 and 402 of the Companies Act. Therefore the Court held that the learned Single Bench appointing the administrator directing to rectify the share register and appointing them as Directors superseding the Board of Directors are not in accordance with law. However, the probate court has no jurisdiction to pass such order and accordingly the order of appointment of APL over the MP Birla Group of Companies and also directions given by the learned Single Bench were set aside. At this juncture, we would be beneficial to refer to the decision in the case of **Goenka** wherein the court held that the Succession Act is a self contained code in so far as the question of making an application for probate, grant or refusal of probate and appeal is carried against the decision of the probate court. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The issue in probate proceedings relates to the adjudication over and due execution of the

will and the court itself has no duty to determine title. The court of probate with a copy of the will annexed establishes conclusively as to the appointment of the execution and valid execution of the will. It does no more than establishes the factum of the will and the legal character of the executor. The probate court does not decide any question of title or the existence of itself. The following paragraphs of the judgment would be relevant:

*15. In Inswardeo Narain Singh v. Smt. Kanta Devi and Ors. MANU/SC/0125/1953 : AIR1954SC280 , this Court held that the court of probate is only concerned with the question as to whether the document put forward is the last will and testament of a deceased person was duly executed and attested in accordance with law and whether at the time of such execution the testator had sound disposing mind. The question whether a particular bequest is good or bad is not within the purview of the Probate Court. Therefore the only issue in a probate proceeding relates to the genuineness and due execution of the will and the court itself is under duty to determine it and preserve the original will in its custody. The Succession Act is a self contained code in so far*

*as the question of making an application for probate, grant or refusal of probate or an appeal carried against the decision of the probate court. This is clearly manifested in the face of the provision of Act. The probate proceedings shall be conducted by the probate court in the manner prescribed in the Act and in no other ways. The grant of probate with a copy of the will annexed establishes conclusively as to the appointment of the executor and the valid execution of the will. Thus it does no more than establish the factum of the will and the legal character of the executor. Probate court does not decide any question of title or the existence of the property itself.*

*16. The grant of a Probate by Court of competent jurisdiction is in the nature of proceeding in rem. So long as the order remains in force it is conclusive as to the due execution and validity of the will unless it is duly revoked as per law. It binds not only upon all the parties made before the court but also upon all other persons in all proceedings arising out of*

*the will or claims under or connected therewith.*

*The decision of the Probate Court, therefore, is the judgment in rem. The probate granted by the competent court is conclusive of the validity of the will until it is revoked and no evidence can be admitted to impeach it except in a proceeding taken for revoking the probate. In Sheoparsan Singh v. Ramnandan Prasad ILR (1916) Cal. 694 PC Singh, the judicial committee was to consider whether the will which had been affirmed by a court of competent jurisdiction, would not be impugned in a court exercising original jurisdiction (Civil Court) in suit to declare the grant of probate illegal etc. The privy council held that the Civil Court has no jurisdiction to impugn the grant of probate by the court of competent jurisdiction. In that case the subordinate court of Muzafarbad was held to have had no jurisdiction to question the validity of the probate granted by the Calcutta High Court. In Narbheram Jivram v. Jevallabh Harijivan MANU/MH/0198/1932 : AIR 1933 Bom 469 , probate was granted by the High*

*Court exercising probate jurisdiction. A civil suit on the Original Side was filed seeking apart from questioning the probate, also other reliefs. The High Court held that when a probate was granted, it operates upon the whole estates and establishes the will from the death of the testator. Probate is conclusive evidence not only of the factum, but also of the validity of the will and after the probate has been granted, it is incumbent on a person who wants to have the will declared null and void, to have the probate revoked before proceeding further. That could be done only before the Probate Court and not on the original side of the High Court. When a request was made to transfer the suit to the Probate Court, the learned Judge declined to grant the relief and stayed the proceeding-on the original side. Thus it is conclusive that the court of probate alone had jurisdiction and is competent to grant probate to the will annexed to the petition in the manner prescribed Under the Succession Act. That court alone is competent to deal with the probate proceedings*

*and to grant or refuse probate of the annexed will. It should keep the original will its custody. The probate thus granted is conclusive unless it is revoked. It is a judgment in rem.*

136. **Issue 2. iii)** - To decide the issue as to whether the question of extent of the PDB estate is barred by res judicata, we can leave out the orders passed by the Company Law Board (CLB) or by this court sitting in appeal over the company court matters at the outset. The principle of res judicata is only applicable when the court which previously decided the issue was competent to try the subsequent suit. A company court or the CLB does not have the competence or jurisdiction to decide a probate or letters of administration proceeding. Thus, in any event, the decisions or observations of a company court or CLB are not binding on a probate or letters of administration court.

137. The first order where the issue cropped up is the order dated March 23, 2005 passed by the Hon'ble Justice K.J. Sengupta of this court. The order arose out of prayers for appointment of APL, injunction and other interlocutory reliefs. The said order was at an ad interim stage and no APL was appointed. The findings were not binding at any stage. In any event, the court observed that the estate comprised of the movable and immovable properties "mentioned



in the affidavits of assets of Lodha or which might be discovered by inventory or otherwise”.

138. The next relevant order was of May 19, 2006, passed by the same learned Single Judge of this court while taking up applications inter alia for appointment of an independent APL. A four-member Committee was appointed. Vide order dated October 11, 2007, however, a Division Bench of this court modified the order and removed the committee but granted injunction. In its discussions, the Division Bench observed inter alia that the Estate was vast and of substantial value, but directed the Executor to keep accounts only of the dividends of the shares owned by PDB, neither more nor less.

139. The matter reached the Supreme Court on the question of caveatable interest regarding the estate but the Supreme Court restricted it to the issue in its order dated March 31, 2008.

140. Thereafter, the learned Single Judge took up the matter and decided that it had jurisdiction to take up the contentious matter, which was affirmed by a Division Bench. None of the said orders have any bearing on the present issue. By an order dated February 5, 2010 passed on the death of Rajendra Singh Lodha, his son HVL was permitted to proceed with the proceeding by converting the same from probate to letters of administration proceeding.

141. Again, vide order dated August 27, 2010, the same learned Single Judge appointed a new set of three persons as APL. Incidentally, the learned

Single Judge clearly proceeded on the premise that the estate comprised of the shareholding of PDB and “voting rights and incidental rights”. It would be interesting to note that the court observed in paragraph no. 71 of the judgment that “Apprehension of the affectation of business of running company with appointment of Administrator during analogy of Receiver is in my opinion misplaced here at the moment”.

142. On December 22, 2011 a Division Bench of this court, sitting in judgment over the previous order, recorded that the parties consented to an independent APL. The court suggested one member each suggested by the parties and a former Judge of this court nominated by the Court as the third member as the composition of the APL. Notably, the Division Bench observed that the only question left for decision was the powers of the APL Committee vis-à-vis the exercise of nature of rights relating to the shares which forms a major part of the estate.

143. On October 4, 2012, Justice Raveendran (retired) of the Supreme Court was appointed as the third member of the APL in place of Justice C.K. Thakker who had sought to be relieved of the role.

144. On June 12, 2014, a Division Bench of this court, on the application of Justice Raveendran, delineated the role of the third member of the APL to laying out policies and resolving differences between the other two members,

who represented the warring parties and not to participate in the daily affairs having financial implications.

145. On May 19, 2016, two applications seeking to pass directions regarding acquisition of shares by some of the companies where PDB held shares were decided by Justice Jyotirmoy Bhattacharya. The learned Judge observed that the testamentary court could not encroach upon the jurisdiction of the Board of Directors of the concerned company to purchase shares. The learned Single Judge opined that a promoter of a company cannot exercise power derogatory to the provisions of Company Law. It was held that the APL at best could take out appropriate proceedings before appropriate forums to protect the interest of the estate.

146. Hence, no conclusive finding was reached by any of the courts which passed orders in connection with the probate/letters of administration proceeding which can be elevated to the status of a conclusive adjudication of the issue. Thus, adjudication on the issue of the extent of the estate of late PDB is not barred by *res judicata*.

147. Upon a thorough scrutiny of the several judgments and orders passed by different courts/forums, it is evident that the question of the extent of the Estate has never been finally determined, sufficient to be terms as *res judicata*. Most of the proceedings in which such orders were passed were interlocutory proceedings or proceedings arising out of interlocutory proceedings. Some of the orders, passed by the Company Law Board, would not operate as *res*

*judicata* in any event, since the Company Law Board is not competent to pass reliefs which can be granted by the Probate Court or a Civil Court and, thus, the tests of *res judicata* would not be satisfied at all.

148. Although there have been elaborate discussions about the concept of ‘controlling interest’ by virtue of the cross-holdings of shares in the companies vertically through different Tiers, it was never conclusively determined in any final proceeding as to the exact extent of the Estate of the PDB.

149. Thus, it cannot be said that the extent of PDB’s Estate has been finally decided by any forum.

150. As to the question of *estoppel*, it cannot be said that HVL is barred by *estoppel* in disputing that the extent of the Estate of PDB ranges over all the companies, including the companies in which PDB did not have majority shareholding by virtue of her controlling interest.

151. It is found from the records that HVL, in his affidavits on oath, has consistently maintained that the extent of the Estate was restricted to the affidavits-of-assets filed by both sides. The written notes of argument filed on behalf of HVL or RSL by their learned advocates, contrary to the said statements on oath by HVL, cannot be construed to operate as *estoppel* against HVL.

152. The ratio laid down in *Himalayan Corporation (supra)* is germane in such context. A client is not bound by the unauthorised admission of counsel.

In (2004)8 SCC 355, the Supreme Court observed that admission cannot confer or divest title. The said proposition is rather true here. Even if HVL had made an admission, the same would not automatically confer title on PDB posthumously and/or affect the extent of her estate. The testamentary court (all the more so since its adjudication culminates in a judgment *in rem*) has to independently ascertain the extent of the estate of the deceased testatrix, albeit on a prima facie level, before deciding the contours of the APL's functioning and cannot be bound merely by assertions or admissions by parties.

153. A testamentary court decides *in rem*, on a wider footing than an inter-party action; thus, the principle of estoppel, although may deter parties from agitating a point, does not deter the court to ascertain independently the extent of the estate of the testator/testatrix.

154. A plethora of judgments have been cited by parties on the subtle distinction between estoppel and admission. Judicial and issue estoppel have also been addressed threadbare.

155. The Calcutta High Court in *Dwijendra (supra)* and the Supreme Court in *Mumbai International Airport (supra)*, *Hope Plantations (supra)*, *Bhanu Kumar Jain (supra)*, *Ishwar Dutt (supra)* have expounded the law elaborately. Judgments of the US Supreme Court (*New Hampshire's Case*), the Karnataka High Court in *Surendra Nayak (supra)* and the Madras High Court in 2017 SCC OnLine Mad 27091 have been cited on the operation of Judicial Estoppel.

156. However, the said line of judgments do not alter the factual situation in the present case in view of the dual aspects of the testamentary court's *in rem* jurisdiction being unbound by parties' fetters of admission and estoppel and HVL's specific stand as a legatee being contrary to counsel's written notes of arguments of RSL, not as his father but in a different legal capacity of Executor.

157. Hence, even without relying on *Chhaganlal Keshavlal (supra)*, where the Supreme Court observed that admission cannot override orders of court and *ESI (supra)*, where the Supreme Court held that concession to court in law and contrary to statutory rules are not binding or operate as estoppel, the inevitable conclusion in the facts of the instant case is that HVL is not bound by admission or estoppel from debating the stand that PDB's estate is confined to her 1260 shares, although the question still remains as to what such shareholding would entail. However, such question is the subject-matter of other issues formulated herein, to be discussed under the appropriate headings.

158. One other confusion is required to be dispelled in the present context. It has been repeatedly argued by the Birla Group that HVL was bound by the statement made by RSL, his father, insofar as the extent of the Estate is concerned.

159. However, the capacities in which RSL and HVL acted are different and distinct from each other. Whereas RSL acted as executor of the concerned Will of 1999 executed by PDB, HVL took over upon the demise of the executor as the legatee of the said Will. The interests of an executor and legatee are different and distinguishable. It has to be kept in mind that HVL did not stepped into the shoes of his father in the capacity of a son but step into the shoes of the executor upon his demise, as a legatee to the Will.

160. Hence, it cannot be said that HVL, in his capacity as a legatee, has to be bound by the stand taken by RSL, the executor. Thus, it cannot be said that HVL is bound by estoppel form disputing the submission of the Birla Group that PDB's Estate ranges not only over the shares actually owned by her but also the vague concept of controlling interest over other companies where PDB is not a majority shareholder.

161. Another aspect has to be considered in the context. The question of *res judicata* applies primarily in respect of judgments *in personam*, since a decision finally taken between parties remained binding on them. It is unheard of that the principle of *res judicata* binds third parties. It operates within the limited zone of the parties, their representatives and/or anybody claiming through the parties.

162. However, in case of probate proceeding, the final judgment which would be rendered operates *in rem*. Not only is it well-settled, but also find sanction in Section 41 of the Indian Evidence Act, which specifically mentions that a probate operates as a judgment *in rem*.

163. Hence, an adjudication in a probate proceeding or a letters of administration proceeding cannot be viewed through the myopic lens of *res judicata* between the parties. Even if an issue is decided finally between HVL and Birla faction, the same does not operate against a Probate Court while adjudicating issues, since the final judgment of a Probate Court would not be restricted to the parties but would operate against the world at large.

164. Hence, the Probate Court's decisions cannot be decided from the limited perspective of *res judicata* or *estoppel* between the parties. Thus, the Probate/Letters of Administration Court has an additional responsibility to independently weigh evidence and adjudicate carefully on all issues before it, *prima facie* or final. Viewing from such perspective, the question of *res judicata* or *estoppel* between the parties cannot restrain the Probate Court from independently assessing the question of extent of Estate of the deceased testatrix.



165. None of the previous adjudications pertained to a final decision on the application under Section 247 of the Succession Act. Since this Court is sitting in appeal over a final decision by the learned Single Judge on the application under Section 247 of the Succession Act, by operation of the principles of Order XLI of the Code of Civil Procedure, the Appellate Court has equivalent powers of finally deciding the said application, co-equal with the learned Single Judge which was deciding the same. Hence, while finally deciding the application for appointment of Administrator Pendente Lite, this Court is not fettered by previous observations by different interlocutory courts at different points of time.

166. **Issue 3. i)** - A short answer to the question as to how far APL can interfere in the companies' affairs has to be answered in a conservative manner. The APL stepped into the shoes of the deceased testatrix and cannot exercise powers which the testatrix herself did not have. PDB, being the owner of certain particular shares in certain companies, could only function as the shareholder of such companies. The shares and incidental rights thereto such as voting rights, etc., were definitely the 'property' of PDB, but her personal charisma, authority and influence asserted over other shareholders and companies definitely does not come within the purview of her 'property'.

167. Thus, the APL can merely step into her shoes and register itself or its nominees as owners of the said particular shares, including the consequential registration as members of the companies.

168. However, even if one proceeds on the premise that PDB's estate regarding the companies was limited to her shareholding of 1260 shares, it is open to debate as to how far such shareholding can empower the holders thereof. Since the said shares confer on the PDB estate majority shareholding in the 'Tier 1' companies, the decision-making of such companies as shareholders in other lower-Tier companies would definitely be influenced substantially by such majority shareholding alone.

169. However, a delicate balance has to be struck with the said position and the cardinal company law doctrine that shareholders are not owners of a company and do not have any interest in its assets. The said position has been well-settled from *Bacha Gazder (supra)* onwards, reiterated between the present parties in *Harsh Vardhan Lodha v. Ajoy Kumar Newar (supra)* and *Birla Corporation Limited v. A.K. Newar (supra)*. Also, promoters have no special right of control as such.

170. That the shareholder has no interest in the assets of the company has also been reiterated in *2016 SCC OnLine Cal 1541*, *AIR 1961 251*, *AIR 1941 All 360* and *AIR Ker 206*.

171. There is also nothing to show that the estate of PDB is a beneficial owner of the companies or that its significant beneficial ownership with a depository was ever recorded. Hence *Balakrishna' Case* and *J.P. Srivastava (supra)* are squarely applicable.

172. Hence, the testamentary court cannot pass orders directly in respect of the management and affairs of corporate/contractual rights of other entities, including companies, trusts, etc.

173. In *Rustom Cawasjee Cooper (supra)* and *Tata Memorial Hospital's Case*, the Supreme Court has laid down what property can be bequeathed. The position and rights of a shareholder has also been elaborately argued on the strength of *Howrah Trading Co. (supra)*, *J.P. Srivastava's Case*, *Shanti P. Jain (supra)* and *LIC v. Escorts*, all cited by the parties.

174. *Murarka Paint (supra)* has been relied on for the principle that directors of a company can only be denuded of powers of control and management by alteration of Articles or by their removal.

175. The concept of 'control' vis-à-vis companies has been argued threadbare and has already been discussed while dealing with the first few issues.

176. *Vodafone's Case* is a contemporary landmark and observes that 'controlling interest' is inextricably linked to ownership/voting powers of shares. *Chintalapati S. Raju* reiterates the same proposition.

177. In fact, counsel have gone so far as to argue elaborately on significant beneficial ownership as well.

178. It cannot be in doubt that the APL's powers cannot go beyond those of the testamentary court itself. The testamentary court's zone of operation, in turn, is co-extensive with the estate of the testatrix.

179. Seen in proper perspective, thus, the present issue is dependent on the first issue, that is, the extent of the estate of PDB. Thus, insofar as the companies are concerned, the testamentary court has powers over the 1260 shares held by PDB, but also includes the control which such shares assert over the respective companies through voting rights and other sanctioned tools under the company jurisprudence itself. Shareholders, although not the owners of the company's assets, definitely have a crucial role to play in the

decision-making process through voting and ancillary membership rights. Thus, the majority shareholders of the first-tier companies get to decide the way in which the said companies exert their voting rights as shareholders of other companies.

180. The restriction which is to be exercised by the testamentary court is to limit itself to asserting such powers associated with voting rights and other essential rights by virtue of shareholding through the democratic process of participating in the shareholders' meetings, actual voting and decision-making, and not by issuing whips from the court. This is so because the deceased testatrix herself, during her lifetime, could not have done it.

181. Here, we must be careful to distinguish the personal influence, charisma and authority PDB might have enjoyed over the companies, their directors and shareholders during her lifetime from her rights as a shareholder of the concerned companies. Personal influence, control and sway do not translate into bequeathable rights and get extinguished with the concerned person. Rights as promoters or directors also are not heritable and, thus, cannot be the subject-matter of a Will.

182. This view finds support in a line of judgments of several Constitutional courts.

183. The Calcutta High Court held in *Maurice Saleh's Case* that even legal powers of the testatrix are not a part of the estate, which principle was also echoed in *Commissioner v. Nirmala* by the Bombay High Court.
184. The Supreme Court in *Chandrabhan's Case* held that the testamentary court does not have jurisdiction to pass orders against individuals/entities acting in different capacity.
185. Hence, the testamentary court can only have control over the shareholding and ancillary rights, including voting rights in companies. Of course, the court cannot participate in the day-to-day affairs of the companies and precisely for such reason has appointed the APL to represent the estate of the deceased. The testamentary court is not a company court and is not sitting in judgment over allegations of mismanagement or fraudulent transactions of the companies and, thus, need not lift the corporate veil in the current context.
186. The charter of the APL under Section 247 of the Indian Succession Act is to protect and preserve the interest of the estate and can deal with the same, short of distributing the same.

187. By placing reliance on *AIR 2000 Cal 152* and *(2019) 9 SCC 154*, it has been argued that the court cannot delegate functions to any other authority. Although true, the said theory is not applicable if the testamentary court appoints an APL under Section 247 of the Indian Succession Act. What is delegated is not the adjudicatory function or the supervisory powers of the testamentary court, but only the day-to-day ground-level operation to protect and preserve the interest of the estate of the deceased.

188. Hence, the testamentary court, in the present case, can and should clothe the APL with the powers to enlist themselves as members of the companies where the testatrix PDB held shares, in the capacity of shareholder, and also exercise each and every power, including voting rights, associated with shareholding.

189. **Issue 3. ii)** - One of the judgments cited is *Abha Rani Sinha's Case*, where the Calcutta High Court held that the APL cannot take a partisan stand. The said principle is indisputable and, thus, calls for a decision on the issue at hand.

190. Decisions have been cited on the proposition that the APL should act together as a body (not majority); if there is no unanimity, it should move court

for directions/clarifications. Some such decisions are *(2009) 2 Maha Law Journal 340*, *(1999) 3 SCC 548* and *(1978) 1 SCC 405*.

191. Again, *(1996) 4 SCC 104* and *(2018) 3 SCC 635* have been cited for the proposition that in a multimember body, majority is the rule and unanimity is resorted to only when it is explicitly provided.

192. The ratio laid down in the said reports have to be read in proper perspective, in the factual matrix of each case.

193. In the instant *lis*, for all practical purposes, unless the APL, being a three-member entity, acts as per the majority decisions, the APL will virtually become and ultimately defunct and cannot take any decision whatsoever. Since there has been perpetual disagreement between the nominees of the Birla Group and the Lodha Group all along, the APL would be permanently paralyzed if it had to function unanimously. Hence, from a practical perspective, the APL has to function on the basis of majority decisions.

194. Secondly, the very composition of the APL as intended by the courts appointing it gives a clue to the purpose behind such appointments. Although the parties on consent agreed that the judicial member in the APL shall only be a third member and not an umpire, the very structure of the APL behoves that the judicial member acts as an arbiter in case of dispute between the other two



members. Obviously, the respective members chosen by the Birla Group and the Lodha Group represent their groups' interests in the APL. Hence, there would be a stand-still if unanimity was a pre-condition, since the respective members of the two factions would always be at loggerheads with each other. A resolution could only come by way of an authoritative decision taken by the judicial member, who is supposed to be neutral.

195. Thus, on such score as well, the APL ought to be permitted to function on majority decisions instead of waiting for unanimity. Hence, the APL decisions have to be taken on the basis of majority and not unanimity.

196. The Bombay and Gujarat High Courts respectively, in *2008 SCC OnLine Bom 1210* and *AIR Guj 30*, have held that the APL are officers of the court and are to be impartial; they cannot enter into the arena of conflict between the parties or the merits of the case.

197. Unfortunately, the composition of the APL and its antecedents in the present case rule out the desired impartiality individually insofar as the representatives of each of the factions are concerned. The only way in which the APL can function effectively is for the third member, who is compulsorily a retired nominated Judge, to act as an arbiter and, if impossible, to exercise veto. Although the initial nomenclature of the third (judicial) member as

‘Umpire’ has formally not been accepted by the parties previously, it has to be kept in mind that we are not dealing with an Arbitral tribunal where a formal straight-jacket formula as sanctioned by statute has to be mandatorily adopted. A court-appointed APL is flexible on such count, both as to nomenclature and interplay of authority *inter se* its members.

198. The theory of referring to the court each and every day-to-day decision in the functioning of the APL as a shareholder/member of the companies is not workable. Conflict is a foregone conclusion in the present composition of the APL, since there has not been a single meeting of the APL in recent past where there has been unanimity among all three members. Of course, major decisions (to be decided by the third member) are to be referred to the testamentary court for formal orders/decisions.

199. In any event, since the APL is not an adjudicatory authority and cannot act so, there does not arise any question of the testamentary court delegating its powers to it. The APL shall strictly act in accordance with the observations above, limited to its role as shareholder with ancillary functions including voting rights, which are to be used judiciously to protect and preserve the interest of the estate during pendency of the Letters of Administration suit.

200. Thus the issues formulated above are answered as follows:-

201. **Issue 1 i)** A testamentary court cannot decide issues of title conclusively; such power lies purely within the domain of civil courts. However, while deciding an application under Section 247 of the Indian Succession Act for appointment of administrator pendente lite, the testamentary court may decide the extent of the estate of the deceased testator/testatrix *prima facie*.
202. **Issue 1 ii)** Third party injunctions can be granted by testamentary courts in exceptional cases, for the limited purpose of protecting the estate of the deceased testator/testatrix. However, under normal circumstances the testamentary court cannot interfere in the internal affairs of third-party companies.
203. **Issue 2 i)** The estate of PDB is comprised of the actual shares owned by her during her lifetime in the various companies, trusts and other entities as well as the consequential powers which such ownership carries as its incidence. Insofar as the companies are concerned, the estate left by PDB consists of the shares which she owned in the various companies and the powers and legal authority she had by virtue of such shareholding, which are heritable. Such powers include, for example, voting rights and ancillary other rights of shareholders sanctioned by law.

It is relevant to remind ourselves, in this context, of the rights of the shareholder as laid down in *LIC v. Escorts (supra)* which are:

- (i) to elect directors and thus to participate in the management through them; (ii) to vote on resolutions at meetings of the company; (iii) to enjoy the profits of the company in the shape of dividends; (iv) to apply to the court for relief in the case of oppression; (v) to apply to the court for relief in the case of mismanagement; (vi) to apply to the court for winding up of the company; (vii) to share in the surplus on winding up.

204. **Issue 2 ii)** ‘Controlling interest’ in the present context can only mean the heritable incidental rights, including voting rights, rights to participate in shareholders’ meetings and other decision-making processes which PDB would have by dint of her shareholdings in the respective companies. Her personal charisma or influence among the different companies and their managements, even if existent during her lifetime, unfortunately went with her and cannot form a bundle of heritable rights to be part of her estate.

205. Paragraph nos. 159 and 160 of *Vodafone (supra)*, quoted in paragraph no. 182 above, are germane here.

*“Control” is a mixed question of law and fact. Ownership of shares may, in certain situations, result in the assumption of an interest which has the character of a controlling interest in the management of the company. A controlling interest is an incident of ownership of shares in a company, something which flows out of the holding of shares. A controlling interest is, therefore, not an identifiable or distinct capital asset independent of the holding of shares. The control of a company resides in the voting power of its shareholders and shares represent an interest of a shareholder which is made up of various rights contained in the contract embedded in the articles of association.*

*The right of a shareholder may assume the character of a controlling interest where the extent of the shareholding enables the*

*shareholder to control the management.*

*Shares, and the rights which emanate from*

*them, flow together and cannot be*

*dissected. In the felicitous phrase of Lord*

*MacMillan in IRC v. Crossman [1937 AC*

*26 : (1936) 1 All ER 762 (HL)] , shares in a*

*company consist of a “congeries of rights*

*and liabilities” which are a creature of the*

*Companies Acts and the memorandum and*

*articles of association of the company. Thus,*

*control and management is a facet of the*

*holding of shares.*

206. **Issue 2 iii)** The issue of the extent of PDB's estate is not barred by res judicata. The company courts and the Company Law Board did not have the jurisdiction to decide such issue conclusively; thus, they were not 'competent' courts within the meaning of 'res judicata' to bind the testamentary court, where the scope of adjudication is different and somewhat wider. The testamentary court's findings and its offshoots by way of challenges before higher forums never conclusively dealt with or finally decided the extent of estate. It has been held time and again, that too in interlocutory orders (the findings of which are tentative and not conclusive), that the estate pertains to the share-holdings and the 'controlling interest' which PDB had by virtue of

such shareholding, without specifying exactly what was meant by ‘controlling interest’.

207. Also, HVL was not estopped by the stand taken by RSL inasmuch as HVL was substituted in a different capacity than RSL in the testamentary proceeding. Whereas RSL was the Executor, HVL was at best a beneficiary. HVL was not substituted under Order XXII Rule 4 as the son/heir/legal representative of RSL (in which case he might have been bound by RSL’s admissions, if any); but entered into the fray as a legatee/beneficiary, which is in a different capacity than RSL. Thus, in any event, RSL’s statements could not have bound HVL. Again, HVL’s pleadings in court would be his legal stand, and not the written arguments authored by his counsel, in the event there was difference between the two, particularly in the absence of any specific proof that HVL had given the power to his counsel to admit the extent of PDB’s estate on his behalf.

208. Seen from another perspective, the principle of Estoppel and the doctrine of res judicata are not applicable in full vigour in judgments *in rem* as they would be in judgments *in personam*. Judgments *in rem* bind the whole world at large; thus, inter-party admissions may not deter the testamentary court (or for that matter other ‘*in rem* courts’ like admiralty courts, matrimonial courts or insolvency courts) from independently deciding all issues in accordance with

law. The water-tight binding effect of res judicata and estoppel in judgments *in personam* are, thus, much relaxed and diluted in proceedings *in rem*.

209. Hence, this issue is decided in the negative, holding that the issue of extent of the estate of the deceased is not barred by res judicata or estoppel.

210. **Issue 3 i)** The answer to this issue lies embedded in the previous issues. We cannot but be a bit conservative here. The APL steps into the shoes of the deceased testatrix – nothing more, nothing less. Thus, it cannot exercise powers which the testatrix herself did not have during her lifetime. PDB was the owner of certain specific shares in some of the companies. In such capacity of shareholder, she had all incidental rights such as voting rights, decision-making powers, etc. Ownership of shares and rights directly incidental thereto are heritable rights which devolved upon her estate on her demise. But her personal charisma, authority and influence asserted over shareholders and management of other companies, if any, were not heritable and are not ‘property’ which can be the subject-matter of her estate and, consequently, under the adjudicatory authority of the testamentary court.

211. We are required to distinguish here between the rights directly flowing from and incidental to such ownership of shares and those which are remotely derivative from such ownership and not proximate. The former are subject-



matters of the estate and the APL can exercise those but the latter (remotely derivative rights) cannot be thrust by the testamentary court or the APL on the respective companies, which are independent juristic entities. We are not deciding any illegality or irregularity of the said companies' affairs; thus, the concept of 'lifting the corporate veil' does not apply. The rights of the testatrix over the companies of the different 'tiers' were co-extensive with her rights as owners of the shares of the tier-one companies and incidentally with the rights of those companies as shareholders of the other companies.

212. The APL, thus, cannot interfere with all internal affairs of the companies of all the tiers with the blessings of the testamentary court. There cannot be any universal or dynamic injunction or direction affecting the future course of action of the companies from the testamentary court, simply because the testatrix could not herself had taken any such action in law.

213. The steps taken by the APL in registering its nominees as members of the companies where the deceased testatrix held shares, in consonance with and in the ratio of the shareholding rights of PDB in each of such companies, is perfectly justified in law. The APL, through its nominees, may very well decide which way the votes of the testatrix's shares should go and how they would exercise their voting rights and election of directors. The nominees, as such shareholders, may participate in shareholders' meetings and decision-making

processes of the tier-one companies and thus mould the course of action and business decisions of such companies. Since the said tier-one companies are also shareholders of other companies in the secondary and tertiary tiers, the APL, through its nominees, may also decide how to go about asserting the interests of the estate of PDB in the secondary and tertiary tier companies through the tier-one companies' actions as shareholders of the latter companies.

214. However, such process can only be done in above-board and legal manner and in due process of law. The APL, for example, cannot jump steps to directly take or pre-empt business decisions in respect of the tertiary-tier companies without going through the process of first taking decisions in the first tier companies and getting its decisions approved through the representation of the first tier companies as shareholders in the lower tier companies.

215. As and when any major decision is required to be taken regarding transactions/transfers of the shares themselves, the APL mandatorily has to approach the testamentary court for necessary orders.

216. Also, the APL itself, being the repository of interest of the estate as the representative of the testamentary court, shall have to take appropriate directions and orders from the testamentary court prior to initiating or

contesting any litigation. However, day-to-day decisions at every stage of such litigation need not be sought from the court, which would be an unnecessary burden on the court and would put an unwarranted spanner in the wheels of the APL.

217. **Issue 3 ii)** The very composition of the APL brews conflict of interest, since two of the members represent the two warring factions and have left no stone unturned to show their true colours in that regard. Thus, in view of the discussion above, the only way in which the APL can function effectively is for the third member, who is necessarily a retired nominated Judge, to act as arbiter in case of conflict of decision between the other two members of the APL. In case there is no resolution, the third member shall exercise veto power. In case of major decisions (which decisions are 'major' for this purpose shall be decided by the third member), the APL may seek appropriate orders from the testamentary court. The APL must also keep in mind that it is not an adjudicatory authority but merely the representative of the estate of the deceased testatrix.

218. Thus, the order of the learned Single Judge is modified to the above extent. Liberty is given to the APL and the parties to approach the testamentary court taking up the letters of administration suit if need be and where there are serious doubts.

219. In view of the inordinately long pendency of the proceeding, we part with the matter with the hope and trust that the testamentary court shall ensure that the letters of administration suit is disposed of expeditiously, without granting any unnecessary adjournment to either side.

220. APO/89/2020 with OCO/11/2020 with OCO/20/2020 with OCO/3/2020, APO/90/2020 with OCO/12/2020 with OCO/21/2020 with OCO/4/2020, APO/91/2020 with OCO/13/2020 with OCO/22/2020 with OCO/5/2020, APO/92/2020 with OCO/14/2020 with OCO/23/2020 with OCO/6/2020, APO/94/2020 with OCO/15/2020 with OCO/24/2020 with OCO/7/2020, APO/95/2020 with OCO/16/2020 with OCO/25/2020 with OCO/8/2020, APO/98/2020 with OCO/10/2020 with OCO/18/2020 with OCO/26/2020 are thus disposed of in the light of the above observations, modifying the impugned order to extent as indicated above.

221. GA 2 of 2021 in APO/91/2020, GA 2 of 2023, GA 3 of 2020, GA 4 of 2021, GA 5 of 2021 in APO/92/2020 are also disposed of accordingly.

**(T.S. SIVAGNANAM, C.J.)**

**(SABYASACHI BHATTACHARYYA, J.)**