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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment Reserved on: 18.04.2023

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Judgment Pronounced on: 19.04.2023

+ **ARB. A. (COMM.) 53/2022**

**MR. HUA SENG CHEW (CHAIRMAN OF JAI RADHA RAMAN
EDUCATION SOCIETY) Appellant**

**Through: Mr. Dhruv Dewan, Mr. Rishabh
Bhargava, Ms. Sonali Malik, Mr.
Dhruv Sethi, Mr. Y. Sharma, Mr.
Ravilocahan Daliparthi and Mr.
Prayuj Sharma, Advs.**

Versus

**JAI RADHA RAMAN EDUCATION SOCIETY (THROUGH ITS
CHAIRMAN AND PRESIDENT) & ORS. Respondents**

**Through: Mr. Akhil Sibal, Sr. Adv. along with
Ms. Bani Dikshit, Ms. Asavari Jain
and Mr. Uddav Khanna, Advs.**

+ **ARB. A. (COMM.) 54/2022**

MILLENNIUM INFRADEVELOPERS LIMITED..... Appellant

**Through: Mr. Sandeep Sethi, Sr. Adv. along
with Ms. Vasudha Sharma, Ms.
Nikita Garg, Mr. Vikram Singh Dalal,
Ms. Shreya Sethi and Ms. Tanvi
Tewari, Advs.**

versus

**JAI RADHA RAMAN EDUCATION SOCIETY THROUGH ITS
CHAIRMAN AND PRESIDENT & ANR. Respondents**

**Through: Mr. Akhil Sibal, Sr. Adv. along with
Ms. Bani Dikshit, Ms. Asavari Jain
and Mr. Uddav Khanna, Advs.**

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

J U D G M E N T

SACHIN DATTA, J.

IA No.7233/2023 (for restoration) in ARB. A. (COMM.) 53/2022

IA No.7132/2023 (for restoration) in ARB. A. (COMM.) 54/2022

FACTUAL BACKGROUND

1. These are applications seeking restoration of the arbitration appeals which were disposed of vide order dated 30.01.2023. The appeals were directed against the order dated 20.07.2022, passed by the learned Arbitrator on an application filed, *inter-alia*, under Section 17 of the Arbitration and Conciliation Act, 1996. It was sought therein that the applicant therein, being the President of Jai Radha Raman Education Society (*hereinafter referred to as the "respondent-society"*), be allowed to represent the said society in the ongoing arbitration proceedings.
2. It is the common case of the parties that there has been a rift between the Chairman and President of the respondent-society since they represent two rival sections of the society. The President of the society i.e. Mr. Shantanu Prakash (*hereinafter referred to as the "President"*) is stated to belong to the "Educomp group" whereas the Chairman of the society i.e the appellant in ARB. A. (COMM.) 53/2022 (*hereinafter referred to as the "Chairman"*) represents the "Raffles group".
3. In the above background, the learned Arbitrator, while disposing of the aforesaid application filed on behalf of the President of the respondent-society, held as under:

“6. Rule 11 of the Rules & Regulations of the Society empowers the Chairman and the President to jointly nominate a person to represent the Society in legal proceedings. However, it is an admitted case that there is a serious deadlock between the Chairman and President of the Society (JRRES), due to which they have jointly not nominated any person to represent the Society in these proceedings. The power under Rule 11 has neither been utilized nor can it be utilized as there are serious disputes between the Chairman and the President.

7. Counsel for the parties are ad idem that an ex parte award would not be in the interest of the either of the parties and that the proceedings may not to be conducted ex parte.

8. I am of the opinion that the Society should not go unrepresented and undefended in these Arbitration Proceedings. The interests of the Charitable Educational Society ought to be protected as an amount of Rs. 59 Crores along with interest has been claimed against the Society in these proceedings and no Statement of Defense has been filed on behalf of the Society. On two prior occasions, the Hon'ble High Court of Delhi has already allowed the Applicant (President) to represent the Society to ensure that the Society does not go unrepresented.

9. Under 17(1)(ii)(e) of the Arbitration and Conciliation Act, 1996, the Tribunal is empowered to pass such interim measures of protection as are just and convenient. There is nothing on record to show that if the Society is allowed to be represented by the President, it would either be 'unjust' or 'inconvenient' or 'cause prejudice' to the Claimant. Since the President would have knowledge about each and every aspect of the various affairs of the Society, I consider it proper to allow the President of JRRES, Sh. Shantanu Prakash, to represent the Society in these Arbitration Proceedings.

10. Accordingly, Application No 01/2022 is allowed to the extent that the President of the Society is permitted to represent the Society JRRES in these Arbitration proceedings.”

4. It was against the aforesaid order that appeals came to be filed assailing the aforesaid order dated 20.07.2022. While ARB. A. (COMM.) 53/2022 was filed by the Chairman of the respondent-society, ARB. A.

(COMM.) 54/2022 was filed by the Claimant in the ongoing arbitration.

5. Admittedly, the Claimant in the ongoing Arbitration (Millennium Infradevelopers Ltd.), is also a part of the “Raffles group”.

6. When the aforesaid appeals first came for consideration on 18.08.2022, it was observed by this court in ARB. A. (COMM.) No. 54/2022 as under:

“9. In the connected matter bearing ARB. A. (COMM.) No. 53/2022 also listed today, it has been brought to the notice of the court that the appellant in that arbitration appeal viz. Mr. Hua Seng Chew is also the Chairman of Raffles Education Corporation, a company incorporated in Singapore, which is the holding company of Millennium Infradevelopers Ltd, viz. the present petitioner and claimant in the arbitral proceedings. It is submitted that there are certain issues between the Chairman and the President of the society, which is the reason why the Chairman is challenging the order made. It is further submitted that if the Chairman were permitted to represent the society/non-claimant, there would be a clear conflict of interest since the Chairman is interested in the financial affairs of the claimant, while also being the Chairman of the non-claimant.

10. It is also pointed-out that the President has been representing the society in at least two other matters pending before this court, being CS(OS) No. 197/2018 and CS(OS) No. 419/2017.

11. In this view of the matter this court is not inclined to stay the operation of the impugned order.”

7. In view of the fact that no interim stay was passed by this court, the arbitration proceedings are stated to have progressed up to the stage of recording of evidence on behalf of CW-1.

8. In the meantime, a Civil Suit [CS(OS) 655/2017] is also stated to have been filed by certain members of the respondent-society under Section 92 of the Code of Civil Procedure, 1908 seeking some reliefs qua the functioning of the respondent-society. In the said Civil Suit, a judgement dated

24.01.2023 came to be passed by this court, disposing of the applications filed on behalf of the plaintiffs under Order 39 Rules 1 and 2 read with Order XL of the Code of Civil Procedure, 1908 wherein it had been sought that the defendant no.10 therein i.e. Mr.Hua Seng Chew, the appellant in ARB. A. (COMM.) 53/2022, the Chairman of the respondent-society, be appointed as the administrator of the respondent-society. The President of the respondent -society, who is also the Chairman and Managing Director of Educomp Solutions Limited, an Indian public listed company was arrayed as the defendant no.1 in the said suit. Admittedly, the President is a key member of “Educomp group”.

9. In the judgment/order dated 24.01.2023, passed by this court in the aforesaid Civil Suit, this court took cognizance of the inter-se disputes between the “Raffles group” and the “Educomp group”.

10. In the said Civil Suit, while opposing the appointment of Mr.Hua Seng Chew (appellant in ARB. A. (COMM.) 53/2022) as the administrator for respondent-society, a specific plea was taken by the defendants therein (i.e. Educomp group) as under:

“iv. Appointment of the defendant no.10 as the administrator would create a conflict of interest as it is the companies of the Raffles Group which are under the control of defendant no.10 that have filed recovery suits against the defendant no.9 Society. Appointment of the defendant no.10 as administrator would result in the interest of the defendant no.9 Society being compromised in the aforesaid recovery suits.”

11. In the circumstances, it was specifically stated on behalf of plaintiffs in reply to the aforesaid plea as under:

“vi. The various group companies who have initiated the recovery suits are controlled by the Raffles Group and defendant no.10. There is no conflict of interest in the defendant no.10 being appointed as the administrator of the defendant no.9 Society. It has been specifically stated in the I.A.

No.2750/2022 as well as in the affidavit dated 15th December, 2022 filed on behalf of the plaintiff no.1 that the recovery proceedings initiated by the Raffles Group Companies will be kept in abeyance with the consent of the parties if the defendant no.10 is appointed as the administrator.”

12. Taking into account the entire factual gamut, this court held as under:

“43. In view of the discussion above, this Court is of the considered view that it is only a representative of the Raffles Group who can be appointed as an interim administrator of the defendant no.9 Society at this stage. On an individual level, the defendant no.10, who has been the Chairman of the Raffles Group, would be the most fitting choice for the following reasons:

i. The defendant no.10 has been involved with the defendant no.9 Society as its Chairman from the year 2014 and has been exercising the responsibility of management of the defendant no.9 Society. Therefore, he has been privy to the functioning of the defendant no.9 Society as well as the running of the JRE College.

ii. The defendant no.10 has been involved in the field of education and running eminent educational institutions in the Asia Pacific region for a long period of time. He has a proven track record of running educational institutions and there is no reason to doubt if he would be able to successfully run the JRE College.

iii. The defendant no.10 will bring with him entrepreneurial and management abilities, technical expertise, experience in administration of educational institutions, financial standing and the ability to mobilise funding and to attract suitable managerial and educational talent to the institution, all of which are necessary for the revival of the defendant no.9, Society and the JRE College.

iv. Appointment of the defendant no.10 as the interim administrator would not saddle the defendant no.9 Society with additional expenses as he has undertaken to not draw any meeting fee or salary, without prior leave of the Court.

v. The defendant no.10 would have a substantial stake in running of the college. If the college were to remain shut, it would be a blot on the reputation of the defendant no.10, who is a known personality in the field of education.

vi. Association of the defendant no.10 with the defendant no.9 Society and

the JRE College would also bring in more credibility.”

13. In the above circumstances, Mr.Hua Seng Chew (appellant in ARB. A. (COMM.) 53/2022) was appointed as the interim administrator of the respondent-society “with immediate effect till further orders of the court” to administer the respondent-society. It was further directed as under:

“46. In view of the discussion above, the plaintiffs have made out a prima facie case for appointment of the defendants no.10 as the interim administrator of the defendant no.9 Society. Accordingly, the defendant no.10 is appointed as an interim administrator of the defendant no.9 Society with immediate effect till further orders of the Court, to perform all administrative functions of the defendant no.9 Society. The following directions are passed in this regard:

i. The Governing Body and General Body of the defendant no.9 Society shall remain suspended while the defendant no.10 operates as the interim administrator of the defendant no.9 Society.

ii. All powers afforded to the Governing Body of the defendant no.9 Society under the JRRES Rules and Regulations shall vest with the defendant no.10.

iii. The defendant no.10 shall be entitled to raise loans to infuse the sum of Rs.30,00,00,000/- into the defendant no.9 Society with a moratorium on interest and repayment by the defendant no.9 Society. The defendant no.10 shall file with the Court a copy of such loan agreement(s).

iv. Out of the aforesaid amount of Rs.30,00,00,000/-, the defendant no.10 shall arrange for a sum of Rs. 15,00,00,000/- to be credited to the account of the defendant no.9 Society within eight weeks from today.

v. The defendant no.10 shall be at liberty to open a bank account in the name of Administrator of Jai Radha Raman Education Society’ / Jai Radha Raman Education Society through its Administrator’ for the purpose of infusing funds into the defendant no.9 Society. The said bank account shall be solely operated by the defendant no.10.

vi. The defendant no.10 shall engage with the GNIDA and ensure that the dues owed to the GNIDA are ascertained and cleared at the earliest.

- vii. *The defendant no.10 shall be at liberty to appoint and seek the assistance of a third-party consultant(s) to chart out the path for revival of the defendant no.9 Society.*
- viii. *The defendant no.10 shall, within twelve weeks from today, file a comprehensive roadmap detailing the requisite activities and tasks to be undertaken for revival of the defendant no.9 Society and the JRE College.*
- ix. *The defendant no.10 shall be entitled to appoint a representative/attorney in India to oversee the day-to-day activities of the defendant no.9 Society.*
- x. *The defendant no.10 shall appoint an independent financial auditor for the defendant no.9 Society, who shall in turn be responsible for periodically verifying and supervising the preparation and filing of books of accounts and financial returns of the defendant no.9 Society.*
- xi. *The defendant. no.10 shall place on record the financial accounts of the defendant no.9 Society as and when prepared and audited.*
- xii. *The defendant no.10 shall, during the period of his appointment as the interim administrator, file with the Court quarterly progress reports detailing the steps undertaken in furtherance of the revival of the defendant no.9 Society and the JRE College.*
- xiii. *The defendant no.10 shall ensure that the plaintiffs/claimants in CS(OS) 419/2017, CS(OS) 197/2018, CS(OS) 118/2021, Arb.A(COMM) 53/2022, Arb.A(COMM) 54/2022, and the arbitration proceedings between Millennium Infradevelopers Limited and the Jai Radha Raman Education Society, file undertakings by way of affidavits before this Court within four weeks to the effect that they shall not proceed further with the recovery proceedings against the defendant no.9 Society without prior leave of this Court.*
- xiv. *All concerned parties having custody of the records of the defendant no.9 Society such as past filings made with the Registrar of Societies, financial records of the defendant no.9 Society, including its existing bank accounts, shall provide access of the same to the defendant no.10.*
- xv. *The Educomp Group nominees are restrained from representing the*

defendant no.9 Society in any legal proceedings or any other matter in relation to the defendant no.9 Society.

xvi. The Educomp Group is directed to remove their guards from the Greater Noida land and the same shall be replaced by the guards to be appointed by the defendant no.10.”

14. Importantly, the judgement dated 24.01.2023 makes specific reference to the arbitration appeals i.e. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 and the arbitration proceedings between Millenium Infra Developers Limited and Jai Radha Raman Education Society. In that context it was directed that the claimant i.e. Millenium Infra Developers Limited would file an undertaking by way of an affidavit before this court to the effect that they shall not proceed further with the recovery proceedings against the respondent-society.

15. In the backdrop of the aforesaid judgment/order dated 24.01.2023, when appeal nos. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 came up before this court for hearing on 30.01.2023, it was the common case of all the parties thereto that it would no longer feasible for the President to continue to represent the respondent-society in the ongoing arbitration. The said order dated 30.01.2023 specifically recorded as under:

“3. Since the petitioner has been appointed as an administrator for the respondent no.1 society, in terms of the aforesaid directions, respective counsel for the parties are in agreement that the President of the society cannot continue to represent respondent no.1 in the ongoing arbitration proceedings.

4. The impugned order passed by the learned Arbitrator itself states that the directions given by the arbitrator to allow the respondent no.1 to represent the society was only an interim arrangement, subject to any modification and change that may be made at a later stage. Needless to say, the learned Arbitrator shall take into account the aforesaid order dated 24.01.2023, so as to ensure that the representation on behalf of the

society is in accord with the same. The Arbitrator shall also take into account the directions contained in para 46(xiii) of the said order dated 24.01.2023.

5. The present appeals are disposed of in terms of the aforesaid.”

16. After the aforesaid order was passed, an affidavit dated 07.02.2023 was filed by the Authorised Representative of Millenium Infra Developers Limited, in CS(OS)655/2017 [in which the judgment dated 24.1.2023 was rendered], stating as under:

“5. I state that MIDL had initiated arbitration proceedings against the Society before Mr. Arun Bhardwaj, Ld. Sole Arbitrator, for recovery of certain sums owed to it by the Society. In terms of the aforesaid directions of this Hon'ble Court, MIDL undertakes that it shall not proceed further with the arbitration proceedings pending before the Ld. Sole Arbitrator, without the prior leave of this Court.

6. In order to comply with the aforesaid directions, MIDL has filed an application dated 03.02.2023 before the Ld. Sole Arbitrator seeking a direction that the arbitration proceedings be adjourned sine die until further orders of this Hon'ble Court in the captioned. suit. A true copy of said Application dated 03.02.2023 is produced as Annexure B.”

17. In the meantime, in an appeal [FAO (OS) 14/2023] filed against the aforesaid judgment/order dated 24.01.2023, it was, *inter-alia*, directed by a Division Bench of this Court, vide order dated 09.02.2023 as under:

“In the meantime, the Administrator, Mr. Hua Seng Chew, respondent no. 3 in the appeal and defendant no. 10 in the suit, is directed to maintain status quo.”

18. The aforesaid interim order was continued thereafter by the Division Bench and is still stated to be in operation.

19. In the aforesaid background, the claimant's application seeking adjournment of arbitral proceedings *sine die* came to be decided by the

Arbitrator, vide order dated 10.03.2023 observing as under:

“8. It is important to study the orders passed by the Hon'ble High Court of Delhi, to understand their impact on these proceedings. The parties have brought three orders to my notice:

- a. Order dated 24.01.2023 in CS (OS) 655/2017 [SB];*
- b. Order dated 30.01.2023 in Arb. A. (Comm.) 54/2022 [SB];*
- c. Order dated 09.02.2023 in FAO (OS) 14/2023 [DB];*
- d. Order dated 20.02.2023 in FAO (OS) 14/2023 [DB];*
- e. Order dated 20.02.2023 in FAO (OS) 22/2023 [DB]; and*
- f. Order dated 20.02.2023 in FAO (OS) 23/2023 [DB].*

9. In the first order, dated 24.01.2023, the Hon'ble High Court of Delhi [SB] held as under:

“46. In view of the discussion above, the plaintiffs have made out a prima facie case for appointment of the defendants no.10 as the interim administrator of the defendant no.9 Society. Accordingly, the defendant no.10 is appointed as an interim administrator of the defendant no.9 Society with immediate effect till further orders of the Court, to perform all administrative functions of the defendant no.9 Society. The following directions are passed in this regard:

i. The Governing Body and General Body of the defendant no.9 Society shall remain suspended while the defendant no.10 operates as the interim administrator of the defendant no.9 Society.

ii. All powers afforded to the Governing Body of the defendant no.9 Society under the JRRES Rules and Regulations shall vest with the defendant no.10.

iii. The defendant no. 10 shall be entitled to raise loans to infuse the sum of Rs.30,00,00,000/- into the defendant no.9 Society with a moratorium on interest and repayment by the defendant no.9 Society. The defendant no.10 shall file with the Court a copy of such loan agreement(s).

iv. Out of the aforesaid amount of Rs.30,00,00,000/-, the defendant no.10 shall arrange for a sum of Rs. 15,00,00,000/- to be credited to the account of the defendant no. 9 Society within eight weeks from today.

v. The defendant no.10 shall be at liberty to open a bank account in

the name of Administrator of 'Jai Radha Raman Education Society' / 'Jai Radha Raman Education Society through its Administrator' for the purpose of infusing funds into the defendant no.9 Society. The said bank account shall be solely operated by the defendant no. 10.

vi. The defendant no. 10 shall engage with the GNIDA and ensure that the dues owed to the GNIDA are ascertained and cleared at the earliest.

vii. The defendant no. 10 shall be at liberty to appoint and seek the assistance of a third-party consultant(s) to chart out the path for revival of the defendant no.9 Society.

viii. The defendant no.10 shall, within twelve weeks from today, file a comprehensive road map detailing the requisite activities and tasks to be undertaken for revival of the defendant no.9 Society and the JRE College.

ix. The defendant no.10 shall be entitled to appoint a representative/attorney in India to oversee the day-to-day activities of the defendant no.9 Society.

x. The defendant no.10 shall appoint an independent financial auditor for the defendant no. 9 Society, who shall in turn be responsible for periodically verifying and supervising the preparation and filing of books of accounts and financial returns of the defendant no.9 Society.

xi. The defendant no.10 shall place on record the financial accounts of the defendant no.9 Society as and when prepared and audited.

xii. The defendant no.10 shall, during the period of his appointment as the interim administrator, file with the Court quarterly progress reports detailing the steps undertaken in furtherance of the revival of the defendant no.9 Society and the JRE College.

xiii. The defendant no.10 shall ensure that the plaintiffs/claimants in CS(OS) 419/2017, CS(OS) 197/2018, CS(OS) 118/2021, Arb.A(COMM) 53/2022, Arb.A(COMM) 54/2022, and the arbitration proceedings between Millennium Infradevelopers Limited and the Jai Radha Raman Education Society, file

undertakings by way of affidavits before this Court within four weeks to the effect that they shall not proceed further with the recovery proceedings against the defendant no.9 Society without prior leave of this Court.

xiv. All concerned parties having custody of the records of the defendant no .9 Society such as past filings made with the Registrar of Societies, financial records of the defendant no. 9 Society, including its existing bank accounts, shall provide access of the same to the defendant no .10.

xv. The Educomp Group nominees are restrained from representing the defendant no.9 Society in any legal proceedings or any other matter in relation to the defendant no.9 Society.

xvi. The Educomp Group is directed to remove their guards from the Greater Noida land and the same shall be replaced by the guards to be appointed by the defendant no.10."

(emphasis added)

10. Following direction (xiii) above, the Claimant submits that it has already filed an affidavit dated 07.02.2023 to the effect that it shall not "proceed further with the recovery proceedings against the defendant no. 9 society without prior leave of this Court".

11. In its second order, dated 30.01. 2023, the Hon'ble High Court held as under:

"2. Learned counsel for the appellant has drawn attention to the judgment/order dated 24.01.2023 passed in CS (OS) No. 655/2017 in which the plaintiff therein had sought that the present petitioner be appointed as administrator of the respondent no. 1 society. Vide order dated 24.01.2023, it has been directed in the said suit as under:

XXX

3. Since the petitioner has been appointed as an administrator for the respondent no.1 society, in terms of the aforesaid directions, respective counsel for the parties are in agreement that the President of the society cannot continue to represent respondent no. 1 in the ongoing arbitration proceedings.

4. *The impugned order passed by the learned Arbitrator itself states that the directions given by the arbitrator to allow the respondent no. 1 to represent the society was only an interim arrangement, subject to any modification say, the and change that may be made at a later stage. Needless to learned Arbitrator shall take into account the aforesaid order dated 24.01.2023. so as to ensure that the representation on behalf of the society is in accord with the same. The Arbitrator shall also take into account the directions contained in para 46(xiii) of the said order dated 24.01.2023.*

(emphasis added)

12. *However, these two orders, both passed by a Ld. Single Judge of the Hon'ble High Court, have significantly been diluted by the subsequent orders of status quo passed in Appeal by the Hon'ble Division Bench of the Hon'ble High Court of Delhi. In the third and fourth orders dated 09.02.2023 and 20.02.2023 respectively, a Division Bench of the Hon 'ble High Court held as under:*

“FAO (OS) 14/2023

On 09.02.2023, the Following order was passed

“...

In the meantime, the Administrator, Mr. Hua Seng Chew, respondent no.3 in the present Appeal and defendant no.10 in the suit, is directed to maintain status qua.

List on 20 .02.2023.”

On 20 .02.2023 , the Following order was passed

“...

Interim Order to continue, till the next date of hearing.

The matters are to be listed on 23.03.2023”.

13. *Both the above orders were passed in an appeal FAO (OS) 14/2023, filed impugning Order dated 24.01.2023 passed in CS (OS) 655/ 2017 in which Mr.Hua Seng Chew was appointed as an Interim administrator of the Society. Similar orders of status quo were also passed on 20.02.2023 in FAO (OS)22/2023 and FAO (OS) 23/2023.*

14. *I believe that the parties must have apprised the Hon'ble High Court that the Arbitral Tribunal has already completed cross examination of one main witness(PW1) and the date had been fixed for cross-examination of the remaining second witness (PW2). The Arbitration and Conciliation Act, 1996 (as amended)provides for a specified time within which the Award*

has to be passed and the proceedings are to be concluded within the specified time.

15. Pertinently, the Hon'ble Court did not explicitly stay either the impugned order dated 24.01.2023 or the specific direction to appoint Mr. Chew as the Administrator. It merely directed the Administrator to maintain the status quo. As far as these arbitral proceedings are concerned, the "status quo" is that the President is representing the Respondent- Society. In a way, therefore, the Administrator has been directed to ensure that the President continues to represent the Respondent-Society in these Arbitral proceedings.

16. The necessary effect of Orders dated 09.02.2023 and 20.02.2023 passed by the Division Bench, therefore, is that the situation as currently exists, is maintained. The President, therefore, has to continue to represent the society till the orders dated 09.02.2023 and/or 20.02. 2023 directing the administrator to maintain "status qua" remain in operation or are modified.

17. Even otherwise, in the present Arbitration Proceedings, there is obviously no question of permitting Mr. Chew, to represent both sides i.e., the Claimant Company (as its Chairman) as well as the Respondent-Society (as its Administrator).

18. I am aware that the Claimant finds itself in a tough spot. It has undertaken before the Ld. Single Judge of the Hon'ble High Court that it shall not prosecute these arbitral proceedings (see Order dated 24.01.2023). It did so on 07.02.2023 pursuant to a direction with respect to which the Division Bench has now directed status qua. Be that as it may, the Claimant is free to obtain the leave of the Hon'ble Court.

19. Accordingly, the next hearing of this Tribunal shall be held on 08.04.2023 for the purpose previously fixed.

20. Needless to say, this order is passed subject to any further directions of the Hon'ble High Court in respect of representation of the Respondent-Society in these Arbitration proceedings.

21. For the foregoing reasons, Application No. 08 of 2023 is dismissed."

20. Thereafter, procedural orders are stated to have been passed by the

Arbitrator, whereby it has been directed that the cross-examination of CW2 shall take place on 19.04.2023 and 20.04.2023. It has been further directed that the witnesses on behalf of the respondents shall be examined on 28.04.2023 and 29.04.2023.

21. In the above background, the present applications have been filed seeking the following reliefs:

- a. Allow the present applications and restore the captioned appeals to their original position to be decided on merits;
- b. Direct that the arbitration proceedings between the appellant [in ARB. A. (COMM). NO. 54/2022] and respondent-society be stayed until the captioned appeals, being ARB. A. (COMM). NO. 53/2022 and ARB. A. (COMM). NO. 54/2022, are decided.

22. The respective senior counsels for the parties have been heard at extensive length and have made elaborate submissions.

SUBMISSIONS ON BEHALF OF THE APPLICANTS

23. Mr. Sandeep Sethi, learned senior counsel for the applicants has raised the following contentions:

- (i) The continuation of the arbitral proceedings shall be in the teeth of the directions contained in the judgement/order dated 24.01.2023 wherein it has been specifically recorded that an undertaking would be given by the claimant to the effect that the claimant shall not proceed further with recovery proceedings against the respondent-society.
- (ii) It is completely untenable and impermissible for the President Mr. Shantanu Prakash to represent the respondent-society as the same would be in the teeth of para-46 (xvi) of the judgment/order dated

24.01.2023.

(iii) The Division Bench order dated 09.02.2023 whereby status quo has been directed to be maintained does not tantamount to stay of the directions contained in the judgment/order dated 24.01.2023, in terms of which Mr. Mr.Hua Seng Chew has been appointed as interim administrator of the respondent-society.

(iv) If the claimant pursues its claims in arbitration, the same would amount to contempt of the directions contained in the judgment/order dated 24.01.2023 and shall also be in violation of the undertaking furnished by the claimant, in terms of the specific directions issued by this court, contained in para-46 (xiii) of the judgment/order dated 24.01.2023.

(v) That the conduct on the part of the President of the respondent-society in seeking to represent the respondent-society in the ongoing arbitral proceedings is in utter contravention of the judgment/order dated 24.01.2023. It is emphasized that the embargo on the President to represent the society, has not been removed by the Division Bench and that the interim order passed by the Division Bench has no bearing in this regard.

24. In the above background, it is contended by Mr. Sethi that the present appeals are liable to be restored inasmuch as the controversy that who will represent the respondent/society in the arbitral proceedings, is yet to be decided. It is submitted that the order dated 10.03.2023 passed by the learned Arbitrator effectively nullifies the consent order dated 30.01.2023 passed by this Court. Hence, the original appeals need to be decided on merits to put the controversy at rest.

25. Learned counsel for the applicant in IA No.7233/2023 has reiterated the aforesaid submissions. In addition, he submits that even in the aforesaid Civil Suit [CS(OS) 655/2017], it has never been the case of the President of the respondent-society that he should be appointed as the interim administrator of the respondent-society. As such, it is wholly inappropriate for the President to represent the respondent-society in the ongoing arbitration.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

26. *Per contra*, it is contended by Mr. Akhil Sibal, learned senior counsel for the respondents that:

(i) There is no justification to interdict with the conduct of arbitration proceedings, especially when the proceedings have reached at an advanced stage. It is emphasized that even though the Arbitrator rejected the claimant's/applicant's request seeking *sine die* adjournment as far back as on 10.02.2023, the applicants did not approach this court immediately thereafter and have waited till almost the eve of the date fixed by the Arbitrator for recording of evidence. Such conduct disentitles the applicants to any relief.

(ii) No prejudice would be caused to applicants if the Arbitrator is allowed to proceed with recording of evidence.

(iii) The applications for restoration are misconceived since the order dated 10.03.2023 is not the subject matter of the appeals inasmuch as the appeals were directed against the order dated 20.07.2022, passed by the learned Arbitrator. As such, there is no occasion in this court to interfere with the order dated 10.03.2023 in these proceedings.

(iv) That "in effect", the order dated 09.02.2023, passed by the

Division Bench implies that the Chairman, Mr. Hua Seng Chew can no longer act as an interim administrator of respondent-society. Further, even the embargo on Educomp group from representing the respondent society, as recorded in para-46 (xv) of the judgment dated 24.01.2023, no longer subsists on account of the interim order dated 09.02.2023 passed by the Division Bench.

27. In the circumstances, it is submitted by Mr. Sibal that the view taken by the Arbitrator, as regards the scope and impact of the interim order dated 09.02.2023, passed by the Division Bench in FAO (OS) 14/2023, cannot be faulted.

ANALYSIS AND CONCLUSION

28. Having given my anxious consideration to the matter, I am inclined to allow the present applications for restoration of ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022. The reasons are enumerated hereunder.

29. The central issue that arose for consideration in the arbitration appeals i.e. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 was whether it was permissible for the President of the respondent-society to represent the society in the ongoing arbitration proceedings.

30. The issue arose in the context of the deadlock between the Chairman and the President of the respondent-society due to which they have jointly not nominated any person to represent the society in the arbitration proceedings.

31. Vide order dated 20.07.2022, passed by the learned Arbitrator, which order was impugned in ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022, it was held that the President of the respondent-society be permitted to represent the respondent-society in the arbitration proceedings.

However, the same order makes it clear that the same was an “interim temporary arrangement” subject to modification and changes that may be made at a later date.

32. When the appeals came for the first time before this Court on 18.08.2022, this Court consciously refrained from interfering with the aforesaid directions. However, there was a significant change in circumstances when the judgment/order dated 24.01.2023 came to be passed in the suit filed under Section 92 of the Code of Civil Procedure, 1908 in respect of the respondent-society.

33. There are three significant facets to the directions contained in the aforesaid judgment dated 24.01.2023. Firstly, Mr.Hua Seng Chew, the Chairman of the respondent-society and the appellant in ARB. A. (COMM.) 53/2022 has been appointed as an interim administrator of the respondent-society and entrusted with the responsibility to perform certain crucial functions, as enumerated in para-46 (i to xii and xiv) of the said judgment dated 24.01.2023. Secondly, to obviate the conflict of interest on account of appointing Mr.Hua Seng Chew as the interim administrator, it has been specifically directed that the Claimant in the ongoing arbitration shall file an undertaking by way of affidavit before this court to the effect that it shall not proceed further with the recovery proceedings against the respondent-society without prior leave of this court. Thirdly, the Educomp group nominees, which admittedly include the President of the respondent-society, have been restrained from representing the respondent-society in any legal proceedings or in any matter in relation to the said society.

34. *Prima facie*, the second and third aspects (supra), are untouched by the interim order passed by the Division Bench whereby the interim

administrator has been directed to maintain status quo. In other words, the restraint on the “Educomp group” nominees (including the President), from representing the respondent-society has not been lifted by the Division Bench. Likewise, the Division Bench has not relieved the applicants/ “Raffles group” from the undertakings given pursuant to the directions contained in para 46 (xiii) of the judgment/order dated 24.01.2023. As such, *prima facie*, the observations in the order dated 10.3.2023 passed by the learned Arbitrator to the effect that the directions contained in the judgement dated 24.1.2023 have been “diluted” by the Division Bench, are incorrect.

35. In fact, the parties were *ad idem* with regard to the aforesaid implications of the judgement dated 24.01.2023 when these appeals came up for hearing on 30.01.2023. This is evident from the fact that during the course of hearing on 30.01.2023, respective counsel for the parties were in agreement that it was untenable for the President of society to continue to represent the respondent-society in the ongoing arbitration proceedings. However, at that stage, the court did not deem it fit to interfere with the findings rendered in the order dated 20.07.2022, passed by learned Arbitrator since the said order was described by the learned Arbitrator itself as “an interim temporary arrangement”. Accordingly it was expected that the Arbitrator would take into account the judgment/order dated 24.01.2023 so as to ensure that the representation on behalf of the society in the arbitration, was in accord with the same. It was in this background that the present appeals were disposed of vide order dated 30.01.2023, stating as under:

“3. Since the petitioner has been appointed as an administrator for the respondent no.1 society, in terms of the aforesaid directions, respective counsel for the parties are in agreement that the President of the society

cannot continue to represent respondent no.1 in the ongoing arbitration proceedings.

4. The impugned order passed by the learned Arbitrator itself states that the directions given by the arbitrator to allow the respondent no.1 to represent the society was only an interim arrangement, subject to any modification and change that may be made at a later stage. Needless to say, the learned Arbitrator shall take into account the aforesaid order dated 24.01.2023, so as to ensure that the representation on behalf of the society is in accord with the same. The Arbitrator shall also take into account the directions contained in para 46(xiii) of the said order dated 24.01.2023.”

[Emphasis supplied]

36. Unfortunately, the matter has become worse confounded in the aftermath of the order dated 10.03.2023 passed by the learned Arbitrator. In the circumstances, the central issue as to who will represent the respondent society in the arbitration proceedings is required to be conclusively decided. As such, there is merit in the contention of the applicants that appeal nos. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 be restored, and decided on merits, to put this controversy at rest.

37. Also, it would be inappropriate to hastily proceed with arbitral proceedings pending determination of the central issue as to who will represent the respondent-society in the ongoing arbitration, and especially when the continuation of the Arbitration is in the teeth of the undertaking given by the Claimant/ Appellant in compliance with the directions contained in para 46 (xv) of the judgment/order dated 24.01.2023. Likewise, permitting the President to represent the respondent-society in the ongoing arbitration would be in the teeth of directions contained in para 46 (xvi) of the judgment/order dated 24.01.2023. There is inherent prejudice to the Applicants/ Appellants if the arbitration is allowed to continue in the

manner suggested by the respondents, while the aforesaid central issue remains to be conclusively decided.

38. In fact, if the parties are permitted to hastily conclude the arbitration proceedings and obtain arbitral award/s qua the society, the same would arguably result in disruption of status quo, as mandated by virtue of the order dated 09.02.2023 passed by the Division Bench.

39. Significantly also, the Division Bench has not stayed the operation of the judgement/order dated 24.01.2023 so as to permit continuation of the arbitration in derogation of the directions contained in the said judgement. Of course, it is open for any of the parties to seek modification/s and/or seek further interim order/s from the Division Bench, but till that is done, it would be inappropriate to permit the parties to forge ahead with Arbitration in utter contravention of the directions contained in the judgement dated 24.01.2023, and/or to permit the President to represent the respondent-society in the arbitration.

40. As such, on a *prima facie* conspectus of the matter, it would be apposite and in the interest of justice that the issue as to who would represent the respondent-society in the ongoing proceedings be conclusively resolved, and only thereafter should the arbitral proceedings be allowed to continue.

41. In the circumstances, IA No.7233/2023 and IA No.7132/2023 are allowed. Appeal nos. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 are restored to their original number. It is further directed that there shall be an interim stay of arbitral proceedings till the present appeals are decided.

42. It is made clear that the aforesaid observations/interim directions are

based on a *prima facie* conspectus of the matter subject to further examination and consideration of contentions that may be raised by the parties at the stage of disposal of these appeals.

43. The respondents are granted liberty to file an additional reply within a period of three weeks, taking into account the intervening developments as referred to in the restoration applications. Rejoinder thereto, if any, may be filed by the Appellants within one week thereafter.

44. List appeal nos. ARB. A. (COMM.) 53/2022 and ARB. A. (COMM.) 54/2022 for hearing on 30.05.2023.

SACHIN DATTA, J.

APRIL 19, 2023/cl

