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ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION

IA No. GA/1/2025
In
CS/123/2025

SMITA BAJORIA
VS
RCTC ASSOCIATION AND ORS.

BEFORE:

The Hon'ble JUSTICE ARINDAM MUKHERJEE

Date: 24th December, 2025.

Appearance:

Mr. Surajit Nath Mitra, Sr. Adv.
Mr. Rajarshi Dutta, Adv.
Ms. Mayuri Ghosh, Adv.
Mr. A.P. Agarwalla, Adv.
For the plaintiff/petitioner.

Mr. S. N. Mookherjee, Sr. Adv.
Mr. Anunoy Basu, Adv.
Mr. Naman Chowdhury, Adv.
Mr. Deepta Priya, Adv.
For the defendant nos. 1, 2 and 3.

Mr. Abhrajit Mitra, Sr. Adv.
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Abhidipto Tarafdar, Adv.
Mr. Satyaki Mukherjee, Adv.
Ms. Mini Agarwal, Adv.
Ms. Sirin Firdous, Adv.
For the defendant/respondent no.4.

The Court: In a suit for declaration and injunction, the plaintiff has filed this application seeking interim relief in aid of the reliefs claimed in the suit.

The plaintiff is also seeking ad interim orders in terms of the prayers made in this application.

Before going into the arguments advanced by the parties, in support of the ad interim order and while opposing the same, the brief facts of the matter are enumerated hereinbelow for convenience and better understanding.

The plaintiff is a permanent member of Royal Calcutta Turf Club (in short 'RCTC') since about last 12 years.

RCTC Association, the defendant No. 1 (in short RCTC) is presently a company within the meaning of Section 8 of the Companies Act, 2013 (hereinafter referred to as the '2013 Act'). Previously defendant No. 1 was an association of persons known as Royal Calcutta Turf Club, Turf Properties Private Limited (in short 'TPPL'), defendant No. 2. TPPL is a unit of defendant No. 1 through which the defendant No. 1 is carrying on horse racing and related sports activities.

The defendant No. 2 as the trustee of defendant No. 1 holds the properties of defendant No. 1 on its behalf. The defendant Nos. 1 and 2 are joint owners of a piece and parcel of land admeasuring about 211 Cottahs, 2 Chittacks and 20 sq.fts. together with a heritage building standing thereupon and admeasuring approximately 19000 sq.fts. situate at premises no. 11 Anandi Lal Podder Sarani (previously Russel Street) Kolkata-700071 (hereinafter referred to as the 'said premises').

The defendant No. 3 is the Chief Executive Officer and Secretary of defendant No. 1.

Defendant No. 4 is a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008. It comprises of P.S. Group Realty Pvt. Ltd. (in short 'P.S. Group'), M/s. Manjusri Realtors Private Limited (in short 'Manjusri') and Salarpuria Properties Private Limited (in short 'Salarpuria').

The defendant No. 4 is a Special Purpose Vehicle (in short 'SPV') set up for the purpose of developing the said premises.

On or about 21st May, 2007, a Memorandum of Understanding (MOU) was executed between the defendant Nos. 1 and 2 being the owners of the said premises with Emaar MGF Land Private Limited (in short EMLL) to facilitate development of the said premises through itself or its nominee. EMLL subsequently nominated Edenic Propbuild Private Limited (in short 'EPPL'), a wholly owned subsidiary of EMLL to develop the said premises.

By a settlement agreement dated 28th September, 2018, entered into by an between EMLL, EPPL agreed to relinquish its rights under the Memorandum of Understanding dated 21st May, 2007 on the terms and conditions recorded therein.

By another Memorandum of Understanding dated 20th May, 2021 (hereinafter referred to as the '2nd MoU') defendant nos. 1 and 2 along with a consortium then comprised of P.S. Group, Forum Projects Pvt. Ltd. (in short

FPPL) and Salarpuria mutually decided to develop the said premises comprising of retail areas and residential areas and to commercially exploit the same in the manner agreed therein. In terms of the 2nd MoU, a development agreement was entered into on 14th January, 2020. The said development agreement, however, was terminated which led to filing of a suit being C.S. 162 of 2024 (***Vidyut Saraf & Anr. Vs. Edenic Propbuild Private Limited***). This suit was ultimately dismissed for non-prosecution as the parties entered into a terms of settlement dated 10th November, 2025. During the pendency of the said suit being C.S. 162 of 2024, the defendant nos. 1 and 2 entered into a second supplementary development agreement on 20th September, 2020 with Confluence Condo LLP (defendant no. 4). It, however, appears from the said supplementary development agreement that the partners of defendant no. 4 are P.S. Group and Salarpuria described as developer in the said agreement. This shows that one of the partners of defendant no. 4 i.e., Manjusri is no more a partner of defendant no. 4 with regard to the development of the said premises.

The supplementary development agreement dated 20th September, 2025 is a registered document. It records that Gourab Dugar, Apurva Salarpuria and Vidyut Saraf shall be authorized representatives on behalf of the developer.

The Clause 7 of the said agreement records as follows:-

“7. RATIFICATION AT EGM:

The Owners shall comply with Applicable Laws and their Articles of Association for due ratification of this Supplementary Development

Agreement and in particular agree and undertake to place this Supplementary Development Agreement before the members of the Owner no. 2 at an Extra Ordinary General (EGM) to be held within 35 days of the registration of this Supplementary Development Agreement, but not later than 25 October 2025 for passing of a resolution ratifying this Supplementary Development Agreement and payment shall not be released by the escrow agent to EPPL until such resolution is passed with requisite majority. This Supplementary Development Agreement shall become fully effective immediately upon passing of such resolution.”

On 24th September, 2025 a notice was issued by the defendant No. 1 through the defendant No. 3 for holding the second Extra-ordinary General Meeting (EOGM) of the members of the defendant No. 1 on 21st October, 2025 at 4.00 P.M. One of the agenda items of the special resolution to be placed at the EOGM was as follows:-

“RESOLVED THAT, in supersession of earlier decision to terminate the Development Agreement dated 14th January, 2022 executed with Confluence Condo LLP (‘Developer’) as approved by the members of Royal Calcutta Turf Club, a development of constructed residential space as allowed by applicable rules to be undertaken on the Property situate at 11, Anandilal Poddar Sarani (earlier known as 11, Russel Street), jointly with the Developer, is approved by the Members in terms of a Supplementary

Agreement executed between RCTC and the Developer dated September 20, 2025 and registered in the Registration Office on September 22, 2025 and that the Members grant their absolute consent and permission to proceed with the proposed joint development of the Property as may be required to give effect to this Resolution”

The notice dated 24th September, 2025 had an explanatory statement. The notice and the explanatory statement thereto are annexed at pages 81 and 82 of the petition. The plaintiff after receiving the notice of EOGM by a letter dated 9th October, 2025 made certain queries and sought for documents. The said letter is at page 128 of the petition. The receipt of this letter was acknowledged by the defendant No. 3 vide an email dated 9th October, 2025 which is annexed at page 131 of the petition. In the said email the defendant No. 3 had stated to have taken note of the various points raised by the plaintiff and such points will be addressed in the forthcoming EOGM. The plaintiff on having not received the answer to the queries and the documents sought for through her letter dated 9th October, 2025 had again sent an email on 10th October, 2025 which is at page 132 of the petition requesting the defendant Nos. 1,2 and 3 to give answer to her queries and supply the documents sought for. As no further reply came forward from the defendant Nos. 1, 2 and 3, the petitioner through her advocate issued a letter to the Board of Directors of RCTC Association on 17th October, 2025. This letter is at page 133 of the petition. The letter caused to be issued by the plaintiff through her advocate was, however, replied by a letter dated 20th October, 2025 which is at page 140

of the said petition. The reply although deals with some of the queries but contains a specific statement that the supplementary development agreement will be tabled at the EOGM and the members will be free to take inspection before casting their votes.

The EOGM took place on 21st October, 2025 and the resolution relating to the supplementary development agreement was passed by majority vote.

Being aggrieved by and dissatisfied with the act and conduct of the defendant Nos. 1, 2 and 3, the suit was instituted and the present application was filed therein.

On behalf of the plaintiff a cross-reference has been made to various terms of the development agreement dated 14th January, 2022 and the second supplemental development agreement dated 20th September, 2025. By referring to such clauses, it is submitted that the second supplemental development agreement dated 20th September, 2025 is a new agreement and not a supplemental agreement to the development agreement dated 14th January, 2022. It is clearly demonstrated according to the plaintiff that the project contemplated under the developmental agreement is different to that in the supplementary development agreement. The owner's allocation and the developer's allocation have been changed. The clause relating to the security deposit has changed. One of the partners of the defendant No. 4, the LLP has also changed.

On a conjoint reading of the different terms contained in the developmental agreement and the supplementary developmental agreement will, according to the plaintiff, clearly show that a new agreement has come into effect for the developmental purpose with a change in the nature and character of the project and the area supposed to come to the defendant Nos. 1 and 2 as owner's allocation and that to the defendant no.4 as developer's allocation. The supplementary development agreement according to the plaintiff gives the developer more benefits n terms of money and allotted area in the proposed project The defendant Nos. 1 and 2 should have supplied the documents dated 20th September, 2025 to the plaintiff and the other members of the Defendant No. 1 sufficiently before the EOGM for effective consideration of the terms thereof so that the members could consciously vote. Even if the said supplementary development agreement was placed before the members immediately prior to holding of the meeting, the terms thereof are so complicated that the change in the terms of the development agreement to those in the supplemental development agreement could not be contemplated. It requires meticulous scrutiny and for which a considerable period of time is required to be devoted. The manner in which the second EOGM was called and convened is contrary to the provisions of 2013 Act and as such the decision taken by passing the resolution should be stayed at the ad interim stage and the defendants should be restrained from not giving effect to or further effect to the supplemental developmental agreement dated 20th September, 2025.

On behalf of the defendant nos. 1, 2 and 3, it is contended that the suit as framed is not maintainable as the Board of Directors have not been made a party thereto. In this context, the defendant nos. 1, 2 and 3 have cited a judgment reported in AIR 1941 Cal. 174 (***Jhajharia Bros. Ltd. v. Sholapur Spinning & Weaving Co. Ltd.***). The defendant nos. 1, 2 and 3 have also submitted that the plaintiff after raising a hue and cry did not attend the EOGM and as such she cannot seek ad interim order for stay of resolution or the decisions taken in terms thereof. Furthermore, the terms of the agreement dated 20th September, 2025 is more beneficial to the club than those contained in the development agreement dated 14th January, 2022. The plaintiff, therefore, has no cause to be aggrieved. The agreement dated 20th September, 2025 as recorded therein was to be given effect only after approval by the members. After the members have approved the supplementary development agreement by overwhelming majority, there cannot be any ground to stay the decisions taken at the EOGM at the instance of the plaintiff. The meeting was convened in accordance with the provisions of 2013 Act. There was no requirement to send the documents along with the notice and the explanatory statement. The documents had been placed before the members prior to holding of the EOGM. The members after considering the said documents have voted in favour thereof. There is as such no ground to pass any ad interim order or interim order as prayed for by the petitioner.

The defendant nos. 1, 2 and 3 have also relied upon the judgments reported in **[1974] 1 Weekly Law Reports 638 (*Bentley-Stevens v. Jones*)**

And Others) and (1986) 60 Company Cases 920 (Cal.) [Gopal Das Gujarati Vs. Titagarh Paper Mills Co. Ltd. and Others) to contend that in the resolution passed at EOGM held on 21st October, 2025 cannot be interfered with by the Court at the instance of the plaintiff at this stage. By relying upon the settlement agreement dated 28th September, 2018 and the minutes of the meeting held on 4th July, 2020 wherein the settlement agreement between the defendant nos. 1, 2 and Edenic was approved. It is submitted that the plaintiff was present in the said meeting. By further relying upon the minutes of the meeting held on 4th July, 2020, it is submitted by the defendant nos. 1, 2 and 3 that the plaintiff being present in the said meeting wherein the settlement agreement dated 28th September, 2018 was approved cannot now fall back and feign ignorance and seek the injunction. It is also submitted that the plaintiff has suppressed the fact to feign ignorance about the settlement of disputes between the defendant nos. 1, 2 and Edenic.

In reply, the plaintiff has sought to distinguish the judgment cited by the defendant nos. 1, 2 and 3. With regard to ***Jhajharia Bros.*** (supra) the plaintiff submits that the facts of the case clearly show that the exclusion of cases made in the said report allows the suit to continue even if the Board of Directors are not made party thereto. Furthermore, at this stage, in absence of any application for rejection of plaint, the maintainability of the suit cannot be gone into as the defect alleged, assuming without admitted to be correct is a curable defect for which the plaintiff is entitled to an opportunity to amend the plaint to cure such defect.

The plaintiff also says that the judgment in ***Bentley-Stevens*** (supra) also does not apply to the facts of the instant case. Referring to the minutes of the meeting dated 4th July, 2020, it is submitted that the presence of the plaintiff in such meeting or the approval of the settlement between the defendant nos. 1, 2 and Edenic has no bearing to the facts of the instant case. By relying upon the minutes of the meeting dated 21st October, 2025, it is submitted that from the resolution itself it will be evident that several members sought clarifications and also made suggestions with respect to the liability, future conduct and other possible options and raised doubt as to the effectiveness of the project, but none of such clarifications or suggestions have been noted down or provided in the said resolution. This fact also goes on to show that several members had doubt about the supplementary development agreement dated 20th September, 2025.

The plaintiff submits that ad interim order in terms of prayers made in the said application be made.

After hearing the parties and considering the materials on record, I prima facie find that there are substantial changes between the terms contained in the development agreement dated 14th January, 2022 and the 2nd supplementary development agreement dated 20th September, 2025. It is also apparent that one of the members of the LLP (defendant no. 4) is no more part of the development project. It is also seen that the nature and character of the project contained in the two agreements as aforesaid are different. The owner's

allocation and the developer's allocation have also been changed. As to whether these changes are beneficial for the club as submitted by the defendants no. 1, 2 and 3 or are detrimental to interest of the club and its members as submitted by the petition is required to be gone into with further details. The agreement dated 20th September, 2025 was executed and registered during the pendency of the previous suit filed by defendant no. 4 through Vidyut Saraf was pending. The said Vidyut Saraf as appears from the agreement dated 20th September, 2025 still continues to be the legal representative of the defendant no. 4. The resolution contained in the notice which was placed for voting in the EOGM held on 21st October, 2025 clearly states that the agreement dated 20th September, 2025 is a registered document. There was as such no difficulty on the part of the defendants no. 1, 2 and 3 to supply the copy of the said document to the members along with the explanatory statement. Although, the defendant no. 1 is a company within the meaning of Section 8 of 2013 Act. But, its acts are to be transparent so that no fingers can be raised against them. It is true that the defendant no. 1 functions through its directors and officers but, any decision taken by them should not create any doubt in the minds of any of its members and are open challenge. The development of the said premises is being sought for ever since 2007. The first agreement was cancelled which led to a litigation as recorded in the settlement agreement dated 28th September, 2018. The development agreement dated 14th January, 2022 may have been approved by the members but the same stood terminated leading to a further litigation. During the pendency of the said suit, the 2nd supplementary

development agreement dated 20th September, 2025 was entered into and was registered.

The development of the said premises therefore, has a chequered history. The defendant no. 1 and 2 ought to have been more cautious before entering into the 2nd supplementary development agreement during the pendency of a litigation with the same party wherein substantial changes in the terms are prima facie evident. There was as such no requirement to take steps in haste. The document was registered and then placed for ratification. It was not contemplated at that point of time that the said agreement will be ratified. If a registered agreement was not ratified at the EOGM it would have led to multiplicity of proceedings as the said agreement speaks of immediate execution of power of attorney in favour of the defendant no. 4. It is also prima facie noticed that a details comparison of the terms of the agreement dated 14th January, 2022 and the agreement dated 20th September, 2025 is required to understand the changes. Just by providing a copy of the agreement immediately prior to holding of the meeting does not prima facie appears to be a sound procedure for holding EOGM as the members require time to consider the same. In any event, several clarifications, suggestions were made by the members which does not appear to have been recorded even in gist from the minutes of the meeting held on 21st October, 2025. This also goes on to show that the members had doubt.

The judgments cited by the defendant nos. 1, 2 and 3 are either not applicable to the facts of the case or at this stage.

In the aforesaid facts and circumstances, I find that the plaintiff has been able to make out a strong prima facie case. The balance of convenience and inconvenience is also in favour of the plaintiff. If no order is passed in favour of the plaintiff at this stage, it will cause further prejudice to the plaintiff and may lead to multiplicity of judicial proceedings.

In the light of the discussion as aforesaid, the defendants and each one of them, their men, servant, agent or assigns are restrained by an order of injunction from giving effect and/or further effect to the agreement dated 20th September, 2025 and the decision taken approving such agreement at the meeting held on 21st October, 2025.

The interim order shall continue till 16th February, 2026 or until further orders whichever is earlier.

The matter requires further scrutiny which can be effectively done after inviting affidavits.

Let Affidavit-in-Opposition be filed by 16th January, 2026. Reply, if any thereto, be filed by 28th January, 2026.

Let this matter appear in the monthly list of February, 2026.

(Arindam Mukherjee, J.)

Later:

The defendants have sought for a stay of operation of this order. Such prayer is considered and refused.

(Arindam Mukherjee, J.)