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

***Reserved on: 04.09.2024***  
***Pronounced on: 05.09.2024***

+ CS(OS) 493/2024 & I.A. 31728/2024, 32679/2024,  
35675/2024, 37374/2024, 37401/2024 & 37402/2024

RUCHIR MODI

.....Plaintiff

Through: Mr.Harish Salve, Sr. Adv. with  
Ms.Anuradha Dutt,  
Mr.Swadeep Hora, Ms.Ekta  
Kapil, Mr.Haaris Fazili,  
Mr.Chaitanaya Kaushik,  
Ms.Priyanka, M.P., Mr.Kunal  
Dutt, Mr.Raghav Dutt,  
Mr.Avinash K. Singh,  
Ms.Prachi Pandey & Mr.Yash  
Mittal, Advs.

versus

BINA MODI & ORS.

.....Defendants

Through: Mr.Kapil Sibal & Mr.Akhil  
Sibal, Sr. Advs. with Ms.Amita  
Gupta Katragadda, Ms.Shikha  
Tandon, Ms.Surabhi Khattar,  
Ms.Aparajita Jamwal,  
Ms.Kamakshi Puri, Mr.Zaid  
Drabu, Ms.Sejal Sethi,  
Mr.Manthan Nagpal,  
Mr.Adhiraj Chauhan,  
Ms.Aashna Gupta, Ms.Jahnavi  
Sindhu & Mr.Krishnesh Bapat,  
Advs. for D-1.  
Mr.Mukul Rohatgi, Sr. Adv. &  
Mr.Rajiv Nayar, Sr. Adv. with



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Mr.Mahesh Agarwal, Mr.Rishi Agrawala, Ms.Niyati Kohli, Mr.Pratham Vir Agarwal and Ms.Manavi Agarwal, Advs. for D-2 (through VC).

Mr.Arvind Pandian, Sr. Adv. with Mr.Simran Singh, Ms.Preetika Dwivedi, Ms.Ruchali Agarwal & Mr.Abhishek Mohanty, Advs. for D-3.

Ms.Suman Yadav, Adv. for D-4  
Mr.Prashant Kumar, Adv. for D-8.

**CORAM:  
HON'BLE MR. JUSTICE NAVIN CHAWLA**

## **J U D G M E N T**

### **I.A. 36653/2024**

1. This application has been filed by the plaintiff under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (in short, 'CPC') praying for the following reliefs:

*“(a) Appoint an Administrator to administer the affairs of the K.K. Modi Family Trust, including to vote on behalf of the K.K. Modi Family Trust at the Annual General Meeting of Godfrey Phillips India Limited slated to be held on 06.09.2024 after consulting the Trustees and in the interest of the beneficiaries; and/or*

*(b) Restrain Defendant No. 1 from voting on behalf of the K.K. Modi Family Trust/ Defendant No.5/Trust Companies in the Annual General Meeting of Godfrey Phillips India Limited slated to be held on 06.09.2024.”*



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**Proceedings in the present Suit:**

2. The present is the third application filed by the plaintiff under Order XXXIX Rules 1 & 2 of the CPC, the first two being I.A.31728/2024 and I.A. 32679/2024. As the present application stated that the Annual General Meeting (in short, 'AGM') of Godfrey Phillips India Limited (in short, 'GPIL') is slated to be held on 06.09.2024, and an urgent relief is being sought in terms of the prayer made, prior to the said meeting, the present application was heard first. The learned senior counsels appearing for the defendants reserved their rights to make further submissions as far as the earlier two applications are concerned. In rejoinder, the learned senior counsel appearing for the plaintiff, therefore, also confined his submissions to this application.

3. It is made clear that any observation made hereinunder on the merits of the case while deciding the present Application shall, therefore, not affect the outcome of the other two pending applications, and being *prima facie* in nature, cannot, in any case, affect the outcome of the Suit.

**Case of the plaintiff:**

4. The present Suit has been filed by the plaintiff *inter alia* seeking a Decree of declaration, permanent and mandatory injunction against the defendant no.1, praying for the following reliefs:

*“(a) Pass a decree of declaration thereby declaring that the Defendant No.1 has been acting in breach of trust and in breach of her fiduciary duties; and/or*



*(b) Grant a permanent and mandatory injunction removing the Defendant No. 1 from the office of Managing Trustee of the K.K. Modi Family Trust and restraining Defendant No. 1 from interfering in any manner in the affairs of the K.K. Modi Family Trust; and/or*

*(c) Pass a decree appointing an Administrator to administer the affairs of the K.K. Modi Family Trust; and/or*

*(d) Direct rendition of accounts, inspection of ledgers, profit and loss accounts, share scripts, details of dividends, details of Demat accounts of the K.K. Modi Family Trust and all the Trust Companies, including as mentioned in Schedule II of the Trust Deed to the Administrator and/or the Plaintiff; and/or*

*(e) Pass a decree directing the administrator to:*

- i. Collect all the moneys due to the K.K. Modi Family Trust, including any moneys that may have been wrongfully appropriated by Defendant No. 1 and 2; and*
- ii. Take steps to sell the assets of the K.K. Modi Family Trust in accordance with the mechanism set out in the Trust deed; and*
- iii. Distribute the net proceeds of sale of all the assets and properties of the Trust to the four Family Branches as set out in the Trust Deed.”*

5. The case of the plaintiff is founded on the “Restated Deed of Trust” dated 09.04.2014 (hereinafter referred to as the “Trust Deed”), executed between late Sh. K.K. Modi as a Settlor, and the defendant nos.1 to 4. It contains a confirmation of a Trust called “K.K. Modi Family Trust” (in short, “Trust”) based on a Family Settlement dated



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10.02.2006 between the parties.

6. The plaintiff herein, is one of the beneficiaries as defined in Clause 2.3 read with Schedule I and IA of the Trust Deed. The Clause 2.3 of the Trust Deed reads as under:

*“2.3. "Beneficiaries" shall mean:*

*2.3.1. The individuals as set out in Schedule I who are members of Mr.K.K.Modi's family hereto which shall include the individual members of each of the four Branches as listed in Schedule IA hereto and companies promoted by the family members of K K Modi Family and private trusts nominated by any of the Branches set out in Schedule IA. Each Branch shall have the right to nominate one company and/or a private family trust as a beneficiary of the Trust and shall give the notice of such nomination in writing to the Managing Trustee, the CEO and the Secretary of the Trust. Upon receiving such notice, the Trustees shall include the company or Trust in the list of beneficiaries in Schedule I. However, it shall exclude any person who otherwise falls within the definition of the term "Beneficiary" hereunder but who has by a written notice delivered to the Managing Trustee confirmed that he or she should not from the date specified in such notice be treated as or be considered to be a Beneficiary.*

*Provided however that if any Beneficiary becomes insolvent pursuant to a final unappealable order of a competent court suffers a money decree or decrees of an aggregate value exceeding Rs.1 crore at any point of time, then unless otherwise agreed to by all Trustees, such Beneficiary shall cease to be a Beneficiary from the date when he has been declared insolvent or the decree becomes executable against him/her. Provided further that even if a Beneficiary ceases to be a Beneficiary as mentioned in this proviso, the share of the Branch to which such Beneficiary*



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*belongs shall not be reduced in any manner whatsoever and the female spouse and the lineal descendants of such Beneficiary shall get equal distribution of the share which such Beneficiary was entitled to receive and the Trustees may at any time thereafter include such a person as a Beneficiary at a later date once again.”*

7. Schedule I states the “List of Beneficiaries”, the relevant extract of which, for the purposes of the present application, is as under:

**“SCHEDULE I**

**LIST OF BENEFICIARIES**

<i>Serial No.</i>	<i>Name</i>	<i>Relationship</i>
1.	<i>Mr. Krishan Kumar Modi</i>	<i>Self</i>
2.	<i>Mrs. Bina Modi</i>	<i>Wife of (1)</i>
3.	<i>Mr. Lalit Kumar Modi</i>	<i>Son of (1) and (2)</i>
4.	<i>xxxx</i>	<i>xxxx</i>

”

8. Schedule IA details the “Branches” and the “Members of the Branch”, which for the Branch of “Mr. Lalit Kumar Modi Branch” includes the children of Mr. Lalit Kumar Modi, that would include the plaintiff herein.

9. Mr.K.K. Modi, unfortunately expired on 02.11.2019.

10. The Clause 3.2 of the Trust Deed states that in the event of the demise of Mr.K.K. Modi, the defendant no.1 herein-Mrs.Bina Modi shall forthwith and without any further action assume the office of the Managing Trustee. The same is reproduced herein under:

*“3 Managing Trustee and the Role of Managing Trustee, Transitional CEO and CEO*



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*3.1 The Settlor is and shall be the Managing Trustee of the Trust during his lifetime or until he seeks to be discharged as a Managing Trustee or until he vacates his office as provided under Clause 26.*

*3.2 In the event of Mr. K.K. Modi ceasing to be the Managing Trustee on his demise or in accordance with Clause 26 hereof, Mrs. Bina Modi shall forthwith and without any further action assume the office of the Managing Trustee.”*

11. It is the case of the plaintiff that the defendant no.1 engineered a letter dated 12.11.2019 from M/s Crawford Bayley & Co., the erstwhile Secretary of the Trust, to GPIL, a listed company, which is within the ambit and scope of “KK Modi Group Companies” as defined in Clause 2.21 of the Trust Deed, purporting to intimate the recommendation of the Trust to appoint the defendant no.1 as the Managing Director of GPIL without the prior knowledge and consent of the defendant no.4, the father of the plaintiff, or his Branch.

12. It is further the case of the plaintiff that in terms of Clause 4 of the Trust Deed, the defendant no.1 was obliged to call for a meeting of Board of Trustees within thirty days of her assuming the office of the Managing Trustee. The plaintiff asserts that in said meeting, the Board of Trustees were to decide “unanimously” in relation to the Trust Fund, which include the family controlled businesses, as to whether to continue to own and manage all assets of Trust Fund or to sell a part or whole of the Trust Fund.

13. The plaintiff asserts that in terms of Clause 4.2 of the Trust Deed, in case the Board of Trustees is unable to take any decision as



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stated in Clause 4.1 of the Trust Deed unanimously, then the entire Trust Fund including all family controlled businesses were to be sold off in the manner provided in Clause 11 of the Trust Deed.

14. In this regard, the plaintiff also places reliance on Clause 4.5 of the Trust Deed to state that the defendant no.1 was to continue to be the Managing Trustee and to possess the complete authority to take all decision on any matter relating to the Trust Fund, including family controlled businesses, 'provided that' it had been agreed by the Board of Trustees to continue to keep the Trust and not dispose of all the assets at the meeting to be held within thirty days in accordance with Clause 4.1 of the Trust Deed. In case it was decided to sell whole or part of the Trust Fund or in the absence of unanimity between the Trustees to continue to hold or to part away with the assets forming part of the Trust Fund, the Trust Fund were to be sold in accordance with the process prescribed in Clause 11 of the Trust Deed.

15. The Trust Fund and the Management thereof were defined in Clause 6.1 of the Trust Deed, which in turn includes GPIL.

16. It is the case of the plaintiff that as the Trustees did not take an unanimous decision to continue with the Trust as defendant no.4, the father of the plaintiff sought its dissolution, the Clause 4.1, the automatic Clause providing for its dissolution, kicked in and the Trust was to be dissolved, and its assets should have been sold in accordance with the process mentioned in Clause 11 of the Trust Deed.

17. It is the case of the plaintiff that the defendant no.1, however, in breach of the Trust Deed, did not proceed to dissolve the Trust and has





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usurped and continues to hold the position of the Managing Trustee of the Trust in violation of the Trust Deed.

18. The plaintiff further asserts that in terms of Clause 7.1 of the Trust Deed, till the disposal of all the assets and distribution of the Trust Fund, management of the family controlled companies was to continue to be decided by the Managing Trustee. The Clause 7.2 of the Trust Deed further provides that all the Trustees who are on the Board of Directors of the companies listed in Schedule II of the Trust Deed will continue to be on the Board of Directors of the respective companies unless any Trustee is desirous of resigning as a Director. The Clause 7.3 of the Trust Deed further provides that the Director nominated by the Branches on the Board of each of these companies shall vote in accordance with the provisions of the Trust Deed and by the unanimous consent of all the Trustees. This was also stipulated in Clause 7.6 of the Trust Deed which states that the voting rights with respect to the shares held by the Trust shall be exercised in accordance with the directions of the Managing Trustee, and shall be exercised to ensure that the management and control of every company is for the equal benefit of all Branches of the family. The plaintiff asserts that in the absence of unanimity with respect to the voting rights of the shares of a company, the CEO of the Trust was to decide the manner of exercising the voting rights in the best interest of the Trust.

19. The plaintiff asserts that in violation of the above term of the Trust Deed, the defendant no. 1 has not only removed Mr. Samir Modi, the defendant no. 3, from the position of being a Director of GPIL, but is also proposing to appoint Ms. Charu Modi as a Director



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of the said Company. She is also seeking reappointment of herself as the MD of the said Company.

20. The plaintiff further asserts that Clause 6.1.1 of the Trust Deed obliges the defendant no.1 to manage the companies so as to enhance the value of the Trust Fund for the benefit of the Branches of the family equally and to distribute the same in accordance with the unanimous consent of the Board of Trustees. The defendant no. 1 has, however, failed to distribute the dividend earned from the Company and is using the same to blackmail the plaintiff and others to accede to her demand of continuing with the Trust and to her being the Managing Trustee of the Trust.

21. The plaintiff asserts that Clause 19 of the Trust Deed obliges the Managing Trustee to cause proper accounts to be maintained of the Trust Fund and to have the accounts examined, audited and certified by a Chartered Accountant once a year and the audited statements to be approved by majority of the Trustees and shall also be signed by at least two of the Trustees. However, the defendant no. 1 has refused to show the accounts of the Trust to the plaintiff.

22. The plaintiff asserts that contrary to the terms of the Trust Deed, the defendant no.1 is not only refusing to sell the Trust Fund but is also seeking her re-nomination and re-appointment as the Managing Director of GPIL. She is also going to be entitled to remuneration by way of commission at the rate of 5% of net profit of GPIL of each financial year, thereby making a personal gain from Trust Fund, which is prohibited under the Indian Trust Act, 1882 (in short, the 'Trust Act').



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**Submission of the learned senior counsel for the plaintiff:**

23. Mr.Harish Salve, the learned senior counsel appearing for the plaintiff, asserts that in terms of Section 11 of the Trust Act, a Trustee is to fulfil the purpose of the Trust and to obey the direction of the author of the Trust, given at the time of its creation, except as modified by the consent of all the beneficiaries being competent to contract. He submits that in the present case, the Settlor Mr.K.K. Modi, had clearly stated that unless there is unanimity in the Board of Trustees that the Trust should continue, the Trust has to be dissolved and the process thereof was also provided in Clause 11 of the Trust Deed. The defendant no.1, therefore, is acting contrary to Section 11 of the Trust Act by refusing to sell the Trust property.

24. He submits that in terms of Section 48 of the Trust Act, all the Trustees must join in the execution of the Trust. In the present case, however, the defendant no.1 is excluding the plaintiff, defendant no.4, and the defendant no.3 from the Trust. This would, therefore, be a fit case where the control of the Trust must be taken over by the Court in exercise of its power under Section 49 of the Trust Act.

25. He submits that in terms of Section 56 read with Sections 59 and 61 of the Trust Act, the plaintiff being the beneficiary of the Trust, has a right to seek enforcement of its terms from this Court.

26. Placing reliance on Sections 19 and 57 of the Trust Act, he submits that the plaintiff is also entitled to seek rendition of accounts of the Trust Fund from the defendant no.1, which the defendant no.1 is refusing to give.



27. He submits that even otherwise, the defendant no.1 is acting contrary to the mandate of the Trust Deed by not only refusing to sell the Trust Fund but even otherwise failing to call a meeting every six months, as is mandated by the Clause 5.5 of the Trust Deed.

28. He further submits that by removing the plaintiff and the defendant no.3 from the position of Directors of the companies; refusing to give the accounts and to distribute the income from the Trust Fund among the beneficiaries; and, most importantly, earning a remuneration/profit for the self in violation of Section 51 of the Trust Act, the defendant no.1 has failed to comply with the mandate of the Trust Deed and made herself liable to be removed as the Managing Trustee. In support of his submissions, apart from various judgments of which detailed reference is not required to be mentioned in the present order, he placed reliance on the judgment of the House of Lords in *Boardman & Anr. v. Phipps*, [1966] 3 All ER 721; and of the Supreme Court in *M. V. Ramasubbiar & Ors. v. Manicka Narasimachari & Ors.*, (1979) 2 SCC 65.

**Submission of learned senior counsel appearing for the defendant no. 3:**

29. Mr.Arvind Pandian, senior advocate appearing for the defendant no.3, supported the case of the plaintiff.

**Submission of the learned senior counsels appearing for the defendant nos. 1 and 2:**

30. Mr.Kapil Sibal, the learned senior counsel appearing for the



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defendant no.1, and Mr.Mukul Rohtagi, the learned senior counsel appearing for the defendant no.2, oppose the present application by contending that the prayer made therein are in fact in the nature of seeking a final relief as claimed in the Suit. They submit that the claim made in the Suit is, even otherwise, founded on the misreading of the Trust Deed and is liable to be rejected.

31. Mr.Sibal, the learned senior counsel for the defendant no.1, submits that in terms of Clause 3.1 of the Trust Deed, Mr.K.K.Modi was to be the Managing Trustee of the Trust during his lifetime. In terms of Clause 3.2 of the Trust Deed, upon the death of Mr.K.K. Modi, the defendant no.1 was to be forthwith and without any further action appointed as a Managing Trustee of the Trust.

32. He submits that, in terms of Clause 3.3 of the Trust Deed, as a Managing Trustee, the defendant no.1 has the powers to perform the day-to-day administration, execution and the management of the Trust, and the assets forming part of the Trust Fund, including family controlled businesses. The Trust Fund including the family controlled businesses are to be administered, executed and managed by the defendant no.1 and such decisions are final and binding on all the parties, including the Trustees and Beneficiaries of the Trust.

33. Mr.Sibal submits that during the tenure of Mr.K.K. Modi, and even now during the tenure of the defendant no.1, none of the directives of the Trust Deed require them to take a unanimous consent or majority consent of the Board of Trustees. He submits that the Clause 4.1 of the Trust Deed requiring for unanimous decision of the Board of the Trustees shall become applicable only after the defendant



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no.1 ceases to remain the Managing Trustee of the Trust.

34. He submits that the claim of the plaintiff that in absence of a unanimous decision to continue with the Trust, the Trust is to be dissolved, is therefore, erroneous and is liable to be rejected. He submits that the intention of the creation of the Trust by the Settlor was for the continuation of the family business and to ensure that fight between the various Branches of the family does not act as a hurdle in such continuation of the business so long as defendant no.1 is alive and acts as a Managing Trustee of the Trust.

35. He further submits that as far as the GPIL is concerned, Clause 29 of the Trust Deed itself obliges the Trustees to abide by the Agreements that have been executed by the Trust with GPIL.

36. He submits that Mr.K.K.Modi and thereafter, defendant no.1 have been acting as Managing Director of the GPIL right since 2006 without any demure or protest by the plaintiff. Mr.K.K.Modi was also drawing remuneration from GPIL in his position as the Managing Director of the company, again without any protest by the plaintiff. He submits that the grievance of the plaintiff in the Suit is not to the remuneration drawn by the defendant no.1 from GPIL, but on his claim that the Trust must be dissolved as the defendant no.4 has expressed his desire to do so.

37. He submits that the defendant no.4 is not acting in the interest of the Trust but on his own individual fancies, which cannot be binding on the others.

38. He submits that Section 51 of the Trust Act restricts a Trustee to use the Trust Property only for "his own use" and for such purposes



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which are not connected with the Trust. He further submits that since the defendant no.1 would be exercising the voting rights attached to the shares control by the Trust to reappoint herself as the Managing Director of GPIL, which in turn is a responsibility cast upon her by the Trust Deed, Section 51 of the Trust Act shall have no application in the facts of the present case. The mere fact that defendant no.1 would incidentally receive compensation for her work, would not make her action for her own profit. He placed reliance on the judgment of the Chancery Division in *Caldicott & Ors v. Richards & Anr.*, [2020] EWHC 767 (Ch).

39. Mr.Sibal submits that in the present Suit, the plaintiff has not challenged the appointment of the defendant no.1 as the Managing Trustee of the Trust. Moreover, there is also no challenge to the competence and suitability of the defendant no.1 to be appointed as the Managing Director of GPIL. In this background, merely holding an AGM, which is an annual exercise, cannot be an unforeseen ground for seeking interim relief as prayed for by the plaintiff.

40. He submits that the plaintiff through the present Suit seeks the appointment of an administrator only to sell the trust assets and distribute the sale proceeds. Since the ultimate claim of the plaintiff is one of money, any remuneration received by the defendant no.1 as the Managing Director of GPIL, can always be adjusted in the final accounting, if and when the Suit is decreed. Hence, the balance of convenience is not in favour of plaintiff, and no irreparable loss would be caused to the plaintiff.

41. Mr.Mukul Rohtagi, the learned senior counsel appearing for the



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defendant no.2, while reiterating the submissions made by Mr.Sibal, further submits that the Trust holds 44% shares in GPIL. He submits that the plaintiff himself seeks to be appointed as a Director of the company owned by the Trust/Family, and in such position, he would also be entitled to draw remuneration. The plaintiff, therefore, cannot complain about the remuneration to be drawn by the defendant no.1 in her position as Managing Director of the GPIL. He submits that the defendant no.1, even otherwise, is ready and willing to give all accounts of the remuneration drawn by her.

**Rebuttal Arguments of the learned senior counsel for the Plaintiff:**

42. Mr.Harish Salve, in his rejoinder, while reiterating the submissions made by him in the opening arguments, stated that the reliance of the defendant no.1 on Clause 3.3 of the Trust Deed is ill founded, as the said clause is subject to the other clauses of the Trust Deed.

43. He further submits that the balance of convenience would require the defendant no.1 to be restrained from exercising her rights as a Managing Trustee to vote in the AGM to be held on 06.09.2024. He submits that, instead, she can, in fact, use that vote to request for the agenda of her continuation as the Managing Director to be postponed, as she has time till 05.11.2024, till when she even otherwise continues as the Managing Director of GPIL.

44. He submits that the balance of convenience would not lie in letting her earn profit by reappointing herself as the Managing Director of the GPIL with the condition that she will account for the





same at a later date. In support, he places reliance on the judgment of the Bombay High Court in *E.D. Sassoon & Co. Ltd. v. K.A. Patch*, 1922 SCC OnLine Bom 158; and of the Calcutta High Court in *P.N. Chouna & Ors. v. Bengal Free Masons Trust Association*, MANU/WB/0447/1982.

45. He reiterates that by getting herself appointed as the Managing Director of the GPIL, without the consent of all the beneficiaries, the defendant no.1 would, in fact, be violating Section 51 of the Trust Act which prohibits a trustee from making a profit from the trust property. In support, he places reliance on the judgment of the Chancery Division in *In re Brooke Bond & Co. Ltd.'s Trust Deed.*, [1963] Ch 357.

46. He also states that the submission of the defendant no.1 that earlier there was no protest on her appointment as a Managing Director of GPIL, is incorrect as the defendant no.4 had objected to the same even at that time.

**Rebuttal Arguments of the learned Senior Counsel for Defendant No.3:**

47. The learned senior counsel appearing for the defendant no.3, submits that in case the defendant no.1 votes in favour of Resolution No.6, which states that the position of a Director against the vacancy of the defendant no.3 be kept vacant, she would, in fact, be acting against Clause 7.2 of the Trust Deed.

48. I must herein also note that Mr.Rajiv Nayar, the learned senior counsel appearing for the defendant no.2, submits that the defendant no.3 has filed his own suit challenging his removal from a



Directorship of GPIL and, therefore, cannot agitate the same issue in the present suit.

**Analysis and findings:**

49. I have considered the submissions made by the learned counsels for the parties.

50. A reading of the Trust Deed would show that Mr.K.K. Modi, as a patriarch of the family, created the Trust involving his children and wife, with the intent that till his death, the affairs of the family controlled business shall be with him, thereafter with his wife, the defendant no.1, and thereafter, shall be dealt with unanimously by the children. In case the children are not able to unanimously decide on the continuation of the family controlled businesses, the businesses would be sold and the Trust would be dissolved by distributing the proceeds thereof amongst the children.

51. Clause 2.17, and Clauses 3.1 to 3.3 of the Trust Deed, capture this intent. They are reproduced hereinbelow:-

**“2. DEFINITIONS:**

xxxxx

**2.17 "Managing Trustee" shall mean Mr. K. K. Modi so long as he does not cease to be the Managing Trustee in accordance with the provisions of this Deed. After Mr. K. K. Modi ceases to be the Managing Trustee, Mrs. Bina Modi, should she be available, shall be the Managing Trustee of the Trust. After both, Mr. K. K. Modi and Mrs. Bina Modi cease to be the Managing Trustees of the Trust, any other person, so appointed with unanimous consent of the Board of Trustees, shall act as a Managing Trustee of the Trust.**

xxxxx

**3 Managing Trustee and the Role of**



**Managing Trustee, Transitional CEO and CEO**

3.1 *The Settlor is and shall be the Managing Trustee of the Trust during his lifetime or until he seeks to be discharged as a Managing Trustee or until he vacates his office as provided under Clause 26.*

3.2 *In the event of Mr. K.K. Modi ceasing to be the Managing Trustee on his demise or in accordance with Clause 26 hereof, Mrs. Bina Modi shall forthwith and without any further action assume the office of the Managing Trustee.*

3.3 *Save and except where it is specifically provided otherwise, **both Mr. K. K. Modi and Mrs. Bina Modi as the Managing Trustees** shall have the powers of the day to day administration, execution and management of the Trust, the assets forming part of the Trust fund including Family Controlled Businesses, to execute all documents, writing, deeds agreements etc. that may be required to be executed for and on behalf of the Trust; to assign, sell, exchange, distribute or dispose of any of the properties or income or any part thereof of the Trust and generally all other powers in relation to the Trust. **So long as Mr.K.K. Modi and after him, Mrs.Bina Modi continue to be the Managing Trustee, the Trust, the assets forming part of the Trust Fund including Family Controlled Businesses shall be administered, executed and managed in accordance with the decisions taken by them and powers exercised by them as provided in this Deed.** Any decision taken by Mr. K. K. Modi and in his absence by Mrs. Bina Modi in relation to the Trust, the Trust Fund, the Family Controlled Business and generally in relation to any matter for administration, execution, management of the Trust shall be final and binding on all parties concerned, including the*



***Trustees and the Beneficiaries of the Trust. During their tenure as the Managing Trustees, none of the powers of the Board of Trustees shall become applicable and any power given to the Board of Trustees requiring either their unanimous consent or a majority consent shall become applicable and shall be exercised by the Board of Trustees only after both, Mr. K. K. Modi and Mrs. Bina Modi cease to be the Managing Trustees of the Trust and only in the event of there being no Managing Trustee, appointed under Clause 3.5.3 hereunder to manage the affairs of the Trust.***

(Emphasis supplied)

52. In the present case, it is an admitted position that the defendant no.1 assumed the charge of Managing Trustee of the Trust in terms of Clause 3.2 of the Trust Deed, after Mr.K.K. Modi unfortunately expired on 02.11.2019. The plaintiff through the present Suit, seeks the appointment of an administrator only to sell the Trust assets and distribute the net proceeds of the sale to the four family branches.

53. Clause 4 of the Trust Deed, which acts as a cornerstone of the case of the plaintiff, reads as under:-

***“4 Meeting of Trustees upon Mrs. Bina Modi becoming Managing Trustee***

*4.1 Within 30 (thirty) days of the earlier of:*

- a. Mrs. Bina Modi assuming the office of a Managing Trustee, or*
- b. Mr. K.K. Modi vacating the office of the Managing Trustee and where Mrs. Bina Modi has predeceased Mr. K.K. Modi, a meeting of the Board of Trustees shall be convened by Mrs. Bina Modi, **or if Mrs. Bina Modi is not a Trustee, the Board of Trustees shall meet,** wherein the Board of*



Trustees ***shall decide unanimously***, in relation to the Trust Fund (which includes the Family Controlled Businesses), whether:

4.1.1 to continue to own and manage all assets of the Trust Fund including the Family Controlled Businesses; or

4.1.2 to sell a part of the Trust Fund (including the Family Controlled Businesses) and continue to own and manage the remaining assets comprising of the Trust Fund; or

4.1.3 to sell the whole of the Trust Fund comprising of various assets including Family Controlled Businesses.

The written consent of all Trustees to the decisions taken at the meeting would be required for the resolution to be unanimously passed for the purpose of this Clause 4.1.

4.2 If the Board of Trustees is unable to take any decision as stated in Clauses 4.1.1 to 4.1.3 above unanimously, then the entire Trust Fund including all Family Controlled Businesses shall be sold off in the manner provided in Clause 11.

#### **4.3 Notice of intent to dispose off Assets**

**So long as Mrs. Bina Modi continues to act as a Managing Trustee, any decision to dispose of the Trust Fund (including Family Controlled Businesses), either under Clause 4.1.2 or under Clause 4.1.3, shall be taken only at the meeting convened by Mrs. Bina Modi in accordance with Clause 4.1 above,** provided however that in the event that any Trustee is unable to attend the meeting personally and vote (including through video conferencing/or other electronic means) his/her written approval to the decisions taken would have to be obtained for the purpose of passing the unanimous resolution will have to be obtained within 3 days thereof, failing which the resolution will not be deemed to



have been passed unanimously. **After both Mr. K.K. Modi and Mrs. Bina Modi cease to be the Managing Trustees, such decision shall be taken only at a meeting of the Board of Trustees which shall be convened specifically to decide on the action to be taken in terms of the options listed in 4.1.1, 4.1.2 and 4.1.3 above.** Such a meeting shall be convened only once at the end of every three year period; the first period of three years to commence 30 days after both, Mr. K. K. Modi and Mrs. Bina Modi shall have ceased to be the Trustees.

4.4 The agenda for the meeting of the Board of Trustees mentioned in Clause 4.3 above, should include all relevant information in relation to the Trust Fund (including Family Controlled Business), the proposed business plans of the respective Family Controlled Businesses for the next 3 years, the tax and other implications etc. to give the Trustees adequate information to enable them to take the appropriate decision. Any decision unanimously taken by the Board of Trustees in and pursuant to any of the meetings convened under Clause 4.3 would be absolute, final and binding on all the parties. **It is clarified that if the Board of Trustees cannot decide unanimously, then the business / asset of the Trust Fund proposed to be sold under the notice provided under clause 4.3 above, shall be disposed off in the manner provided under clause 11 hereof.**

#### **4.5 Decision to continue whole or part of the business**

After Mr. K. K. Modi vacates the office of the Managing Trustee and so long as the Trust continues to own and manage the whole or part of Trust Fund including Family Controlled Businesses then:

4.5.1 Mrs. Bina Modi shall continue to be the Managing Trustee and shall have complete authority to take all decisions on any matter relating to the Trust Fund



*including Family Controlled Businesses and her decisions shall be final and binding on all the Beneficiaries and Trustees provided that it has been agreed to continue to keep the Trust and not dispose of all the assets at the meeting to be held within 30 days in accordance with clause 4.1; and 4.5.2 Upon Mrs. Bina Modi ceasing to be the Managing Trustee, the Managing Trustee appointed unanimously in accordance with Clause 3.5.3 above and in his/ her absence the CEO, if any, appointed in accordance with Clause 3.5.4 above, acting under the supervision and direction of the Board of Trustees acting by majority consent, shall manage the Trust Fund.*

**4.6 In the event that it is decided to sell the whole or part of the Trust Fund including Family Controlled Businesses or in the absence of unanimity between the Trustees to continue to hold and operate the assets forming part of the Trust Fund including Family Controlled Businesses, the Trust Fund (or part thereof as decided by the Board of Trustees) shall be sold and the process of sale as described in paragraph 11 shall be followed.**

(Emphasis supplied)

54. Clause 4.1 is applicable in two different eventualities:-
- a) Where the defendant no.1 assumes the office of the Managing Trustee;
  - b) Where the defendant no.1 had predeceased Mr.K.K. Modi and Mr.K.K. Modi vacates the office of Managing Trustee.
55. Though the second part of Clause 4.1 states that in a meeting called within 30 days of any of the above two eventualities, the Board of Trustees shall meet, wherein the Board of Trustees shall decide



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‘unanimously’ in relation to the Trust Fund, including the family controlled businesses. However, on a conjoint reading of Clause 4.1 and 3.3 of the Trust Deed, it *prima facie* appears that the intent of the Settlor is that as long as defendant no.1 continues to be the Managing Trustee of the Trust, the requirement of unanimous consent of the Board of Trustee cannot kick-in.

56. Clause 4.1 read with Clause 4.3 of the Trust Deed, shows that where defendant no.1 assumes charge as a Managing Trustee, in a meeting called by her, it is she who will decide whether to continue with the Trust Fund, including the family controlled businesses, or to sell a part or the whole thereof. It is for this reason that Clause 4.3 of the Trust Deed further states that so long as the defendant no. 1 continues to act as a Managing Trustee, any decision to dispose of the Trust Fund, including Family Controlled Business, either under Clause 4.1.2 or under Clause 4.1.3, shall be taken only at the meeting convened by the defendant no. 1 in accordance with Clause 4.1 above. It is also for this reason that the option of Clause 4.1.1 is not mentioned as far as where the defendant no.1 is the Managing Trustee. If the decision in terms of Clause 4.1.2 and 4.1.3 of the Trust Deed could be taken by the Board of Trustees in a meeting called by the Defendant no. 1 in accordance with Clause 4.1, without it being in the Agenda Items of such meeting, there was no need to have Clause 4.3 in the Trust Deed.

57. Clause 4.3 of the Trust Deed further states that after Mr. K.K. Modi and the defendant no. 1 cease to be the Managing Trustees, such decision shall be taken only at a meeting of the Board of Trustees





which shall be convened specifically to decide on the action to be taken in terms of the options listed in Clause 4.1.1, 4.1.2, and 4.1.3 of the Trust Deed. The absence of option under Clause 4.1.1 for the first part of Clause 4.3 appears to show that the default option in the event of the defendant no. 1 taking over the reigns of the Trust is the continuation of the Trust under her. It is only in the event that she seeks a vote on options under Clause 4.1.2 and/or 4.1.3 that she shall seek such a vote in the meeting convened by her.

58. The plea of the plaintiff that as defendant no.4 refused to give his consent for the continuation of the family businesses or Trust Fund, the Trust must be dissolved, therefore, *prima facie* does not appear to be correct.

59. Mr. Salve has placed reliance on Clause 5.6.1(a), (p), (r), (t), and (x) of the Trust Deed to contend that the defendant no. 1 has to act in accordance with the unanimous consent of the Trustees. The said Clauses of the Trust Deed are reproduced hereinunder:-

*“5.6.1 The following powers shall be exercised by the Trustees only with the unanimous consent of all the Trustees of the Board in writing, whether personally present at a meeting of the Trustees or not:*

*a. Appointment of a Managing Trustee upon Mr.K.K. Modi and Mrs.Bina Modi vacating the office of the Managing Trustee;*

*xxxxx*

*p. Extension of the time period of 1 year for sale of the assets of the Trust Fund (Date of Distribution) after Mr. K.K. Modi ceases to be the Managing Trustee;*

*xxxxx*

*r. Decision on directorships/management*



*position of the members of K. K. Modi family after Mrs. Bina Modi ceases to be the Managing Trustee;*

xxxxx

*t. Exercise of the voting rights with respect to shares held by the Trust after Mrs. Bina Modi ceases to be the Managing Trustee; In the event there is no unanimity amongst the Board of Trustees, then voting will be done as per the majority decision of the Board of Trustees, or in the case of a deadlock, the CEO will decide the manner of exercising the voting rights. However, the sale process for sale of that particular company in respect of which there is either no unanimity or where there is a deadlock, shall start forthwith;*

xxxxx

*x. To exercise the right to appoint non retiring directors, Managing Directors, Chairman, etc. and to exercise the right to appoint proxies / authorized representative(s) under the provisions of Section 113 of the Companies Act, 2013, or otherwise, and to provide strategic guidance and supervision to the Chief Executive Officer / Managing Director / Manager / Whole-time Director / Chief Financial Officer / Company Secretary of the Companies controlled and /or managed by the Trust including right to convene shareholders meeting for any permissible purpose, right to appoint and remove such key management personnel and to determine the terms and conditions of appointment and removal.”*

60. At this stage itself, it may be important to note the reliance of Mr.Salve on Clause 5.6.1(x) to submit that even the Managing Director is to be appointed by unanimous consent of the Board of Trustees. While that be so, as noted hereinabove, the Clause requiring a unanimous consent of the Board of Trustees becomes operative only



after the defendant no.1 ceases to remain the Managing Trustee of the Trust. Therefore, as long as defendant no.1 is the Managing Trustee, it is she alone who shall have the power to manage and control the family businesses and the Trust Fund. The same applies to other Clauses of Clause 5.6 of the Trust Deed.

61. Mr.Salve has also placed reliance on Clause 2.8 of the Trust Deed, which reads as under:-

*"2.8 "Date of Determination to Sell" shall mean the earliest of:*

*2.8.1 the date on which Mr. K. K. Modi, as the Managing Trustee decides to sell the whole or part of the Trust Fund at his discretion (which decision will be expressed in writing to all the Trustees);*  
*or*

*2.8.2 after Mr. K. K. Modi vacates the office of the Managing Trustee, the earlier of the following :*

*a. the date on which the Board of Trustees convene a meeting in accordance with Clause 4.1 hereunder, and at which meeting the Board of Trustees decide to dispose of the whole or any part of the Family Controlled Businesses and other assets constituting the Trust Fund pursuant to Clause 4.1.2 or 4.1.3;*  
*or*

*b. the date of the meeting of the Board of Trustees, if the Board of Trustees are unable to take any one of the decisions stated in clauses 4.1.1 to 4.1.3; or*

*c. if, at any time after Mrs. Bina Modi vacates the office of the Managing Trustee, at any meeting of the Board of Trustees one or more of the Trustees,*



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*notifies the Board of Trustees in writing of the instructions from one or more Head of a Branch to the Board to dispose of the entire share of such branch in the Trust Fund and places before the Board of Trustees the intimation received by the Trustee from the concerned Head of the Branch setting out the instruction to dispose of its entire share in the Trust Fund then the date of such meeting of the Board of Trustees.”*

62. A reading of the above Clause would indicate that after Mr.K.K. Modi vacates the office of Managing Trustee, it is the decision of the Board of Trustees, to either unanimously decide to dispose of the whole or part of the family controlled businesses, or on them being unable to come at such a decision, that shall act as a trigger point for the disposal of the Trust Fund in accordance with Clause 11 of the Trust Deed. The said Clause has to be read along with other Clauses of the Trust Deed and *prima facie* Clause 2.8.2 shall come into operation only where defendant no.1 is not the Managing Trustee of the Trust upon the vacation of the office by Mr.K.K. Modi or his demise.

63. Section 11 of the Trust Act obliges a Trustee to fulfil the purpose of the Trust and to obey all the directions of the author of the Trust given at the time of its creation, except as modified by the consent of ‘*all the beneficiaries*’. Section 14 prohibits a Trustee from setting up any title to the trust property which is adverse to the interest of the beneficiaries. Section 19 of the Trust Act binds the Trustee to keep clear and accurate accounts of the trust property and at all



reasonable times, at the request of the beneficiary, to furnish him with full and accurate information as to the amount and state of the trust property. Section 48 of the Trust Act is relevant to the controversy raised in the present suit/application and is reproduced hereinunder:-

*“48. Co-trustees cannot act singly.—When there are more trustees than one, all must join in the execution of the trust, except where the instrument of trust otherwise provides.”*

64. In the present case, as it is the case of the defendant no.1 that the Trust Deed itself provided for the decision of the defendant no.1 to be final and binding on all the Trustees, the defendant no.1 is not bound to seek consent of all the Trustees/Board of Trustees, *prima facie* appears to be worthy of acceptance.

65. Section 51 of the Trust Act, on which much reliance has been placed by Mr. Salve, reads as under:-

*“51. Trustee may not use trust property for his own profit.—A trustee may not use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.”*

66. A Trustee, therefore, is prohibited from using or dealing with the trust property for his/her own profit or for any other purpose unconnected with the Trust. Mr. Salve places reliance on the Judgment of the House of Lords in **Boardman** (supra), and has contended that this prohibition shall also extend to any profit being made by a Trustee due to his benefit of such a position.

67. In my opinion, however, while there is no caveat to the proposition urged by Mr.Salve, in the facts of the present case, it may



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not be applicable. As noted hereinabove, it is the case of the defendant no.1 that Mr.K.K. Modi, while he was the Managing Trustee of the Trust, not only remained the Managing Director of the GPIL, but also drew remuneration therefrom. There was no protest on the same by the plaintiff. The defendant no.1 also assumed the office of GPIL as a Managing Director on the demise of Mr.K.K. Modi and on her assuming the office of Managing Trustee of the Trust, she also drew remuneration right from 2019, and again, without protest from the plaintiff. The remuneration drawn by the defendant no.1 in her position as a Managing Director of GPIL, even assuming the same to be accounted for as a Trust Fund, can only lead to a claim of accounts by the plaintiff. It may not lead to a claim for removal of defendant no.1 from her position as a Managing Trustee of the Trust or as a Managing Director of GPIL. It is also to be remembered that defendant no. 1 is herself also a beneficiary under the Trust.

68. As has been contended by Mr.Salve, and even reflected in the Trust Deed itself, the other Trustees are also holding positions of Directors/Managing Directors of family controlled businesses/companies and are drawing remunerations from such positions without any protest by the others.

69. In any event, these are matters which may require evidence and, only on this ground, the defendant no.1 cannot be restrained from being voted as a Managing Director of GPIL.

70. In *Caldicott* (supra), the Chancery Division dealt with similar points and submissions and observed as under:-

*“137. However, this point needs to be*



*considered in the wider context. Yvonne would have been fully aware of Mrs Pearson's involvement in running the business and her attachment to it. Mr Caldicott was not involved in the management and resigned his consultancy at the time the new will was made. It follows that Yvonne knew about the inherent conflict and intended it. In the words of Lord Blackburn there is a "reason to the contrary" discernible from "the intentions of the framer of the trust". Furthermore, it is clear that Yvonne discussed her wishes with Mrs Pearson before her death, including her wish to ensure that the interests of David Alexander are looked after in due course.*

*138. It is also important to have regard to what the consequences would be of replacing the trustees, and not to lose sight of what this dispute is really about.*

*139. New trustees might be more active in, for example, scrutinising the accounts and activities of Wyvern and IoSHV. However, in the absence of a serious issue, such as a material breach of directors' duties or other grounds for an unfair prejudice petition, they will not be able to disturb the status quo. With a 50% shareholding they will be able to block significant changes but will not be able to force them through, and in particular they will not be able to dismiss and appoint directors. The companies will simply be deadlocked. Any concerns about friction or an absence of harmony will certainly not be resolved.*

*140. This dispute is not really about achieving a deadlock, the practical result of which would be to allow the business to continue as it is for the time being. What the claimants really want is to undermine Mrs Pearson's position and force her to sell out altogether, as Mr.Caldicott proposed in late 2015. Having not been involved in the management of the business for a number of years, Mr Caldicott*



*has now decided that it should be part of his family's legacy. He wants control, and he would need control to implement his development plans. However, that is not a good reason to replace the trustees.*

*141. Mr Sawyer emphasised the lack of harmony between the trustees and beneficiaries. This is obviously referred to by Lord Blackburn and was discussed in some detail in *Re Weetman* [2015] EWHC 1166 (Ch), where HHJ Purle QC (sitting as a High Court judge) focused on an absence of harmony, and a potential for conflict, in deciding to replace trustees. However, the existence or otherwise of harmony is not necessarily determinative. The key question, as already discussed, is whether continuance of the relevant trustee in office would prevent the Trust from being properly executed in the interests of the beneficiaries, taking account of the perspective of the settlor.”*

71. In ***Boardman*** (supra), the appellant therein when offered to buy the shares or bought them, did not act or purport to act as agents of the trustees, however, gained knowledge that helped them in assessing the transaction, only because they were representing the trust in the negotiations. In such circumstances, the House of Lords held that the appellant was bound to give accounts of profits made to the Trust. In the present case, however, the Trust itself recognises the Trustees to be holding office of profit, so to speak, in various companies controlled by the Trust. Therefore, there is an implicit approval of the Trustees and the Beneficiaries to make such profit.

72. In ***re Brooke Bond & Co.*** (supra), the Court was dealing with the position of the “custodian trustees”, which would be different from the ordinary trustee appointed under the Trust Deed. The Judgment,





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therefore, may not have any application in the facts of the present case.

73. In the present case, as noted hereinabove, the gist of the controversy lies in the claim of the plaintiff *qua* the claim of the plaintiff that the Trust Fund must be liquidated and the money received from the sale proceeds of the Trust Fund and other business run by the family be distributed. At this stage, the plaintiff has failed to establish a *prima facie* case and show as to how the appointment of defendant no.1 as the Managing Director of GPIL would cause irreparable loss to the plaintiff.

74. The submission of the plaintiff that defendant no.1 is not giving proper accounts or is otherwise acting against the mandate and intent of the Trust are questions that would require in-depth analysis in the other applications that have been filed by the plaintiff. For the present, at the stage of this application, this Court does not render its opinion on the same.

75. As far as the submissions of the learned counsel for the defendant no. 3 are concerned, it need only be noted that the present is not an application filed by the defendant no. 3. The defendant no. 3 has also filed his independent Suit and therefore, cannot be heard to agitate his grievance with respect to his non-appointment as a Director of GPIL in the present application.

**Conclusion:**

76. For the reasons mentioned hereinabove, I find no merit in the present application. The same is dismissed. It is, however, directed



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that defendant no.1 shall, on a half yearly basis, file an affidavit disclosing all remuneration and other benefits received by her in her position as a Managing Director of GPIL. In case a direction is passed, at any stage of this Suit, that her appointment as a Managing Director of GPIL was against the terms of the Trust Deed or the Trust Act, she shall immediately tender her resignation from the said position and not claim any equity only because of the dismissal of the present application. This shall also be informed during the AGM of GPIL, which is scheduled to be held on 06.09.2024.

77. It is reiterated that any observations in the present order are only *prima facie* in nature and confined only to the present application and shall not in any manner prejudice either of the parties in the adjudication of the other applications or the Suit.

**CS(OS) 493/2024 & I.A. 31728/2024, 32679/2024, 35675/2024, 37374/2024, 37401/2024 & 37402/2024**

78. List on 22<sup>nd</sup> October, 2024.

**NAVIN CHAWLA, J**

**SEPTEMBER 5, 2024/Arya/rv/VS**

*Click here to check corrigendum, if any*