NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No.93 of 2022

(Arising out of Order dated 01.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, C.P.-71(/241-242)/PB/2020)

IN THE MATTER OF:

Major Atul Dev (Retd.) & Ors. ... Appellants

Versus

Union of India,
Ministry of Corporate Affairs Through Regional
Director (North Region) & Ors. ... Respondents

Present:

For Appellants : Mr. Krishnendu Datta, Sr. Advocate with Mr. Gaurav M. Libehran, Mr. Arun Singh Rawat, Mr. Angad Mehta, Mr. Akhil Nene, Mr. Arsh, Mr. Rahul Divedi, Mr. Komal Gupta, Ms. Akariti, Advocates.

For Respondents : Mr. U.K. Chaudhary, Sr. Advocate with Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Jeezan Pakliwal, Mr. Sanjay Shorey and Mr. Vinod Sharma, Advocates for R-1/UOI.

Mr. Prateek Kumar, Ms. Raveena Rai and Ms. Moha Paranjpe, Advocates for Delhi Gymkhana Club.

Col. A Khanna (Retd.), SM, Advocate for R-18.

Ms. Niji Sapra, SFIO Complainant.

With

Company Appeal (AT) No.141 of 2022

(Arising out of Order dated 01.04.2022 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, C.P.-71(/241-242)/PB/2020)

IN THE MATTER OF:

Rajeev Sabharwal ... Appellant

Versus

Union of India, M.C.A.,
Through Regional Director (Northern Region) & Ors.. ... Respondents

Present:

For Appellant	**:**	**Mr. Kailash Vasdev, Sr. Advocate with Ms. Ruchi Singh, Ms. Aastha Advocates.**
For Respondents	**:**	**Mr. U.K. Chaudhary, Sr. Advocate with Mr. Raunak Dhillon, Ms. Isha Malik, Mr. Jeezan Pakliwal, Mr. Sanjay Shorey and Mr. Vinod Sharma, Advocates for R-1/UOI.** **Mr. Prateek Kumar, Ms. Raveena Rai and Ms. Moha Paranjpe, Advocates for Delhi Gymkhana Club.** **Col. A Khanna (Retd.), SM, Advocate for R-18.** **Ms. Niji Sapra, SFIO Complainant.**

J U D G M E N T

ASHOK BHUSHAN, J.

These two appeals have been filed challenging the same order dated 1st April 2022 passed by the National Company Law Tribunal, Principal Bench (hereinafter referred to as the "**NCLT**") in C.P.-71/241-242/PB/2020. The impugned order has been passed by the NCLT in petitions filed under Section 241-242 of the Companies Act, 2013 (hereinafter referred to as "the 2013 Act"). By the impugned order, the NCLT has allowed the petition filed by the Union of India permitting the Union of India to nominate 15 number of persons as Directors in General Committee of Delhi Gymkhana Club Limited. The appellants in these appeals being Members of the Delhi Gymkhana Club Limited who were permitted to intervene in the proceedings, feeling aggrieved by the impugned order, have come up in these appeals.

2. Brief background facts giving rise to these two appeals are as follows;

(a) The Delhi Gymkhana Club Limited (hereinafter referred to as 'the Company') was incorporated as Company Limited under Section 26 of the 1913 Act on 14.07.1913 which corresponds to Section 8 of the 2013 Act. A perpetual lease admeasuring 27.03 acres situate at 2, Safdarganj Road, New Delhi was granted to the Company vide lease deed dated 20th February, 1928. The Government of India, Ministry of Corporate Affairs vide order dated 16th March, 2016 directed for conduct of an inquiry/technical scrutiny under Section 206(4) of the 2013 Act. In pursuance of the order dated 16th March, 2016, an inspection of the Company was carried out from January, 2019 to July, 2019. A detailed report dated 31st July, 2019 was submitted with regard to the Company. In the inspection report, details regarding background of the company, the main activities of the Company, the object for which the Company was established, were noticed. The business activities, membership of the company, management of the Company, financial position etc. were also noted in the inspection report. The details of the complaints, which were received, were also noticed in the report. The Inspectors before submitting the report, have also given opportunity to the Company's Directors and auditors. The inspection report was divided into several parts. Part-A dealt with "violation of the 2013 Act under the purview of the Central Government"; details of the membership

and other details. Several instances of mismanagement were noted. A supplementary report dated 3rd March, 2020 was submitted to the Ministry of Corporate Affairs detailing numerous violations. After receipt of the report, a letter dated 4th March, 2020 was submitted recommending filing of petition under Section 241-242 of the 2013 Act. A letter dated 18th March, 2020 was issued by the Union of India indicating sanction of the competent authority for filing a petition under Section 241-242 of the 2013 Act.

(b) On 22nd April, 2020, a petition under Section 241-242 of the 2013 Act was filed by the Union of India on which the NCLT issued notices. On 24th April, 2020, time was allowed to file reply. Certain interim directions were also issued by the NCLT directing that the Club will neither take any policy decision nor it will accept any new application of membership. On 10th May, 2020, a preliminary objection was raised by means of an application with regard to maintainability of the petition. A separate application was also filed praying for dismissal of the petition on the ground of not being maintainable.

(c) The Union of India of India filed its reply to the preliminary objection raised by the appellants. On 26th June, 2020, the NCLT passed an order directing the Union of India to appoint two members to monitor the Company along with other General Council Members and give suggestion to the General

Council and also directed the Union of India to inquire into the affairs of the Company.

(d) An appeal was filed by the Company being Company Appeal (AT) No.95 of 2020 before the Appellate Tribunal challenging the order dated 26th June, 2020. On 15th February, 2021, the Appellate Tribunal dismissed the appeal filed by the Company upholding the order dated 26th June, 2020. An appeal was filed before Hon'ble the Supreme Court by one of the Appellant in these Appeal, in which Hon'ble the Supreme Court passed an order dated 30th September, 2021 directing the NCLT to decide the matter expeditiously and provided a time of four months to the NCLT to dispose of the matter, failing which Administrator was to conduct elections. On a misc. application, Hon'ble the Supreme Court vide order dated 11th March, 2022 further granted four weeks' time for disposal of the petition. On 1st April, 2022, the NCLT allowed the petition filed by the Union of India. Aggrieved against the said judgment, these two appeals have been filed.

3. The NCLT vide impugned judgment and order, has issued following directions:-

> "1. The petition is allowed and the Central Government is permitted to nominate 15 number of persons to be appointed as Directors on the General Committee of Respondent No. 1-Company and manage the affairs of the Company in

accordance with the memorandum and Articles of Association and the Companies Act, 2013.

2. Such Directors so appointed as above will file a report with this Tribunal, once in three months or whenever required.

3. They are directed to take all actions for restructuring the Respondent No. 1-Company in terms of the memorandum and Articles of Association and take corrective measures which are in violations of the memorandum and Articles of Association and the Companies Act, 2013.

4. A duly authorized person of the newly appointed Directors who form the General Committee of the Respondent No.1-Company will file the report including financial report as indicate above or when required.

5. The present Administrator or any other person(s)/who may be in-charge of Respondent No.1- Company/Club will hand over charge to the newly appointed Directors of the Respondent No. 1-Company forthwith.

6. The new Directors of the General Committee appointed by the Government in terms of this order shall file a report before this Tribunal immediately on taking over charge of the Respondent No. 1-Company/Club.

4. Company Appeal (AT) No. 93 of 2022 has been filed by 7 appellants who were members of the Club. Company Appeal (AT) No. 141 of 2022 has been filed by Rajeev Sabharwal, a member of the Club. The reliefs sought in Company Appeal (AT) No. 93 of 2022 are as under:-

"A. That this Hon'ble Appellate Tribunal be pleased to quash and set aside the Impugned Order dated April 1, 2022 passed by the Ld. National Company Law Tribunal, Principal Bench, New Delhi.

B. That this Hon'ble Appellate Tribunal may pass such other and further order(s) and direction(s) as it deems fit"

5. The reliefs sought in Company Appeal (AT) No.141 of 2022 are as follows:

"a) Admit and allow the present Appeal and set aside the against the final order and judgment dated 01.04.2021 passed by the Hon'ble National Company Law Tribunal in Petition No. C.P.-71/241-242/PB/2020 titled "*Union of India vs. Delhi Gymkhana Club Ltd. & Ors.*";

AND/OR IN THE ALTERNATIVE AND WITHOUT PREJUDICE

b) Amend the final order and judgment dated 01.04.2022 passed by the Hon'ble National Company Law Appellate Tribunal in Petition No. C.P.- 71/241-242/PB/2020 titled "*Union of India vs. Delhi Gymkhana Club Ltd. & Ors.*"to the extent that

(i) Allow a duly elected Board of Directors to manage the club with suitable checks and balances. Suitable timelines may be drawn for the board of Directors to correct anomalies under NCLT's guidance. Additional government appointed directors may be nominated if considered essential.

(ii) The management of the present GC appointed by the Central Government be directed to hold elections to elect a new General Committee

c) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper to meet the ends of justice."

6. We have heard Sri Krishnendu Dutta, learned Senior Advocate for the appellants in Company Appeal (AT) No. 93 of 2022, Sri Kailash Vasudev, learned Senior Counsel has appeared for the appellant in Company Appeal (AT) No. 141 of 2022. Sri U.K. Chaudhary, Senior Advocate and Sri Raunak

Dhillon have appeared for the Union of India. We have also heard, learned counsel appearing for respondent No.2, the Delhi Gymkhana Club Limited. The respondent No.3 to 17 were the members of the General Committee of the Club in the year 2020 and 2021 and have been arrayed as proforma respondents in Company Appeal (AT) No.93 of 2022. The respondent No.18, Col. Ashish Khanna (Retired) was the Secretary of the Club on the date of filing of the Application by the Union of India, whose services were subsequently terminated by the Club on 4th August, 2020. Col. Ashish Khanna has appeared in person and has also made submissions. One Ms. Niji Sapra has also appeared in person.

7. The submissions advanced by the learned counsel for the parties in Company Appeal (AT) No. 93 of 2022 and Company Appeal (AT) No. 141 of 2022 as substantially same, the arguments are being noted as arguments of the appellants. Three additional submissions made in Company Appeal (AT) No. 141 of 2022 shall be additionally noticed.

8. Learned counsel for the appellants challenging the impugned order, contends that twin conditions under Section 241(2) of the 2013 Act being not satisfied, the NCLT committed error in passing the impugned order allowing the petition. The twin conditions fulfilment of which is required, are (a) The Central Government has to establish that the affairs of the Company are conducted in a manner which are prejudicial to the public interest; and (b) it has come to form an opinion about the aforesaid. It is submitted that there is no opinion formed by the Central Government in terms of Sections 241(2) of the 2013 Act and the document dated 18th

March, 2020 and 4th March, 2020 cannot be held to be an opinion of the Central Government. It is submitted that formation of opinion under Section 241(2) of the 2013 Act is not mere formality. The Central Government has to apply its mind to the materials before it and has to give a reasoned opinion for filing a petition under Section 241-242 of the 2013 Act. The memorandum dated 18th March, 2020 does not constitute an opinion within the meaning of Section 241(2) of the 2013 Act. Even if the letters dated 18th March, 2020 and 4th March, 2020 are treated as an opinion, clearly there is no application of mind by the Central Government and the application of mind is sine qua non for opinion. Mere reference of materials is not sufficient to constitute an opinion.

9. It is further submitted that a company incorporated under Section 8 of the 2013 Act corresponding to Section 26 of the 2013 Act is a company not incorporated for a public purpose nor can public interest be assumed in every Section 8 company. The objects as enumerated in Section 8 of the 2013 Act cannot be read as public interest/public purpose. "Sports" as an object was introduced for the first time only in the year 2013. The Central Government cannot be permitted to take advantage of a newly introduced term and apply the same retrospectively which was incorporated in 1913 legislation. The fact that the land which was leased to the Company, was owed by the Union of India does not *ipso facto* translate into public interest. For the perpetual lease deed the company/club had paid an amount of Rs.5,460/- with yearly rent. The lease deed itself makes it clear that the land has not been leased to the Club either for public or for public purpose.

The mere fact that the Club/Company has been given on perpetual lease an area of 27.3 acres on which it can function or carry out its activities cannot involve public interest.

10. It is further submitted that the petition under Section 241-242 of the 2013 Act neither pleads nor establishes that the affairs of the Club concern the general public as a whole or the public as a whole has any pecuniary interest affecting their legal rights or liabilities in relation to the management and affairs of the Club. There is no foundation in the petition for the relief granted. The NCLT fell in error in holding that the primary object of the Club is sports. The findings of the NCLT of the alleged financial irregularities are baseless. With regard to the membership of the Club, it is submitted that grant or non grant of membership cannot be subject matter of a petition under Section 241-242 of the 2013 Act. No element of public interest is involved with respect to membership of the Club. The membership of the Club is an internal matter of the Club, the right of admission being reserved. The green card holders and UCP holders are not membership categories which has been relied in the inspection report as well as by the NCLT as violation of articles of association of the Club. The green card holders are those individuals who are using the Club premises as a dependent of a permanent member after attaining the majority of 21 years and wishes to continue to use the Club. They do not become automatically a member of the Club. Use of green card does not constitute a separate class of permanent voting, they must await their turn in the queue to get full-fledged permanent voting membership in the Club. The

number of permanent voting Members continues to remain 5600 and neither green card nor UCP nor eminent category can be treated as permanent Members of the Club. The ground given by the NCLT that asking deposit from the common pubic who applies for Membership violates Section 58A of the 2013 Act and the provisions of the Companies (Acceptance of Deposit) Rules, 1975 is erroneous. The collection and use of registration fees does not violate the Articles of Association or the 2013 Act. It is further submitted that jurisdiction under Section 241-42 empowers the NCLT to pass appropriate orders "with a view to end the matters complained of". The NCLT thus was required to put the matter to an end but by the impugned order the NCLT has appointed a Committee and in essence delegated its jurisdiction to the said Committee to bring to an end the matter complained of which is in excess of jurisdiction of the NCLT. The appointment of 15 Members General Council is an appointment which is to continue in perpetuity without any time limit prescribed.

11. Learned counsel for the appellant referring to the orders passed by Hon'ble the Supreme Court dated 30.9.2021 and 11.3.2022, has contended that Hon'ble the Supreme Court intended that new elected committee would be installed within four months if the NCLT is unable to conclude the proceedings within four months. It is submitted that Hon'ble the Supreme Court clearly intended that elected committee of the Club would be installed to run the affairs of the Club. The NCLT has not followed the spirit and intent of the order of Hon'ble the Supreme Court dated 30.9.2021 and 11.3.2022. The 15 Members committee appointed by the impugned

order cannot be allowed to continue in perpetuity. The final order passed by the NCLT dated 1st April, 2022 is in nature of an interim order under Section 242(4) of the 2013 Act and not a final order under Section 241(1) and 242(2) of the 2013 Act. Learned counsel for the appellants reiterating his submission has submitted that twin conditions which are to be fulfilled for invoking jurisdiction under Section 241(2) being not present, the order impugned is without jurisdiction and could not have been passed in exercise of power under Section 241(2) of the 2013 Act.

12. Sri Kailash Vasudev, learned Senior Advocate appearing for the appellant in Company Appeal (AT) No.141 of 2022, has contended that there is no allegation that any Member of the General Council or any Member of the Club has enriched himself. The amount deposited by the persons desirous of taking membership of the Club were voluntarily deposited which was refundable. The new committee which has taken the charge in pursuance of the impugned order has increased the charges. The management of the Club prior to its supersession has carried various sports activities. The green card holders were not given membership. They are in queue for membership. The issue raised in the petition under Section 241-242 does not establish any case for passing the impugned order.

13. Learned counsel for the Union of India submits that company petition under Section 241(2) of the 2013 Act was filed before the NCLT after forming an opinion that the affairs of the Company were being carried out in a manner prejudicial to the public interest and such opinion was based on relevant materials. The opinion formed and communicated vide

letter dated 18th March, 2020 to file company petition, was formed after following a step by step process of carrying out a thorough inspection into the affairs of the Club. The inspections were carried out after issuance of summons to the Club as well as its Members and thereafter recommendations were made. The opinion formed communicated by letter dated 18th March, 2020 was formed after perusing various recommendations and observations made by the functionaries at lower levels including the observations in the inspection report, supplementary inspection report as well as the recommendations in the letter dated March 4, 2020. It is submitted that pursuant to receipt of several complaints starting from 2014 with regard to mismanagement, irregularities, misuse of funds, fudging of financial statements etc. in the functioning of the Club, vide letter dated 16th March, 2016 direction was issued to carry out an inspection under Section 206(4) of the 2013 Act into the affairs of the Club for the financial year 2012-2013 to 2017-2018. There were preliminary inspection report, inspection report and supplementary inspection report. Upon considering the aforesaid, the Ministry of Corporate Affairs vide letter dated 12th September, 2019 directed for a supplementary inspection specifically on the issues (a) allotment of membership; (b) registration fee; (c) accounting treatment of the registration fee; (d) investments made by the Club from the amount received as registration fee; and (e) processing charges received by the Club from the new applicants. The Inspecting Officers asked the Club to furnish various documents including details of type of membership granted and the registration fee charged. The entry fee

fixed in the Article of Association is Rs.25,000/- and no registration fee beyond the said amount can be collected. The collection of registration fee of an amount running into lacs is a deposit violating the provisions of 2013 Act and the Acceptance of Deposit Rules. There were several other financial irregularities committed by the Club which was noticed in the inspection report and the supplementary inspection report. The appointment of permanent members as Auditors of the Club is violative of Section 141(3)(d)(i) of the 2013 Act. The provisions of Article of Association regarding membership have been violated. The Company has created several categories of membership like Green Card, UCP Holder, NRI, Eminent Card Holders etc. which are not as per the Article of Association of the Company.

14. It is further submitted that it is true that the opinion which is to be formed by the Central Government for taking action under Section 241(2) of the 2013 Act is subjective opinion and there has to be sufficient material with regard to the same. There were sufficient materials, which were collected during long inspection and supplementary inspection, to form an opinion. The submission of the appellants that there was no sufficient materials for forming an opinion is wholly erroneous and against the record. The submission of the appellants that there was no element of public interest is incorrect in the facts of the present case. As per the Memorandum of Association the main object of the Club is 'to promote polo, hunting, racing, tennis and other games, athletic sports and pastimes'. The object listed in Clause 3(a) of the Memorandum of Association is in relation

to “sports”. The promotion of sports being main object of the Company, the Club has to carry on its business in alignment with the main object. The Club being a Section 8 Company under the 2013 Act, is a non profit company and has to carry out its functioning in public interest. The Club is operating on a land owned by the Government of India in pursuance of the lease dated 2nd February, 1928 which consists of an area of 27.03 acres situated at 2, Safdarjung Road, New Delhi i.e. in heart of New Delhi. Functioning of a Section 8 Company has to be as per Section 8. From the statement of income and expenditure account of the company during the financial year 2014-15 to 1018-19, out of total income earned in the respective financial years, there was no income directly from sports and the expenditure of the company towards sports was only 3%. Collecting money from desirous persons and keeping such members to wait for several years, some time running into 36 years, is against the public interest. Running of the Club in violation of Article of Association and provisions of the 2013 Act is again an action in derogation of the public interest. The appellants company being a Section 8 company cannot act in derogation of its primary object.

15. The orders of Hon’ble the Supreme Court on which reliance has been placed by the learned counsel for the appellants, were orders directing the NCLT to hold the election in the event the NCLT is not being able to conclude the petition within a stipulated time period. In the present case, the NCLT has concluded the proceedings within the time allowed along with the extended time, hence there was no direction of Hon’ble the Supreme

Court for conducting the election. The intent of the impugned judgment was for the General Council to undertake all necessary actions, under the aegis and guidance of the NCLT which would be brought on record by way of status update reports. Eight status update reports have been submitted so far bringing before the NCLT various action taken by the General Council appointed by the impugned order. The General Council has in no manner usurped the power of the NCLT. The NCLT has retained its superintendence by directing for filing update status report within every three months. The submission that the NCLT has delegated its jurisdiction to the Committee is not correct. The management of the Club having acted in violation of the Article of Association as well as the 2013 Act, the NCLT has rightly exercised its jurisdiction under Section 241-242 of the 2013 Act. Corrective measures are being taken by the General Council appointed by the impugned order. The NCLT after considering all reports and materials on record, has rightly exercised its jurisdiction as the Club had violated Article of Association with regard to membership and several acts of the Club were in violation of the Article of Association.

16. Learned counsel appearing for the Club submits that in pursuance of the order of the NCLT dated 1st April, 2022, six persons were nominated in the Board. At present, General Committee consists of eight persons appointed. The General Committee appointed by the NCLT has filed eight detailed status update reports in compliance of the impugned order. Various steps have been taken by the General Committee to restructure the functioning of the Club. The Club has turned profitable from the financial

year 2022-2023 onward. The KYC record of the members has been updated and the administrative facilities have been improved. The Administrator has found 125 green cards issued to over-aged dependent of the Members whose membership was terminated on 31st March, 2022.

17. Learned counsel for respondent No.2 has referred to various proactive steps taken by the General Committee appointed by the NCLT.

18. Col. Ashish Khanna, respondent No.18, has appeared in person and has raised submission. Respondent No.18 has made allegations against the Members of the General Committee during the period 2013-2018. Allegation of corruption has been made by respondent No.18. It is contended that NCLT has not fixed any individual responsibility despite glaring proof. Respondent No.18 further contends that several violations were committed which were found during the inspection conducted by the Ministry of Corporate Affairs. It is also contended that despite according of sanction for prosecution of the General Committee under Section 447 of the 2013 Act, no action has yet been initiated nor any prosecution has been launched. Respondent No.18 was the Secretary of the Company from 17th April, 2018 till his illegal termination on 4th August, 2020. He had filed IA No.1770/2020 in the NCLT as serving Secretary bringing on record gross violation of Article of Association and scam in the Company. Respondent No.18 has also pointed out various irregularities and has made serious allegation against the ex-general Committee Members. He has also prayed for witness protection.

19. Ms. Niji Sapra has also appeared and referred to a criminal complaint filed before the Metropolitan Magistrate and contended that she has supported the Union of India in the proceedings and she is also entitled for witness protection.

20. From the submissions of learned counsel for the parties and the materials on record, the following questions arise for consideration in these appeals:-

(I) What are the requisite conditions precedent for invoking provisions of Section 241(2) of the Companies Act, 2013?

(II) Whether the requisite conditions precedent within the meaning of Section 241(2) of the Companies Act, 2013 in the application filed by the Union of India under Sections 241and 242 are met i.e. (i) formation of opinion by the Central Government under Section 241(2); and (ii) that the affairs of the Company are being conducted in a manner prejudicial to the public interest?

(III) Whether there was sufficient materials on the record for formation of requisite opinion under Section 241(2) by the Central Government?

(IV) Whether affairs of the Company (Delhi Gymkhana Club) were being conducted in a manner prejudicial to the public interest so as to enable the Central Government to file an application under Section 241(2) of the 2013 Act?

(V) Whether the impugned order dated 1st April, 2022 is in nature of interim order under Section 242(4) and not a final order?

(VI) A Whether the impugned order does not record any finding for exercising jurisdiction under Section 242 of the Companies Act, 2013?

(VII) Whether the NCLT vide its impugned judgment has delegated its jurisdiction to the 15 members committee which was to be nominated by the Central Government in pursuance of the impugned order?

(VIII) Whether the supersession of the management of the Company by 15 members committee to be nominated by the Central Government without providing for any time period or course of action with a view to bringing to an end the matters complained of requires interference by the Appellate Tribunal?

(IX) To what relief, if any, the appellants are entitled in the present appeals.

(X) Course of Action with a view to bringing to an end the matters complained of

Question No.I

21. The application, which was filed by the Union of India, was filed under Section 241-242 of the 2013 Act. Section-241-242 of the 2013 Act are contained in Chapter XVI of the 2013 Act. Section 241 of the 2013 Act is as follows:-

"**241.** (1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

22. As indicated by the heading of Chapter XVI i.e. "Prevention of Oppression and Mismanagement", the object of an application under Section 241 of the 2013 Act is for relief in cases of oppression and mismanagement. A perusal of Section 241(1) indicates that entitlement is given to Member of a Company on fulfilment of conditions as contemplated under Section 244 of the 2013 Act to apply to the Tribunal. Sub section (2) of Section 241 of the 2013 Act empowers the Central Government to apply

to the Tribunal for an order under Chapter XVI "**if it is of the opinion that the affairs of the Company is conducted in a manner prejudicial to the public interest**".

23. Section 242 of the 2013 Act enumerates various nature of orders which may be passed under this section "without prejudice to the generality of the power under sub-section (1). Relevant provisions of Sub-section (2) of Section 242 of the 2013 Act are as follows:-

> "241(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—
>
> (a) the regulation of conduct of affairs of the company in future;
>
> (h) removal of the managing director, manager or any of the directors of the company;
>
> (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
>
> (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made."

24. Sub-section (4) of Section 242 of the 2013 Act empowers the Tribunal to pass an interim order. Sub-section (4) of Section 242 is as follows:-

> "242(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable"

25. The scheme of the 2013 Act indicates various checks and balances of a company which is registered under the 2013 Act. Various powers are retained with the Central Government to ensure compliance of the provisions of the 2013 Act by the company in addition to rights given to the Members as per Section 241(1) of the 2013 Act, the Central Government has also been empowered to apply to the Tribunal for an order. What are the conditions precedent for applying to the Tribunal for an order, is a question to be answered. The very language of the Statute as contained in Section 241(1) indicates that there are two conditions precedent which entitles the Central Government to apply to the Tribunal for an order. They are – (i) if it is of the opinion; (2) that the affairs of the Company are being conducted in a manner prejudicial to the public interest.

26. Learned counsel for the appellants has referred to and relied upon a judgment of Hon'ble the Supreme Court in **Tata Consultancy Service Limited vs Cyrus Investment Private Limited reported in 2021(9) SCC 449**. In the said case Hon'ble the Supreme Court had occasion to consider the provisions of Sections 241 and 242 of the 2013 Act. In the above judgment, Hon'ble the Supreme Court has placed the legislative history pertaining to oppression and mismanagement as contained in Chapter XVI of the 2013 Act. The appeal before Hon'ble the Supreme Court arose out of an order from an application under Section 241-242 of the 2013 Act filed by Cyrus Investment Private Limited and others, the respondent in the appeal before Hon'ble the Supreme Court. The provisions contained in Section 153C of the Indian Companies Act, 1913, which were inserted by

Amendment Act 58 of 1951, the provisions of Sections 397, 398 and 402 of the Companies Act, 1956 have been noticed in the said judgment. The change of language and the consequential changes and parameters in all the three Statutes i.e. 1913, Act, 1956 Act and 2013 Act have been noticed in paragraph 86 of the said judgment, which is as follows:-

> "**86.** The change of language and the consequential change of parameters for an inquiry relating to oppression and mismanagement from 1951 to 1956 and from 1956 to 2013 and thereafter can be best understood, if the anatomy of the statutory provisions are dissected and presented in a table:

1913 Act (after the Amendment Act 52 of 1951)	*1956 Act (with the amendment made under Act 53 of 1963)*	*2013 Act*
(1) Company's affairs *are being conducted* in a manner— (*a*) Prejudicial to the company's interest; or (*b*) Oppressive to some part of the members; and (2) Winding up will unfairly *and materially prejudice the interests of the company's or any part of its members*. (3) The object should be to bring to an end, the matters complained of."	(1) Company's affairs *are being conducted* in a manner— (*a*) Prejudicial to public interest; or (*b*) Oppressive to any member or members; or (*c*) Prejudicial to the interests of the company; and (2) Winding up will unfairly prejudice *such member or members*.	(1) Company's affairs *have been or are being* conducted in a manner— (*a*) Prejudicial to any member or members; (*b*) Prejudicial to public interest; or (*c*) Prejudicial to the interests of the company; or (*d*) Oppressive to any member or members. (2) Winding up will unfairly prejudice *such member or members*.

27. The material changes have been summarised in Paragraphs 87, 87.1, 87.2 and 87.3 which are as follows:-

"**87.** From the table given above, it could be seen that the changes brought about in India in course of time, were material. These changes can be summarised as follows:

87.1. While the conduct of the company's affairs in a manner that warrant interference, should be "present and continuing", under the 1913 Act and the 1956 Act, as seen from the usage of the words "are being", the conduct could even be "past or present and continuous" under the 2013 Act as seen from the usage of the words "have been or are being" (but the conduct cannot be of a distant past).

87.2. Prejudice to public interest and prejudice to the interests of any member or members were not among the parameters prescribed in the 1913 Act, but under the 1956 Act prejudice to public interest was included both under the provision relating to oppression and also under the provision relating to mismanagement. Prejudice to the interest of the company was included only in the provision relating to mismanagement. But under the 2013 Act conduct prejudicial to any member or prejudicial to public interest or prejudicial to the interest of the company are all added along with oppression.

87.3. Under the 1913 Act, the court should be satisfied that winding up under the just and equitable clause will not only unfairly prejudice but "also materially prejudice" the interests of the company or any part of its members. But in the 1956 Act and the 2013 Act, the words "and materially" do not follow the word "unfairly". Moreover, under the 1956 Act and the 2013 Act all that is required to be seen is whether the winding up will unfairly prejudice "such member or members" indicating thereby that the focus was on complaining/affected members."

28. In paragraph 90 of the said judgment, Hon'ble the Supreme Court noticing the above three enactments, has held that the above enactments are ordaining the Court generally to pass such orders "with a view to brining to an end the matters complained of". In paragraph 90 of the said

judgment following has been held:-

> "**90.** But despite the huge shift in England, there appears to be a common thread running in all the enactments, both in India and England. In all the three Indian enactments, namely, the 1913 Act, the 1956 Act and the 2013 Act, the court is ordained, generally to pass such orders "with a view to bringing to an end the matters complained of". This sentence is found in Section 153-C(4) of the 1913 Act. It is found in Section 397(2) as well as Section 398(2) of the 1956 Act and it is also found in Section 242(1) of the 2013 Act. This is also the common thread that runs through the statutory prescriptions contained in the English Acts of 1948, 1985 and 2006. Therefore, at the stage of granting relief in an application under these provisions, the final question that the court should ask itself is as to whether the order to be passed will bring to an end the matters complained of. Having thus seen the development of law, let us now take up the questions of law one after another."

29. The expression "is of the opinion" occurring in Section 241(2) of the 2013 Act denotes a subjective satisfaction of the Central Government and the opinion has to be formed "that the affairs of the Company are being conducted in a manner prejudicial to the public interest" are conditions precedent for applying for an order to the Tribunal under Section 241 of the 2013 Act. There are various other provisions in the Companies Act, 1956 which contemplate formation of opinion by the Central Government or satisfaction by the Central Government for initiating action. Reference is made to Section 396 of the Companies Act, 1956 which provides for power of the Central Government to provide for amalgamation of the company in public interest. The expression used in sub-section (1) of Section 396 is "if

the Central Government is satisfied that it is essential in the public interest". Hon'ble the Supreme Court had occasion to consider the provisions of Section 396 of the Companies Act, 1956 in the case of **63 Moons Technologies Limited vs. Union of India and others** reported in **2019(18) SCC 401**. The expression "whether the Central Government is satisfied" came to be dealt with by Hon'ble the Supreme Court in the said judgment. In the judgment Hon'ble the Supreme Court has also considered its earlier two judgments i.e. in the case of **Barium Chemical Limited vs. The Company Law Board and others** reported in **AIR 1963 SC 295** and in the case of **Rohtas Inudstries Limited vs. S.D. Agarwal and another** reported in **1969(1) SCC 325** where the expression "in the opinion of" came for consideration. Hon'ble the Supreme Court in paragraph 70 of the said judgment held as under:-

> **"70.** With regard to similar language that is contained in Section 237(*b*) of the Companies Act, 1956, this Court, in *Barium Chemicals* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] , contained separate opinions as to what the phrase "in the opinion of" contained in Section 237(*b*) meant. In *Rohtas Industries* [*Rohtas Industries Ltd.* v. *S.D. Agarwal*, (1969) 1 SCC 325 : (1969) 3 SCR 108] , this Court adopted the test laid down by Hidayatullah, J. (as he then was) and Shelat, J. as follows : (*Rohtas Industries case* [*Rohtas Industries Ltd.* v. *S.D. Agarwal*, (1969) 1 SCC 325 : (1969) 3 SCR 108] , SCC pp. 333-35 & 340-41, paras 5-6 & 11 : SCR pp. 119-121 & 128-29)
>
> > "*5.* Before taking action under Sections 237(*b*)(*i*) and (*ii*), the Central Government has to form an opinion that there are circumstances suggesting that the business of the company is being conducted with intent to defraud its creditors, members or any other persons, or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any member or that the company was formed for any fraudulent or unlawful purpose or that the persons concerned in the formation or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members.

From the facts placed before us, it is clear that the Government had not bestowed sufficient attention to the material before it before passing the impugned order. It seems to have been oppressed by the opinion that it had formed about Shri S.P. Jain. From the arguments advanced by Mr Attorney, it is clear that but for the association of Mr S.P. Jain with the appellant company, the investigation in question, in all probabilities would not have been ordered. Hence, it is clear that in making the impugned order irrelevant considerations have played an important part.

The power under Sections 235 to 237 has been conferred on the Central Government on the faith that it will be exercised in a reasonable manner. The department of the Central Government which deals with companies is presumed to be an expert body in company law matters. Therefore, the standard that is prescribed under Section 237(*b*) is not the standard required of an ordinary citizen but that of an expert. The learned Attorney did not dispute the position that if we come to the conclusion that no reasonable authority would have passed the impugned order on the material before it, then the same is liable to be struck down. This position is also clear from the decision of this Court in *Barium Chemicals Ltd.* v. *Company Law Board* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] ….

6. The decision of this Court in *Barium Chemicals case* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] which considered the scope of Section 237(*b*) illustrates that difficulty. In that case Hidayatullah, J., (our present Chief Justice) and Shelat, J., came to the conclusion that though the power under Section 237(*b*) is a discretionary power the first requirement for its exercise is the honest formation of an opinion that the investigation is necessary and the further requirement is that "there are circumstances suggesting" the inference set out in the section; an action not based on circumstances suggesting an inference of the enumerated kind will not be valid; the formation of the opinion is subjective but the existence of the circumstances relevant to the inference as the *sine qua non* for action must be demonstratable; if their existence is questioned, it has to be proved at least *prime facie*; it is not sufficient to assert that those circumstances exist and give no clue to what they are, because the circumstances must be such as to lead to conclusions of certain definiteness; the conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct. In other words they held that although the formation of opinion by the Central Government is a purely subjective process and such an opinion cannot be challenged in a court on the ground of propriety, reasonableness or sufficiency, the authority concerned is nevertheless required to arrive at such an opinion from circumstances suggesting the conclusion set out in sub-clauses (*i*), (*ii*) and (*iii*) of Section 237(*b*) and the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. Shelat, J., further

observed that it is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded; it is also not reasonable to say that the clause permitted the authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose.

On the other hand Sarkar, C.J., and Mudholkar, J., held that the power conferred on the Central Government under Section 237(*b*) is a discretionary power and no facet of that power is open to judicial review. Our Brother Bachawat, J., the other learned Judge in that Bench did not express any opinion on this aspect of the case. Under these circumstances it has become necessary for us to sort out the requirements of Section 237(*b*) and to see which of the two contradictory conclusions reached in *Barium Chemicals case* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] is in our judgment, according to law. But before proceeding to analyse Section 237(*b*) we should like to refer to certain decisions cited at the bar bearing on the question under consideration.

***

11. Coming back to Section 237(*b*), in finding out its true scope we have to bear in mind that that section is a part of the scheme referred to earlier and therefore the said provision takes its colour from Sections 235 and 236. In finding out the legislative intent we cannot ignore the requirements of those sections. In interpreting Section 237(*b*) we cannot ignore the adverse effect of the investigation on the company. Finally we must also remember that the section in question is an inroad on the powers of the company to carry on its trade or business and thereby an infraction of the fundamental right guaranteed to its shareholders under Article 19(1)(*g*) and its validity cannot be upheld unless it is considered that the power in question is a reasonable restriction in the interest of the general public. In fact the *vires* of that provision was upheld by majority of the Judges constituting the Bench in *Barium Chemicals case* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] principally on the ground that the power conferred on the Central Government is not an arbitrary power and the same has to be exercised in accordance with the restraints imposed *by law*. For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in *Barium Chemicals case* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or the persons mentioned in sub-clause (2) were guilty of fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. *In other words, the existence of*

> *the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts*. As held earlier the required circumstances did not exist in this case."
>
> (emphasis in original)

30. The judgment of Hon'ble the Supreme Court in the case of **Rohtas** Industries **Limited** (supra) was quoted with approval in the case of **63 Moons Technologies Limited** (supra). The ratio of the judgment as extracted above in the case of **Rohtas Industries Limited** (supra) is as follows:-

> "For the reasons stated earlier we agree with the conclusion reached by Hidayatullah and Shelat, JJ. in *Barium Chemicals case* [*Barium Chemicals Ltd.* v. *Company Law Board*, 1966 Supp SCR 311 : AIR 1967 SC 295] that the existence of circumstances suggesting that the company's business was being conducted as laid down in sub-clause (1) or the persons mentioned in sub-clause (2) were guilty of
>
> fraud or misfeasance or other misconduct towards the company or towards any of its members is a condition precedent for the Government to form the required opinion and if the existence of those conditions is challenged, the courts are entitled to examine whether those circumstances were existing when the order was made. *In other words, the existence of the circumstances in question are open to judicial review though the opinion formed by the Government is not amenable to review by the courts*. As held earlier the required circumstances did not exist in this case."

31. In the case of **63 Moons Technologies Limited** (supra), after noticing several earlier judgments, Hon'ble the Supreme Court laid down the following in paragraph 78:-

> "78. Thus, at the very least, it is clear that the Central Government's satisfaction must be as to the conditions precedent

> mentioned in the section as correctly understood in law, and must be based on facts that have been gathered by the Central Government to show that the conditions precedent exist when the order of the Central Government is made. There must be facts on which a reasonable body of persons properly instructed in law may hold that it is essential in public interest to amalgamate two or more companies. The formation of satisfaction cannot be on irrelevant or imaginary grounds, as that would vitiate the exercise of power."

32. The ratio of the above judgment is that the Central Government satisfaction must be as per the conditions mentioned in the section and must be based on the fact that has been gathered by the Central Government to show that the conditions precedent exist in the order of the Central Government.

33. In view of the foregoing discussion, we conclude that to enable the Central Government to apply for an order under Section 241, the conditions precedent i.e. (i) the Central Government is of the opinion; and (ii) that the affairs of the Company are being conducted in a manner prejudicial to the public interest, need to be satisfied. On fulfilment of the above two conditions, an application can be filed by the Central Government under Section 241 of the 2013 Act for an order.

Question Nos.II, III & IV

34. All the above questions being interrelated, are taken together.

35. The challenge to the impugned order by the appellants in the present case is on the ground that the twin conditions under Section 241(2) of the

2013 Act did not stand satisfied i.e. (i) "formation of an opinion by the Central Government; and (ii) that the affairs of the company are being conducted in a manner prejudicial to the public interest". The first limb of argument of the appellants is that there is no opinion formed by the Central Government and the letters dated 18th March and 4th March, 2020 are not opinion. Elaborating the submission, it is contended that formation of opinion under Section 241 of the 2013 Act is not mere formality. The Central Government has to apply its mind to the materials and give reason for forming an opinion to file a petition under Section 241-242 of the 2013 Act. The letter darted 18th March, 2020 does not constitute an opinion within the meaning of Section 241-242 of the 2013 Act. Letter dated 4th March, 2020 which provides the opinion of 18th March, 2020 only mentions "I agree with the opinion of the Inspecting Officer as mentioned above".

36. The challenge to the impugned order by the appellants in the present case is on the ground that the twin conditions under Section 241(2) of the 2013 Act did not stand satisfied i.e. (i) "formation of an opinion by the Central Government; and (ii) that the affairs of the company are being conducted in a manner prejudicial to the public interest". The first limb of argument of the appellants is that there is no opinion formed by the Central Government and the letters dated 18th March and 4th March, 2020 are not opinion. Elaborating the submission, it is contended that formation of opinion under Section 241 of the 2013 Act is not mere formality. The Central Government has to apply its mind to the materials and give reason for forming an opinion to file a petition under Section 241-242 of the 2013

Act. The letter darted 18th March, 2020 does not constitute an opinion within the meaning of Section 241-242 of the 2013 Act. Letter dated 4th March, 2020 which provides the opinion of 18th March, 2020 only mentions "I agree with the opinion of the Inspecting Officer as mentioned above".

37. We first need to consider as to whether the pre-condition that "Central Government is of the opinion" is fulfilled or not. We have noticed above that statutory inspection was directed under Section 206 of the 2013 Act vide order dated 16th March, 2016. The inspection was carried out and a detailed report dated 31st July, 2019 was submitted. The inspection report is part of the record. The conclusion of the inspection report is as follows:-

> "**18. CONCLUSION:-**
>
> Keeping in view the irregularities and mis-management of company's affairs including funds of the applicants seeking membership of the club and deposits accepted by the company action U/s 241 r/w Section 242 of the Companies Act, 2013 has been suggested in the part A of the report. Further, as the company has not been able to achieve the object, for which it is formed, action for revocation of license u/s 8(6) of Companies Act, 2013 has been proposed in Part B of the report."

38. The inspection report was placed before the Regional Director, Ministry of Corporate Affairs who forwarded the inspection report along with its opinion to the Ministry of Corporate Affairs by letter dated 5th August, 2019. The letter dated 5th August, 2019 is quoted below:-

> "Dear Shri,

I am forwarding herewith the Inspection Report under Section 206(5) of the Companies Ad. 2013 in respect of DELHI GYMKHANA CLUB LIMITED conducted by Shri. Ajay Kumar Meena, Deputy Director. The Inspection of this company was ordered by the Ministry vide letter No. 7/29/2016/2016-CL.II (NR) dated 16.03.2016 directing to examine 1M complaints by the members and Directors of the club alleging various irregularities in the management of the affairs of the company.

The inspecting officer has highlighted the contraventions of sections 58A of companies act 1956 and section 74, section 76 of Companies Act 2013, section 5, 166, 179 of the Companies Act. 2013 for mismanagement of funds received by way of registration fee from applicants, section 209, 211 of the Companies Act, 1956, section 128, 129 of the Companies Act 2013 for mismanagement of funds received by way of registration fee from applicants, violation under section 141 of the Companies Act 2013, section 628 of Companies Act, 1956 for misstatement in the eform, section 448 of the Companies Act, 2013, violation u/s 628 of Companies Act, 1956 for anomaly in the number of members of the company, violation u/s 628 of companies oct.1956 for false statement in the balance sheet as at 31.03.2013 under PART-A of Report.

Inspecting officer has highlighted violations under section 209, 211 of the Companies Act, 1956 and section 128, 129 of the Companies Act, 2013. section 226 of the Companies Act, 1956, repeated violations of section 129 of the Companies Act 2013, violation of section 134 of Companies Act, 2013, violation of section 217{3} of the Companies Act, 1956 in PART-8 of Report. Inspecting Officers has recommended for revocation of license issued u/s 8(6) of Companies Act, 2013 in the name of company as it claims. In PART-C. Inspecting Officer has reported violation of section 179 of Companies Act 2013.

By highlighting various irregularities in the affairs of the company and in construction activities over the lease hold land which is situated in a high security zone, Inspecting Officer has strongly

recommended to refer the matter to Ministry of Housing and Urban Affairs to examine the use of the lease hold land allotted to the company in PART-D of the Report.

The Undersigned agrees with views of the Inspecting Officer on the issues reported in the inspection Report of the above company. However, Ministry may like to examine the issues reported in the Inspection report and issue necessary instructions in the matter as deemed fit.

With regard

Yours sincerely,

Encl. as above Sd/-

(Dr. Raj Singh)"

39. Subsequent to receipt of the inspection report, on 12th September, 2019, the Ministry of Corporate Affairs directed for follow-up instructions to the Regional Director and for supplementary inspection. The supplementary inspection report dated 3rd March, 2020 was submitted, which was perused and vide letter dated 4th March, 2020, the same was sent to the Ministry of Corporate Affairs agreeing with the concluding remark of the recommendation made by the Inspecting Officer. It is useful to extract the letter dated 4th March, 2020, quoted in paragraph 9.7 of the impugned judgment, which is as follows:-

"**9.7** Thereafter, Regional Director, Northern Region, submitted the Supplementary Inspection Report dated 03.03.2020 annexed as annexure P-5 with its letter dated 04.03.2020 (at page 980 of volume IV of the Petition) and the contents of the same are reproduced below:

Dear Shri,

I am forwarding herewith the Supplementary Inspection Report under Section 206(5) of the Companies Act, 2013 in respect of M/s Delhi

Gymkhana Club Limited conducted by Smt. Seema Rath, Deputy Registrar of Companies/Delhi & Inspector. The supplementary inspection of the company was directed by the Ministry vide letter No. 1/97/2019/CLII(NR) dated 12.09.2019 broadly on the following issues:

a) to take up issues related to allotment of membership;

b) the money received from new applicants as registration fee for membership;

c) accounting treatment of the amount received from new applicants for membership (registration fee received was treated as revenue before the financial year 2015-16 and should. have been treated as long term liabilities as it is a refundable item);

d) investment made by the company of the amount received from new applicants; and e) the processing charges received by the company from new applicants.

2. Shri Ajay Meena, Deputy Director RD (NR) had earlier submitted the Inspection report dated 31.07.2019. Shri A.K. Sahoo, DRoC, Delhi and Shri VyomeshSheth, Assistant Director, DGCoA were appointed as Inspectors vide letter dated 13.09.2019. Both the Inspecting officers could not join the supplementary inspection due to their involvement in other important and time-bound works. Subsequently, Smt. SeemaRath, Deputy Registrar of Companies, Delhi & Inspector was appointed as Inspectors vide letter dated 25.10.2019 for undertaking the Supplementary Inspection of the subjected company.

3.On Supplementary Inspection the Inspecting officer has highlighted the following contraventions to the Companies Act:

a. Financial statements by the company do not give a true and fair view of the state of affairs of the company within the meaning of provisions of Section 209 And 211 of The Companies Act, 1956 and Section 129 of the Companies Act, 2013 r/w AS-9 with respect to treatment of registration fees collected by the company from new applicants under the head 'Revenue' in Income & Expenditure Statement.

b. The continuing acts of the company and the officers in default are violative of the provisions of section 5 and section 8 of the Companies Act, 2013 and section 16 r/w section 36 and section 25 of the Companies Act, 1956 as the company had not adhered to its AoA. Furthermore, the collection of various amounts for admitting members, over and above the prescribed entrance fee in the AoA, and arbitrary grant of different memberships to select category of applicants, indicates that the actions of the company are fraudulent in nature and therefore, the provisions of section 447 of Companies Act, 2013 are attracted.

c. The company has furnished different sets of information with regard to the number of vacant memberships in the Club, as part of the Board Report viz-a-viz the reply dated 03-02-2020 to the Inspector. Which indicates manipulation of the registers and records kept by the company and furthermore, the furnishing of false information falls

within the purview of violations specified under section 448 of the Companies Act, 2013.

d. For mis-statement in the e-form action u/s 628 of the Companies Act, 1956 for filing wrong Annual Financial Statement of the year 2013-14.

e. Col. Ashish Khanna, Secretary of the company who is member of the company from 2018 onwards has given a wrong statement knowing to be false and attracts the provisions of section 229 r/w section 449 of the Companies Act, 2013 to be initiated against him.

f. For members of the General Committee of the company section 449 of the Companies Act, 2013 gets attracted which prescribes punishment for intentionally giving false evidence.

g. Ministry/ICAI to take disciplinary action u/s 226 of the Companies Act, 1956 and section 141(3)(d)(i) of the Companies Act, 2013 for Mr. Vinod Chander Chandiok who being an auditor of the company was also the member of the company. Further, in view of the false statement given by Mr. Vinod Chander Chandiok, the provisions of section 229 r/w section 449 of the Companies Act, 2013 gets attracted and has to be initiates against him.

4. The IO, in her concluding remarks, has recommended the following:
(i)To file petition under section 241 and 242 of the Companies Act, 2013 and take over the management control of the company in public Interest by the Government of India;
(ii) Charging the company and its General Committee members under section 447 of the Companies Act, 2013;
(iii)Immediate appointment of Government appointed administrator(s) in the General Committee and transfer of absolute power to such administrator(s); (iv)Immediate ban on acceptance of any further membership applications and fees; and
(v) The prime location of the land with the company being worth thousands of crones to be better utilized for meaningful purposes to achieve the objectives of the Company as laid down in the MoA, in the interest of the public.
I agree with the recommendation of the Inspecting Officer as mentioned above."

40. The Central Government, Ministry of Corporate Affairs thus had materials including the inspection report dated 31st July, 2019, complaints, supplementary inspection report dated 3rd March, 2020 and after taking into consideration the inspection report, supplementary inspection report and the recommendation made by the Regional Director, Northern Region and after perusing the aforesaid materials, the Ministry of Corporate Affairs

issued order dated 18th March, 2020 to the Regional Director to file a petition under Section 241-242 of the 2013 Act. The letter dated 18th March, 2020 has been extracted by the NCLT in paragraph 9.10 of the impugned judgment, which is extracted below:-

> "**9.10** The Ministry of Corporate Affairs vide order dated 18.03.2020, issued the order to Regional Director, Northern Region after inspecting the Supplementary Report, content of the same is reproduced below:
>
> *"To*
>
> *The Regional Director,*
> *Northern Region,*
> *Ministry of Corporate Affairs,*
> *New Delhi*
>
> *Subject: In the matter of M/s Delhi Gymkhana Club Limited.*
>
> *Sir,*
>
> *I am directed to refer to your letter No 1587/JDI/1/ 2017/15908 dated 04.03.2020 on the above subject matter, you are advised to take necessary steps for following action and submit action taken report within 30 days.*
>
> *(i) To file petition under section 241 and 242 of the Companies Act, 2013 and take over the management control of the company in public interest by the Government of India;*
>
> *(ii) Charging the company and its General Committee members under section 447 of the Companies Act, 2013;*
>
> *(iii) Immediate appointment of Government appointed administrator(s) in the General Committee and transfer of absolute power to such administrator(s);*
>
> *(iv) Immediate ban on acceptance of any further membership application and fees; and*
>
> *(v) The prime location of the land with the company being worth thousands of crores to be better utilized for meaningful purposes to achieve the objectives of the company as laid down in the MoA, in the interest of the public.*
>
> *2. This issues with the approval of the Competent Authority."*

41. The letter dated 18th March, 2020 itself contained a statement that "this is issued with the approval of the competent authority". The letter dated 18th March, 2020, which specifically contained a stipulation that it has been issued with the approval of the competent authority, clearly indicates the opinion was formed by the Central Government to file a petition under Section 241-242 of the 2013 Act. The expression used in Section 241-242 that "Central Government is of the opinion" does not contemplate any particular manner of formation of opinion. The opinion formed by the Central Government is clearly reflected in communication dated 18th March, 2020 as extracted above. The formation of opinion was on the basis of the statutory inspection report, supplementary inspection report and the recommendation sent by the Regional Director as well as other materials including the reply received from Delhi Gymkhana Club and queries and summons issued by the Inspectors. All the documents were with the Central Government containing voluminous materials viz. inspection report and supplementary inspection report submitted after examining the affairs of the Company, its financial position, its management and its financial records reflecting violation of the Companies Act, 1956 and the 2013 Act. We thus do not find any substance in submission of the counsel for the appellants that at no point of time the Central Government formed its opinion as required under Section 241(2) of the 2013 Act. The opinion was formed on the subjective satisfaction of the Central Government.

42. Now we come to the other limb of attack that there was no sufficient

materials before the Central Government to form an opinion that affairs of the Company are being conducted in a manner prejudicial to the public interest.

43. Before we consider the above ground of attack laid by the counsel for the appellants, we need to first examine the expression "affairs of the company are being conducted in a manner prejudicial to the public interest". What is the concept of expression "public interest" is a question to be considered in these appeals. The expression "public interest" occurs in large number of statutes. It is settled proposition of law that the expression "public interest" takes colour from context in which it is used. In the case of **63 Moons Technologies Limited** (supra), the expression "public interest" in reference to Section 396 of the Companies Act, 1956 came for consideration. In paragraphs 80 and 81 of the said judgment, the expression "public interest" has been explained in following words:-

> "**80.** In *J. Jayalalitha* v. *Union of India* [*J. Jayalalitha* v. *Union of India*, (1999) 5 SCC 138 : 1999 SCC (Cri) 670] , this Court dealt with an argument that there is no guideline contained in Section 3(1) of the Prevention of Corruption Act, 1988, when the section empowers the Government to appoint as many Special Judges "as may be necessary". It was stated that this word has a precise meaning and means "what is indispensable, needful or essential" [see para 14]. It is thus clear that the Central Government's mind has to be applied to whether a compulsory amalgamation under Section 396 is indispensably necessary, important in the highest degree, and whether such amalgamation is both basic and necessary.
>
> ***Public Interest***
>
> **81.** The third prerequisite of Section 396 is that the Central Government must apply its mind when compulsorily amalgamating

> two or more companies in the public interest. "Public interest" is an expression which is wide and amorphous and takes colour from the context in which it is used. However, like the expression "public purpose", what is important to be noted is that public interest is the general interest of the community, as distinguished from the private interest of an individual [see *State of Bihar* v. *Kameshwar Singh* [*State of Bihar* v. *Kameshwar Singh*, (1952) 1 SCC 528 : 1952 SCR 889 : AIR 1952 SC 252] at pp. 1073-1075]."

44. The above judgment of Hon'ble the Supreme Court clearly indicates that the expression "public interest" is of wide amplitude when it is used in different statutes. We have to look into the concept of public interest in reference to Section 241 of the 2013 Act. What is contended by the counsel for the appellants is that the Company is a charitable company registered under Section 26 of the Companies Act 1913 and the Company exists for its members and there is no public interest in functioning of the Company nor any public interest can be said to be prejudiced by the conduct of the affairs of the Company by its members and its General Council. Before we proceed further, we need to notice Section 26 of the Companies Act, 1913 under which the Company was registered. Section 26 of the Companies Act, 1913 contains a heading "association not for profit". Section 26 of the Companies Act, 1913 is as follows:-

> "**26.** (1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall—
>
> (a) state the following information, namely:—

(i) names and addresses of the registered office of the company, company secretary, Chief Financial Officer, auditors, legal advisers, bankers, trustees, if any, underwriters and such other persons as may be prescribed;

(ii) dates of the opening and closing of the issue, and declaration about the issue of allotment letters and refunds within the prescribed time;

(iii) a statement by the Board of Directors about the separate bank account where all monies received out of the issue are to be transferred and disclosure of details of all monies including utilised and unutilised monies out of the previous issue in the prescribed manner;

(iv) details about underwriting of the issue;

(v) consent of the directors, auditors, bankers to the issue, expert's opinion, if any, and of such other persons, as may be prescribed;

(vi) the authority for the issue and the details of the resolution passed therefor;

(vii) procedure and time schedule for allotment and issue of securities;

(viii) capital structure of the company in the prescribed manner;

(ix) main objects of public offer, terms of the present issue and such other particulars as may be prescribed;

(x) main objects and present business of the company and its location, schedule of implementation of the project;

(xi) particulars relating to—

(A) management perception of risk factors specific to the project;

(B) gestation period of the project;

(C) extent of progress made in the project;

(D) deadlines for completion of the project; and

(E) any litigation or legal action pending or taken by a Government Department or a statutory body during the last five years immediately preceding the year of the issue of prospectus against the promoter of the company;

(xii) minimum subscription, amount payable by way of premium, issue of shares otherwise than on cash;

(xiii) details of directors including their appointments and remuneration, and such particulars of the nature and extent of their interests in the company as may be prescribed; and

(xiv) disclosures in such manner as may be prescribed about sources of promoter's contribution;

(b) set out the following reports for the purposes of the financial information, namely:—

(i) reports by the auditors of the company with respect to its profits and losses and assets and liabilities and such other matters as may be prescribed;

(ii) reports relating to profits and losses for each of the five financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries and in such manner as may be prescribed:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in such manner as may be prescribed, the reports relating to profits and losses for each of the financial years immediately preceding the financial year of the issue of prospectus including such reports of its subsidiaries;

(iii) reports made in the prescribed manner by the auditors upon the profits and losses of the business of the company for each of the five financial years immediately preceding issue and assets and liabilities of its business on the last date to which the accounts of the business were made up, being a date not more than one hundred and eighty days before the issue of the prospectus:

Provided that in case of a company with respect to which a period of five years has not elapsed from the date of incorporation, the prospectus shall set out in the prescribed manner, the reports made by the auditors upon the profits and losses of the business of the company for all financial years from the date of its incorporation, and assets and liabilities of its business on the last date before the issue of prospectus; and

(iv) reports about the business or transaction to which the proceeds of the securities are to be applied directly or indirectly;

(c) make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder; and

(d) state such other matters and set out such other reports, as may be prescribed.

(2) Nothing in sub-section (1) shall apply—

(a) to the issue to existing members or debenture-holders of a company, of a prospectus or form of application relating to shares in or debentures of the company, whether an applicant has a right to renounce the shares or not under sub-clause (ii) of clause (a) of sub-section (1) of section 62 in favour of any other person; or

(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange.

(3) Subject to sub-section (2), the provisions of sub-section (1) shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.

Explanation.—The date indicated in the prospectus shall be deemed to be the date of its publication.

(4) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless on or before the date of its publication, there has been delivered to the Registrar for registration, a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his duly authorised attorney.

(5) A prospectus issued under sub-section (1) shall not include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion or management, of the company and has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the Registrar for registration and a statement to that effect shall be included in the prospectus.

(6) Every prospectus issued under sub-section (1) shall, on the face of it,—

(a) state that a copy has been delivered for registration to the Registrar as required under sub-section (4); and

(b) specify any documents required by this section to be attached to the copy so delivered or refer to statements included in the prospectus which specify these documents.

(7) The Registrar shall not register a prospectus unless the requirements of this section with respect to its registration are complied with and the prospectus is accompanied by the consent in writing of all the persons named in the prospectus.

(8) No prospectus shall be valid if it is issued more than ninety days after the date on which a copy thereof is delivered to the Registrar under sub-section (4).

(9) If a prospectus is issued in contravention of the provisions of this section, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both."

45. The statutory pre-condition for registration of a company under Section 26 of the Companies Act, 1913 is that it has been or is about to be formed for promoting "**Commerce, Art, Science, Charity or any other useful object**". When the statute itself indicates that registration under Section 26 of the Companies Act, 1913 can be of the companies which were formed not for profit but for promoting commerce, art, science or any other useful object, the statutory requirement of promoting commerce, art, science, charity or any other useful object is clearly designed for public purpose. The special status and recognition of such companies by the Statute is since the said companies are formed not for profit but for promoting commerce, art, science, charity or any other useful object. At this stage, we also need to notice the Memorandum of Association of the Delhi Gymkhana Club, Clause 3 of which notes the object for which the Company was founded. Clause 3 of the Memorandum of Association is as follows:-

"**Objects**

3. The objects for which the Company is founded are :-

a) to promote polo, hunting, racing, tennis and other games, athletic sports and pastimes;

b) to provide courses and grounds at Delhi or elsewhere and to layout, prepare and maintain the same for the purposes of the Company and to provide club houses, pavilions, lavatories, kitchens, refreshment rooms, workshops, stables, sheds and other conveniences in connection therewith and to furnish and maintain the same and to permit the same and the property of the Company to be used by members and other persons either gratuitously or for payment;

c) to purchase, hire, make or provide and maintain all kind of horses, live stock, furniture. implements, tools, utensils, plates, glass, linen, books, paper, periodicals, stationery, cards games and other things required or which may be conveniently used, in connection with the courses, grounds, houses and other premises of the Company by persons frequenting the same whether members of the Company or not;

d) to buy, prepare, make, apply, sell, deal in all kinds of apparatus used in connection with any sport, game or pastime and all kinds of provisions and refreshments required to be used by members of the Company or other persons frequenting the courses, grounds, club houses or premises of the company;

e) to purchase, take on lease or in exchange. Or otherwise acquire. any property movable or immovable which may be required for the purposes of, or conveniently used in connection with, any of the objects of the Company and in any way to transfer the same;

f) to hire and employ Secretaries, Clerks, Managers, Servants and workmen, and to pay to them and to other persons in return for services rendered to the Company, salaries, wages, gratuities and pensions;

g) to promote or hold either alone or jointly with any Association, Club or persons meetings, competitions and matches relating to polo,

hunting, racing, tennis and other games, athletic sports and pastimes and to offer, give or contribute prizes, medals and awards, and to promote, give or support, dinners, balls, concerts and other entertainment;

h) to establish, promote or assist in establishing or promoting and to subscribe to, or become a member of, any other Association or Club whose objects are similar or in part similar to the objects of the Company or the establishment or promotion of which may be beneficial to this Company, provided that no subscription be paid to such other Association or Club out of the funds of this Club except bonafide in furtherance of the objects of this Company;

i) to invest and deal with the money of the Company not immediately required upon such securities and in such manner as may from time to time be determined;

j) to borrow or raise and give security for money by the issue of or upon bonds, debentures, bills of exchange, promissory notes or other obligations or securities of the Company or by mortgage or charge upon all or part of the property of the Company;

k) to do all such other lawful things as are incidental or conducive to the attainment of the above objects."

46. We have noticed the submission of the Union of India that the main object of the Company was to promote sports. Learned counsel for the appellants submitted that the word "sport" did not find place in Section 26(1) of the Companies Act, 1913 as sport was included for the first time in Section 8 of the 2013 Act, hence the submission cannot be accepted that main object of the Company was promoting the "sport". We need to notice Section 8 of the 2013 Act also, which is as follows:-

"**8.** (1) Where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

(a) has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;

(b) intends to apply its profits, if any, or other income in promoting its objects; and

(c) intends to prohibit the payment of any dividend to its members,

the Central Government may, by licence issued in such manner as may be prescribed, and on such conditions as it deems fit, allow that person or association of persons to be registered as a limited company under this section without the addition to its name of the word "Limited", or as the case may be, the words "Private Limited" , and thereupon the Registrar shall, on application, in the prescribed form, register such person or association of persons as a company under this section.

(2) The company registered under this section shall enjoy all the privileges and be subject to all the obligations of limited companies.

(3) A firm may be a member of the company registered under this section.

(4) (i) A company registered under this section shall not alter the provisions of its memorandum or articles except with the previous approval of the Central Government.

(ii) A company registered under this section may convert itself into company of any other kind only after complying with such conditions as may be prescribed.

(5) Where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

(6) The Central Government may, by order, revoke the licence granted to a company registered under this section if the company contravenes any of the requirements of this section or any of the conditions subject to which a licence is issued or the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest, and without prejudice to any other action against the company under this Act, direct the company to convert its status and change its name to add the word "Limited" or the words "Private Limited", as the case may

be, to its name and thereupon the Registrar shall, without prejudice to any action that may be taken under sub-section (7), on application, in the prescribed form, register the company accordingly:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard:

Provided further that a copy of every such order shall be given to the Registrar.

(7) Where a licence is revoked under sub-section (6), the Central Government may, by order, if it is satisfied that it is essential in the public interest, direct that the company be wound up under this Act or amalgamated with another company registered under this section:

Provided that no such order shall be made unless the company is given a reasonable opportunity of being heard.

(8) Where a licence is revoked under sub-section (6) and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

(9) If on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to the Rehabilitation and Insolvency Fund formed under section 269.

(10) A company registered under this section shall amalgamate only with another company registered under this section and having similar objects.

(11) If a company makes any default in complying with any of the requirements laid down in this section, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ten lakh rupees but which may extend to one crore rupees and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than twenty-five thousand rupees but which may extend to twenty-five lakh rupees, or with both:

Provided that when it is proved that the affairs of the company were conducted fraudulently, every officer in default shall be liable for action under section 447."

47. Admittedly, the Delhi Gymkhana Club was incorporated under Section 26(1) if the Companies Act, 1913. Although the word "sport" is not specifically included in sub-section (1) of section 26 but the use of expression "other useful object" is wide enough to include "sport" also. As noted above, the Memorandum of Association of the Delhi Gymkhana Club specifically in Clause 3(a) lists the object to promote "Polo, Hunting, Racing, Tennis, other games, athletic sports and pastime". The submission of learned counsel for the appellants thus cannot be accepted that object of the Company was not to promote sports. Non use of the word "sport" in Section 26(1) of the 1913 Act is in consequential.

48. The companies, which are referable to Section 8 of the 2013 Act, are companies which are incorporated for particular object as delineated in the Statutes. When a company is incorporated for the objects enumerated in the Statutes itself, objects which are contained in the Statutes are the objects which promote the public purpose. The promotion of commerce, art, science, charity and other object are all objects of public purpose. Incorporating such non-profit companies which are incorporated for the object enumerated in the Statutes serves a public purpose and if such company is found not promoting main object for which it was incorporated, it cannot be said that there is no public purpose in the affairs and management of the Company. The management and affairs of the Company had to be guided by the objects for which the Company is incorporated. It is true that in addition to promoting different sports, the Delhi Gymkhana

Club can also lawfully carry other objects as delineated in Memorandum of Association. However, when we look into different sub-clauses of Clause (3) of the Memorandum of Association, we find that other objects are in aid and the sport is the main object of the Company which are object of promoting polo, hunting, racing, tennis, other game, athletic sport and pastime.

49. Learned counsel for the appellants has relied on a judgment of Delhi High Court in the case of **Air Vice Marshal J.S. Kumar vs. Governing Council of Air Force Sports Complex and another** reported in **2006 SCC Online Delhi 8** to support his submission that no public functions are discharged by such entities like Air Force Sports Complex. In the case before the Delhi High Court writ petition under Article 226 of the Constitution of India was filed by the writ petitioner challenging termination of his membership from Air Force Sports Complex. The question which arose for consideration in the said writ petition was as to whether the dismissal of the writ petition by the learned Single Judge was sustainable. The appeal was filed by the writ petitioner challenging the dismissal of the writ petition. In the above context, the Delhi High Court had occasion to consider as to whether the Air Force Sports Complex is discharging any public function. In paragraphs 34 to 37 of the said judgment following was held by the Delhi High Court:-

> "**34.** Ordinarily no writ lies against a private party except a writ of habeas corpus vide *Praga Tools Corporation* v. *C.V. Imanual and Others* AIR 1969 SC 1306, *Chander Mohan Khanna* v. *N.C.E.R.T* (1991) 4 SCC 578, etc.

> **35.** A writ will lie ordinarily only against a State or an instrumentality of the *State, vide Federal Bank Ltd.* v. *Sagar Thomas and Others* (2003) 10 SCC 733, *Pradeep Kumar Biswas* v. *Indian Institute of Chemical Biology and Others* (supra), *General Manager, Kisan Sahkari Chini Mills Ltd, Sultanpur, U.P* v. *Satrugan Nishad and Others* (supra) etc.
>
> **36.** There is no averment in the writ petition that the AFSC satisfies the tests of a State under Article 12 of the Constitution of India as laid down in *Ajay Hasia and Ors.* v. *Khalid Mujib Sehravardi and Ors* 1981 (1) SCC 722, etc. There is no allegation that the AFSC is financed by the State Government or that there is deep and pervasive State control over the AFSC.
>
> **37.** It is true that in some exceptional cases it has been held that a writ lies against a private body, but that is only where it is performing a public duty, vide *Binny Ltd.* v. *Sadasivan*, AIR 2005 SC 3202. The question, therefore, arises as to what is a public duty or public function?"

50. Learned counsel for the appellant has also referred to paragraph 58 of the judgment of the Delhi High Court which is as follows:-

> "**58.** As regards the meaning of the expression 'public function' or 'public duties', that has been explained by the Supreme Court in G. Bassi Reddy's case (Supra), where it has been held that public function is a function akin to the sovereign functions of the State. In our opinion, providing recreation for Air Force Officers, serving or retired, can certainly not be called sovereign functions of the State. No doubt providing entertainment or sports may be conducive to one's mind or health, but in our opinion, this is not a sovereign function of the State."

51. The above judgment of the Delhi High Court does not support the appellants in the present case. In the case before the Delhi High Court the issue was as to whether Air Force Sports Complex is performing any public function or discharging any public duties or not so as to hold the Writ

Petition under Article 226 maintainable. The said question does not arise for consideration in the present appeals. The question in the present case is as to whether the affairs of the Company are being conducted in a manner prejudicial to the public interest which is a entirely different expression and concept.

52. Another judgment which has been relied by the learned counsel for the appellants is in the case of **Secretary Madras Gymkhana Club Emloyees Union vs. Management of the Gynkhana Club** reported in **AIR 1968 SC 554**. The above was a case where appeal was filed by the Employee Union challenging the order of the Industrial Tribunal which held that Madras Gymkhana Club is not an industry. In paragraph 2 of the said judgment facts have been noticed, which is as under:-

> "**2**. The Madras Gymkhana Club is admittedly a members' club and not a proprietary club, On December 31, 1962 its membership was about 1200 with 800 active members. The object of the club is to provide a venue for sports and games and facilities for recreation and entertainment. For the former, it maintains a golf course, tennis courts, rugby and football grounds and has made arrangement for billiards, pingpong and other indoor games. As part of the latter activities it arranges dance, dinner and other parties and runs a catering department, which provides food and refreshments not only generally but also for dinners and parties on special occasions. The club employs six officers (a Secretary, a Superintendent and four Accountants and Cashiers), twenty clerks and a large number of peons, stewards, butlers, gate-attendants, etc. Its catering department has a separate managerial, clerical and other staff. Altogether there are 194 employees. The affairs of the club are managed by a Committee elected annually. Two of the members of

the Committee work as Honorary Secretary and Honorary Treasurer respectively."

53. Hon'ble the Supreme Court, after considering various judgments, held that Madras Gymkhana Club is not an industry, its activities cannot be described as manufacture and running of the club is not calling of its members and the managing committee. It was also held that it cannot be said that the Club has an existence apart from the members. The following was held in paragraphs 29, 30 and 32, which are quoted below:-

> "**29.** We cannot go by the size of the club or the largeness of its membership or the number or extent of these activities. We have to consider the essential character of the Club activity in relation to the definition of industry. As we said before, the definition is in two parts. The first part which we called the denotation or the meaning of the word shows what an industry really is and the second part contains the extended connotation to indicate who will be considered an integral part of the industry on the side of employees. Beginning with the second part, it may at once be conceded that the activity of the club is conducted with the aid of employees who follow callings or avocations. Therefore if the activity of the employers is within the realm of industry, the answer must be in favour of the Union. But taking the first part of the definition it may also be said that the club does not follow a trade or business. Its activity cannot be described as manufacture and the running of clubs is not the calling of the members or its managing committee. The only question is, is it an undertaking?
>
> **30.** Here the appearances are somewhat against the club. It is not of any consequence that there is no profit motive because that is considered immaterial. It is also true that the affairs of the club are organised in the way business is organised, and that there is production of material and other services and in a limited way production of material goods mainly in the catering department. But these circumstances are not truly representative in the case of the

> club because the services are to the members themselves for their own pleasure and amusement and the material goods are for their consumption. In other words, the club exists for its members. No doubt occasionally strangers also take benefit from its services but they can only do so on invitation of members. No one outside the list of members has the advantage of these services as of right. Nor can these privileges be bought. In fact they are available only to members or through members.
>
> **32.** It is contended that, although there is no incorporation as such, the club has attained an existence distinct from its members. It may be said that members come and members go but the club goes on for ever. That is true in a sense. We are not concerned with members who go out. The club belongs to members for the time being on its list of members and that is what matters. Those members can deal with the club as they like. Therefore, the club is identified with its members at a given point of time. Thus it cannot be said that the club has an existence apart from the members."

54. The above case in no manner helps the appellants in the present case. The question in the present case is not as to whether the Delhi Gymkhana Club is an industry or not. The expression that "affairs of the Company are being conducted in a manner prejudicial to the public interest" as required under Section 241(2) is a entirely different expression and right given to the Central Government to apply for an order is also for an entirely different purpose. As noted above, under Section 241(1) of the 2013 Act right has been given to the Members to apply for an order under Section 241 after fulfilling necessary requirements under Section 244 of the 2013 Act and by the same Statute power has been given to the Central Government to apply for an order under Section 241.

55. The learned Counsel for the Appellant has also placed reliance on several judgments of the Hon'ble Supreme Court and one judgment of the Delhi High Court, which need to be noticed.

56. The learned Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in **Dr. K.R. Lakshmanan vs. State of T.N. and Anr. – (1996) 2 SCC 226** in support of the proposition that Delhi Gymkahana Club is a private Members' Club, which has no impact whatsoever on the material resources of the community or the economic system of the State. The Hon'ble Supreme Court in the above case was considering the constitutionality of the Madras Race Club (Acquisition and Transfer of Undertakings) Act, 1986 as well as provisions of T.N. Horse Race (Abolition of Wagering or Betting) Act, 1974. The issues, which came for consideration in the above case has been noted in paragraph 2 of the judgment, which is as follows:

> "**2.** From the pleadings of the parties and the arguments addressed before us by the learned counsel the following questions arise for our consideration:
>
> 1. What is 'gambling'?
>
> 2. What is the meaning of the expression "mere skill" in terms of Section 49-A of the Madras City Police Act, 1888 (the Police Act) and Section 11 of the Madras Gaming Act, 1930 (the Gaming Act)?
>
> 3. Whether the running of horse-races by the Club is a game of 'chance' or a game of "mere skill"?
>
> 4. Whether 'wagering' or 'betting' on horse-races is 'gaming' as defined by the Police Act and the Gaming Act?

> 5. Whether the horse-racing — even if it is a game of "mere skill" — is still prohibited under Section 49-A of the Police Act and Section 4 of the Gaming Act?
>
> 6. Whether the Madras Race Club (Acquisition and Transfer of Undertaking) Act, 1986 (the 1986 Act) gives effect to the policy under Article 39(b) and (c) of the Constitution of India (the Constitution) and as such is protected under Article 31-C of the Constitution. If not, whether the 1986 Act is liable to be struck down as violative of Articles 14 and 19(1)(g) of the Constitution."

57. The Hon'ble Supreme Court held that horse racing is a game of skill where the winning depends substantially and preponderantly on skill. In paragraphs 47 and 49 of the judgment, following observations have been made:

> "**47.** There is no material on the record to show that any inquiry or investigation was held by the State Government in the affairs of the Club. In the facts and circumstances of this case, it was of considerable importance that there should be a proper inquiry held by the Government before such an action is taken. The inquiry should show that the management have so misbehaved and mismanaged that they are no longer fit and proper persons to be permitted to manage the affairs of the Club. Even if the mismanagement on the part of the Club is assumed, it is not open to single out a club of the type for discriminatory treatment. May be that a race-club of national importance or of considerable importance in the State can be taken over in the interest of the State, but the Club is an ordinary race-club which has no impact whatsoever on the material resources of the community or the economic system of the State. There are no special circumstances or reasons to single out the Club as a class for the purposes of the impugned Act. Even if we were to accept the recitation in the Objects and Reasons that the company was being mismanaged, we are of the view that the Companies Act provides for ample machinery to deal with the mismanagement in the companies registered under the

> Companies Act. It is true that the presumption is in favour of the constitutionality of a legislative enactment and it is to be presumed that a legislature understands and appreciates the needs of its own people, but when on the face of the statute there is no classification and no attempt has been made to select an individual with reference to any differentiating attributes peculiar to that individual and not possessed by others, the presumption is of no assistance to the State. In the present case the petitioner Club is a company like any other company registered under the Companies Act. Elaborate machinery and well-established procedural safeguards have been provided under the Companies Act for dealing with the mismanagement in the companies registered under the Companies Act. We see no reasonable basis for classifying the race-club for the purposes of acquiring and transfer of its undertaking on the ground of mismanagement.
>
> **49.** We, therefore, hold that the provisions of 1986 Act are discriminatory and arbitrary and as such violate and infract the right to equality enshrined under Article 14 of the Constitution."

58. The observations, which have been made in the above paragraphs, were made in the context of challenge to 1986 Act and the Court held that provisions of enactment are arbitrary and discriminatory. The Hon'ble Supreme Court further observed that elaborate machinery and well-established procedural safeguards have been provided under the Companies Act for dealing with the mismanagement companies registered under the Companies Act. The Hon'ble Supreme Court also noted in the said judgment that no material on the record shows that any inquiry or investigation was held by the State Government in the affairs of the Club. The said findings in no manner support the submissions of the Appellant, rather, the Hon'ble Supreme Court's categorical observation that

Companies Act provides for elaborate machinery for dealing with the mismanagement companies registered under the Companies Act.

59. The next judgment relied by learned Counsel for the Appellant is **(1970) 1 SCC 462 – The Joint Commercial Tax officer, Harbour Division, II-Madras vs. The Young Men's Indian Association (Regd.), Madras and Ors**. The above was a case where proceedings under Madras General Sales Tax Act, 1959 were questioned by the Club by a writ petition, which was allowed by the High Court, holding that Club could not be held as a 'dealer' within the meaning of Section 2(g), read with Explanation I of the Act, nor was any sale involved in the aforesaid activities of the Club. In paragraph 1 of the judgment, facts have been noticed, which are as follows:

> "These appeals by certificate are directed against a common judgment of the Madras High Court in petitions filed under Article 226 of the Constitution by the Cosmopolitan Club, Madras, the Young Men's Indian Association, Madras and the Lawley Institute, Ootacamund challenging the proceedings relating to their assessment to Sales Tax under the Madras General Sales Tax Act, 1959, hereinafter called the "Act", for supplying food, snacks, beverages and another articles to their members or their guests. It was held by the High Court that each of these clubs could not be regarded as a "dealer" within the meaning of Section 2(*g*), read with Explanation I of the Act nor was any "sale" involved in the aforesaid activity of the club within the meaning of Section 2(*n*), read with Explanation I of the Act."

60. The Hon'ble Supreme Court in paragraphs 11 and 12 approved the conclusion of the High Court in following words:

> "**11.** The essential question, in the present case, is whether the supply of the various preparations by each club to its members

involved a transaction of sale within the meaning of the Sale of Goods Act, 1930. The State Legislature being competent to legislate only under Entry 54, List II, of the Seventh Schedule to the Constitution the expression "sale of goods" bears the same meaning which it has in the aforesaid Act. Thus in spite of the definition contained in Section 2(n) read with Explanation I of the Act if there is no transfer of property from one to another there is no sale which would be exigible to tax. If the club even though a distinct legal entity is only acting as an agent for its members in matter of supply of various preparations to them no sale would be involved as the element of transfer would be completely absent. This position has been rightly accepted even in the previous decision of this Court.

12. The final conclusion of the High Court in the judgment under appeal was that the case of each club was analogous to that of an agent or mandatory investing his own monies for preparing things for consumption of the principal, and later recouping himself for the expenses incurred. Once this conclusion on the facts relating to each club was reached it was unnecessary for the High Court to have expressed any view with regard to the vires of the Explanations to Sections 2(g) and 2(n) of the Act. As no transaction of sale was involved there could be no levy of tax under the provisions of the Act on the supply of refreshments and preparation by each one of the clubs to its members."

61. The above case was considering the issue as to whether sale of goods to its Members attracts the Madras General Sales Tax Act, 1959 and answer was given in negative. The said judgment has no bearing in the issues, which are involved in the present Appeal and does not render any help to the Appellant.

62. Another judgment, which has been relied by the Appellant is **(2019) 19 SCC 107 – State of West Bengal vs. Calcutta Club Ltd.** The question

involved in the above case was eligibility to sales tax/ VAT for supply of food and drinks to Members of the Club and the doctrine of mutuality. The Hon'ble Supreme Court in the above case has quoted with approval of earlier judgment of the Supreme Court in the **Joint Commercial Tax officer, Harbour Division, II-Madras vs. The Young Men's Indian Association (Regd.), Madras and Ors**. (supra) and ultimately concluded that there is no sale transaction between a club and its Members as there cannot be a sale of goods to oneself. Doctrine of mutuality was noted and considered in the above context. In the above case, notices were issued by Assistant Commissioner of Commercial Taxes to the Club, apprising it that it had failed to make payment of sales tax on the sale of food and drinks to the permanent Members, which was challenged before the Tribunal. The Tribunal accepted the plea of the Club and held that supplies of food, drinks and refreshment by the Club to its permanent members cannot be treated as 'deemed sales'. The above order of the Tribunal was not interfered with by the High Court and the High Court concurred with the opinion of the Tribunal against, which State of West Bengal filed the Appeal. The Hon'ble Supreme Court approved the view taken by the High Court and dismissed the Appeal filed by the State of West Bengal. The above judgment, which considered the question of levying of sales tax on the Club for supplying food and drinks etc. to its Member, has no bearing on the issues, which have been sought to be raised in the present Appeal. Hence, the said judgment also does not render any assistance to the Appellant.

63. Another judgment of the Delhi High Court, which has been relied by the Appellant is in the matter of **Commissioner of Income Tax vs. Delhi Golf Club Ltd. – ITA No.1757 of 2010** decided on 30.03.2011. The Delhi Golf Club was registered under Section 12A of the Income Tax Act, whose main activity was to promote the game of golf in India. The Assessing Officer treating the activity of the Club as commercial activity, invoked the provisions of Section 11, sub-section (4)/11 (4A) of the Income Tax Act and rejected the exemption to the extent of Rs.67,84,182/-. An Appeal was taken in the Delhi High Court in the above background. The Hon'ble High Court in the above judgment noticed the position as accepted by the Department that the assessee/ Club would be a "charitable" in nature having regard to the objective for which it is established namely the promotion of the game of golf or sport. The High Court in paragraph 14 of the judgment has extracted the relevant discussion contained in the order of the Tribunal expressing its agreement with the said view. The view taken in paragraph 14 of the judgment is as follows:

> "14. At this stage, we would also like to extract below the relevant discussion contained in the order of the Tribunal with which we are in agreement:-
>
> "We have considered the rival contentions carefully gone through the order of the authorities below and also perused the memorandum and article of association of the assessee club. As per clause-9 of the articles of association, the club was entitled to admit various classes of persons which also included casual members in addition to permanent and tenure members. The casual members were also

using the Golf Course in the same manner as permanent and tenure members were using. The AO has declined fees received from the casual members as income u/s 12A merely because assessee club was not maintaining separate books of accounts regarding this business activity. As per AO it was a business income and not income from the mutual interest that was not liable for exemption u/s 11. There is no merit in the AOs' action for treating the fees received from the casual members as business income. The assessee club was maintaining required records with regard to income and expenditure. There is no requirement of maintaining separate accounts with respect to fees received from different kinds of members, as provided in the articles of Association. The assessee, Delhi Golf Club Limited is a well known club having been in Delhi for over five decades. Its main object is to promote the game of gold in India. It has members from various walks of life. Even the department all along after due examination had accepted that activity of the assessee as not for profit motive. In spite of this consistent finding of the department itself in the past, without any cogent reason, the AO has held that because the assessee was not maintaining separate books of accounts of such casual members it was a business income of the assessee not liable for exemption. As per the articles of the club, the casual members were allowed the usage of green to play the game of golf. The casual members were allowed to play at the club, when they are in Delhi. There is no finding by the AO to the effect that activities of the club during the year were not covered by the definition provided u/s 2 (15) i.e. Charitable purpose which includes relief of poor, educational and advancement of any other object of general public utility. In order to satisfy the requirement of being an “object of general public utility” within the meaning of section 2 (15) of the Act, it is necessary that the benefit should reach each and every person of the country or the state. It is sufficient if it reaches a sizable number of members of the Public. It is therefore clear that for an association to be recognized and given benefit of Section 12(A) of the I.T. Act, its objectives listed should cover any one or all of the following laid down principles:-

A. Object of General Public Utility within the meaning of Section 2 (15) means that the benefit need not reach each and every person. It is sufficient if it reaches a sizable number of members of the public.

B. To serve as charitable purpose object should be to benefit the mankind and not the whole of mankind in a particular country or province.

C. The section of public which is expected to benefit should be well defined even though it does represent only a portion of the mankind.

D. The intention of providing the benefit to portion of the public as individual should be clearly spelled out.

6. The question whether promotion of sports and games can be considered as being charitable has been examined. The Board is advised that the advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individuals would be an object of general public utility. In view thereof, promotion of sports and games is considered to be a charitable activity within the meaning of Section 2 (15) of the I.T. Act, 1961. Therefore, an association or institution engaged in the promotion of sports and games can claim exemption under section 10 (23) of the Act relating to exemption from tax of sports associations and institutions having their object the promotion control regulation and encouragement of specified sports and games."

64. The judgment of the Delhi High Court, which concurred with the opinion of the Tribunal that advancement of any object beneficial to the public or a section of the public as distinguished from an individual or group of individual would be an object of general public utility and in view thereof, promotion of sports and games was considered as a charitable activity within the meaning of Section 2(15) of the Income Tax Act 1961. Hence, it was held that Club was entitled for exemption from tax of sports

associations. We fail to see how the above judgment help the Appellant in the present case.

65. The power given to the Central Government under Section 241(2) is for a purpose and object, which is not far to seek. When a company, which is registered under Section 8 of the 2013 Act, and its affairs are being conducted in a manner prejudicial to the public interest, the Central Government is entitled to file an application under Section 241 of the 2013 Act. When the affairs of a Company are being conducted contrary to the Article of Association and the Company is not promoting the object for which it is incorporated, we are not persuaded to accept the submission of the learned counsel for the appellants that in affairs of the Club no public interest is involved. In the Inspection Report and the Supplementary Inspection Report, the Inspector had detailed the mismanagement in carrying the affairs of the Club contrary to Articles of Association, relevant detail facts with figures have been given as to how the General Council of the Club is violating the provisions of the Articles of Association with regard to membership of the Club. The NCLT in the impugned order has noticed relevant contentions of the parties. Certain part of the inspection report has also been noticed and extracted in the impugned order and after noticing the rival contentions of the parties and materials on record, findings have been returned by the NCLT that the affairs of the Club are not in accordance with the Articles of Association. It will be suffice to notice the findings of the NCLT in the impugned order which contained the reasons and conclusion of the NCLT based on the inspection reports and the materials

which have been collected. The findings of the NCLT are as follows:-

"**FINDINGS OF THE TRIBUNAL**

What connects the dots? In the instant case, the land of the Government held in trust for the people of this country was granted by the way of a perpetual lease in the large extent to the respondent company in question. So long as the leased land was put to use for the purposes mentioned in the Memorandum of Association, the primary objective being sports and related activities which also serves the public interest or the public cause there appears to be no problem with the Govt.

A few members as recorded in the inspection report have flagged the improper working of the club in question forcing the govt. to order inspection. In the course of inspection, several issues came out in the fore front and those issues of mismanagement, irregularities of grave nature and conduct of the affairs contrary to Memorandum of Association, AOA and the Companies Act, 2013 became evident in detail in the inspection report. Statements of General Council members of the club justified most of the issues identified in the course of inspection. The facts and figures stated in the inspection report highlighted gross irregularities committed by the company and the persons who are conducting the affairs of the company. The Govt. initially thought it fit to go into the allegations and in the course of inspection various acts of mismanagement were unearthed. What has been unearthed in the course of inspection is that for the period beginning from 2014-15 onwards the club adopted the method of increasing the registration fee, additional registration fee, application processing fee etc. and invested this amount on the interest bearing investment/mutual funds and the amount of Income generated thereon become part of the income of the respondent club. On one hand the inspection report states that amount received as registration fee was subsumed as income. The counsel for the respondent club pleads that it is shown as a liability and has been refunded as and when desired by the person to make the repayment. For some period, it has treated as an income and for some period as a liability. In any event we find such a course of action deserves to be treated only as a method adopted to enhance the finances of the club for the benefit of the members at the cost of third party because the amounts were received as interest free refundable deposits. The increase in the number of members namely, Green cards and UCP which we find in Annexure-B & C of Volume-XIII clearly establish the allegation that the General Council has been increasing the numbers to enhance its revenue by way of registration fee and penalty which clearly is a case of breach of the MOA and the AOA. Annexure-H notice at volume V clearly establishes that even for dependents green cards are issued for the age 21 onwards upto the age of 56 years over and above, collecting penalty and this clearly establish a case of an intention to unjustly enrich themselves and grant membership so as to allow them to use club even though those persons failed to apply immediately on

attaining the age of 21 years. The two reports and the answers given by the General Committee members make it evident that the affairs of the company have been mismanaged. The affairs of the company have not been properly handled besides being prejudicial to public interest as we have held earlier. Even the manner in which the amounts have been handled and utilized for the benefit of the members attracts violation of the Companies Act and therefore, it is prejudicial to the interest of the company as well. In this case the members of the club Permanent, Temporary, Garrison, Casual and others are people of repute and the affairs of the company run by such persons should be on much higher pedestal that is required by ordinary citizens. Looking at the conduct of the affairs of the company we are of the clear opinion that on the basis of the report that for the last five years period there is a clear case of increase in the number of Green cards and UCPs with an intention to collect the registration fee and penalty and also collect funds from outside persons who do not become a member for long number of years. The conduct of the general council to device methods to collect more amounts in the name of registration fee and penalty clearly establishes a case of conduct prejudicial to interest of the company and against public interest. The further act of investing the amounts in mutual funds and taking the benefit for the use of the company also does not augur well for a club of this nature. Assuming that this amount was kept as liability in respect of new entrants because it is taken as interest free deposit, the club while returning the same cannot justify in retaining the interest components. This will amount to unjust enrichment for no justifiable reason. We are compelled to state so because this company as per the MOU is non-profit company and its primary objective of sports and sports related activities which is nothing but a public interest.

We are therefore of the definite opinion that the affairs of the company are being conducted in a manner prejudicial to the public interest as also in the manner prejudicial to the interest of the company and therefore, the application stands justified.

The argument of the respondent that the action taken by the Central Govt. is based on complaints of 12 persons (1.e., 2 members and 10 others), the details of which are discussed in Para 9.2 and therefore, the entire exercise of inspection in filing of this petition was based on irrelevant complaints of members and bias and predisposed mind on the part of the Central Govt. This argument appears to be incorrect because though the initial complaint was received, the government proceeded to cause a proper enquiry and came to unearth a number of issues of mismanagement and manner in which the company was being run. One among the material is the report of M/s Deloitte Touche Tohmatsu India LLP. Therefore, the plea that the government acted with bias and in a pre disposition of mind has no basis. The plea that M/s Deloitte Touche Tohmatsu India LLP report is a draft report and it is unsigned was taken by the respondent but that was proved to be false by the petitioner by supplying a letter of the respondent company addressed to the individual members referring to very same M/s Deloitte Touche

Tohmatsu India LLP.Report which report has highlighted various irregularities and mismanagement of the affairs of the company.

In the present case it will be relevant to rely upon the decision referred to by Mr. K. Dutta, Ld. Sr. Counsel in the case of In Re: Bengal Luxmi Cotton Mills Ltd., reported in [1965] 35 CompCas 187 (Cal). He referred to para 138 which reads as follows:

> *"In my opinion the allegations in the said paragraphs of the affidavit do not provide any ground for interference nor do they disclose a state of urgency, which would justify interference by an order for supersession of the board of directors of the company. While alleging that in the event of withdrawal of the guarantee given by him the company will be wound up being unable to pay its debts, the applicants have said nothing to show or establish that a winding up order would unfairly prejudice them or other supporting members of the company. It is not enough for an applicant to allege that the company's affairs are being conducted in such a manner that a winding up order would be appropriate, but he must also show that such an order would unfairly prejudice the applicant and other members. No such grounds have been made out of the possibility of prejudice to the applicants or supporting members."*

In the course of inspection and the resultant reports the petitioners have highlighted serious infractions of the provisions of the Companies Act, the MOA and AOA. They are set out in Para 9.14, 9.16, 9.18 and 9.21 of this order. The Senior Counsel for respondents tried his best explaining that the report and inferences are misconceived. We do not subscribe to the said plea, as we find the infractions highlighted in the report are not only based on records but also on the basis of reply of the GC members in response to the queries raised at the time of inspection. They have admitted the infraction. Money has been refunded based on decision of the GC meetings, this speaks for itself.

The Central Govt. in this case has not only established by various acts of mismanagement and financial arbitrariness in collecting various amounts which are contrary to the Articles of Association to enrich the club and its members at the cost of third parties which we have very clearly held is not only violations of the provisions of the Companies Act but against public interest and prejudicial to the conduct of the affairs of the company. The Union Govt. represents the people and therefore, public interest becomes relevant and the manner in which the company is run is prejudicial to the interest of the company therefore, though it is beneficial to the member or members of the company, such company which is run in violations of the Companies Act and also run in a manner prejudicial to public interest in view of the specific material placed showing breach of the provisions of the Companies Act which are very serious in nature and the gross abuse of that position to collect amounts in breach is a clear case where the Company requires to be wound up. However,

> the petitioner have only indicated in the prayer that the petition is filed for the purpose of correcting the respondent company in terms of the MOA and therefore, this Tribunal is of the view that at the present there is no requirement of passing an order for winding up. The documentation of inspection is voluminous and it may need further probe for in-depth understanding of the mismanagement of the Club over the period of time. Hence, the prayer in terms of final relief is justified.
>
> We, therefore, hold that it will be just and equitable to allow the prayer of the Union Government to nominate 15 persons to be appointed as Directors on the General Committee of the respondent no. 1 company to manage the affairs of the company in order to function as per the terms of the memorandum and Articles of Association.
>
> To conclude, we find that there is sufficient material for holding that it is a case of mismanagement for the affairs of the company and the general council members of each financial year have been propagating the same violations year after year and some have been continuing from one period to another giving credence to the stand of the Govt. that the club is run in the nature of "parivadvaad" which cannot be countenanced in the light of provisions of the Companies Act. The continued conduct of the governing body of the company whose acts are prejudicial to the public interest and against the interest of the company justify that the company of this kind should be wound up. However, keeping in mind the inspection report and the nature of action proposed contemplated in the petition we are inclined to invoke the power under Section 242 (1) & (2) of the Companies Act, 2013."

66. We may also notice two more judgments in the present context. A Division Bench of Madhya Pradesh High Court in the case of **Madanlal Juharmal vs. Union of India and others** reported in **2024 SCC Online MP 2881** had occasion to consider the challenge to a sanction order passed under Section 212 (1)(c) of the 2013 Act directing for investigation. The order under Section 2012 (1)(c) can be passed where the Government is of the opinion to investigate into the affairs of a company. The facts and grounds of challenge have been noticed in paragraph 3 of the said judgment, which is as follows:-

> "**3.** The learned counsel for the petitioners submits that the primary contention of the Petitioners is based on the settled position that an order directing investigation under Section 212(1)(c) of the Companies Act, 2013 **("Companies Act")** should stand on its own feet and must be able to demonstrate that there exist material/circumstances which warrant investigation and that such material/circumstances have been been considered and an opinion is formed by the government to investigate into the affairs of the company on the basis such of material/circumstances. This opinion must be based on specific grounds and reasons which shall form a part of the order authorizing sanction. It is the specific case of the Petitioner that though an order sanctioning investigation ought not to be subjected to judicial review on merits, the same can be examined on ground whether the sanction complies with the mandatory requirement of; ***i) there is requisite opinion formed by the Central Government; and ii) existence of material and circumstances to indicate that the company's affairs are causing prejudice to the public interest***. The Petitioners submit that in the present case the order of investigation is completely unreasoned, requisite opinion is not formed by the Central Government, there does not exist material/circumstances/fact necessitating investigation and is without any basis and is merely based on the ipse-dixi of the liquidator who has already filed an application under Section 66 of the Insolvency and Bankruptcy Code 2016 ("IBC"), which is pending adjudication."

67. The Division Bench of the Madhya Pradesh High Court in the said case after analysing the law, came to the following conclusions in paragraphs 35 and 36 of the said judgment which is as follows:-

> "**35**. Even Assuming that there was a requisite opinion formed by the Central Government, it is incumbent upon us to examine whether there exist material facts and circumstances to form such an opinion or weather such opinion correct has been formed on basis of

irrelevant considerations or no material at all or on materials so tenuous, flimsy, slender or dubious that no reasonable man could reasonably reach such conclusion.

36. We are of the opinion that the opinion formed by the Central Government must not be based on a wholly irrelevant or extraneous consideration. The material and circumstances based on which the opinion to order and investigation has been rendered will have to prima facie show that the inferences drawn from the facts in the material and circumstances led to conclusions of certain definiteness as has been rightly held in the judgment of Parmeshwardas Agarwal (supra). In other words, it will have to be examined weather there existed necessary material or circumstances to arrive at an opinion requiring investigation of the affairs of a company by the SFIO. At this juncture, we must caution ourselves to not sit in appeal over the opinion formed by the Central Government and to not substitute the opinion of the Central Government but restrict to examination of existence of circumstances and material facts to grant the impugned sanction."

68. The Division Bench of the Madhya Pradesh High Court allowed the writ petition holding that the impugned order has been passed without applying its mind and in the opinion so formed the satisfaction of pre-conditions under Section 212(1)(c) was lacking. In paragraph 42 of the judgment following was held:-

"**42.** In light of the aforementioned judgments, we are of the opinion that an order of sanction under Section 212 of the Companies Act, 2013 needs to be a reasoned order, there needs to be existence of opinion formed by the Central Government on the basis of material facts and circumstances warranting such investigation and in compliance with principles of natural justice. In our opinion the impugned sanction dated 30.11.021 fails on all counts for reasons stated hereinabove. On a perusal of the impugned order it is evident

> that the Impugned Order is solely based on the suspicion raised by the Liquidator and Transaction Audit Report. On a bare perusal of the Transaction audit report has not brought forth any fact, material or circumstance in its report that could have led the Central Government to form the requisite opinion for the purposes of Section 212(1)(c). The same shows that the Impugned Order has been passed by the Respondent No. 1 without applying its mind and the opinion so formed by it is lacking in the pre-conditions to be satisfied under Section 212(1)(c)."

69. There can be no quarrel to the proposition laid down in the aforesaid judgment. The pre-conditions for exercising statutory power have to be satisfied.

70. Another judgment relied by the Counsel for the Union of India is in the case of **Parmeshwar Das Agarwal vs. Additional Director** reported in **2016 SCC Online Bombay 9276**, which was also a case where investigation was directed under Section 212 (1)(c) of the 2013 Act. In paragraph 14 of the said judgment following was laid down:-

> "**14.** The petitioners have also instituted proceedings for the purpose of holding AGMs and that is how they filed a petition before the Company Law Board, Kolkata numbered as Company Petition No. 62 of 2012. The Company Law Board passed an order on 16th April, 2012, allowing AGMs for the Financial Years 2007-08 to 2010-11 to be held. However, on account of non-cooperation and non-supply of particulars of accounts relating to the Jharsuguda unit, the order of the Company Law Board could not be implemented. Though the AGMs were held, the annual accounts could not be approved. The meetings had to be adjourned sine die. It is then claimed that a round of complaints was commenced by the said Radha Krishan and his group. They approached the Registrar of Companies for the alleged non filing of DIN-3 as also non filing of accounts and annual

returns after 2007. That was in relation to the business of the petitioner No. 8-company. However, the company replied to the letter from the Registrar of Companies and set out the entire factual position, including how Radha Krishan and his group and Parmanand and his group have involved each of them in some litigation. Thereafter, a show cause notice was issued under section 234(1) of the Companies Act on 1st October, 2012 and an explanation was sought with regard to the affairs of the company. The petitioners pointed out in detail as to how the entire attempt on their part is to comply with law, but given the pending disputes between family members and the litigation, they are unable to do so. The petitioners also forwarded alongwith their replies, copies of the relevant orders passed by the High Court of Calcutta. They also gave a detailed explanation as sought by the Registrar when he invoked section 234(1) of the Indian Companies Act, 1956."

71. There can be no quarrel to the proposition laid down in the above case. The **question** to be answered is as to whether there were sufficient materials before the Central Government to form an opinion that affairs of the Company are being conducted in a manner prejudicial to the public interest. The materials which were before the Central Government, as noticed above, contained inspection report and the supplementary inspection report pointing out various violations of the 2013 Act as well as violation of the Articles of Association. The inspection report reported that only 3% of the entire expenditure by the Company is devoted towards sports. The findings returned by the NCLT on the materials before it that the Company has not been able to follow-up its main object and the affairs of the Company are being mismanaged which is prejudicial to the public interest. The relevant findings of the NCLT we have already extracted above.

The Company, which is a Section 8 company, is not able to manage its affairs to pursue its main object. We are not persuaded to accept the submission of the learned counsel for the appellants that there was no public interest involved in directing for filing of petition under Section 241-242 of the 2013 Act by the Central Government. We are thus satisfied that there was sufficient materials before the Central Government to form an opinion that the affairs of the Company are being conducted in a manner prejudicial to the public interest. We thus do not accept the submission of the appellants that there was no public interest involved in carrying of the affairs of the Company and the Company is only for the benefit of its members and no public interest is prejudicially affected by the internal management and affairs of the Company. When a company is incorporated with an object, which is object of public interest, any impairment of such object in carrying out the affairs of the Company which do not truly promote the objects for which it has been incorporated, we fail to see any substance in the submission of the appellants that in managing the affairs of the Company/Delhi Gymkhana Club, no public interest is involved.

72. We thus answer the Question Nos.II, III and VI in the following manner:-

(II) Requisite conditions precedent within the meaning of Section 241(2) of the 2013 Act in the application filed by the Union of India under Section 241-242 are met.

(III) There were sufficient materials on record for formation of requisite opinion under Section 241(2) of the 2013 Act by the Central Government.

(IV) The affairs of the Company/Delhi Gymkhana Club are being conducted in a manner prejudicial to the public interest which enabled the Central Government to file an application under Section 241(2) of the 2013 Act.

Question Nos.(V), (VI) and (VII)

73. The above questions being interrelated, are being taken together.

74. The submission which has been advanced by learned Counsel for the Appellant is that the impugned order dated 01.04.2022, does not contain sufficient findings for exercising jurisdiction under Section 242 of the Companies Act, 2013. It is submitted that order is in nature of interim order and cannot be held to be a final order. It is submitted that in the final order, which was required to be passed, the NCLT ought to have identified the matters complained of for remedial action thereon. Further limb of argument is that NCLT by its impugned order has delegated its powers and jurisdiction to Fifteen Members' Committee ("**Committee**"), which ought to have exercised by the NCLT, which was not permissible. The impugned order dated 01.04.2022, directed the Committee to submit Report once in three months or whenever required. Further submission is that the General Council of the Club has been superseded for an indefinite

period, the impugned order ought to have provided a course of action and a timeline for taking corrective measures. The impugned order passed by the NCLT in exercise of jurisdiction under Section 241 and 242 of the Companies Act, 2013 cannot supersede the General Council of the Club indefinitely. The Fifteen Members Committee have been appointed by the impugned order for perpetuity, which is not in the domain of NCLT while exercising power under Section 241 and 242. The learned Counsel for the Appellant has also relied on judgment and order of the Hon'ble Supreme Court dated 30.09.2021 passed in Civil Appeal(s) arising out of an interim order dated 15.02.2021 passed in Company Appeal(s) challenging the order of NCLT dated 26.06.2020. It is submitted that Hon'ble Supreme Court vide order dated 30.09.2021 had directed the Administrator to take necessary steps for installing the duly elected committee by conducting elections within four months, which order indicates that there was clear direction for installation of newly elected Committee and despite the aforesaid directions of Hon'ble Supreme Court dated 30.09.2021, the NCLT has superseded the General Council of the Club for an indefinite period without any direction for installation of duly elected Committee by conducting election within a time period.

75. We need to first examine as to whether the order impugned is an interim order under Section 241 (4) or a final order under Section 242.

76. As noted above C.P.-71(/241-242/PB/2020 was filed by the Union of India in March 2020, in which apart from main prayer, ad-interim relief was also sought for. Paragraph 3 of the impugned order, notices the

prayers made in Company Petition. Paragraph 32 of the impugned order is as follows:

77. The reliefs sought by the Union of India in this petition are as follows:

> *"PRAYER*
>
> *32. That in light of the factual position detailed above and also in view of the emergent circumstances involved, it is most humbly prayed that the Hon'ble Tribunal be pleased to pass the following orders under Section 242 of the Companies Act, 2013:*
>
> ***Ad-interim Reliefs***
>
> *a) That the General Committee of Respondent No. 1 Company be suspended, with immediate effect, and a Central Government nominated Administrator be appointed to manage the affairs of the Respondent No. 1 Company and such Administrator may report to this Hon'ble Tribunal on such matters as it may direct.*
>
> *b) That immediate ban be implemented on acceptance of any further new membership applications and fees or any enhancement thereof, by the Respondent No. 1 Company, till the time the pending/waitlisted applications are disposed of as per the orders of this Hon'ble Tribunal.*
>
> *c) That the Petitioner be permitted to serve the Respondents through post, publication in newspapers, email, WhatsApp messaging, wherever required, in order to ensure due service of notice to all Respondents, present in India or overseas.*
>
> ***Final Reliefs***
>
> *d) That the Central Government be allowed to nominate 15 (fifteen) persons, to be appointed as directors on the General Committee of the Respondent No. 1 company to manage the affairs of the company and such directors may report to this Hon'ble Tribunal on such matters as it may direct, including restructuring of the Respondent No. 1 company in order for it to function as per the terms of its Memorandum and Articles of Association.*
>
> *e) Pass any other order(s) as deemed fit and proper, under the circumstances, by this Hon'ble Tribunal."*

78. In the Company Petition No.71 of 2020, interim orders were passed on 26.06.2020. Paragraphs 75 and 76 of the order dated 26.06.2020 are as follows:

> "75. For the reasons aforementioned, I have found prima facie case demonstrating that the affairs of the Club are being conducted in a manner prejudicial to the public interest therefore I hereby direct Union of India to appoint two of its nominees of its choice as Members in the General Committee to monitor the affairs of the Club along with other GC Members
> and give suggestions to the GC, and direct the Union of India to constitute a Special Committee with five Members of its choice to enquire into the affairs of the Club, utility of the land leased out by the State, with regard to constructions in progress without requisite approvals or with approvals, suggestions for changes in Articles and Memorandum of Association, membership issues including waitlist and about accelerated membership, adherence of the Club to the Rules governed by Section 8 of the Companies Act 2013 and other miscellaneous issues if any and file report of recommendations suggesting for better use of the club premises for the larger good in a transparent manner on equity basis within two months hereof.
> 76. This Bench further directs the general committee that it shall not proceed with construction or further construction on the site, it shall not make any policy decisions and it shall not make any changes to the Memorandum of Association or Articles of Association and it shall not deal with the funds received for admission of Members and it shall not conduct balloting until further orders. The GC is given liberty to carry day to day functions of the Club by using funds of it other than fee collected from applicants. All these directions shall remain in force until further orders."

79. Company Appeal (AT) No.95 of 2020 was filed by the Delhi Gymkhana Club against the interim order dated 26.06.2020 and Company Appeal (AT)

No.94 of 2020 was filed by Union of India, challenging the same order. Both the Appeal(s) were heard by this Appellate Tribunal and disposed of by the common judgment dated 15.02.2021. This Tribunal upheld the order of NCLT dated 26.06.2020. Further, while considering the last limb of issued raised in Company Appeal (AT) No.94 of 2020 in regard to interim relief granted in terms of impugned order regarding suspension of General Council and appointment of an Administrator, this Appellate Tribunal held following in paragraph 46:

> "46. Now coming to the last limb of the issue raised in Company Appeal (AT) No.94 of 2020 in regard to the interim relief granted in terms of impugned order being inadequate, be it seen that induction of two nominees by Central Government as members in the GC to monitor the affairs of Club and give suggestions to the GC is of no consequence as the voice of such nominees, on account of their inferior numerical strength in GC is bound to be lost in the din and the interim relief as granted would become meaningless. The interim relief, to which the Union of India is found entitled to on the strength of a prima facie case demonstrated by it, has to be effective and adequate enough to ensure that the affairs of the Club are conducted in accordance with law and the charter of the Club. The interim relief must prove to be result oriented. We accordingly modify the interim relief by directing suspension of the GC and appointment of an Administrator to be nominated by the Union of India to manage the affairs of the Club and also direct that acceptance of new membership or fee or any enhancement thereof till disposal of wait list applications be kept on hold till disposal of the Company Petition. The interim directions are accordingly modified and be carried into effect within two weeks.
>
> The observations made hereinabove are limited to grant of interim relief. The same shall not be construed as an expression of opinion

on the merits of the case.

We will be failing in our duty if we do not express our gratitude to Mr. K.M. Natraja, learned ASG representing the Union of India and Mr. S.N. Mookherjee, Senior Advocate representing the Respondents. But for their valuable assistance, this judgment may not have seen the light of the day.

The appeals are accordingly disposed off. Judgment be communicated to the Tribunal."

80. Two Appeal(s) were filed against the judgment dated 15.02.2021 of this Tribunal being **Civil Appeal No.__ of 2021 (Diary No.5221 of 2021) and Civil Appeal No.__ of 2021 (Diary No.5593 of 2021) – Rajeev Sabharwal & Anr. vs. Union of India & Ors.** Both the Appeal(s) were disposed of by the Hon'ble Supreme Court vide order dated 30.09.2021. The Hon'ble Supreme Court in the order dated 30.09.2021 observed *"We decline to interfere in these appeals as the same are directed against interlocutory order passed by the National Company Law Appellate Tribunal (in short, "NCLAT")."*. In the same order dated 30.09.2021, the Hon'ble Supreme Court made following observations:

"Needless to observe that rejection of these appeals does not mean that the NCLT can decide the matter(s) on the basis of prima facie finding/opinion recorded by itself and by the NCLAT in the impugned judgment(s). Those findings/observations shall not come in the way of any party. Instead, the NCLT must decide the entire matter(s) afresh on all contentions available to both parties without being influenced by any findings and observations in the earlier decision or the fact of rejection of these appeals."

81. The order impugned dated 01.04.2022 has been passed by the NCLT, consequent to the order of the Hon'ble Supreme Court dated 30.09.2021.

Further, extension of four weeks' time was granted by the Hon'ble Supreme Court by a subsequent order. Thus, it is clear from the order of the Hon'ble Supreme Court that direction was issued by the Hon'ble Supreme Court to NCLT to take a final decision and decide the entire matter as per the observations extracted above in the order. Hence, the order passed by the NCLT on 01.04.2022, is thus, a final order, which has been passed by the NCLT in compliance of the order of the Hon'ble Supreme Court dated 30.09.2021. Thus, the submission of the Appellant that order dated 01.04.2022 is only an interim order, cannot be accepted. As noted above, interim order was earlier passed by NCLT on 26.06.2020, which was upheld by this Appellate Tribunal and was not interfered with by the Hon'ble Supreme Court by its order dated 30.09.2021.

82. We, thus, reject the submission of learned Counsel for the Appellant that order dated 01.04.2022 is not a final order. The order dated 01.04.2022 has to be held to be a final order passed in Company Petition under Section 241 and 242 filed by the Union of India.

83. Another question which need to be answered is as to whether the impugned order does not record any finding for exercising jurisdiction under Section 242 of the Companies Act, 2013?

84. We have already noticed above that inspection was directed by the Government of India and elaborate Inspection Report dated 31.07.2019 was submitted. Thereafter, a Supplementary Inspection Report dated 03.03.2020 was also submitted, highlighting numerous violations by the

Club, which Supplementary Inspection Report was forwarded to the Ministry of Corporate Affairs by letter dated 04.03.2020 as noted above. Inspection Report dated 31.07.2019 as well as Supplementary Inspection Report dated 03.03.2020 have been brought on record as Annexure R-3 and R-6. Inspection Report dated 31.07.2019 runs into 41 pages, whereas Supplementary Inspection Report runs into about 4000 pages, which Reports elaborately considered various aspects regarding affairs of the Club. Company Petition filed by the Union of India is also brought on Record, which in detail mentions various complaints received by the Government against the Club and order of inspections issued on 16.02.2016 under Section 206(5) of the Companies Act, 2013. Major complaints received against the Club has been enumerated in paragraph-12 of the petition, which included various violations of the Companies Act, 2013 and Companies Act, 1956. The Company Petition also refers to Supplementary Inspection Report dated 03.03.2020. The Petition extracts Preliminary Observations of the Supplementary Inspection Report in paragraph 22. The petition extract the observations made by Inspectors, after verifying the records of the Club and after considering the reply submitted by Club in response to summons issued to the Members and Office bearers. The Petition, which was filed by the Union of India under Sections 241 and 242 is a detailed petition, containing pleading with reference to Inspection Report and Supplementary Inspection Report. The NCLT has sought reply from the Club. The NCLT noted the submissions of the parties and the materials on record and has returned its detailed finding under the heading

"Findings of the Tribunal", which findings, we have already extracted above.

85. It is further relevant to notice that the order impugned also contain discussion by the NCLT on different aspects. Paragraph 16 of the impugned order reads – "Major Issues Identified for consideration by this Tribunal". In paragraph 16A under the heading "Violation of Memorandum of Association and Articles of Association and Financial Irregularities-Mismanagement", following has been captured by the NCLT:

> "**16. Major Issues Identified for consideration by this Tribunal.**
>
> **A. VIOLATION OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION IRREGULARITIES-MISMANAGEMENT AND FINANCIAL**
>
> In the course of the inspection of the company the statement of Income & Expenditure account of the company for the last 5 financial years filed as Annexure 12 of the supplementary inspection report dated 03.03.2020 revealed that the company has earned an income of Rs. 51.81 crores, Rs. 56.35 crores, Rs. 50.18 crores, Rs. 65.90 crores and Rs. 86.20crores during the period from 2014-15 to 2018-19 respectively. There is no major income directly from sports activities which is the primary objective of the company and for which lease of public land was granted by the Ministry of Urban Affairs in the year 1928 on perpetual lease on a meagre rent. The expenses of the company was Rs. 46.42 crores, Rs. 50.84 crores, Rs.49.26 crores, Rs. 55.63 crores and Rs. 70.16 crores from 2015-16 to 2018-19 respectively. The expenditure towards sport during this period was Rs. 1.40 crores, Rs. 1.53 crores, Rs. 1.48 crores, Rs. 1.56 crores and Rs.1.84 crores whereas extraordinary higher sum

was spent on catering, wine, beverages and cigarettes etc. So, the total expenditure for the said period 2.77% alone has been expended towards sports. In order to supplement the enormous expenditure, the company realizing that the number of Permanent Members has to be restricted to 5600 and there is no restriction in so far as Garrison Members, Temporary, Casual and Special category Members and in order to overcome the limit prescribed by Article 13(1) of AoA which prescribes the entrance fee at permanent (non-govt.) Rs. 25,000/-, permanent (govt. officers) Rs. 10,000/-, use of club premises pending election (UCPs) Rs. 10,000/- and Special category Members(i.e. corporate members) Rs. 15,00,000/- with additional Rs. 7,50,000/- devised a method of including new Members and started issuing Green Cards to children of the permanent members and UCPs Members as well. For these Members they have issued a notice on 17.05.2019 which has been extracted in Para 13.1 of this order where details of penalty and registration fee deposits for issuance of Green cards to children has been indicated. In pages 1026 to 1030 of Volume V of the supplementary report dated 03.02.2020 the reply of the company has been recorded. They have admitted that though besides the entrance fee has been specifically defined under Article 13 (1) of the AoA, the company has been charging registration fee of Rs. 1,50,000/- for permanent government Members, additional registration fee of Rs. 2,50,000/-, security deposit etc., for permanent non govt. Members the entrance fee is Rs. 25,000/-, registration fee is Rs. 7,50,000/-, additional registration fee is Rs. 10,65,000/- besides other amounts, for Green card granted to Member's of children, the registration fee is Rs. 1,50,000/-,for UCP i.e. Green card 104 holder for up-gradation, entrance fee is Rs.

10,000/-, additional registration fee is Rs. 1 ,50,000/- from UCP to permanent, entrance fee is Rs. 15000 /- and additional registration fee is Rs. 1 ,50,000/- . Similarly for lady subscriber Govt. category entrance fee is Rs. 10,000/-, registration fee is Rs. 1,00,000/-,for lady subscriber non govt. category registration fee is Rs. 2 ,00,000/ , entrance fee is Rs. 10000 /- for divorcee additional registration fee is Rs. 6 ,00,000/- , for eminent Members namely Judges of High Court and Supreme Court and Civil Service officers, entrance fee is Rs. 10000 /- additional fee is Rs. 1 ,50,000/- This chart is Para 13.2 of this order. From this it is evident that the company has been receiving this registration fee which is not contemplated under AOA. All that is provided for is entrance fee, the AOA has not been amended, which is a violation as explained in Para 9.21 of this Order. This is not provided in the AOA but appears to have been introduced by way of bye laws. What is not contemplated in the AOA have been indirectly brought in through byelaws. The source of this power is stated to be under Article 23 of the AOA. This is one aspect which clearly establishes that the company has been arbitrarily collecting registration fee based on the general committee decision without proper mandate as required under the Companies Act as indicated in Para 9.14 of this Order."

86. It has been noticed by the NCLT in the above paragraph that expenditure towards sports is only 2.77%. It was further noticed that sport is the primary objective of the Club for which lease of public land was granted by the Ministry of Urban Affairs in the year 1928. We have already referred to the Supplementary Inspection Report dated 03.03.2020. The Inspection Report as well as the Supplementary Inspection Report have

been brought on record in the reply filed by the Union of India. In the Supplementary Inspection Report under the heading "Profile of the Company" and at Item No.11 following has been noticed:

> "11. First and major objective of the Company: To promote various sports and pastimes and the other objectives."

87. After noticing the nature of Company, which is incorporated under Section 26 of the Companies Act, 1913, the Report makes following observations with regard to main object of the Company:

> "**Observation on facts:**
>
> Section 26 under Companies Act, 1913 or section 25 under Companies Act, 1913 and section 8 under Companies Act, 2013 taken into consideration, to be a non-profit company, the company has to work on fulfilment of the conditions mentioned in the relevant section and the Central government grants a license subject to conditions and regulations which shall be binding on the association. Also, the first and foremost object of the company should be the major object of the company, which is promotion of various sports which falls under the words 'any other useful objects'. The company can carry out any related business as per its object clause however, it needs to align with the main object as stated in the MoA i.e. promotion of sports."

88. Supplementary Inspection Report has also noted the revenue from operations, other income and expenses and also observed that the Club has failed to carry out the objects of the Company. Following are the observations in the Supplementary Inspection Report:

> "**Observation on facts:**

The above mentioned Tables referring to the Income & Expenditure of the company Indicates that the company has earned an income of Rs 51.81 crores, Rs. 56.35 crores, Rs. 50.18 crores, Rs. 65.90 crores and Rs. 86.20 crores during the period from 2014-15 to 2018-19 respectively.

Of the total income earned in the respective financial years, there is no income directly from sports during the said period which could have been made by seeking sponsorships and endorsements, holding sports events, spectators' fees of the events, sale of sports items, etc. This reflects that the management or the General Committee of the company are not able to generate any income for this company on account of sports which is a major objective of the company and for which lease of land was allotted by the Ministry of Urban Affairs in the year 1928 (at Annexure 13).

Similarly, a bare look at the expenses for the said period indicates that the company has incurred a total expenditure Rs. 46.42 crores, Rs. 50.84, Rs. 49.26 crores, Rs. 55.63 crores and Rs. 70.16 crores from 2014-15 to 2018-19 respectively:

(i) Of which the expenditure on sports in the name of games during the said period was to the tune of Rs. 1.14 crores, Rs. 1.53 crores, Rs. 1.48 crores, Rs. 1.55 crores and Rs. 1.84 crores respectively

(ii) and on payment to employees and contractors was Rs. 15.93 crores, Rs. 19.07 crores, Rs. 19.57 crores, Rs. 20.35 crores and Rs. 30.62 crores respectively

(iii) and on catering, wine and beverages and cigarettes (i.e. consumables) was Rs. 14.32 crores, Rs. 15.46 crores, Rs. 15.26 crores, Rs. 16:80 crores and Rs. 20.14 crores respectively

So the total expenditure during the said period (i.e. 2014-15 to 2018-19) of the company is Rs. 272.31 crores, of which only 2.77% (Le: less than 3%) of expenditure is towards sports and towards employee benefit is 38.78% and towards consumables is 30.11%.

Thus, an admitted picture of Income & Expenditure a/c indicates that the company has a minimal income and expenditure on promotion of sports activities which is not in tune with the object clause of the MoA of the company.

Thus, the member of the General Committee during the last 5 financial years have consistently failed to carry out the object of the company. Further, 30.34% of the total expenditure by the company is in the form of catering consumables, wine and beverages, and cigarettes."

89. When a Company fails to carry out its affairs for promotion of its main objective, the affairs of the Company definitely are being conducted in a manner prejudicial to the public interest. Facts, which have been captured in paragraph 16A, are facts, which are culled out from the Supplementary Inspection Report and those facts are also reason for exercising the jurisdiction under Sections 241 and 242 by the NCLT. Detailed expression and observations have been made in the Supplementary Inspection Report with regard to Membership criteria of the Company in paragraph 3 of the Supplementary Inspection Report. The copy of Memorandum of Association and Article of Association have been filed as Annexure A-3 to the Appeal. Paragraphs 1 to 4 of the Article of Association, which deals with the Members, are as follows:

"**Name of Members**

1. The company for the purposes of registration is declared to consist of two hundred permanent members of the Delhi Gymkhana Club Limited, hereinafter called the Club.

Increase of Membership

2. The General Committee hereinafter mentioned may, whenever

the expansion of club required it, register an Increase of permanent Members upto 5600.

Vice Patrons

3. The President of India shall be invited to become the Patron of the Club. The General Committee may, from time to time, invite other distinguished persons to become Vice Patrons or Honorary Members.

Class of Members

4 (1) There shall be the following classes of members namely :-

(a) Permanent members

(b) Garrison members

(c) Temporary members

(d) Casual members

(e) Special Category Members (EGM dated 4th May 96)

Qualifications for Membership

(2) Any individual not less than 21 years of age shall be eligible for membership;

Provided that :-

(a) only officers in units of Delhi garrison may become Garrison Members;

(b) only temporary residents of Delhi may become Temporary Member,

(c) only persons ordinarily resident out of Delhi may become casual members.

(d) upto three persons occupying top managerial positions in Companies and Corporate bodies which have a turnover in excess of Rs.100 crores, and who have been designated at the time Special category membership is

sought may, at the discretion of the Club, and subject to the satisfactory fulfillment by each of the designated persons of balloting criteria laid down in Article 8(5), be permitted use of the Club facilities."

90. Clauses 6, 7 and 8 deal with 'Application for admission'; 'Candidates' Book' and 'Procedure for election of membership'. Clause 8(7) and 8(8), which are also relevant, are as follows:

"8.(7) With a view to maintaining the distinctive character of the Club, the General Committee shall regulate the balloting of candidate for membership of the Club in such a manner that the proportion of members who are officers of the Armed Forces of India or Civil officers of Government continues to be about half the total active membership, and also in order to facilitate the early admission of members of the Diplomatic Corps

8.(8) The General Committee shall regulate the admission of Special category members so that at no time shall the number of such members exceed a total of one hundred and fifty Company and Corporate Bodies, Nor shall more than fifteen Companies and Corporate Bodies be admitted as Special Category members in any one year."

91. Clause 12, which deals with 'Use of premises Pending Election', is as follows:

"**Use of permises Pending Election**

12. A candidate, whose name is up for election as a permanent, garrison of temporary member, may, provided that his proposer and

seconder be responsible for the liabilities incurred by him, be invited by the General Committee to use the premises of the Club pending the result of the election.

92. Clause 13, deals with 'Entrance Fee'. Clause 13, sub-clause (2a) deals with 'monthly subscription in respect of Special Category Members'. Clause 13 (3a) deals with 'Members whose sons and daughters, between the age of 13 and 21 and are permitted to use the Club as dependents'. Clause 13(3b) deals with 'on reaching the age of 21, the son of a member having previously used the Club under Article 13(3a) must apply to become a full member'. Clause 13 with its sub-clauses are as follows:

> "**Entrance Fee**
>
> 13.(1) The Entrance fee for permanent membership. including that payable by Lady Subscriber, shall be Rs. 25,000/- payable in lump sum. Provided that persons who at the time of applying for membership are officers of the Armed Forces of India, or Civil Officers of Government, would be required to pay an Entrance Fee of only Rs. 10,000/-. The entrance fee for UCPs of members sons/daughters will in all cases be Rs. 10,000/-.
>
> 13. (1a) Provided that no entrance fee shall be payable in the case of the widow of a deceased permanent member who applied to be admitted as a Lady Subscriber within two years of her husband's death.
>
> 13. (1b) The entrance fee for Special Category membership shall be Rs. 15 Lakhs for upto two designated user, and an additional Rs. 7.5 Lakhs for a third such user, payable in advance and in lump sum by the Company or Corporate Body granted such membership, for the entire validity 'period of 10 years.
>
> (2) The following shall be the rate of monthly subscription for all members:
>
> | | | Monthly |
> |---|---|---|
> | 1. | Permanent (married or single) | |
> | | *(a) Members below 65 years of age | Rs. 400/- |

	*(b) members 65 and 80 years of age	Rs. 250/-
	(c) members 80 years and above and	Nil
	(d) members of 90 years and above	Nil
2.	Temporary membership (Married or single)	Rs.3000/-
*3.	Lady Subscribers	Rs. 400/-
4.	Special category member of each designated user	Rs. 250/-

13 (2a) The monthly subscription in respect of Special Category Members shall be payable by the Company or Corporate body granted such membership, for each designated user in addition to the charges leviable under sub-paragraph 5 of this Article.

In case of married members the monthly subscription includes their wives.

13. (3a) Members whose sons and daughters, between the age of 13 and 21 are permitted to use the Club as dependents, shall pay an additional monthly subscription of Rs. 40/- p.m. for each child using the Club. However, for absentee dependent children, a member shall pay Rs. 20/- p.m. for each child.

13.(3b) On reaching the age of 21, the son of a member having previously used the Club under Article 13 (3a) must apply to become a full member, should he wish to continue to use the Club.

13. (3c) On reaching the age of the 21, the unmarried daughter of a member may use the Club under Article 13 (3a) during such time as she lives with her parents.

13. (4) . Children of members under the age 13 are permitted use of the Club amenities free of charge subject to such restrictions as regards hours and times as the bye-laws may impose from time to

time, but they shall not be permitted to appear in the main Club House (except by prior invitation of the General Committee) or to live in the Club quarters.

13. (5) The monthly subscription of all members whether permanent or temporary and of Lady Subscribers is inclusive of the use of the Club buildings, and amenities but excluding tennis, squash, swimming and card rooms for which separate charges shall be as follows ;-

(a)	Tennis	Rs. 100/- p.m.
(b)	Squash or Swimming or Card Rooms	Rs. 100/-p.m.
(c)	Two or more of the above facilities	Rs. 150/- p.m.
	For casual users of facilities the charges shall be as follows:	
	(i) Tennis	Rs. 30/- per day
	(ii) Squash or Swimming or Card Room	Rs. 20/- per day
(d)	Separate charges may be levied for Billiards, Badminton, Table Tennis, Dances and special facilities/ entertainments as may be determined by the General Committee from time to time.	

Provided that in the case of Special category membership the charges indicated in the sub-paragraph shall be payable by the Company or Corporate body in respect of each of its designated persons actually using the facilities described herein."

93. With regard to Membership and the category of Members, elaborate examination has been made in the Supplementary Inspection Report and with regard to Green Card Holders, detailed observations have been made, observing that the Green Card Holders, which are not contemplated in the Article of Association, number of Green Card Holders ranged from 4000 to 5333 from 2015 to 2019. It is not necessary for us to refer to detailed

Report with regard to Green Card Holders as captured in the Supplementary Inspection Report. With regard to Green Card Holders, following are observations in paragraph (e) at page 904 of the reply of Respondent No.1:

> "(e) Thus, the GC for each financial year after 2014-15 had knowledge of all the irregularities and violations done in the past while giving the memberships of the Club and the same got continued in the coming years. In spite of having knowledge of the Irregularities and violations, every year the new GC appointed by the Club violated the Articles of the Company by exceeding their powers in a new way. Knowingly, the GC for each year continued the practice of inviting new applications for membership by paying membership fees in the name of registration fee, additional registration fee, processing fee, etc. in addition to entrance fees.
>
> The practice of GC going beyond its vested powers as per Articles of Association is still continuing as the present GC also invites registration fees from new applicants, makes Green Card Holders, lady subscribers and UCPs as members etc. which is ultra vires to the AoA. These are quite visible in the minutes of the company from June, 2019 to January, 2020.
>
> The AoA of the company does not contain any concept of Green Card Holders. The said category has been perfidiously created by the General Committee to accommodate, out of line, the dependent family members of the permanent members of the DGC. This in effect is a way to bypass the existing, long and self- created waiting-list of the general applicants, by the GC. It is to be noted that the Green Card Holders have been enjoying preference in grant of permanent memberships of the Club. These so-called Green Card Holders, more or less, consist of the dependents (who have crossed the age of 21 years) of the permanent members, but who have been summarily chosen for enjoyment of the Club. As such, the grant of privileges to

use of the Club premises by arbitrarily chosen individuals (Green Card Holders) has become a norm, which, is nothing short of hereditary succession or 'parivaar-vaad'. Similar modus-operandi is also being used for accommodating superannuated government officers who were members of the Club in the category of Govt. Members."

94. Supplementary Inspection Report found various illegalities and irregularities with regard to Membership. Supplementary Inspection Report also highlights that although entrance fee is provided for enrollment of Member under the Article of Association, but in the name of registration fees, process fees and security deposit, huge amounts are got deposited from Applicants desirous to take Membership of the Club. The said amounts were till financial year 2016-17 was treated as revenue of the Club, but subsequently is treated as liabilities. The amounts were deposited in various securities and huge interest was earned. It has been observed that Company being non-profit Company, Company has enriched itself by adopting the aforesaid mode, which is not in accordance with the Article of Association. Supplementary Inspection Report has also observed that the class of Members from Companies and Members from corporate entities have increased from the prescribed limit. Different queries which were forwarded, have been dealt by the Ministry in detail in Supplementary Inspection Report, which is filed as Annexure R-5 to the reply filed by Union of India, which contains detailed observations after examining the reply of the Company and the facts. The NCLT has also returned its finding as noted above, opining the violation of Memorandum of Association and

Article of Association, along with financial irregularities and mismanagement. We, thus, are unable to accept the submission of the Appellant that no findings have been returned by the NCLT while exercising jurisdiction under Sections 241 and 242.

95. The next limb of submission of the Appellant is that NCLT by the impugned order delegated its jurisdiction to the Fifteen Members Committee and has abdicated its jurisdiction, which was required to be exercised by the NCLT itself. The operative portion of the order has already been extracted above in paragraphs 2 and 3. In direction 2 and 3, following have been directed:

> "2. Such directors so appointed as above will file a report with this Tribunal, once in three months or whenever required.
>
> 3. They are directed to take all actions for restructuring the Respondent No.1-Company in terms of memorandum and Articles of Association and take corrective measures which are in violations of the memorandum and Articles of Association and the Companies Act, 2013."

96. The task, which was entrusted to Fifteen Members Committee has been outlined in the order from the above two directions are clearly decipherable, i.e. (i) take all actions for restructuring Respondent No.1 Company in terms of Memorandum and Article of Association; and (ii) take corrective measures which are in violation of the Memorandum and Article of Association and the Companies Act, 2013. We, thus, are unable to accept the submission of the Appellant that the NCLT has delegated its jurisdiction to the Fifteen Members Committee. The Fifteen Members

Committee, which was to replace all the General Council was entrusted with the task as noted above. Hence, the Fifteen Members Committee has to take its action as per the directions and it cannot be said that the NCLT has delegated its jurisdiction to the Fifteen Members Committee. It goes without saying that Fifteen Members Committee has to act in accordance with the NCLT's order, after taking into consideration the observations of the NCLT and directions issued thereunder. Direction No.3 as noted above, has to be read with the findings as returned by the NCLT in the impugned order. We, thus, are unable to accept the submission of the Appellant that NCLT abdicated its jurisdiction and delegated its jurisdiction to Fifteen Members Committee.

97. We have also noticed the submission made by learned Counsel for Union of India that after order of NCLT dated 01.04.2022, Status Reports have been filed starting from April 04, 2022 to June 06, 2024. Status Reports contained details of actions taken by Fifteen Members Committee regarding financial irregularities, irregularities in allotment of Membership, actions take and the objects of the Club. The Fifteen Members Committee has also appointed Auditors namely – Baker Tilly Business Advisory Services Pvt. Ltd., to conduct the Forensic Audit Report of the Club, who has submitted a Report. However, any further direction issued by the NCLT on the Status Report submitted by the Committee in compliance of the directions have not been brought on record.

Question No.(VIII)

98. We have noticed the judgment of the Hon'ble Supreme Court in **Tata** Consultancy **Services Ltd.** (supra) where the Hon'ble Supreme Court considered the object and purpose of exercise of jurisdiction under Sections 241 and 242 by the NCLT. The Hon'ble Supreme Court held in the above judgment that "…*the court is ordained, generally to pass such orders* ***"with a view to bringing to an end the matters complained of""***. The Hon'ble Supreme Court further made following observation – "*Therefore, at the stage of granting relief in an application under these provisions, the final question that the court should ask itself is as to whether the order to be passed will bring to an end the matters complained of."*

99. Thus, the principal objective of order under Sections 241 and 242 is to pass order with a view to bringing to an end the matters complained of. Thus, the proceeding under Sections 241 and 242 is to take remedial action. The affairs of the Company, which are being conducted to the prejudicial to the public interest, should be remedied to protect the public interest, has to be the objective of the Court in proceeding under Sections 241 and 242. The order was passed by the NCLT on 01.04.2022 and more than two and a half years have been elapsed from passing of the order and Fifteen Members Committee (at present only eight Members are functioning) has acted in pursuance of the impugned order and has taken certain steps. It is not necessary for us to enter into details and the steps taken by Fifteen Members Committee, since the challenge in the present case is basically to

the order impugned dated 01.04.2022. We have also referred to order of the Hon'ble Supreme Court dated 30.09.2021 passed in Civil Appeal(s) before the Hon'ble Supreme Court by the Rajeev Sabharwal (Member of the Club), who is also one of the Appellant before us and challenged the order dated 15.02.2021 passed by this Tribunal, appointing an Administrator after superseding the General Council of the Club. The submission, which was advanced on behalf of the Appellant in Civil Appeal is that in event the NCLT was not in position to dispose of the main proceedings in the timeline specified in the order, the Administrator be directed to take necessary steps for installing the duly elected committee by conducting elections after four months. The Hon'ble Supreme Court noticed the aforesaid prayer of the Appellant and accepted the said request. Relevant part of the order of Hon'ble Supreme Court dated 30.09.2021, is as follows:

> "It was suggested by Mr. Neeraj Kishan Kaul, learned senior counsel appearing for the appellant(s) in Civil Appeal arising from Diary No. 5593 of 2021 that if the NCLT is not in a position to dispose of the main proceedings in the timeline specified in this order, the administrator be directed to take necessary steps for installing the duly elected committee by conducting elections after 4(four) months.
>
> We accede to this request. The administrator may do the needful."

100. Subsequently, four months period granted on 30.09.2021, came to an end by *January* 2022. However, on an Application filed by the Union of India, the Hon'ble Supreme Court has passed an order extending the period for a further period of four weeks. By order dated 11.03.2022, further four weeks' time was granted to dispose of the petition. Before the four weeks'

time granted on 11.03.2022, came to an end, order was passed by NCLT on 01.04.2022. Thus, the order dated 01.04.2022 passed by NCLT is within the timeline granted by the Hon'ble Supreme Court.

101. However, the observations of the Hon'ble Supreme Court in order dated 30.09.2021 as extracted above, clearly indicate that Hon'ble Supreme Court had directed that in event the NCLT is unable to decide the main petition within the time allowed, Administrator may take steps for installing a duly elected Committee after four months. It is true that the NCLT disposed of the matter within the time allowed by the Hon'ble Supreme Court from time to time. However, as noted above, after passing of order dated 01.04.2022, more than two and a half years have elapsed. One of the limbs of challenge of the Appellant is that the order of NCLT dated 01.04.2022, superseding the General Council is for indefinite period and the NCLT, ought to have directed a course of action for bringing an end to matters complained of. It is contended that neither any time limit was prescribed for completing the process by Fifteen Members Committee to bring an end to the affairs prejudicial to the public interest complained of and the Fifteen Members Committee cannot be allowed to continue indefinitely. We find substance in this submission of the Appellant. The object of Fifteen Members Committee under Sections 241 and 242 is to bring an end to the matters complained of. A period of two and a half years have already elapsed, during which the Fifteen Members Committee appointed by Central Government has been conducting the affairs of Club

and certain remedial action as per the submission of learned Senior Counsel for Union of India has already been taken.

102. As noted above, in pursuance of the directions of the NCLT dated 01.04.2022, several remedial actions have been taken by the Committee nominated by the Central Government. However, as noted above, the object of an order under Section 241 and 242 has to be with a view to bringing to an end the matters complained of. As noted above, two and a half years have elapsed from passing of the order dated 01.04.2022. The Committee nominated by the Central Government has to take remedial actions as indicted in the order dated 01.04.2022, with a view to bringing to an end the matter complained of. Completion of process of remedial actions have to be taken within a time frame. Taking all remedial actions by the Committee to end the matter complained of is both in the public interest and in the interest of the Club. We, thus, are of the view that the Committee nominated by the Central Government has to complete the process of taking actions to bring to an end the matters complained of expeditiously. We are inclined to fix a time frame for completing the process of remedial actions by Committee to subserve the object for which NCLT passed an order under Section 241 and 242. We direct the Committee to complete its process of taking remedial actions to bring to an end the matters complained of by 31.03.2025. The Committee to also conduct the elections as per the Article of Association, Clause 20 of the Article of Association deals with 'Management of the Club to be vested in a General Committee', which provides the mode and manner of the election of General Committee

from the prominent Members of the Club. Clause 20 of the Article of Association is as follows:

> "**Management of the Club to be vested in a General Committee**
>
> 20. (1) The Management of the business of the Club shall be vested in a General Committee consisting of a President and sixteen other members.
>
> (2) The President and other members of the General Committee shall be elected by ballot from among the permanent members at an Ordinary General Meeting taking place on or as soon as possible after, the 1st of November in each year, and no member shall be eligible for ejection unless he is at the time residing in Delhi.
>
> (3) Printed lists of members who are willing to serve on the Committee shall be posted in the Club for atleast ten days before the General Meeting; a ballot box shall be placed near the said list, and members may vote by placing, or causing to be placed a list of not more than sixteen names in the ballot box, which list shall be signed by the member voting. The ballot Box shall be closed eight hours before the start of the General Meeting. The General Committee shall appoint two members to scrutinize the voting papers and result shall be declared at the meeting.
>
> (4) Permanent vacancies in the General Committee or in the office of the President occurring during the year shall be filled by the General Committee as soon as practicable.
>
> (5) If the President or a member informs the General Committee of his intention to be absent. from Delhi for more than one month, the General Committee may in their discretion fill the temporary vacancies so arising.
>
> (6) All acts done by the General Committee or by any sub-Committee appointed by the General Committee shall, notwithstanding that it be afterwards discovered that there was some defect in their appointment or procedure, be as valid as if the

Committee or subcommittee or sub-committees had been duly constituted and the correct procedure had been observed.

(7) Article 20(7) : Any member may be elected to serve on the General Committee for a maximum of three years in the first instance. Thereafter with a break of 2 years, he/she would be eligible for a election again for not more than 2 further years Le., a total of 5 years during the tenure of his/her membership"

103. We, thus, are of the view that the Committee, which is functioning in pursuance of the impugned order may take steps and conclude the remedial action and hold election as as per Clause 20 of the Article of Association to elect the President and other Members of the Committee.

104. We also need to notice the submissions advanced by Col. Ashish Khanna, Respondent No.18 in the Appeal. Col. Ashish Khanna was the serving Secretary at the time when Petition under Section 241 and 242 was filed by the Union of India. Hence, he was impleaded as Respondent No.18. Col. Ashish Khanna during his submission has raised various contentions alleging corruption and fraudulent conduct of Ex. Members of the General Council. He submits that EOW has already registered FIR No.103/21. It is contended that NCLT had to initiate proceedings under Section 447 for fraud and direct for perjury complaint to jurisdictional Magistrate for necessary action under Section 340 of the CrPC. It is further contended that Respondent No.18 has filed various Applications before the NCLT seeking protection, on which no positive orders have been passed by NCLT. It is further submitted that NCLT appointees have also covered the corruption of the earlier General Council. He also referred to SFIO

Complainant Ms. Niji Sapra, who need protection for supporting Government to unearth corruption against public interest. Niji Sapra was permanent voting Member has also appeared in person and prayed for witness protection. It is submitted by her that she has supported the Government in unearthing the corruption and misdeeds in the Club, but she has not been provided any protection either by the Court or Government.

105. Col. Ashish Khanna has also referred to various Application, which he has filed before the NCLT, some of which are pending and some of which have already been decided. He has prayed that Company Appeal (AT) No.93 of 2022 be dismissed and order be passed in IA filed by Respondent No.18 in the present Appeal being Diary No.910110/10688/2024.

106. The present proceedings arises out of the Application filed by Union of India under Section 241 and 242. Prayers are quoted in paragraph 32 of the Application, which are as follows:

> "**PRAYER**
>
> 32. That in light of the factual position detailed above and also in view of the emergent circumstances involved, it is most humbly prayed that the Hon'ble Tribunal be pleased to pass the following orders under Section 242 of the Companies Act" 2013:
>
> **Ad-interim Reliefs**
>
> a) That the General Committee of Respondent No. 1 company be suspended" with immediate effect, and a Central Government nominated Administrator be appointed to manage the affairs of the Respondent No.1 company and such Administrator may report to this Hon'ble Tribunal on such matters as it may direct.

b) That immediate ban be implemented on acceptance of any further new membership applications and feesor any enhancement thereof. by the Respondent No.1 company, till the time the pending/ waitlisted applications are disposed of as per the order of this Hon'ble Tribunal.

c) That the Petitioner be permitted to serve the Respondents through post, publication in newspapers, email, whatsapp messaging, wherever required, in order to ensure due service of notice to all Respondents, present in India or overseas.

Final Reliefs.

d) That the Central Government be allowed to nominate 15 (fifteen) persons.to be appointed as directors on the General Committee of the Respondent No.1 company to manage the affairs of the company and such directors may report to this Hon'ble Tribunal on such matters as it may direct, including restructuring of the Respondent No.1 company in order for it to function as per the terms of its Memorandum and Articles of Association.

e) Pass any other order(s) as deemed fit and proper, under the circumstances, by this Hon'ble Tribunal."

107. The scope of the present Appeal is to examine the correctness of the order dated 01.04.2022 passed NCLT on an Application filed by Union of India. No directions have been passed by the NCLT in the impugned order with regard to proceedings under Section 447 of the Companies Act, 2013. With regard to SFIO investigation, the said is also a separate issue, unconnected with the issues raised in the Appeal. Present Appeal(s) have been filed by the Appellant(s), who were Members of the Club, challenging the order dated 01.04.2022. We are of the view that it is not necessary to enter into various issues, which are sought to be raised by Col. Ashish Khanna, who is Respondent No.18 in the present Appeal, who was

impleaded as Respondent in the capacity of the serving Secretary at the time when Application was filed by the Union of India. Col. Ashish Khanna was terminated from the office of Secretary, by the then General Council on 04.08.2020. Col. Ashish Khanna, Respondent No.18 has also filed Application before the NCLT, challenging his termination dated 04.08.2020, in which no relief was allowed by the NCLT, which order was unsuccessfully challenged before this Tribunal and also before the Hon'ble Supreme Court. The allegations made by Respondent No.18 regarding SFIO investigation and proceedings under Section 447 of the Companies Act, are not subject matter of these Appeal(s) and need no consideration at the instance of Respondent No.18, who has also supported the impugned order passed by NCLT and has prayed that Company Appeal (AT) No.93 of 2022 be dismissed. Respondent No.18 is at liberty to raise other issues in appropriate forum and in appropriate proceedings.

108. Coming to the witness protection as was prayed by Respondent No.18 as well as Ms. Niji Sapra during oral submission. It is seen that Col. Ashish Khanna himself has filed a copy of the order dated 29.05.2024 passed by Metropolitan Magistrate-01, New Delhi District in Complaint Case No.959/2021 filed by Col. Ashish Khanna, where with regard to witness protection, following observations have been made:

> "… A Senior Officer or team of Officers, may be deputed to enquire into the allegations of coercion and threat on employees of Delhi Gymkhana Club and witnesses may be examined afresh. Furthermore, the complainant and the witnesses are at liberty to

> approach the Witness Protection Cell, New Delhi District for dealing with the aspect of protection and suitable measures for alleviating their concerns. Let a copy of this order be given dasti to the applicant and also be sent to the officers indicated above. Application stands disposed-of in the aforesaid term."

109. With regard to witness protection, liberty having been granted to approach the Witness Protection Cell, New Delhi District for dealing with the aspect of protection. Both, Col. Ashish Khanna and Niji Sapra can take recourse to the liberty given by Metropolitan Magistrate in the above order dated 29.05.2024. Hence, no directions are required in the present Appeal with regard to witness protection with respect to Complaint Case No.959/2021 in the Court of Metropolitan Magistrate.

Question Nos.IX & X

110. Now we come to the reliefs, which the Appellant(s) may be entitled.

111. In view of the foregoing discussions, we have already held that Application filed by Union of India under Sections 241 and 242 of the Companies Act, 2013, the Union of India was fully maintainable and NCLT has rightly exercised its jurisdiction under Sections 241 and 242 on the basis of materials on record. We have also upheld the order dated 01.04.2022 appointing the Fifteen Members Committee in place of the General Counsel of the Club. As noted above, the Committee, which is appointed by the Central Government having already taken various steps and having filed eight Status Reports, it has to expedite the conclusion of the remedial actions within the time frame. The Committee is to complete

all remedial actions in pursuance of the order of NCLT dated 01.04.2022 by 31.03.2025. We, however, have noticed the order of the Hon'ble Supreme Court dated 30.09.2021, where observation was given that NCLT may install a duly elected Committee after completing the election within four months from the date of order dated 30.09.2021. As noted above, although the NCLT decided the proceedings within the time allowed on 30.09.2021 and extended subsequently, a period of two and a half years have elapsed after order of NCLT dated 01.04.2022. We found substance in the submission of the Appellant that management of the Club cannot be superseded for indefinite period and the object of Sections 241 and 242 proceeding is only to bring to an end the matters complained of. Certain steps have been claimed to be taken by the Fifteen Members Committee appointed in consequent to the impugned order dated 01.04.2022. We, thus, are of the view that ends of justice will be served in directing the existing Committee nominated by Central Government to conclude remedial steps and conduct the election of Delhi Gymkhana Club in accordance with Clause 20 of Article of Association.

112. In view of foregoing discussions and our conclusions, we dispose of these Appeal(s) in following manner:

(1) The order dated 01.04.2022 passed by NCLT in Company Petition No. 71/(241-242)/PB/2020 is upheld.

(2) The Committee nominated by the Central Government in pursuance to the order dated 01.04.2022 passed by NCLAT is

directed to complete the all remedial measures, so as to end the matters complained of on or before 31.03.2025.

(3) The Committee nominated by the Central Government in pursuance of the impugned order dated 01.04.2022, is directed to conduct the election of President and Members of the General Council in accordance with Clause 20 of the Article of Association within three months after 31.03.2025 and install the duly elected General Council accordingly.

(4) The General Council of the Club with whom management is entrusted, shall act in accordance with Memorandum of Association and Article of Association and conduct its affairs accordingly.

Parties shall bear their own costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

NEW DELHI

21st October, 2024

Ashwani