

OD-6

EOS/1/2022

IN THE HIGH COURT AT CALCUTTA

Extra Ordinary Original Civil Jurisdiction

ORIGINAL SIDE

BHASKAR GUPTA

Vs.

CALCUTTA CLUB LIMITED AND OTHERS

BEFORE :

The Hon'ble JUSTICE KRISHNA RAO

Date: 26th September, 2022.

Appearance:

Mr. Bodhisatta Biswas, Adv.

.....For the plaintiff

Mr. Anirban Ray, Adv.

Mr. Rajarshi Dutta, Adv.

Mr. Sayak Ranjan Ganguly, Adv.

Ms. Srijani Ghosh, Adv.

Mr. Sounak Banerjee, Adv.

.....For the defendant no.1

Mr. Yashovardhan Kochar, Adv.

Mr. Soumava Mukherjee, Adv.

... For the defendant no. 3

ORDER

The plaintiff has filed the instant suit for declaration, perpetual injunction, mandatory injunction and damages. The plaintiff has also filed an application for grant of temporary injunction under Order 39, Rule 1 and 2 of the CPC read with Section 151 of the CPC. The plaintiff is permanent member of the defendant no. 1 for the last more than 40 years. The plaintiff was a committee member in General Committee of the respondent no. 1 for 9 years and the plaintiff was also the Chairman of the Finance Sub-Committee in the year 2018-2019. On 19.08.2021, the plaintiff had received a show cause notice dt. 18.08.2021 wherein several allegations levelled against the plaintiff with regard to the investment decision taken by the plaintiff during his tenure as Chairman of the Finance Sub-Committee. The allegations levelled against the plaintiff were based on forensic audit conducted by the defendant no. 3. The allegations in the said show cause notice are as follows:-

“Deviation in initial protocol in respect to financial investment:

- i) As per the established process, Financial Controller needs to inform Finance Chairman about the surplus fund available for investments. However, no documented communication from the Financial Controller to you as Finance Chairman was available. Deviations were noticed in case of investments in Yes Bank Tier I bond and Jana Bank Fixed Deposit.*
- ii) You as Chairman – Finance informed the MC about purchase of Yes Bank Tier I Bond amounting to INR 1 Crore on 1st March, 2019 whereas the actual investment was made in November, 2018.*
- iii) No communication of MC approval has been provided for investing INR 1.5 Crore in Jana Bank FD.*

iv) You as Chairman – Finance informed the MC about INR 1.5 Crore FD investment with Jana Bank on 1st March, 2019 whereas the actual investment was made on 15th September, 2018 (When Jana Bank was a Non-Scheduled Bank).

v) No communication noted from Provident Fund (PF) Trustees to Management Committee about seeking approval prior to any investment.

vi) You as Chairman-Finance failed to follow the general norms for receiving quotations from 2/3 Banks to compare interest rates before any investments in Yes Bank Tier I Bond.

vii) It is noticed that Investment was made with Yes Bank of INR 1 Crore but the amount paid was INR 1.12 Crores without approval of the Committee.”

On receipt of the show cause notice, the plaintiff had submitted his reply by denying the charges/allegations levelled against the plaintiff. The plaintiff in his reply submitted as follows:-

- “a. There is no “established process’ regarding any requirement of the Financial Controller to inform the Finance Chairman about the surplus fund available for investments. The petitioner clarified that the established practice and procedure was that the Financial Controller along with the Chairman Finance would go to the President’s chamber and inform him about such investment decision, which procedure was followed with regard to investments in Yes Bank and Jana Bank;*
- b. The aforesaid investments were ratified unanimously by the Management Committee of Respondent No. 1 during the meeting held on 1st March, 2019, being a prudent financial decision. The investment in Jana Bank was done at an interest rate of 9.5 percent per annum. The withdrawal of the Fixed Deposit by the subsequent President of Respondent No. 1, despite objection by the Petitioner resulted in Respondent No. 1 incurring losses;*
- c. There is no prohibition under law or the regulations of Respondent No. 1 for ex post facto ratification of investment decision, which was done in the present case. The petitioner also stated that contrary to the allegation levelled regarding approval of the Management Committee concerning investment out of the Provident Fund Trust, no such approval was required under law to be taken regarding such*

investment, as the Trust was under the legal supervision of the Employees' Provident Fund Commissioner, and was not answerable to the Management Committee;

- d. There are no 'general norms' to take quotations from banks while investing in fixed deposits. The investment in Yes Bank was made at an interest rate of 10.50 percent, which the Respondent No. 1 Club has been enjoying each year and the Bank is presently also showing a robust growth. Accordingly, the investment was a safe investment, and Respondent No. 1 has continued to reap the benefits of the investment, by earning an interest of Rs. 10,50,000/- every year for the last three years, amounting to Rs. 31,50,000/- , and the next interest is due to Respondent No. 1 on 31st December, 2021, to the tune of a further amount of Rs. 10,50,000/-.*
- e. The nominal value is different from the market value with regard to purchase of bond. The Tier 1 Bond was bought at the market price quoted on the date of purchase."*

On 27.09.2021, the defendant no. 2 on behalf of the defendant no. 1 had issued a letter wherein the membership of the plaintiff was suspended for a period of one year with immediate effect.

Mr. Bodhisatta Biswas, Ld. Counsel for the plaintiff submits that the suspension of the plaintiff is bad in law as the defendant no. 3 in its own report observed that there was no adverse news or any negative views about the Yes Bank and Jana Bank at the relevant point of time when the investments were made. Motilal Oswal is a financial company of national repute, which is engaged in providing financial services and the transaction of investing in bonds of Yes Bank carried out through Motilal Oswal, being a re-knowned financial services provider and the amount of Rs. 3,44,320/- was not brokerage, as the said alleged suspension letter frivolously assumes but

practically it was the market value of the said bond on the date of purchase of the said bond.

It is further submitted that from the said investments interest of Rs. 10,50,000/- per year for the period of 3 years but the said figure was wrongly stated as Rs. 10,30,000/- in the suspension letter. It is further submitted that the investments in the Yes Bank was made in November, 2018 and the interest received by the defendant no. 1 was Rs. 10,50,000/- which was for a complete one year.

It is further submitted that there is no prohibition under the Company's Act, 2013 or any of the bye laws of the defendant no. 1 against ratification subsequent to the investments. Ratification has been done with regard to other investments also in the meeting dt. 01.03.2019 but the defendant no. 2 has picked and chosen some investments for which clarifications have been belatedly sought for after three years. It is further submitted that several investments decision even in subsequent years made by the present Chairman of the Sub-Finance Committee have been rectified ex post facto.

The Counsel for the plaintiff further submits that there is no basis for contending that competitive quotes for investments were required to be sought for and the same was never been the practice of the defendant no. 1. The current rate of interest on fixed deposit is 5.10 % and the bonds are earning an interest of 10.50 % but the same has not been considered by the defendants.

It is further submitted that with regard to the Provident Fund Trustees seeking approval of the Management Committee has been dropped after the representation made by the petitioner. It is further submitted that the conduct of dropping the charge clearly shows that the acknowledgement that the so called forensic audit conducted by the defendant no. 3 unilaterally, without seeking any inputs from the plaintiff.

Ld. Counsel for the plaintiff submits that on the overwhelming evidence on the face of record shows that malafide an premeditated decision of the new Management Committee of the defendant no. 1 with a view to wrongfully and illegally suspend the plaintiff on baseless ground by making unsustainable allegations against the plaintiff.

Counsel for the plaintiff relied upon the judgment reported in (2020) SCC OnLine Cal 1272 (Karan Singh Grewal –vs- Secretary, Calcutta Cricket and Football Club & Ors.), 2019 SCC OnLine Del 9010 (Vijay Chhibbar & Ors. –vs- Delhi Gymkhana Club & Ors.) and the order passed by the Madras High Court in the case of D. Prandhaman –vs- The Towers Club representing by its Honorary Secretary dt. 06.112013.

Mr. Anirban Ray, Learned Counsel appearing for the defendants submits that the suit filed by the plaintiff is not maintainable under law in view of the provision under Sections 430, 435, 241 & 242 of the Companies Act, 2013. Mr. Ray submits that though the plaintiff has taken the ground that no opportunity of hearing given to the plaintiff but on receipt of the show cause notice the

plaintiff has submitted his detailed reply. The plaintiff had also agreed that vide email dt. 07.09.2021, the defendant no. 2 had sent an email to the plaintiff wherein it was informed to the plaintiff that the defendant no. 1 had agreed to hear the plaintiff in person on 11.09.2021. On 11.09.2021, the plaintiff had again submitted that the supplementary written statement challenging the veracity of the audit report submitted by the defendant no. 3. The plaintiff has also admitted that on 11.09.2021, the plaintiff had made detailed representation with regard to all the allegations levelled against him. Mr. Ray further submits that in paragraph 31 of the application, the plaintiff had admitted that the suspension order contains the reasons. Mr. Ray further submits that in paragraph 36 (f), the plaintiff had admitted that the allegations regarding Provident Fund Trustees were dropped against the plaintiff which itself shows that the defendants have applied their mind.

Learned Counsel for the defendants further relied upon Clauses 41, 43, 45 & 45 (c) and submits that the defendants have taken the decisions against the plaintiff in terms of memorandum of association of the defendant no. 1. Mr. Ray has further relied upon Clause 15 (k) of the revised General Bye Laws of defendant no. 1 and submits that the defendant no. 1 has acted in accordance with the revised General Bye Laws.

Mr. Ray submits that the 2nd part of Section 430 is starting “and no injunction..... Appellate Tribunal” is a mandate on Court’s not to grant any

injunction in respect of any action taken pursuant to any power conferred by or under the Companies Act, 2013.

Mr. Ray submits that as per the pleading of paragraph 24 to 26 of the petition would indicate that all provisions of natural justice have been provided to the petitioner. He further submits that the petitioner was allowed to submit supplementary written submission and the petitioner was also given an oral hearing and thus the allegation of violation of natural justice does not arise. He further submits that as per Article 45 (A), the Committee is entitled to impose three punishments (i) call upon the offending member to resign his membership, (ii) suspend such member from all privileges for a period of not exceeding one year at a time and (iii) convene a general meeting for the purpose of expelling him. He submits that in the present case, the petitioner has been imposed the least punishment and thus there is no mala fide action on the part of the defendant.

Mr. Ray further submits that the defendant no. 1 had taken an audit through M/s. Ernst and Young, which had found several financial discrepancies. He further submits that the investment made in respect of the Yes Bank has caused severe loss to the defendant no. 1.

Counsel for the defendant relied upon the judgment reported in (1996) 3 SCC 364 (State Bank of Patiala & Ors. -vs- SK. Sharma), (2011) 10 SCC 106 (Lalit Kumar Modi -vs- Board of Control for Cricket India & Ors.), AIR 1963 SCC 1144 (T.P. Daver -vs- Lodge Victoria No. 363 S.C. Belgaum & Ors.), (2019)

18 SCC 569 (Sashi Prakash Khemka –vs- NEPC Micon & Ors.), (2020) SCC OnLine Del 1223 (Delhi & District Cricket Association –vs- Sudhir Kumar Agarwal & Ors.), (2019) SCC OnLine Cal 6663 (Vikran Jairat & Ors. –vs- Middleton Hotels Pvt. Ltd. & Ors.), FMAT 211 of 2022 with CAN No. 1 of 2022 (Asha Agarwal & Ors. –vs- Williamson Magur & Company Ltd. & Ors.) dt. 02.06.2022 (Calcutta High Court).

Heard, the Learned Counsel for the respective parties perused the application, documents and the judgment relied by the parties.

Before taking into consideration, whether the petitioner is entitled to get a temporary injunction, the issue with regard to maintainability of the suit as raised by the defendant is to be decided first.

The Forensic Audit Report on the basis of which the impugned order of suspension is issued against the plaintiff reads as follows :

“Identified Financial Investments

Deviation in internal protocol in respect to financial investments

- *As per the established process, Financial Controller (FC) needs to inform Finance Chairman about the surplus fund available for investments. However, no documented communication from Mr Sukumar Dutta (FC) to Mr Bhaskar Gupta (Finance – Chairman) was available. Deviation noticed in case of investment in Yes Bank Tier I bond, Jana bank Fixed Deposit (FD)*
- *Mr Bhaskar Gupta (Chairman –Finance) informed the MC about purchase of Yes bank tier I bond amounting to INR 1 Cr on 01 Mar 2019, whereas the actual investment was made in Nov 2018*

- *No communication of MC approval has been provided for investing INR 1.5 Cr in Jana Bank FD*
- *Mr Bhaskar Gupta (Chairman –Finance) informed the MC about INR 1.5 Cr FD investment with Jana bank on 01 Mar 2019, whereas the actual investment was made on 15 Sep 2018*
- *No communication noted from Provident Fund (PF) trustees to management committee about seeking approval prior to any investment.*
- *Mr Sukumar Dutta stated that Mr Bhaskar Gupta discussed verbally the investment options with MC members and thereafter instructed him to initiate the investment procedures both in case of ‘Yes Bank Tier I Bond’ and ‘Jana Bank FD’. Those investments were subsequently ratified in the MC meetings.*
- *He also mentioned that during that time the Club was incurring a huge operational loss. Club has a fair amount of income from interest. At that point in time interest of ‘Yes Bank Tier I Bond’ was quite attractive at 10.5% and Jana bank had offered an interest on FD at 9.5%. During that time there was no negative news about Yes Bank and Jana Bank as well.*
- *Mr Subirman Nandi informed that generally they received quotations from 2/3 banks to compare interest rates before any investments, however they did not receive such quotations from other banks at the time of investment in ‘Yes bank Tier I’ bond. He was instructed to initiate the process of investment by Mr Sukumar Dutta.”*

Section 241, 242 and 430 of the Companies Act, 2013 reads as follows:-

“241. Application to Tribunal for relief in cases of oppression, etc. – (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:

[Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.]

[(3) Where in the opinion of the Central Government there exist circumstances suggesting that –

- (a) *any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;*
- (b) *the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;*
- (c) *a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or*
- (d) *the business of a company is or has been conducted and managed by such a person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,*

The Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.]

[(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.]

[(5) Every application under sub-section (3) –

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the injury; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the signature and verification of a plaint in a suit by the Central Government.]

242. Powers of Tribunal. – *(1) If, on any application made under section 241, the Tribunal is of the opinion-*

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

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(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;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

- (d) *restrictions on the transfer or allotment of the shares of the company;*
- (e) *the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;*
- (f) *the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e);*

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

- (g) *the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;*
- (h) *removal of the managing director, manager or any of the directors of the company;*
- (i) *recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;*
- (j) *the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);*
- (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;*
- (l) *imposition of costs as may be deemed fit by the Tribunal;*
- (m) *any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.*

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(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.

[(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of Section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.]

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the marking thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable [***] with fine which shall not be less than twenty-five thousand rupees but which may extend to [one lakh rupees].

“430. Civil court not to have jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any

action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.”

The plaintiff has relied upon judgment passed by the Hon’ble High Court Madras in the case of D. Prandhaman (Supra):

“2. *The petitioner herein is the plaintiff in the suit. Challenging the suspension order dated 18.10.2013, he filed the suit in O.S. No. 5691 of 2013, seeking declaration of the suspension order passed by the respondent, dated 18.10.2013 as null and void, on the ground that the same is against the bye-laws of the Defendant club and also sought consequential injunction.*

7. *It is not in dispute that as per Section 9 of the Code of Civil Procedure, Civil Court has got jurisdiction to try all suits of civil nature, except the suits, which are either expressly or impliedly barred by any law, hence, the Court below has got jurisdiction to try the suit. In that suit, I.A.No.15319 of 2013 was filed by the petitioner / plaintiff under Order 39 Rule 1 and 2 CPC.*

22. *Here in the instant case, as per the order, dated 18.10.2013, the petitioner was suspended by the Honorary Secretary of the respondent-club with effect from 19.10.2013. It is seen that the mandatory provisions of rule 28 (c) of the Bye-laws was not complied with by the respondent, as stipulated in the provision of law.*

44. *Having considered the facts and circumstances, this Court is of the view that the suspension orders passed against the petitioner is against bye-laws and principles of natural justice. It has been made clear that there is prima facie case made out and balance of convenience is also in favour of the petitioner. As contended by the learned Senior counsel appearing for the petitioner, if interim injunction is not granted, the orders of suspension, preventing the petitioner from entering into the premises of the club, either as member or guest of other members, would cause irreparable loss and even if the suspension order against the petitioner is revoked later on, the past dates cannot be brought back again, in order to provide concession to the petitioner. As contemplated under Order 39 Rule 1 and 2 CPC, the petitioner has established his right to get interim injunction, based on the admitted facts and the violation of the mandatory provisions of the Bye-laws by the respondent, as discussed above, however, the Court below has not granted interim injunction. Therefore, I*

am of the view that it is a fit case to invoke [Article 227](#) of the Constitution of India and allow the revision preferred by the petitioner.”

In the case of Vijay Chhibber and others (Supra) passed by the Hon’ble Delhi High Court held that :

“24. *The only other ground for rejection is, of the jurisdiction of this Court being barred by [Section 430](#) of the Companies Act, 2013.*

25. *Though during the hearing on 2nd November, 2018 there was no clarity about the constitution of the defendant, as is also evident from the order of that date reproduced above, but the pleadings show both plaintiffs and the defendant to admit the defendant to be a company within the meaning of [Companies Act](#), 1956 and the plaintiffs to be the members of the defendant. [Section 241](#) of the Companies Act, 2013 entitles a member of a company who complains that the affairs of the company 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, to apply to the NCLT. Thus the remedy for the grievance of mismanagement and oppression would be before the NCLT. However the grievance in the present suit, though may have its genesis in the complaints of the plaintiffs of mismanagement, the subject matter of the present suit is not mismanagement but the action of the defendant of issuing notice to the plaintiffs to show cause why the membership of the plaintiffs should not be terminated. The said grievance is not a grievance of mismanagement and oppression, even though the cause of action may have its genesis in complaints of plaintiffs, of mismanagement and oppression.*

26. *Though this is clear as daylight but the defendant also, by filing an application under Order VII Rule 11 of the CPC running into as many as 93 pages and by raising all sorts of arguments, did not allow the same to be seen immediately, resulting in the order being reserved.*

27. *Before parting, I may deal with another contention and in which context Shashi Prakash Khemka supra was cited. The remedy under [Section 111](#) of the Companies Act, 1956 of rectification of Share Register is also available only after the name has not been removed from the Share Register and as of today the name has not been removed and the only question is of the legality of the proceedings initiated by issuance of show cause notice.”*

In the case of Karan Singh Grewal (Supra) the Coordinate Bench of this Court held that :

“35. *Be that as it may, the main question that falls for adjudication is as to whether Title Suit No. 781 of 2019 is maintainable under the facts and circumstances of this case or that under various provisions of the [Companies Act](#) 2013 Civil Court's jurisdiction is barred to entertain such suit.*

36. Chapter 16 of the [Companies Act](#) starts with the heading "prevention of oppression and mismanagement". [Section 241](#) of the said Act authorizes any member of the company to apply to the tribunal complaining 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 interest of company; or (b) the material change, not being a change brought about by, or in the interest 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 any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the companies will be conducted in a manner prejudicial to its interest or its members in any class of members. However, such application shall be made by the member/members as stated in [Section 244](#) of the said Act. I have already stated that the proviso to [Section 244](#) gives discretionary power to the tribunal to permit an individual member to make his grievance against the affairs of the company being conducted in a manner prejudicial to public interest or prejudicial or oppressive to him. [Section 245](#) of the said Act clearly describes the action taken by a member or group of members under [Section 244](#) of the said Act as "class action". Clauses A-H of [Section 245\(1\)](#) describes the nature of breach by the company which may be agitated before the tribunal. It clearly reveals that where the affairs of the company is being conducted without following the memorandum of articles or that a resolution is taken violating the memorandum of articles of the company, or similar other provisions prejudicial to the class of members of the company, the same is void being violative of 'class action'. In the instant case the petitioner never agitated any provision of the [Companies Act](#) as prejudicial to its members or oppressive in nature. He has challenged the action of the Board of

Directors suspending him from the membership of the club. Such action, in my considered view does not follow within the jurisdiction of NCLT.

37. Section 9 CPC gives jurisdiction to try all suits of civil nature excepting those which are expressly or impliedly barred by any other law. A bar to file a civil suit may be expressed or implied. An express bar is whether statute it is contain a provision that the jurisdiction of a civil court is barred, as for example [Section 430](#) of the Companies Act. An implied power may rise when a statute provides a special remedy to an aggrieved party like a right of appeal. *In Sri Ramendra Kishore Biswas v. State Of Tripura* reported in (1999) 1 SCC 472 : AIR 1999 SC 294 it is held by the Hon'ble Supreme Court that it is appropriate to relegate a person to exhaust Departmental remedies when he approaches the Court without exhausting departmental remedies under the service rules but to hold that the civil court had no jurisdiction while hearing a second appeal, after the matter has been litigated in civil court for more than five years was to say the least, not proper. Exclusion of civil court jurisdiction cannot be readily inferred on the ground of availability of remedy and forum under [Special Act](#) when the action in question was taken without complying with the provisions of the Act. The decision of the Hon'ble Supreme Court in [M.P. Electricity Board, Jabalpur v. Vijaya Timber Co.](#) reported in (1997) 1 SCC 68 may also be relied on in this regard. Even assuming that NCLT has the jurisdiction to decide the question in hand, civil courts jurisdiction cannot be said to be barred as the power of NCLT under the proviso is discretionary in as much as NCLT may allow or disallow the petitioner to place his grievance before the tribunal. Under such circumstances, civil court's jurisdiction cannot be said to be barred under the Law. Before I conclude, let me state few words about the nature of the dispute between the parties. Allegation against the petitioner is that the petitioner allowed an outstation cricketer to play second division cab league for defendant No.1 club though according to the rules of CAB no outstation player is permitted to take part in cricket during tournament on behalf of any club registered under CAB. It is also alleged that by engaging the said outstation cricketer the petitioner compelled the club to spent huge sum of money towards conveyance charges and stay of the said outstation cricketer.”

The Counsel for the defendants have relied upon the judgment passed in the case of Shashi Prakash Khemka (Supra), the Hon'ble Supreme Court held that :

“2. The subject-matter of dispute before us is the exercise of power under [Section 111-A](#) of the Companies Act, 1956 (as amended in 1988) and the Depositories Related Laws (Amendment) Act, 1997. In terms of the impugned order of the Madras High Court, on an appeal filed against the order of the Company Law Board, the view taken by the Company Law Board has been reversed and thus, in effect, the appellants have been left to a remedy of civil suit.

3. The learned counsel for the appellants says that the issue raised by the appellants qua the transfer of shares, whether done rightly or wrongly, has to be adjudicated by some forum – whether it be a civil suit or the exercise of jurisdiction by the then Company Law Board.

4, The learned counsel for the appellants has drawn our attention to the view expressed in [Ammonia Supplies Corpn. \(P\) Ltd. v. Modern Plastic Containers \(P\) Ltd.](#) to canvass the proposition that while examining the scope of [Section 155](#) (the predecessor to [Section 111](#)), a view was taken that the power was fairly wide, but in case of a serious dispute as to title, the matter could be relegated to a civil suit. The submission of the learned counsel is that the subsequent legal developments to the impugned order have a direct effect on the present case as the [Companies Act, 2013](#) has been amended which provides for the power of rectification of the Register under [Section 59](#) of the said Act.

5. The learned counsel has also drawn our attention to [Section 430](#) of the Act, which reads as under:-

“430. Civil court not to have jurisdiction. - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate.”

The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.

6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and the power would be vested with the National Company Law Tribunal (NCLT) under [Section 59](#) of the said

Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which [Section 430](#) of the Act is widely worded.

7. *We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the [Companies Act, 2013](#). In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today.”*

In the case of Delhi & District Cricket Association (Supra), the Hon’ble Delhi High Court held that :

“14. *Evidently, the contentions of Mr. Uppal and Mr. Singh pertain to the merits of the case. The issue to be determined is : whether the NCLT has the exclusive jurisdiction to adjudicate upon them. The preliminary question of jurisdiction of the civil court to entertain the suit may be to be determined. Therefore, at this stage, we would not like to comment on the said application and the relief sought therein.*

15. *The appellant contends that : i) the trial court erred in not determining first, its jurisdiction to entertain the suit, ii) [sections 241, 242 and 244](#) of the Companies Act, deal with all grievances raised in the suit, iii) the powers of the Tribunal under those provisions are sufficient, and iv) [section 430](#) specifically ousts the jurisdiction of the civil courts apropos the matter with respect to such cases for which powers have been specifically conferred upon the Tribunal. The appellant has relied upon the decision of the Madras High Court in *Viji Joseph v. P. Chander*, 2019 SCC OnLine Mad 10424, which was examining an election dispute under Section 20 of the Companies (Management and Administration) Rules, 2014, involving the maintainability of the election of the Board of Directors through electronic means. After analyzing [section 242](#) and other circumstances pertaining to the case, it concluded that only the Tribunal had powers to deal with the issue raised in the suit and the civil court had no jurisdiction to entertain the suit.*

18. *The learned Senior Advocate for the appellant submits that the [Companies Act](#) and the National Company Law Tribunal Rules, 2016, are together a complete code. Ample power has been provided to the NCLT - akin to a civil court - to deal with all issues for which powers have been conferred upon*

the Tribunal. For instance Rule 11 deals with inherent powers of the NCLT to conduct a full trial, in order to prevent abuse of justice; Rule 34 specifically allows for determination of procedure not provided for already in accordance with the principles of natural justice; Rules 39 and 40 provide for production of evidence; Rule 43 empowers the Tribunal to call for further information or evidence; Rule 47 provides for administration of oath to witnesses; Rule 51 gives power to regulate procedure; Rules 56 and 57 deals with the execution of orders passed by the Tribunal; Rule 58 provides for the effect of non-compliance with orders. Viji Joseph, as mentioned above in paragraph 24, also states that the powers of the Tribunal cannot be termed as 'summary'. As discussed hereinabove, complete jurisdiction has been given to the NCLT to deal with all aspects of issues, as agitated in the suit.”

In the case of Vikrarn Jairath and others (Supra) the Division bench of this Court held that :

67. *However, there may be exceptional situations where, notwithstanding [Section 430](#) of the companies Act, a civil suit may be maintainable. The exercise required to be undertaken in all such cases would be to analyse the plaint to find out if the matters in issue in the suit could be a matter which the NCLT is empowered to decide. The court is required to find the real cause of action. A dispute between a member and non-member of a company or a dispute between a director and the company relating to his status could be matters which may not fall foul with [Section 430](#) of the Companies Act, 2013. [Section 430](#) of the Act is widely worded and absolute in terms. The dispute raised in this plaint can only be decided by the NCLT. In [Jai Kumar Arya v. Chhaya Devi](#) reported at (2014) 142 CLA 365 : 2017 SCC OnLine Del 11436 (DB), the court was concerned with the power of removal of directors, which is distinct from the disputes involved in the present case. However, by applying the tests laid down therein, it is clear in the facts of this case that involve issues relating to registration of shares and oppression and mismanagement, the NCLT is 'empowered to determine' the issues - leading to the conclusion that this court has no jurisdiction.*

72. *The relationship between a trustee and cestui que trust as recognized in Mathalone (supra) is quite well established today. Killick Nixon (supra) has also recognized it. However, there are several distinguishing features and differences between Killick Nixon (supra) and the present case. Significantly, the proceeding in the instant case is initiated by filing a suit. The proceeding in Killick Nixon (supra) started with a petition under [section 397](#) and [398](#) of the Companies Act 1956.*

At the time when Killick Nixon (supra) was decided, there was no provision analogous to [section 430](#) of the 2013 Act and the company court of the Bombay High Court had the jurisdiction to entertain the petition under [section 397](#) and [398](#) of the 1956 Act. However, that is not the case today. If the appellant, who claims to be the transferee of the shares, wanted to file an action for oppression and mismanagement through the constructive trustee/respondent nos. 2 to 5, like was done in Killick Nixon (supra), that application would today have to be filed by the constructive trustee/respondent nos. 2 to 5 before the NCLT under [sections 241](#) and [242](#) of the Companies Act 2013. For this reason, the reliefs claimed in the present suit cannot be granted by this court. The proper application would have to be made before the NCLT.

74. *Additionally, Mr. Banerjee was quick to point out that if the suit were to be entertained by this court, an anomalous situation could possibly arise. The rights of the appellants as the supposed transferees of shares are predicated on them being able to prove that there was an oral agreement in June 2018 and that signed transfer deeds had been made over to them as security. The respondent no. 2 and 3 had contended first that the transfer deeds were merely for comfort and later that they were not signed. From the records herein, it appears that these were the reasons, amongst others, that weighed with the respondent no. 1 in its refusal to register the shares when called upon by the appellants to do so. Under [section 58\(5\)](#) or [59\(2\)](#) of the 2013 Act, the NCLT could either dismiss the appeal or it could direct the respondent no. 1 to register the shares. The NCLT would do this after following the procedures and making an inquiry into matters of fact. Towards this end, an application has already been filed by the appellants and the reliefs sought in that application has been reproduced herein above. If the present suit was to be decided by this court, in order to answer the question about whether the appellants are entitled to the reliefs sought in the suit, the court would have to go into an inquiry as to the very same facts which the NCLT is already looking into in the application under [section 58](#) and [59](#) of the 2013 Act. This may result in a situation where, hypothetically, the NCLT could dismiss the application and hold that the appellants are not entitled to be registered as members of the company but the court finds, after an inquiry into the facts, that the appellants ought to be deemed as members and then go on to grant the reliefs claimed in the suit. This would result in an anomalous situation where even though the appellants have been deemed to not be members by the proper forum, it gets the consequential reliefs in the suit. It results in conflict of decision. In order to become eligible and qualify for any reliefs claimed in the petition, the appellant must pass muster the test of establishing a strong prima facie finding that the appellant has now become a beneficial owner of the shares, which finding can be arrived at necessarily by the NCLT for granting any interim relief to the appellant as prayed for in the said*

proceeding. It was possible for the appellant to claim relief of oppression and mismanagement under [sections 241](#) and [242](#), with a prayer for exemption under [section 244](#) by way of amendment of the existing pleadings to demonstrate that the transferor is holding the shares in trust for the appellant and any dilution of the present shareholding at present would adversely affect the rights of the appellant as shareholders of the company. It is on demonstration of such an unimpeachable right to the shares that the NCLT may read down [sections 241](#), [242](#) and [244](#) of the 2013 Act for the limited purposes of granting interim reliefs as claimed in the company petition. In fact, all the reliefs claimed in the present proceeding can be considered and allowed in the proceeding pending before the NCLT. The NCLT proceeding is a prior proceeding. In *Mathalone (supra)* and *Killick Nixon (supra)*, the transferor transferee relationship was clearly established. All parties had understood the relationship between the constructive trustee and the cestui que trust to have been in place. However, in the present case, the respondent no. 2 and 3 deny that such a relationship exists. This is another reason why it is difficult to adjudicate the issues in the suit in light of the reliefs claimed. If, however, the NCLT does return a positive finding in favour of the appellants in their application under [section 58](#) and [59](#) of the 2013 Act and directs the company to register them as members of the company, the NCLT could then also adjudicate and decide on the reliefs sought in this suit on the grounds of oppression and mismanagement.

75. For the aforesaid reasons, no reliefs as prayed for by the appellant can be granted at this stage since the court is of the prima facie view that it does not have the jurisdiction to try, receive and entertain the suit. During the hearing of the appeal, Mr. Saha submitted that after the filing of the civil suit, the appellants discovered that the respondent nos. 2 to 5 had caused the respondent no. 1 company to execute a deed of sub-lease and to enter into two several development agreements in respect of the Middleton Chambers property, which is the sole asset of the respondent no. 1 company. Mr. Saha submitted that the company petition before the NCLT was listed to be heard out sometime in the middle of November 2019 and that this court ought to protect the appellant, in light of such fraud, from having the company proceedings or the suit proceedings being rendered infructuous. In view of my prima facie finding that this court does not have the jurisdiction to grant any of the reliefs prayed for in the plaint and having regard to the fact that all the reliefs claimed in the plaint could be claimed before the NCLT in the pending proceeding and in fact if the prayer made before the NCLT is allowed it could have the same effect or consequence or bearing, I am not inclined to pass any interim order at this stage. The NCLT is in seisin over the matter. I am of the view that the matter in issue in the suit can be more appropriately and effectively decided and adjudicated by the NCLT. Additionally, in the present case, [section 430](#) of the Companies Act 2013

itself provides an additional bar by stating that no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any power conferred on the NCLT by the [Companies Act 2013](#).”

In the instant case admittedly, the plaintiff is the member of the defendant no.1 club. During 2018-2019, the plaintiff was the chairman of the Finance Sub-Committee. The defendant no.1 came to know that during his tenure as Chairman of the Finance Sub Committee has committed large scale of financial irregularities. To find out the truth of the said irregularities, the defendant no.1 has appointed a Chartered Accountant and he had prepared a report. On receipt of report, the same was discussed in the management committee of the club wherein the majority members of the club expressed their dissatisfaction over the issue of loss caused to the club. Subsequently, an Extraordinary General Meeting of the club was held and in the said meeting a decision was taken to conduct a detailed Forensic Audit for the year 2018-2019 and 2019-2020 by a reputed Chartered Accountant Firm. On receipt of the forensic audit report, a decision has been taken to conduct enquiry by the management committee and to issue show cause to the members including the plaintiff who are responsible for the lapses.

The plaintiff has challenged the Extra Ordinary Meeting dt. 12th December, 2020 wherein a decision was taken to conduct a detailed forensic audit report by a reputed chartered accountant firms as well as the show cause

notice dt. 18th August, 2021 and the order of suspension dt. 27th September, 2021.

Section 241, 242 and 244 of the Companies Act, 2013 deal with the grievances raised in the suit. Section 430 of the Act of 2013 specifically ousts the jurisdiction of the civil courts apropos the matter with respect to such cases for which powers have been specifically conferred upon the Tribunal. The plaintiff has challenged the Extra Ordinary General Meeting of the defendant no.1 wherein it was decided to appoint a reputed Chartered Accountant Firm to conduct a forensic audit for the year 2018-2019 and 2019-2020. On receipt of the said report, the committee of the defendant club has accepted the report and proceeding is initiated against the plaintiff and the other members of the club.

Section 241 of the Companies Act also gives a power that 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 interest of the company.

As per Section 242 of the Act of 2013, if on any application under Section 241 are made, the Tribunal may, with a view to bringing to an end the matters complaint of, make such order as it thinks fit.

The judgments referred by the plaintiff in the Case of Karan Singh Grewal (Supra) the facts are different. In the said cases, the plaintiff has not

challenge the resolutions of any Extra Ordinary General Meeting or Annual General Meeting and contrary the plaintiff has challenge the procedure of Audi Altrem Partem but in the instant case from the pleading of the plaint, the defendants have given proper opportunity to the plaintiff and the plaintiff has acted upon by submitting his reply and appearing before the committing and filing supplementary reply.

The judgment referred by the plaintiff in the case of Vijay Chhibber and others (Supra) is not the case of mismanagement but only the show cause notice why the membership of the plaintiff should not be terminated.

The judgment referred by the plaintiff in the case D. Prandhaman (Supra) is against the bye laws and principal of natural justice. Thus this court is of the view that the judgment referred by the plaintiff is not applicable in the case of the plaintiff.

In view of the above, this court finds that the suit filed by the plaintiff is not maintainable and thus this court has not considered the application for grant injunction on merit. Accordingly, the suit and the injunction application are dismissed as not maintainable.

(KRISHNA RAO, J.)

p.d