



\$~82

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

Date of Decision: 20th May, 2025

+ **RFA(OS) 29/2025**

SURAJ PRAKASH ARORA & ORS.Appellants

Through: Mr. Mohit Chaudhary, Mr. Kunal Sachdeva, Ms. Katyayani Vajpayee and Ms. Nimmi Babu, Advocates.

versus

ROSHANARA CLUB LIMITED & ORS.Respondents

Through: Mr. Manik Dogra, Sr. Adv with Mr. Lalitaksh Joshi, Mr. Dhruv Pande, Mr. Imon Bhattacharya and Ms. Ananya Sanjiv Saraogi, Advocates for R-1.
Mr. Santosh Kumar Rout, Standing Counsel for BOB and State Bank of India.
Mr. Arun Aggarwal, Mr. Loveshlesh Kukreja and Mr. Aman Singh, Advocates for R-14.

**CORAM:
JUSTICE PRATHIBA M. SINGH
JUSTICE RAJNEESH KUMAR GUPTA**

JUDGMENT

Prathiba M. Singh, J.

1. This hearing has been done through hybrid mode.

CM APPL. 29299/2025 (for exemption)



2. Allowed, subject to all just exceptions. Application is disposed of.

RFA(OS) 29/2025 & CM APPL. 29298/2025 (for interim stay)

Factual Background

3. The present appeal has been filed by the Appellants under Section 96 of the Code of Civil Procedure, 1908 read with Section 10 of the Delhi High Court Act, 1966 challenging the impugned judgement dated 15th April, 2025 passed by the Id. Single Judge of this Court in **CS(OS) 210/2025** titled as **Suraj Prakash Arora & Ors. vs. Roshanara Club Limited & Ors.**

4. The Roshanara Club Limited (hereinafter “*the Club*”), a historically well-known Club, is the subject matter of this appeal. The Appellants are and have been members of the Club for several years. The Appellants had various grievances against the functioning of the Club and accordingly, they preferred suit bearing **CS(OS) 210/2025**, seeking the following reliefs :

“1. Declare that Defendant Nos. 2 to 10 have forfeited their authority and ceased to represent Roshanara Club Limited (RCL) in any capacity, including as Secretary, General Secretary, Director(s), or members of the Executive Committee/Management Committee, by virtue of the expiration of their term of office on 30.09.2023, pursuant to Clause 44 of the Memorandum of Association of RCL., and/or

2. Declare that, with effect from 01.10.2023, Defendant Nos. 2-10 constitute a defunct and dissolved body, having ceased to possess any legal authority or competence to act on behalf of Roshanara Club Limited (RCL), by reason of the expiration of their term of office, and/or

3. Declare that all actions, decisions, and transactions undertaken by Defendant Nos. 2-10 post 01.10.2023, in the name of Roshanara Club Limited, assuming themselves to be members of the Executive/Managing Committee of RCL, are null and void, having been undertaken without authority, and are consequently



non-binding and of no legal effect upon RCL, being void ab initio, and/or

4. Declare that, effective 01.10.2023, all representations and communications made by Defendant No. 2, projecting himself as General Secretary of Roshanara Club Limited (RCL) and using RCL's letterhead, are illegitimate, illegal, null, and void, and completely devoid of any legal efficacy or consequence, and/or

*5. Declare that Communication dated 07.12.2024 (**Document No.8**) issued by Defendant No. 2, projecting himself as General Secretary of Roshanara Club Limited (RCL) and using RCL's letterhead is illegitimate, illegal, null, and void, and completely devoid of any legal efficacy or consequence, and/or*

6. Direct Defendant Nos. 2 to 10 to strictly comply with and adhere to the provisions of Clauses 43 and 44 of the Memorandum of Association (MOA) of Roshanara Club Limited (RCL), in their entirety and spirit, and/or

7. Pass an order of Permanent Injunction restraining Defendant Nos. 2 to 10 from unauthorizedly entering into any agreement/communication using the name of Roshanara Club Limited (RCL), including the one with Delhi Development Authority (DDA) , and/or

8. Injunct Defendant Nos. 2 to 10 from representing themselves as the competent authority of Roshanara Club Limited (RCL), for the purpose of entering into any agreement/settlement as detailed in the affidavit dated 19.12.2024 (Document No. 13), and/or

9. Injunct Defendant Nos. 2 to 10 from operating bank accounts of Roshanara Club Limited (RCL) in banks, namely HDFC, AXIS, SBI, Bank of Baroda and other banks, the account details of which are specified in paragraph 10 of the suit, and/or

10. Declare that Defendant Nos. 2 to 10 have committed acts of misfeasance and malfeasance with regard to the resources of



Roshanara Club Limited (RCL) and have illegally and unauthorizedly withdrawn amounts from the bank accounts. Direct that the withdrawn amounts be restored by issuing recovery order from each and every Defendant, who shall be jointly and severally liable for the same, and/or

11. Pass an awarding Damages to the tune of Rs. 2 crores to the Plaintiff declaring that it is being subjected to intentional and malicious harassment by the Defendants.

12. Direct Defendants Nos. 2 to 10 to provide a detailed and accurate rendition of accounts of Roshanara Club Limited (RCL) from the date of their appointment till date and further order a forensic audit into the accounts of RCL to investigate and scrutinize all financial transactions, dealings, and decisions made by the Defendants during their tenure, and/or

13. In the event of finding accounts being irregular or deficient or wrongly kept, then Defendant(s) to be held jointly and severally responsible to bring back the money forthwith, and/or

14. Direct Defendants Nos. 2 to 10 to furnish a detailed, accurate, and transparent inventory of all goods, assets, and properties belonging to Roshanara Club Limited (RCL), as reflected in the books of accounts and physically present on site, from the date they assumed office in the Executive/Management Committee of RCL up to the date of their handing over of charge, and/or

15. In the event that any goods, assets, and properties belonging to Roshanara Club Limited (RCL) are found to be missing, unaccounted for, misappropriated, misused, alienated, or carelessly lost by the Defendant(s), this Hon'ble Court be pleased to direct the Defendant(s) to be held jointly and severally responsible to restore, return, and re-deliver all such goods, assets, and properties to the Club forthwith.”

5. The allegation in the said suit is against various office bearers of the Club, who are arrayed as Defendant Nos. 2 to 10 herein. The maintainability



of the suit was opposed by the Club on the ground that it would be barred in view of Section 430 of the Companies Act, 2013 (hereinafter “*the Act*”). Under the said provision, the stand of the Club was that the jurisdiction of the Civil Court is barred and that the Plaintiffs, if they have any grievance ought to approach the National Company Law Tribunal (hereinafter “*the NCLT*”) under Sections 241 and 242 of the Act. The said objection was considered by the Id. Single Judge, and *vide* the impugned judgement it was held that the suit is barred under Section 430 of the Act. Accordingly, the Plaintiffs were directed to approach the NCLT.

Submissions of the Parties

6. Mr. Mohit Chaudhary, Id. Counsel appearing for the Appellants has submitted that in order for the bar under Section 430 of the Act to apply, there is a particular threshold that is required to be satisfied under Section 244 (1)(a) of the Act. It is submitted that in the present case, since the said threshold is not satisfied by the Plaintiffs, the matter would not be liable to be adjudicated by NCLT. Hence, the jurisdiction of the Civil Court would not be barred.

7. He submits that under similar circumstances, another member of the Club had approached the NCLT with a petition raising similar issues, which was not entertained by the NCLT on the ground that the threshold under Section 244 (1)(a) is not satisfied. The waiver was not granted to the said member to enable sustaining the said challenge before the NCLT. Thus, it is argued that the fate of the Appellants’ case, before the NCLT, having been pre-decided in a similar matter, no useful purpose would be served in approaching the NCLT.

8. In addition, Mr. Chaudhary, Id. Counsel also relies upon the decision of the Division Bench of the Calcutta High Court in ***Eastern Indian Motion***



Picture Association & Ors. vs. Milan Bhowmic & Ors., 2024 SCC OnLine Cal 1325, where the jurisdiction of a Civil Court had been recognized despite the bar under Section 430 of the Act. He, therefore, submits that the impugned judgement is not sustainable and considering that only a few members have approached the Civil Court, who would not satisfy the threshold under Section 244(1)(a) of the Act, the suit would be liable to be proceeded with before the Id. Single Judge.

9. On the other hand, Mr. Manik Dogra, Id. Sr. Counsel, appearing for the Respondent No.1 - Club has relied upon the following decisions :

- (i) ***SAS Hospitality Pvt. Ltd. and Another vs. Surya Constructions Pvt. Ltd. and Others, 2018 SCC OnLine Del 11909;***
- (ii) ***Delhi & District Cricket Association vs. Sudhir Kumar Aggarwal & Ors., 2020 SCC OnLine Del 1223, and***
- (iii) ***Jaiveer Singh Virk vs. Sir Sobha Singh & Sons Private Limited, 2020 SCC OnLine Del 498.***

10. It is the submission of the Id. Sr. Counsel that the argument *qua* non-satisfaction of the threshold under Section 244(1)(a) of the Act, has been clearly considered by the Id. Single Judge in paragraphs 26 to 27 of the impugned judgement. Therefore, the same does not warrant any interference.

Analysis and Findings

11. The Court has considered the matter. In the impugned judgement, the Id. Single Judge, has copiously considered each and every argument, which has been raised by the Appellants. The Id. Single Judge has also given reasons why the Court does not agree with the decision of the Calcutta High Court in ***Milan Bhowmic (supra)***, relied upon by the Appellants. The relevant portions



of the impugned judgment are set out below :

*“23. Coming now to the Scheme of the 2013 Act, Section 241(1)(a) enables any member of a company to file an application before NCLT complaining that affairs of the company have been or are being conducted in a manner prejudicial to public interest or are prejudicial or oppressive to him or any member or members or to the interests of the company. In **Jai Kumar Arya (supra)**, the Division Bench observed that amplitude of the words used in Section 241(a) are wide and expansive and cover all cases where the complaint is made alleging mismanagement of the affairs of the company in a manner prejudicial or oppressive to the complainant or the company or any member or members of the company albeit Section 241(1)(a) limits the applicability to cases falling under Chapter XVI of the Act. Section 241(1)(b) provides that application can be made only by a member who has a right to apply under Section 244. Section 242 details the powers of NCLT in cases where Section 241 can be invoked.*

24. It is relevant to note at this stage that Plaintiffs do not contest the position that the disputes sought to be raised in the suit and/or reliefs claimed are covered under Sections 241 and 242 of the 2013 Act and as rightly flagged by Defendant No. 1, they have so admitted in paragraph 6 of the plaint. Therefore, this issue need not detain this Court and the only issue arising for consideration is whether Plaintiffs can be non-suited and relegated to the jurisdiction of NCLT, when according to them they do not meet the threshold of eligibility provided in Section 244. In a nutshell, contention of the Plaintiffs is that in the absence of meeting the eligibility under Section 244(a) of having 10% of total strength of RCL which has 4000 members, they are not eligible to apply under Section 241. While it is conceded that proviso to Section 244(1)(a) and (b) empowers the Tribunal, on an application made in this behalf, to waive the eligibility requirements, the argument is that various orders passed by NCLT in the past including an order in the case where RCL was a party, NCLT invariably declines to waive the eligibility condition and therefore approaching the NCLT would be a futile exercise and in this context, heavy reliance was placed on the judgments of the Division Benches of Calcutta



High Court in Eastern Indian Motion Picture Association (supra), and this Court in Jai Kumar Arya (supra).

25. I am afraid I cannot accept this contention of the Plaintiffs in light of the bar under Section 430 and the settled law on this aspect adumbrated in the aforementioned judgments. It is true that Section 244 provides the threshold eligibility criteria for members of a company to apply under Section 241 and Section 244(1)(a) requires in case of a company with share capital, a threshold criteria of 100 shareholders or 1/10th strength of total members and in the present case, the suit is filed by 5 members out of the total strength of 4000 members and Plaintiffs do not meet the threshold criteria. However, the proviso clearly empowers NCLT to waive all or any requirement specified in Section 244(1)(a) and (b). Therefore, the remedy of the Plaintiffs is to apply before NCLT under Section 241 and seek a waiver under the said proviso. For easy of reference, Section 244 of the 2013 Act is extracted hereunder:

“244. Right to apply under section 241.—(1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any



share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.”

26. The contention that precedents reflect that NCLT ordinarily or invariably declines to grant waiver can be no argument in the teeth of a statutory provision. By making this submission, Plaintiffs are virtually calling upon the Court to pre-judge the outcome of an application for waiver, if and when filed by the Plaintiffs, which cannot be a yardstick to decide the maintainability of the suit, which cannot be entertained in view of the bar under Section 430, especially, when Plaintiffs admit that the reliefs sought by them pertaining to allegations essentially of oppression and mismanagement fall in the domain and jurisdiction of NCLT. In the earlier part of the judgment, the reliefs sought have been extracted and for the ease of reference, I may only highlight the allegations in the plaint being: (a) Defendants No. 2 to 10 along with two others were elected as Executive Committee of RCL for one year expiring on 30.09.2023 in terms of Clause 43 of MoA and the tenure could not be extended in terms of Clause 44 but they have continued unlawfully and are not permitting fresh elections; (b) misappropriation of assets; (c) diversion of funds; (d) wrongful financial exploitation of RCL accounts and malfeasance; (e) impersonation and misrepresentation by Defendants of continuing as Executive Committee; and (f) making unauthorized deals/compromises with DDA in respect of 23 acres of land of RCL etc. Each of these issues relate to oppression and mismanagement and/or elections and clearly fall within the scope of NCLT's jurisdiction thus barring the jurisdiction of this Court.

*27. Insofar as the judgment of the Division Bench of this Court in **Jai Kumar Arya (supra)** is concerned, reliance by the Plaintiffs is not understood as the judgment does not inure to their advantage. The prime issue for consideration before the Division Bench was*



a notice by Defendant No. 1 to the shareholders/Directors of the Petitioner company notifying a date for holding an EGM, which sparked a number of litigations. The Court came to a conclusion on the facts of the case that the dispute with respect to the said notice was not amenable to adjudication by NCLT either under Section 169(4) or Section 241 but insofar as Section 430 is concerned, the Court noted that there was a bar for the Civil Court to adjudicate issues, where NCLT was empowered to exercise jurisdiction and in fact in paragraph 13 of the judgment, Court took note of the fact that insofar as allegations of oppression and mismanagement of the affairs by Plaintiff No. 1 therein were concerned, the petition was pending before NCLT and would not impact the adjudication of the appeal. With respect to the judgment of the Division Bench of the Calcutta High Court, I may say with all due respect, this Court is not persuaded to follow the said view in light of the judgments of the Supreme Court as also Division Bench of this Court and several Co-ordinate Benches reiterating and reinforcing the embargo under Section 430. With respect, it cannot be anticipated at this stage that if Plaintiffs were to approach NCLT, their application for waiver would necessarily be rejected and thus on the basis of mere speculation, this suit cannot be entertained. Moreover, this Court also respectfully differs with the view taken that when the NCLT declines to grant waiver of the threshold eligibility condition, Plaintiffs will have to fall back to a remedy before the Civil Court inasmuch as if the NCLT declines to grant waiver, for the sake of arguments, Plaintiffs have a remedy of statutory appeal under Section 421 of the 2013 Act before NCLAT.

28. For all the aforesaid reasons, Court agrees and upholds the preliminary objection that the suit is not maintainable as the remedy of the Plaintiffs lies in approaching NCLT. Accordingly, the plaint is rejected leaving the Plaintiffs to avail their remedies in accordance with law before the NCLT, making it clear that this Court has neither entered into nor expressed any opinion on the merits of the case.”

12. The scheme of the Act is clear. After setting up of the NCLT, the



grievances in respect of Oppression and mismanagement have to be raised before the said forum and not before a Civil Court. Chapter 16 of the Act titled ‘*prevention of oppression and mismanagement*’ clearly permits parties under Sections 241 and 242 to approach NCLT with any such allegations. The relevant portions of Sections 241, 242 and 244 of the Act are extracted hereunder for ease of reference:

“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.

XXXXXXX

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. [...]

XXXXXXX

244. Right to apply under section 241.—(1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the



members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member. [...]”

13. Under Section 244 of the Act, the clear mandate has been stipulated as to who are the members who can approach the NCLT under Section 241 of the Act. The purpose of these provisions and the fixation of a threshold is obviously to ensure that allegations of oppression and mismanagement are raised only when a substantial number of members of a company are aggrieved by its functioning. This is in the broader ethos of ensuring that frivolous litigation making allegations of Oppression and Mismanagement are not attracted against companies.

14. The argument that if a particular case does not cross the threshold, then such members would be permitted to invoke Section 9 of the Code of Civil Procedure, 1908 and file a Civil Suit, would go against the grain of the Act itself. Section 430 of the Act makes it clear that the Civil Court’s jurisdiction is barred and the conditions for approaching the appropriate Tribunal, in this case the NCLT, are provided in the Act itself. The Act is a complete code in itself and in the opinion of this Court, the threshold fixed under Section 244 of the Act cannot be bypassed by filing a Civil Suit.

15. In **SAS Hospitality (supra)**, the Court has considered the scheme of the Act and has observed as under:

“15. The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceedings" which the NCLT is "empowered to determine". The NCLT in the present case would



be empowered to determine that the allotment of shares in favour of the Defendant Nos. 5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos. 5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No. 1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.

16. The allegations in the present case relate to non-compliance of the stipulations in Section 62 of the 2013 Act. The non-compliance of any conditions contained in Section 62 of the 2013 Act also constitutes mismanagement of the company, inasmuch as under Section 241 of the 2013 Act, the conduct of affairs of the company "in a manner prejudicial" to any member or "in a manner prejudicial to the interest of the company", would be governed by the same. The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass "such order as it thinks fit", including providing for "regulation of conduct of affairs of the company in future". These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.

17. Moreover, the powers of the NCLT being broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 CPC. The NCLT is a specialised



Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies. As observed by the Supreme Court in *Union of India v. R. Gandhi*, (2010) 11 SCC 1 (hereinafter, 'R. Gandhi') and thereafter, in *Madras Bar Association v. Union of India*, 2015) 8 SCC 583 (hereinafter, *Madras Bar Association*)* the NCLT has been created by a specific amendment in the law. The constitution of the NCLT has been upheld. The relevant observations in the said *R. Gandhi* (supra) is set out below :

"33. The argument that there cannot be whole-sale transfer of powers' is misconceived. It is nobody's case that the entire functioning of courts in the country is transferred to Tribunals. The competence of the Parliament to make a law creating Tribunals to deal with disputes arising under or relating to a particular statute or statutes cannot be disputed. When a Tribunal is constituted under the Companies Act, empowered to deal with disputes arising under the said Act and the statute substitutes the word 'Tribunal' in place of 'High Court' necessarily there will be 'whole-sale transfer' of company law matters to the Tribunals. It is an inevitable consequence of creation of Tribunal, for such disputes, and will no way affect the validity of the law creating the Tribunal."

18. In *Madras Bar Association* (supra), relying upon the decision in *R. Gandhi* (supra), the Supreme Court observed as under:

"11. First of all the creation of Constitution of NCLAT has been specifically upheld in 2010 judgment. It cannot be denied that this very Petitioner had specifically questioned the Constitutional validity of NCLAT in the earlier writ petition and even advanced the arguments on this very issue. This fact is specifically noted in the said judgment. The provision pertaining to the constitution of the Appellate Tribunal i.e. Section 10FR of the Companies Act, 1956 was duly taken note of. Challenge was laid to the establishments of NCLT as well as NCLAT on the ground that the Parliament



had resorted to tribunalisation by taking away the powers from the normal courts which was essentially a judicial function and this move of the Legislature impinged upon the impartiality, fairness and reasonableness of the decision making which was the hallmark of judiciary and essentially a judicial function. Argument went to the extent that it amounted to negating the Rule of Law and trampling of the Doctrine of Separation of Powers which was the basic feature of the Constitution of India. What we are emphasising is that the petitions spearheaded the attack on the constitutional validity of both NCLT as well as NCLAT on these common grounds. The Court specifically went into the gamut of all those arguments raised and emphatically repelled the same.

12. The Court specifically rejected the contention that transferring judicial function, traditionally performed by Tribunals offended the Courts, to the summarised the position in this behalf as under:
We may summarize the position as follows:
(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.
(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.
(c) Whenever there is need for 'Tribunals, there is no presumption that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and



decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary. (d) The Legislature can re-organize the jurisdictions of Judicial Tribunals. For example, it can provide that a specified category of cases tried by a higher court can be tried by a lower court or vice versa (A standard example is the variation of pecuniary limits of courts). Similarly while constituting Tribunals, the Legislature can prescribe the qualifications/eligibility criteria. The same is however subject to Judicial Review. If the court in exercise of judicial review is of the view that such tribunalisation would adversely affect the independence of judiciary or the standards of judiciary, the court may interfere to preserve the independence and standards of judiciary. Such an exercise will be part of the checks and balances measures to maintain the separation of powers and to prevent any encroachment, intentional or unintentional, by either the legislature or by the executive.

13. Thereafter, the Constitution Bench categorically dealt with the Constitutional validity of NCLT and NCLAT under the caption "Whether the constitution of NCLT and NCLAT under Parts 1B & 1C of Companies Act are valid", and embarked upon the detailed discussion on this topic. It becomes manifest from the above that the question of validity of NCLAT was directly and squarely in issue. Various facets of the challenge laid to the validity of these two fora were thoroughly thrashed out. No doubt, most of the discussion contained in paras 107 to 119 refers to NCLT. However, on an insight into the said discussion contained in these paragraphs, would eloquently bear it out that it is inclusive of NCLAT as well. In para 121 of the judgment, which is already extracted above, the Court specifically affirmed the decision of the High Court which held that creation of NCLT and NCLAT was not unconstitutional. In view of this, it is not



open to the Petitioner even to argue this issue as it clearly operate as res judicata."

19. The bar under Section 430 of the 2013 Act being absolute in nature, this Court is of the view that the jurisdiction to adjudicate the disputes raised in the present case vests with the NCLT."

16. In ***Delhi & District Cricket Association (supra)***, this Court again had the occasion to consider the scheme of the Companies Act and has observed as under :

*"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.*

19. The appellant contends that the dicta of the Supreme Court in Aruna Oswal v. Pankaj Oswal Civil Appeal No. 9340/2019, would not be applicable as that dealt with the locus standi of the petitioner whose infinitesimal shareholding was yet to be determined. Whereas in the present case, the process of election to the Board of Directors/Members of the Apex Council, has been challenged because of it being allegedly contrary to the procedure



laid down in the AoA and the notice calling for the AGM, and that the elections were held on the basis of a voice vote instead of paper ballot, contrary to what was mentioned in the AGM notice.”

17. In ***Jaiveer Singh Virk (supra)***, the submission of the Appellants *qua* the threshold not being met under Section 244 of the Act has been considered by the Id. Single Judge of this Court. The relevant portions are set out below:

“13. It is the contention of the senior counsel for the plaintiff, that :

*(i) Section 430 of the Companies Act, 2013 bars the jurisdiction of the civil court to entertain any suit or proceeding only in respect of matters which the National Company Law Tribunal (NCLT) or the National Company Law Appellate Tribunal (NCLAT) is empowered to determine by or under the said Act or any other law in force; ii) the bar contained under Section 430 came into operation prospectively, with effect from 1 -6-2016; however the present suit was instituted prior thereto on 9-5-2016 — thus at the time of institution of the present suit, there was no bar to the jurisdiction of this Court; (iii) the remedy even if any available to the plaintiff under the Companies Act is to, as a shareholder, complain against acts which are prejudicial or oppressive to the shareholder; (iv) however if the plaintiff was to now approach the NCLT, he would encounter the difficulty of Section 241(1) read with Section 244 of the Companies Act which only permits shareholder/s holding one-tenth of the issued share capital of the company to apply to NCLT for relief in case of oppression, etc.; the plaintiff holds only five equity shares of Defendant 1 company and thus cannot agitate his grievance before the NCLT; (v) NCLT even otherwise cannot grant the reliefs claimed in the present suit; (vi) reliance is placed on *Jai Kumar Arya v. Chhaya Deviz*; (vii) Section 430 of the Companies Act does not create a bar as the plaintiff is deriving his legal right on the basis of Resolution dated 21-7-1990 which is in the nature of family settlement/arrangement; reliance is placed on *Dinesh Gupta v. Rajesh Gupta*; (viii) the legal right canvassed by the plaintiff in this suit is premised exclusively on the Resolution dated 21-7-1990*



*which is a family settlement/arrangement; (ix) once the corporate veil is lifted, the whole situation will become crystal clear; (x) the Resolution dated 21-7-1990 acknowledges and establishes the seniority of grandchildren and the great grandchildren of Sir Sobha Singh family for allotment of apartments; (xi) out of the 23 members whose name have been recorded in the list prepared pursuant to Resolution dated 21-7-1990, all the children of Mrs Mohinder Jaspal Singh have been allotted flats except the plaintiff; (xii) the said Resolution has been diligently implemented; (xiii) Defendant 1 company also in its written statement has admitted the informal understanding between some of the family members; (xiv) the Board of Directors of Defendant 1 company have ratified the said Resolution; (xv) the said Resolution is binding on Defendant 1 company as also evident from the Resolution of the Board of Directors meeting dated 8-9-2012 in which all the current Directors were present as well as from Resolution of the meeting of Board of Directors on 17-12-2015; reliance is placed on *Deepa Anant Bandekar v. Rajaram Bandekar (Sirigao) Mines (P) Ltd.*; (xvi) Defendant 1 company, by giving effect to the said Resolution, has consciously allotted flats as per the allotment list and has thus accepted the Resolution dated 21-7-1990 to be binding on it; (xvii) family settlements are governed by a special equity and are to be enforced; reliance is placed on *Kale v. State of U.P.* and *K.K. Modi v. K.N. Modi*; (xviii) the condition imposed on the plaintiff, of vacating Property No. 1-A, Janpath, New Delhi is illegal, being in repudiation of the Resolution dated 21-7-1990/family settlement; (xix) Defendant 1 company and Sir Sobha Singh Public Charitable Trust are separate legal persons and Defendant 1 company cannot impose conditions for the benefit of Sir Sobha Singh Public Charitable Trust, on the plaintiff; and (xx) thus on the basis of Resolution dated 21-7-1990, the plaintiff has an enforceable right.*

34. Not only so, once the Legislature in its wisdom has deemed it appropriate that less than the prescribed number of shareholders or shareholders holding less than the prescribed number of shares should not be permitted to initiate legal proceedings with respect to management and affairs of the company, it would be travesty of



the statute to hold that less than the prescribed number of shareholders or shareholders having less than the prescribed shares, though not entitled to approach the NCLT, can interfere with the management of affairs of the company by approaching the civil court. The Legislature having prescribed the minimum for exercising such a right, it has to be held that less than the said minimum have no right to interfere in the management”

18. A perusal of the statute, leaves no manner of doubt that the allegations of Oppression or mismanagement are exclusively governed by Chapter XVI of the Act and that any dispute *qua* the same shall be dealt exclusively by the NCLT.

19. The manner in which the Appellants sought to bypass the said scheme by filing a Civil Suit is not tenable in law. This Court notes with approval the observation of the Id. Single Judge in ***Jaiveer Singh Virk (supra)***, where the Court has clearly dealt with the threshold argument and has held that it would be a travesty to the statute to hold that less than the number of prescribed shareholders can interfere with the management of the company by approaching a Civil Court and bypassing the NCLT.

20. The Id. Single Judge’s views in the impugned judgement are in accordance with the scheme of the Act, and thus, the suit has been rightly rejected.

21. In view of the above, the impugned judgement does not warrant any interference by this Court. Needless to add, the Appellants’ remedies under the Act are left open to be availed of.



2025:DHC:4251-DB



22. The present appeal is dismissed in above terms. Pending application(s), if any, also stand disposed of.

PRATHIBA M. SINGH
JUDGE

RAJNEESH KUMAR GUPTA
JUDGE

MAY 20, 2025/nd/msh