NATIONAL COMPANY LAW APPELLATE TRIBUNAL,

PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 94 of 2020

(Arising out of Order dated 26.06.2020 passed by the National Company Law Tribunal, New Delhi, Principal Bench in C.P. No. 71/2020)

IN THE MATTER OF:

Union of India, Ministry of Corporate Affairs ...Appellant

Versus

Delhi Gymkhana Club Ltd. &Ors. ...Respondents

Present:

For Appellant: **Mr. K. M. Nataraja, ASG with Mr. Vatsal Joshi, Advocate and Dr. Raj Singh, Director RD NR, Mr. Sanjay Shorey, Director Legal, Ms. Seema Rath, Mr. Parvez Naikwadi, Mr. Shailesh Madiyal, Mr. Nagachandran Easwaran, Ms. Kusum Yadav, Mr. Sughosh SN and Mr. Sudhanshu Prakash.**

For Respondents: **Mr. S. N. Mookherjee, Sr. Advocate**

Mr. Arun Kathpalia, Sr. Advocate

Mr. Gaurav M. Liberhan, Sr. Advocate and Mr. Ash Khanna, Advocate for R-1.

Ms. Rohini Musa, Mr. Pulkit Deora, Ms. Garima Prashad and Mr. Sylvine Sarmah, Advocates for R-18.

Col. Ashish Khanna, Secretary, Gymkhana Club

With

Company Appeal (AT) No. 95 of 2020

IN THE MATTER OF:

Delhi Gymkhana Club Ltd. ...Appellant

Versus

Union of India, Ministry of Corporate Affairs &Ors. ...Respondents

Present:

For Appellant:	**Mr. S. N. Mookherjee, Sr. Advocate** **Mr. Arun Kathpalia, Sr. Advocate** **Mr. Gaurav M. Liberhan, Sr. Advocate.** **Mr. Ash Khanna, Advocate**
For Respondents:	**Mr. K. M. Nataraja, ASG with Mr. Vatsal Joshi, Advocate and Dr. Raj Singh, Director RD NR, Mr. Sanjay Shorey, Director Legal, Ms. Seema Rath, Mr. Parvez Naikwadi, Mr. Sarthak Bhardwaj, Mr. Shailesh Madiyal, Mr. Nagachandran Easwaran, Ms. Kusum Yadav, Mr. Sughosh SN and Mr. Sudhanshu Prakash.** **Ms. Rohini Musa, Mr. Pulkit Deora, Ms. Garima Prashad and Mr. Sylvine Sarmah, Advocates for R-18.**

J U D G E M E N T

BANSI LAL BHAT, J.

Pending consideration of CP No. 71/2020, National Company Law Tribunal ("Tribunal", for short), New Delhi, Principal Bench, being of the view that a *prima facie* case demonstrating that the affairs of the 'Gymkhana Club' ("Club", for short) are being conducted in a manner prejudicial to the public interest, passed interim order dated 26th June, 2020 within the ambit of Section 242(4) of the Companies Act, 2013 ("Act, 2013", for short) for regulating the conduct of the company's affairs by directing Union of India to appoint two nominees of its choice as Members in the General Committee to monitor the affairs of the Club along with other General Committee Members and give suggestions to the General Committee and also directed the Union of

India to constitute a Special Committee with five Members of its choice to enquire into various issues including affairs of the Club, utility of the land leased out by the State, constructions in progress, Articles and Memorandum of Association and membership issues including waitlist, adherence of the Club to the Rules and for making recommendations suggesting for better use of the Club premises. Besides directions were given to General Committee not to proceed with construction or take any policy decisions or effect any changes in the Memorandum of Association and Articles of Association. The Club was also restrained from operating the funds received for admission of Members. Holding of elections was also stayed. Union of India, though satisfied that the Tribunal has found a *prima facie* case in its favour warranting grant of interim relief, is aggrieved of the order on the ground that the same does not grant effective and efficacious remedy to stem the rot. Company Appeal (AT) No. 94 of 2020 thus came to be filed by the Union of India impugning the order dated 26th June, 2020 passed by the Tribunal under Section 242(4) of the Act, 2013 to the extent of interim relief granted thereunder as being inadequate and praying for modification of the relief by providing for nomination of an Administrator by the Central Government to manage the affairs of Club. Company Appeal (AT) No. 95 of 2020 has been preferred by the Club against Union of India & Ors. impugning the aforesaid order on various grounds set out in the memo of appeal and seeking setting aside of the impugned order.

2. Both appeals, arising out of the same impugned order dated 26th June, 2020 were clubbed and heard together. This common judgment is formulated to govern the fate of both appeals.

3. The background facts giving rise to the controversy involving allegations of mismanagement and leading to filing of the Company Petition by Union of India under Section 241(2) of the Act, 2013 before the Tribunal need to be noticed insofar as they are relevant. The Club came to be incorporated on 14th July, 1913 as a Company (limited by guarantee) under Section 26 of the Companies Act, 1913 (corresponding to Section 25 of the Companies Act, 1956/ Section 8 of the Companies Act, 2013) under the name and style 'Imperial Delhi Gymkhana Club Ltd.' with its Registered Office presently situated at 2nd, Safdarjung Road, New Delhi as a non-profit company, *inter alia*, with objective to promote sports and pastimes under licence from the Central Government to carry out its functions subject to the conditions and regulations binding on the Club. The Club has been operating for more than a century in 27 acres of land leased out by the then Government. Respondent Nos. 2 to 17 before the Tribunal were the General Committee Members for the year 2019-2020 out of whom Respondent No.2 was acting as President of the GC while Respondent No.18 was working as Secretary/ CEO of the Club. Respondent No.19- the Ministry of Housing and Urban Affairs is the lessor of 27.03 acres of land given on perpetual lease to the Club in 1928 under a lease deed executed *inter se* the Secretary of State for India in Council (British India) and the Imperial Gymkhana Club Limited (the erstwhile name and style of the Club),

the prefix “Imperial” having been dropped in the year 1959 after lapse of paramountcy of the British Empire and adopting of Constitution of India. The Club, with its main objective, being to promote various sports and pastimes and other objectives set out in the Memorandum of Association, has a limited membership. The number of permanent members is 5600. However, the users of the Club are stated to be double the number of permanent members. Based on complaints received by the Government against the Club, Ministry of Corporate Affairs, Government of India issued order dated 16th March, 2016 directing inspection of the Club by invoking powers vested in it under Section 206 (5) of the Companies Act, 2013. The nature and content of the complaints is referred to in para 8 of the impugned order and the violations borne out from the Inspection Report have been taken note of in para 9 of the impugned order. Keeping the same in view, Ministry of Corporate Affairs directed to take penal action against the Club management, auditors of the Club besides revocation of license of the Club, removal of the existing management, appointment of Government Directors and carrying out supplementary inspection to take up issues related to allotment of membership, money received from the new applicants as registration fee for membership, accounting treatment of the amount received from new applicants, investments made by the Club from such membership fee and with regard to the processing charges received from the Applicants. As a sequel to the Inspection Report and action taken thereof, the Inspectors filed the supplementary Inspection Report dated 3rd March, 2020 which detailed numerous violations and mismanagement of the affairs of

the Club disclosing that the GC had been acting in violation of Articles of Association of the Club and the provisions of the Companies Act, 1956/ 2013 which was detrimental to the public interest, such violations being gross and extreme in nature and bringing it to fore that the GC members had acted in an autocratic manner to confer benefits on chosen members of the Club in hereditary manner at the cost of general public.

4. The case set up by the Union of India before the Tribunal is that the Club which limited its access only to the Government officers and limited number of non-government people virtually barred entry of many people who applied for membership to seek membership even after waiting for decades as the children of permanent members managed to sneak in under the garb of being dependents of permanent members, thereafter as green card holders and finally as UCPs holders frustrating the desire of people on the wait list. According to Union of India, the money taken from the waitlisted applicants was being utilized for the usage of the Club by persons coming through various channels which was alleged to be unfair and prejudicial to public interest. The stand taken by the Club, on the contrary, is that the Club is entitled and empowered to decide the membership issue in accordance with the Articles of Association and its action cannot be called in question by the Government on the ground of being prejudicial to public interest. The Club further pleaded that the premises housing the Club has been leased out to it in perpetuity and the Club has been paying the rent regularly. It is denied that the Club was being used for purposes other than the objects mentioned in the Articles of

Association. It was further pleaded that the land had been allotted to the Club for sports and pastimes along with other objectives which have neither been altered nor is the Club pursuing any other objective. The further stand taken by the Club before the Tribunal was in regard to maintainability of the Company Petition on the ground that the opinion in regard to affairs of the Club being conducted in a manner prejudicial to the public interest is bereft of reasons and application of mind.

5. Union of India filed Company Petition under Section 241(2) of the Companies Act, 2013 against the Club and its GC members as also the Ministry of Urban Affairs alleging that the affairs of the Club were being conducted in a manner prejudicial to public interest, therefore, seeking nomination of 15 persons by the Central Government as Directors of the GC of the Club to manage its affairs besides restructuring of the Club to ensure its functioning in conformity with its Articles of Association. Interim relief was sought to suspend the GC and appoint Administrator nominated by Union of India to manage the affairs of the Club as also to ban acceptance of new membership or fees or any enhancement thereof till disposal of waitlist applications. The Club and other Respondents in Company Petition, while did not file reply to the main petition, resisted the interim relief on two points:-

(i) formation of opinion is not supported by grounds and cognizance has not been taken into at the time of forming opinion

(ii) lack of public interest.

6. On consideration thereof, the Tribunal granted interim relief in terms of Section 242(4) of the Act, 2013 after coming to conclusion that a *prima facie* case for relief sought was made out. The operative part of the impugned order reads as under:-

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

7. As noticed at the very outset, while the Company Appeal (AT) No. 95 preferred by the Club assails the finding recorded by the Tribunal as regards

maintainability of the Company Petition as also existence of *prima facie* case for grant of interim relief in favour of Union of India, Company Appeal (AT) No. 94 of 2020 preferred by Union of India assails the impugned order only to the extent of interim relief granted which is said to be inadequate and not efficacious. Since the issue relating to the interim relief being not efficacious or inadequate would be dependent on the finding in regard to maintainability of the Company Petition and existence of *prima facie* case for grant of interim relief, we deem it appropriate to first come to grips with Company Appeal (AT) No. 95 of 2020.

8. Sh. S.N. Mookherjee, Senior Advocate representing the Club submitted that no opinion has been formed by the Central Government and in the absence of any such opinion, the Tribunal cannot assume jurisdiction in any matter under Section 241(2) of the Act, 2013. It is submitted that the ostensible sanction dated 18th March, 2020 to file a petition under Section 241(2) does not constitute formation of an opinion and there being a complete absence of public interest in the allegations in the Company Petition, the jurisdictional hook of conduct of its affairs in a manner prejudicial to public interest did not arise. It is further submitted that the Inspection Report and supplementary Inspection Report do not at all render any finding in regard to the affairs of the Club or its affairs being conducted in a manner prejudicial to public interest. Therefore, order passed by the Tribunal is without jurisdiction. It is further submitted that the Tribunal has misdirected itself and misconstrued "public interest" to exercise a jurisdiction where none existed. It

is further submitted that there is no opinion formed by the Central Government for the purposes of Section 241(2) of the Act, 2013 nor has any such opinion been placed on record. It is submitted that the two jurisdictional conditions precedent must pre-exist before any petition under Section 241(2) is to be filed: (i) the formation of an opinion by the Central Government; and (ii) that the affairs of the company are being conducted in a manner prejudicial to public interest. In absence of either, the petition is bound to fail at a very threshold stage. It is submitted that there is no evidence of the formation of any 'opinion' on record. The petition was filed by the Regional Director asserting that he was duly authorized to file the petition vide sanction dated 18th March, 2020 which does not constitute an opinion within the meaning of Section 241(2) of the Act, 2013. It is submitted that the Tribunal has casually dealt with the second limb of the issue relating to maintainability of the petition for want of any valid opinion while failing to deal with the first limb of the issue pertaining to want of formation of opinion by the Central Government. It is submitted that there is complete non-application of mind by the Union of India and the formation of opinion on the basis of reiteration of comments of the Inspecting Officer renders it non-est. It is submitted that the Tribunal has glossed over the matter by ignoring the judgments of Hon'ble Apex Court. Thus, it is submitted that error is obvious as the letter of 18th March, 2020 is not an opinion and makes no reference to an opinion. Besides it does not reflect any application of mind. It is submitted that for formation of an opinion there must be sufficient evidence to arrive at satisfaction. The

standard of proof would ordinarily be such that would satisfy an unprejudiced mind beyond reasonable doubt, objectively and not subjectively. It is submitted that the opinion has to be formed on the basis of material and the validity and the existence of opinion can be subjected to judicial review. If the opinion fails to pass the muster of judicial scrutiny, the condition precedent would not be fulfilled and the exercise of powers would be bad in law.

9. Sh. S.N. Mookherjee, Senior Advocate representing the Club next contended that the petition ex-facie disclosed no public interest, therefore, the petition against the Club would not lie. It is submitted that the Club is a private members' Club for the benefits of its members where the public has no interest. The Tribunal has a very limited scope of judicial review in the matter of functioning of such Clubs which have absolute freedom to govern themselves in accordance with their charters'. It is submitted that the Tribunal has touched upon many concepts to virtually hold that there should be no private members Club on perpetual leasehold land. It is submitted that the management and affairs of a private club and its membership are matters pertaining to private law and personal matters and no public law aspect or any violation of statutory rights or fundamental rights is involved therein. Merely because 27 acres of land have been given on perpetual lease to the Club to carry out its activities does not by itself invoke 'public interest'. The lease is still subsisting. It is submitted that there is no element of public interest made out in the Company Petition, which does not concern the welfare of public/ society as a whole, affairs of Club do not concern citizens generally, public as a

whole has no pecuniary interest affecting their legal rights or liabilities in relation to the management and affairs of the Club and there is no element of public order, public health, public security, morals, economic welfare of the public or the objects mentioned in Part IV of the Constitution of India. It is thus contended that there is no public interest element involved in managing the affairs of the Club. It is further submitted that the perpetual leasehold rights over the land have been granted for the purposes of the Club, including for banquets, concerts and dances and the lodging and boarding of the members resident in the premises as reflected in Clause 6 of the lease deed. Besides promoting sports and pastimes, kitchens, refreshment rooms, use of the Club property by its members, hosting dinners, balls, concerts and other entertainment incidental and conducive to the attainment to its objects are the objects of the Club. The perpetual leasehold rights have been granted for the exclusive use of the Club and its members and creates no public interest in the affairs of the Club for the purposes of Section 241(1) of the Act, 2013. It is submitted that mere violations of law do not constitute public interest. It is submitted that the finding of the Tribunal is flawed inasmuch as mere allotment of lease land does not make the Club amenable to public interest. The fact that Government has leased land to the Club cannot be construed as public interest in the affairs of the Appellant. It is submitted that there is no allegation of any violation of the lease deed. It is submitted that the Club has been or is being used for the very same purpose for which lease was granted in favour of the Club in 1928. Taking strong exception to the observations of the

Tribunal that the perpetual lease granted to the Club was a 'State largesse', it is submitted that the grant of perpetual lease can under no circumstances be termed as 'largesse'. It is submitted that even in case of lease being a 'State largesse', the Hon'ble Apex Court has recognized the need to recognize government largesse as enforceable rights besides there is no misuse of the land or violation of any of the terms of the lease deed. It is submitted that 'better utilization' of land is not a ground available to initiate an action under Section 241(2) of the Act, 2013. Any violation of the terms of perpetual lease deed may give rise to a contractual dispute to be agitated before a Civil Court for appropriate remedies, but would not entitle Central Government to maintain a petition under Section 241(2) of the Act, 2013.

10. It is submitted by Sh. S.N. Mookherjee, Senior Advocate that the impugned order is contrary to Article 19(1) (c) of the Constitution of India. Appellant, being an association of persons in the incorporated form, has the absolute right to associate with only those whom the Club voluntarily admits. Such right includes the right of continuance to the association. The association is entitled to admit members and there can be no interference with formation or membership or management except on the grounds set out in Article 19(4) of the Constitution of India. The Company Petition is in the teeth of constitutional protection granted to the Club. It is submitted that the Tribunal erred in not understanding the import of this fundamental right and sought to curtail the same in the name of Article 14.

11. It is further submitted that grant or non-grant of membership is non-justiciable as no element of public interest is involved. Moreover, it is beyond the purview of Courts and Tribunals. Elaborating upon it, learned counsel for the Club submits that an application for membership being only a request for invitation to be considered for membership does not vest any legal right in favour of the persons seeking membership and the same is not justiciable in law. An applicant who is denied membership cannot claim invasion of any right as no right accrued to such person. It is for the Club to decide who it will admit as a member, it being a sole preserve and right of the Club to grant or not grant membership and there is no element of public interest involved in it to render it justiciable. It is further submitted that the matters pertaining to membership are not matters of public interest, but private matters and issues of internal management only. It is pointed out that UCP's, Green Cards and eminent persons are not permanent members but are members who have been given the privilege to use the Club. A usage card, being either a Green Card or User of Club Premises termed as UCP card is issued to such members. Dwelling upon various classes of members and users of Club, it is submitted that there are permanent members, garrison members, temporary members, casual members, special category members, lady subscribers besides users of Club like candidates pending election, children of members upon attaining age of 21 years and dependent children of members below 21 years of age as provided in the Articles of Association. It is further submitted that under Articles of Association there is a cap on permanent membership with voting

rights restricting it to 5600. GC regulates the balloting of a candidate for membership of the Club in a manner that ensures maintaining the proportion of members belonging to Armed Forces of India or Civil Officers of Government at about half of the total active membership. This is besides facilitating the early admission of members of the Diplomatic Corps. This is aimed at maintaining the distinctive character of the Club. Under Articles of Association not less than half must be from the Government at the time of balloting for election of membership. Subject to this there is no restriction on the powers of GC and power to induct others vests in GC.

12. It is submitted on behalf of Club that there is a distinction between permanent members of the Company and other members/ users of the Club permitted use of Club premises. Special provisions have been made in Articles of Association for children of members to permit them use of the Club, first as dependent children and after attaining age of 21 years seeking membership. Children below 21 years of age are issued dependent cards to permit use of the Club and upon attaining age of 21 years they are issued green cards. It is submitted that issuance of dependent card or green card is only for administrative convenience and it does not clothe them with any voting right. A green card holder is a user of the Club and it is only after passage of time that upon his candidature being accepted and upon balloting by GC he gets a UCP card. A UCP card holder becomes a permanent member only upon arising of vacancy of a permanent member. It is submitted that the Tribunal was not justified in coming to conclusion that the membership was hereditary. It is

further submitted that the Tribunal was also not justified in holding that the applicants who applied for membership keep waiting for years. Learned counsel for the Club further submitted that the Tribunal entered into the foray of membership, which it could not do as it was not a public Club.

13. It is further submitted that the Tribunal erred in finding that the membership application money submitted by prospective members was utilized by the Club. It is submitted that such finding is not based on any evidence on record. It is submitted that there is no public interest involved in so far as deposit of money by the prospective member is concerned. It is submitted that in any case this issue no more survives for consideration as the Club had decided to refund such application money lying with it which otherwise also was refundable on demand.

14. It is submitted on behalf of the Club that the Tribunal, instead of deciding the legal issues, proceeded to make unnecessary and unwarranted comments against the Club and its members reflecting a predetermined and personal, prejudice and bias. Reference is made to observations made by the Tribunal in paras 14, 17, 18, 20, 21, 32& 33 of the impugned order in this regard. It is submitted that the Tribunal has allowed its socio economic inclinations dictate the tenor, contents and findings of the impugned order. Furthermore, it is submitted that the Tribunal has made generalizations and comments unconnected to the issues arising in the petition.

15. It is further submitted that the Tribunal, while exercising jurisdiction under Section 241(2) of the Act, 2013 cannot rewrite the Constitution or expand the scope of Section 241 to conform to its personal socio-economic prejudices and thereby destroy the basic structure of the Club. It is submitted that grant or non-grant of such membership can never be the subject matter of a petition under Section 241(2) of the Act, 2013 as no element of public interest was involved therein. It is submitted that the Tribunal is supposed to exercise jurisdiction to protect the entity viz. the Club and not destroy it. It is submitted that the Tribunal was not justified in invoking Article 14 of the Constitution of India which did not extend to Club membership. It is submitted that the Club is a private body and not amenable to Article 14. It is constituted of and for its members and does not serve the public nor perform public function. In terms of Memorandum of Association, the Club is for enjoyment of its members alone. It is further submitted that the Tribunal erred in holding that the Club was under the principles of democracy. It is submitted that the Club is at liberty to manage its affairs within the confines of its charter documents viz. MOA and AOA. No breach of fundamental rights of any prospective members can be said to be violated by the Club.

16. It is further submitted on behalf of the Club that the Tribunal erred in drawing an artificial distinction between its objects as stated in the MOA. It is submitted that a company is permitted to carry out activities as set out in the objects clause of its MOA and the artificial distinction as sought to be made out by the Tribunal is not recognized in law. It is further submitted that the finding

of the Tribunal that the Club acted in violation of its objects by incurring and generating more expenditure from F&B than sports, is perverse as the MOA of the Club itself allows for promotion of sports, pastimes and F&B. The Club may generate revenue from any one or all of such activities. It is submitted that the sports and pastimes are plainly meant to be a portmanteau phrase to prevent anybody from arguing whether a particular activity is a sport or pastime. It can be used for both sports and pastimes. It is submitted that the F&B object of the Club is not subservient to any other object. It is submitted that the Tribunal has, without reference to evidence, held that the Club was acting in violation of its AOA, giving out of turn memberships and misusing of money collected as membership fees which is unsustainable.

17. As regards the interim relief granted, it is submitted on behalf of Club that the impugned order is in the nature of a final order and virtually spells death knell of the Club. The affairs of the Club have been brought to a grinding halt. It is submitted that the finding recorded by the Tribunal is finding on merits which could not have been done at the interim stage. Relief has been granted in the nature of final relief which could not be done at the interim stage. The impugned order has virtually decided the fate of the Company Petition. It is submitted that the impugned order is beyond the scope of the pleadings and grants relief not even prayed for. Nothing remains for adjudication in the Company Petition as Tribunal has granted more than final relief. Powers have been delegated to the five members of the sub-committee which is an abdication of jurisdiction. It is further submitted that there was no

urgency in the matter as the Club had been shut since 24th March, 2020 on account of COVID-19 Pandemic and subsequent lockdowns and there was no urgency for seeking *ex-parte* hearing. It is submitted that the petition was filed on the basis of complaints by disgruntled members who lost in election and had various other motives. Union of India should not espouse the cause of disgruntled members. It is lastly submitted that the Company Petition itself has been filed by way of proxy on behalf of such disgruntled members of the Club, who had an independent right to complain. It is submitted that the Central Government is not a competent authority to entertain complaint from members of the company. The Central Government exceeded its jurisdiction by entertaining complaints from members for moving the Company Petition. It is submitted that the Company Appeal (AT) No. 95/2020 deserves to be allowed and Company Appeal (AT) No. 94/2020 is liable to be dismissed.

18. Per contra, it is submitted by Mr. K.M Natraja, learned ASG representing Union of India that the proceedings after 31st July, 2019 and the decision based thereon, including the decision for further inquiry (supplementary inspection) shows that there has been material as well as application of mind to the findings therein. Further consideration culminated in order dated 18thMarch, 2020. Thus there has been a formation of an opinion, as contemplated under Section 241(2) of the Act, 2013. It is submitted that formation of an opinion is an internal process of the Government which cannot be called in question in the manner sought to be done by the Club. It is submitted that the power of the Tribunal in Section 242 is not circumscribed

or regulated by the opinion formed under Section 241(2) of the Act, 2013. It is submitted that there is large public interest involved in the matter. Elaborating thereupon, Mr. K.M Natraja submitted that the license under Section 8 of the Act restricts the objects in MOA to promotion of sports and pastimes and such other objects which are subsidiary, ancillary and incidental functions to promotion of sports and pastimes. It is submitted that each of the objects are not severally permitted under Section 8 of the Act. It is further submitted that the Government land held on lease by the Club for a purpose cannot be converted into a recreational club for the elite class only. Referring to violation of Section 8, it is submitted that taking public deposits and distribution of dividends indirectly, even though prohibited, calls for State action. It is submitted that the Government has refrained from proceeding under penal provisions of the Act as it did not intend to curb the sporting spirit of the Club. Moreover, unjust enrichment and continuous sabotaging of MOA and AOA by successive Boards warranted action by the Government. It is submitted that objects of the Club were promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object, which has to be read *ejusdem generis*. The activity of the Club registered under Section 8 of the Act has to answer the description of 'useful purpose'. It is submitted that the activities of the Club in serving of wine, beverages and cigarettes and catering to the elite sections are not 'useful purpose' and cannot be said to be in accordance with the provisions of Section 8. It is further submitted that Section 8 (1) (c) of the Act prohibits paying of

dividend to its members but the Club has been indirectly paying dividend to the members in kind. The charging of discriminatory fees, in a way provides dividend indirectly to some of its members in violation of the provisions of the Act. Learned counsel, while referring to the objects of the Club in its MOA, submits that promoting sports and pastimes being the first objective or the purpose, it has to be read disjunctively. Therefore, any activities undertaken by the Club for 'pastime' should also be related to promotion of sports only. Moreover, such objects being final, if there is something *ultravires* in the object clause of the Club, same would be a good ground to hold that the Club has declared that it will conduct the affairs in a manner prejudicial to the public interest. Mr. K.M Natraja, would submit that the Club, initially registered as a Section 26 company under Companies Act, 1913, cannot carry out recreational activities divorced from sporting activities at least as its major time functions. It is pointed out that the Club is spending less than 3% of its total expenditure towards its major objects while spending over 60% for maintaining the recreational club. Mr. K.M Natraja would further point out with reference to the inspection report the complicity of Club in specific criminal offences, therefore, it is submitted that the violation of the legal restrictions on the Club, which inhere in each grant, are palpably injurious to public interest. It is submitted that the grant of a privilege by a largesse by the State has to "best sub-serve the common good". It cannot be to sub-serve private interests or recreational purposes of a private groups of individuals. The Central Government would be lawfully justified in putting in motion the legally prescribed processes to gain

control over resources with a view to reform them, as institutions, when any violation is noticed due to mismanagement of such grants by the grantee. It is further submitted that when sports facility is taken over by the elite for recreational purposes and activities of the Club is hit by nepotism or favoritism despite the Club having been formed on the basis of State largesse, injury to public interest is involved. It is further submitted that the membership of a person with a dependent child is in the nature of license to use the Club's facilities not only for his lifetime but also for his child subject to formality of filing an application for membership when the child attains age of 21 years and upon gaining membership by child at any time before his child attains the age of 21, the facility would be available for such child also and this process continues *ad infinitum*. It is submitted that such hereditary enjoyment of State largesse, for no reason connected to public interest, invites the frown of Article 14 of the Constitution and renders such enjoyment abhorrent to public interest *ad nauseam*. This is especially so when the facilities are mostly the recreational ones rather than for promoting the main objects of the Club viz. sports activity. It is submitted that some observations, in the nature of obiter dicta, were invited on account of Club's reference to migrant workers' plight on the road and even when excluded, the impugned order is not adversely impacted insofar as the existence of *prima facie* case is concerned. It is submitted that the allegations of *malafides* are unfounded and no specific allegation against any officer dealing with the matter has been made. It is further submitted that the question of direct exercise of power attributed to Central Government is out of

context as the Central Government has formed opinion and taken action directly in exercise of its power and not indirectly for any prohibition on its direct action. It is submitted that the license under Section 8 of the Act restricts the object in MOA into promotion of sports and pastimes which cannot be read severally. It is, with reference to inspection reports which pointed out that majority has been obtained by dubious means and it has remained confined to few families with majority used to violate MOA and AOA by acts of continuous sabotage bringing in numbers of their choice by misusing the provision for voting on addition of new members. The management has failed to protect the distinctive character of the Club which stands converted into recreational Club only. As regards violation of lease deed, it is pointed out that the lease deed was obtained for the benefit of Section 8 Company with permitted objects and work towards the achievement of such objects. Deviation from the object vitiates the consent given by the Government. In such circumstances, the lease itself may not be subsisting. This is also a factor for filing an application under Sections 241-242 of the Act, 2013. As regards membership of the Club, it is submitted that membership applications are invited from the public satisfying certain criteria. Money is collected but no decision is communicated on the application. Though return of money is provided for, interest earned thereon is appropriated by the Club. In the given circumstance, when nepotism and opacity permeate the process, public interest is involved and government has to step in. It is submitted that the interim order sought by Union of India was necessary to protect the public

interest as also the interest of its members. It is pointed out that the Club did not file its response before the Tribunal despite availing number of opportunities. It is further submitted that the illegalities committed by the Club are evident and there is virtual admission of facts demonstrating existence of *prima facie* case in favour of Union of India. Mr. K.M Natraja would further submit that unless the Central Government is granted the control of the Company, during the pendency of the Company Petition, continuance of the GC will result in irreparable injury to the promise of purity and authorized action under the corporate structure and public interest. Lastly, it is submitted that the relief sought is preventive in nature. Prejudice to the public interest has a continuing effect, especially when it is built carefully on the strength of misrepresentations and false promises over a period of half a century, as admitted by private Respondents. It is submitted that the Union of India has carved out a strong case supported by documentary evidence entitling it to the interim reliefs as sought by it in Company Petition viz. appointment of an Administrator as a preventive measure against further prejudice to public interest in the affairs of the Club. In addition to the prejudice, it is submitted that the application by some of the other Respondents as also the findings of the inspection reports clearly indicate that the activities of the Club are being carried out prejudicial to the interest of its members as also prejudicial to the interests of the company. Reference in this regard is made to application filed by Respondent No.18 alleging gross nature of the illegalities in conducting the affairs of the Club. Union of India, thus defends the impugned order while

demonstrating that the interim relief is inadequate and prays for appointment of Administrator.

19. Heard learned counsel for the parties at great length and accorded consideration to the submissions made at the Bar. The two appeals, one preferred by the Union of India assailing the impugned order only to the extent of relief granted as being inadequate and the other appeal preferred by the Club assailing legality and correctness of the impugned order, common to both appeals, were heard together. Before dealing with the issues raised in these appeals, it would be appropriate to have a conspectus of the provision governing grant of interim relief under Section 242(4) of the Act, 2013 and the scope of appeal preferred against an order passed in exercise of powers under Section 242(4) of the Act, 2013. This Appellate Tribunal, while dealing with the issue in ***"Smt. Smruti Shreyans Shah vs. The Lok Prakashan Limited- Company Appeal (AT) No. 25 of 2018 (decided on 5th September, 2019)"*** observed as under:

> *"15. Now coming to the issue of grant of interim relief, be it noticed that Section 241 of the Act dealing with grant of relief in cases of oppression and mismanagement provides that any member of a company, eligible in terms of Section 244 of the Act, may apply before the Tribunal for an order under Chapter XIV dealing with prevention of oppression and mismanagement. Such member's complaint must be in regard to the affairs of the Company that 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 that any material change has taken place in the management or control of the company and because 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. ***Section 241(2) of the Act enables the Central Government also to apply to the Tribunal for an order under Chapter XIV of the Act, if in its opinion the affairs of the Company are being conducted in a manner prejudicial to public interest.*** *Section 242 of the Act dealing with the powers of the Tribunal empowers it to pass such order as it thinks fit if, based on application filed under Section 241 it is of opinion that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member(s) or prejudicial to public interest or in any manner prejudicial to the interests of the company and on just and equitable ground winding up order would be justified but such winding up would unfairly prejudice such member(s). Sub-section (2) of Section 242 deals with the nature of substantive relief that can be granted though same is only illustrative and not exhaustive. Section 242(4) of the Act provides for interim relief which the Tribunal may grant for regulating the conduct of the company's affairs. Such interim relief can be granted by virtue of an order passed on the application of any party to the proceeding and such order can be subjected to terms and conditions which appear to the Tribunal to be just and equitable. On a plain reading of these provisions, it is abundantly clear that pending consideration of application by a member or*

member(s) of a Company alleging oppression or mismanagement, the Tribunal is vested with wide discretion to make any interim order on the application of any party to the proceedings, which it thinks fit for regulating the conduct of company's affairs. Such interim order can be subjected to terms and conditions which appear to the Tribunal to be just and equitable. The nature of interim order would depend upon the nature of complaint alleging oppression or mismanagement and the relief claimed therein. A member alleging that the affairs of the company have been or are being conducted in a manner prejudicial or oppressive to him or any other member or prejudicial to the interests of the company must come up with specific allegations of oppression and mismanagement and demonstrate that the affairs of the company have been or are being run in a manner which jeopardizes his interests or interests of other members or the interests of the company. Passing of interim order necessarily correlates to regulating the conduct of company's affairs. It is therefore imperative that the member complaining of oppression or mismanagement makes out a prima facie case warranting grant of relief in the nature of an interim order. The making of an interim order by the Tribunal across the ambit of Section 242 (4) postulates a situation where the affairs of the company have not been or are not being conducted in accordance with the provisions of law and the Articles of Association. For carving out a prima facie case, the member alleging oppression and mismanagement has to demonstrate that he has raised fair questions in the Company Petition which require probe. Fairness of questions depends on the nature of allegations which, if proved, would entitle the member complaining of

oppression and mismanagement to final relief in terms of provisions of Section 242."

20. It is indisputable that an order granting interim relief in terms of provision of Section 242(4) of the Act, 2013 is appealable. The scope of such appeal, however, is limited as there are no findings of fact recorded by the Tribunal in a regular trial in the Company Petition. This Appellate Tribunal, while sitting in appeal against grant of interim relief would be within its province to ascertain whether the Tribunal was right in recording the prima facie satisfaction on the basis of material on record. To put it otherwise, this Appellate Tribunal would be acting within its jurisdiction to consider whether the finding or conclusion in regard to existence of prima facie case has been reached on consideration of relevant material and if it is so, whether such finding is justified. The impugned order cannot be set aside without examining the material on record and recording a contrary finding qua the existence of a *prima facie* case. Examination of material relied upon for grant of interim relief being inevitable in the instant case, it has to be borne in mind that this Appellate Tribunal would be loath in interfering with the finding unless it is demonstrated that the view taken by the Tribunal is capricious or unreasonable and not merely because other view is possible. However, before examining the legality and correctness of the impugned order in the context of existence of a prima facie case for relief made out in the Company Petition filed by Union of India before the Tribunal, it would be appropriate to come to grips with formation of opinion by the Central Government in regard to the affairs of

the Club being conducted in a manner prejudicial to public interest. Section 241(2) of the Act, 2013 reads as under:

> *"**241. Application to Tribunal for relief in cases of oppression, etc.**-.....(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."*

21. On a plain reading of the provisions engrafted in Section 241, it comes to fore that while any member of a Company complaining of affairs of company 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 is entitled to apply to the Tribunal for relief, subject to its entitlement under Section 244, the Central Government is empowered to apply to the Tribunal for relief in case of mismanagement only if the affairs of the company are being conducted in a manner prejudicial to public interest. The Central Government is required to record its opinion as regards affairs of the company being conducted in a manner prejudicial to public interest. Recording of such opinion is a *sine qua non* for applying to the Tribunal under Section 241(2). The first issue confronting this Appellate Tribunal would be whether there is formation of opinion on the part of Central Government in regard to the affairs of the Club

being conducted in a manner prejudicial to public interest. This would require briefly going into the genesis qua formation of the Club, its activities as delineated by its MOA & AOA, the objects sought to be pursued by the Club, handling of its affairs including its assets and funds besides regulating the entry and exit of its members.

Formation of opinion by the Central Government in regard to affairs of Club being conducted in a manner prejudicial to public interest:

22. While contending the Club appears to have raised issue that the sanction dated 18th March, 2020 does not constitute an opinion within the meaning of Section 241(2) of the Act, 2013, it is submitted that the petition before the Tribunal was bad for want of formation of opinion by the Central Government and in the event of the Tribunal being of the view that there was formation of an opinion, the petition was not maintainable for want of a valid opinion as such opinion suffered from non-application of mind. While it is not disputed that the Tribunal has shown its awareness in regard to raising of issue, the Club is aggrieved of the impugned order on the score that while it does not address the issue of formation of opinion, it casually deals with the issue relating to non-maintainability of petition for want of any valid opinion. Before leaping forward, we deem it appropriate to point out that the issue of maintainability of petition could not have been raised as an issue for determination at the threshold stage and within the narrow scope of application for grant of interim relief under Section 242(4) unless it was the

case of the Club that the petition or the remedy claimed therein was barred by law or that the Tribunal lacked jurisdiction to deal with the petition. Whether the petition raised a fair question requiring a probe at the inquiry was the only consideration required to be present to the mind of the Tribunal while considering grant of interim relief. It is not the case of the Club that the Company Petition filed by Union of India or the remedy claimed therein was barred by law or that the Tribunal lacked jurisdiction to take cognizance. This being the position, the only issue required to be dealt with by the Tribunal was in regard to formation of opinion by the Central Government which admittedly is a sine qua non for grant of interim relief in a petition filed by the Central Government alleging affairs of the Club being conducted in a manner prejudicial to public interest.

23. According to learned counsel representing the Club, there is complete non-application of mind by the Central Government in filing the petition, it being submitted that no material has been produced to establish that the Central Government have formed a valid opinion under Section 241(2) of the Act, 2013. As regards letter dated 18th March, 2020, it is submitted that the same is not an opinion and same does not reflect any application of mind. It is contended on behalf of the Club that the standard of proof on the basis of which satisfaction has been arrived at by the Central Government must be such that would ordinarily satisfy an unprejudiced mind objectively and not subjectively. The Club would further argue that the opinion has to be formed on the basis of material as the validity and existence of opinion is not excluded

from judicial review. The opinion has to pass the muster of judicial scrutiny. This argument is countered by the Union of India submitting that the proceedings after 31st July, 2019, the decision based thereon which included the decision to cause a supplementary inspection to be conducted clearly demonstrate that there was material as also application of mind to arrive at the conclusion which is supplemented by the fact that further consideration was accorded which culminated in order dated 18th March, 2020. It is submitted that formation of opinion is an internal process of the Government and cannot be called in question in the manner sought to be done by the Club.

24. It cannot be disputed that the opinion in regard to affairs of the Club being conducted in a manner prejudicial to public interest has to be based on material and its consideration in the context of involvement of public interest besides disclosing as to how the management of the Club was being conducted in a manner prejudicial to public interest. Formation of such opinion is not an idle formality. It is in the nature of arriving at a judgment based on the material with the object of taking action. The Club has taken serious exception to the observations made in regard to such formation of opinion on the part of the Central Government and its validity in para 63 of the impugned order which is reproduced hereinbelow:

> *"63. With regard to formation of opinion, in Governments, one person can't do everything right from inspection to formation of opinion, it goes from one table to another in step wise functioning, when it comes to the highest official,*

he will examine summation and supporting documents to ascertain whether prejudice is being caused to public interest, moreover Government has to discharge various functions, this formation of opinion is one among many works, of course for club, it is the only work. For this is not anybody's personal job, it is to be assumed Government will remain impersonal, unless it is shown that certain officer has personally done something against somebody to settle personal score. No such material before this Bench. To elaborate this logic, the State has relied upon Gullapalli Nageswara Rao V. APSRTC (AIR 1959 SC 308), to say that when facts are available to arrive to an opinion, it is sufficient to proceed further. In this case, no doubt supplementary report dated 03.03.2020 runs into 5000 pages, but whereas main report prepared basing on supplementary report is of only 100 pages, upon which the Central government along with the assistance of its team, formed an opinion, which cannot be denied. The bottom line is whether material is there or not. Here the material is very much present to the satisfaction of the authority, it is a subjective satisfaction based on the material available, if opinion is based on the material, as to sufficiency, it is not in the realm of the court. But in this case, material available is clearly indicating mess is created in the club affairs causing prejudice to the public interest, therefore there is no merit in saying that filing is not based an opinion demonstrating reasons."

25. In the instant case, it is not in controversy that the order dated 16th March, 2016 came to be passed by the Ministry of Corporate Affairs for

inspection of the Club in terms of powers conferred under Section 206(5) of the Act, 2013. This order came to be passed upon receipt of complaints against the Club which, *inter alia* alleged ineligibility of 'M/s. S.N. Dhawan and Company' for appointment as Statutory Auditors of Club, irregularities in the management of the Club, demand by the Club for revision of registration fee with retrospective effect from some individuals etc. It is also not in dispute that the Inspectors held inspection from January, 2019 to July, 2019 for F.Y. 2012-13 to 2017-18, in respect whereof report was laid before the Regional Director (Northern Region) of Ministry of Corporate Affairs, who placed the same before the Central Government on 5th August, 2019. The inspection report pointed out violations which are set out in para 9 of the impugned order reproduced herein below:

> *"9. The violations borne out from the inspection report are as follows:*
>
> *(i) Violation of Section 58A of the Companies Act, 1956 read with Companies (Acceptance of Deposit) Rules, 1975 along with Section 74 and Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014;*
>
> *(ii) Violation of provisions of Section 5, 166 and 179 of the Companies Act, 2013 and mismanagement of funds received by way of registration fee from the applicants;*
>
> *(iii) Violation of provisions of Section 129, 166 and 179 of the Companies Act, 2013 due to mismanagement of*

company's funds as per qualified opinion of Auditor's Report for the financial year 2017-18;

(iv) Violation of provisions of Section 209 and 211 of the Companies Act, 1956 along with violation of Section 128 and 129 of the Companies Act, 2013 and mismanagement of funds received by way of registration fee from the applicants;

(v) Violation of Section 141 of the Companies Act, 2013;

(vi) Misstatement in the e-forms-action under Section 628 of the Companies Act, 1956;

(vii) Violation of Section 129 read with Schedule-III and Section 448 of the Companies Act, 2013;

(viii) Anomaly in the number of members of the company, liable for action under section 628 of the Companies Act, 1956;

(ix) False statement in the balance sheet as at 31.03.2013, liable for action under section 628 of the Companies Act, 1956;

(x) Violation of Section 5 of the Companies Act, 2013;

(xi) Violations of provisions of Sections 211(1) and 211(2) of the Companies Act, 1956;

(xii) Violation of provisions of Sections 209 and 211 of the Companies Act, 1956 and the provisions of Sections 128 and 129 of the Companies Act, 2013 along with mismanagement of funds received by way of registration fee from the applicants;

(xiii) Violation of provisions of Section 226 of the Companies Act, 1956;

(xiv) Violation of Section 129 of the Companies Act, 2013;

(xv) Financial irregularities, liable for violation of Section 134(3) (i) of the Companies Act, 2013;

(xvi) Violation of provisions of Section 134 of the Companies Act, 2013;

(xvii) Violation of Sections 128, 129 read with AS-10 of the Companies Act, 2013;

(xviii) Violation of provisions of Section 217(3) of the Companies Act, 1956;

(xix) Violation of provisions of Section 209(1) of the Companies Act, 1956; and

(xx) Revocation of license under Section 8(6) of the Companies Act, 2013."

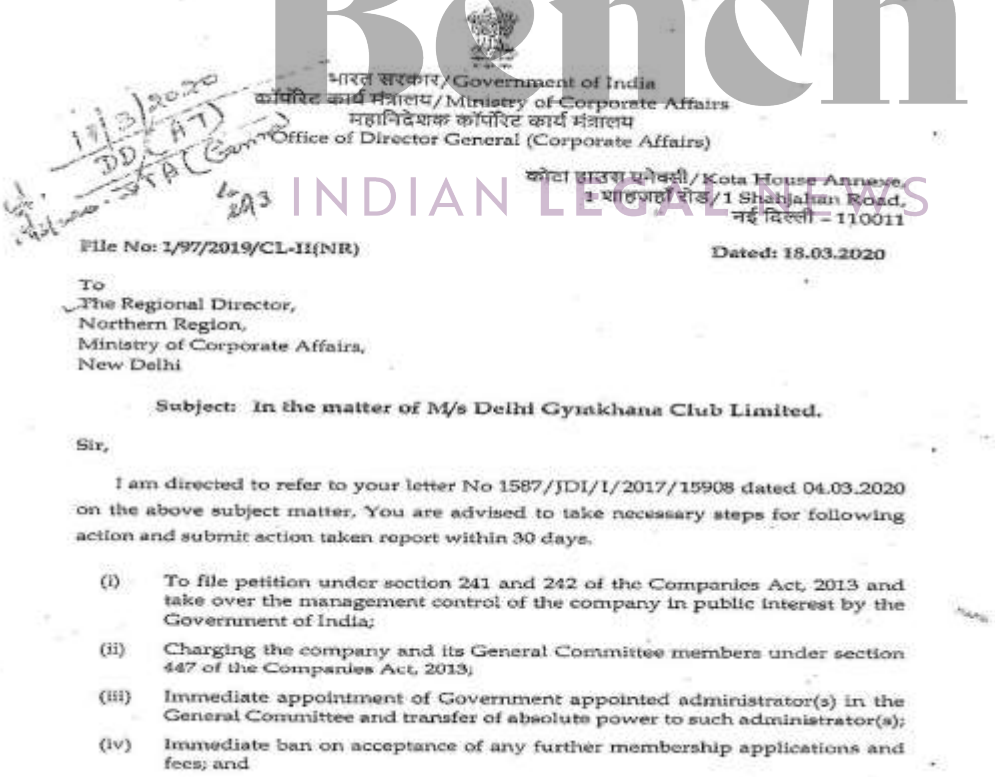
26. The Ministry of Corporate Affairs, on consideration of the Inspection Report directed taking of penal action against the Club management, Auditors of the Club which included removal of management and appointment of Government directors with further provision for supplementary inspection for dealing with the issues pertaining to allotment of membership, funds raised from new aspirants as registration fees for membership, accounting treatment of the amount received from such funds, investments made by the Club out of such amount as also processing charges received from the aspiring candidates for membership. Report dated 31st July, 2019 came to be placed before Ministry of Housing and Urban Affairs with a view to initiate necessary action against the Club. A direction was given to the Inspectors who submitted the Supplementary Inspection Report dated 3rd March, 2020 to the Regional Director. Same was placed before the Ministry of Corporate Affairs on 4th March, 2020. This Report elaborately dealt with the numerous violations and

mismanagement of the affairs of the Club. It also brought to fore that the actions of the committee acting in brazen violation of Articles of Association and statutory provisions, seriously jeopardized public interest. The Report pointed out that the GC members had been acting in a manner to confer benefit on chosen members of the Club at the expense of general public. It is upon consideration of such material that the Central Government directed initiation of action culminating in filing of the Company Petition under Section 241(2) of the Act, 2013. Viewed in this factual background, it is futile on the part of Club to contend that there was no material before the Central Government for formation of opinion with regard to the affairs of Club being conducted in a manner prejudicial to public interest. The very fact that the first Inspection Report manifesting in taking of penal action was followed by further probe by the Inspectors leading to a more elaborate exercise and then upon the report being laid before the Central Government, action was directed to be taken would leave no room for doubt that there was application of mind.

27. The Hon'ble Apex Court, in ***"63 Moons Technologies Ltd. & Ors. v. Union of India (2019) SCC OnLine SC 624"*** while dealing with formation of opinion by the Government in regard to prejudice being caused to public interest clearly laid down that the opinion of the Government is not subject to objective test. It was emphasized that the only requirement was that there must be factual material for arriving upon such opinion. The reasons which weighed with the Government for arriving at such opinion are not subject of judicial review as regards sufficiency of those reasons.

28. The factum of application of mind in regard to formation of opinion cannot be proved through any mode other than the material before the Competent Authority and the action directed to be taken on the basis of same after having taken notice of it. The penultimate action manifesting in filing of Company Petition under Section 241(2) of the Act, 2013 as a sequel to the action taken on the basis of the Inspection Reports and conclusion of the probe would not permit of any hypothesis other than the one compatible only with application of mind by the authority in regard to formation of opinion on the basis of material placed before it which comprised of the Inspection Reports and the conclusion of probe establishing gross violations and brazen exercise of authority by GC members to the detriment of general public interest. The forming of an opinion in regard to affairs of the Club being conducted in a manner prejudicial to public interest would not be based on satisfaction as contended on behalf of the Club. Such formation of opinion cannot be called in question. The Tribunal would not be acting within its province to evaluate or sift the material placed before the Central Government and arrive at a different conclusion. Such an exercise would be impermissible as the task of formation of an opinion in regard to the conduct of affairs of company being prejudicial to public interest is not in the nature of an order required to be passed by the Central Government as a statutory authority for purposes of discharge of any statutory duty like in a case of amalgamation/ merger of Companies but merely for the purpose of enabling it to apply to the Tribunal for an order under Chapter XVI of the Act, 2013. While a member of a Company is entitled

to complain that the affairs of Company are being conducted in a manner prejudicial to public interest, the Central Government can file a petition under Section 241/242 of the Act, 2013 only after forming an opinion qua affairs of Company being conducted in a manner prejudicial to public interest. The letter dated 18th March, 2020 addressed to Regional Director speaks of the Competent Authority having addressed the issue raised in letter dated 4th March, 2020 by the Assistant Director which is referable to the Inspection Reports referred to elsewhere in this judgment and clear direction, *inter alia,* to take necessary steps for filing petition under Sections 241 & 242 of the Act, 2013 and takeover management, control of the Company in public interest by the Government of India. The letter is reproduced herein below:



भारत सरकार/Government of India
कॉर्पोरेट कार्य मंत्रालय/Ministry of Corporate Affairs
महानिदेशक कॉर्पोरेट कार्य मंत्रालय
Office of Director General (Corporate Affairs)

कोटा हाउस एनेक्सी/Kota House Annexe,
1 शाहजहां रोड/1 Shahjahan Road,
नई दिल्ली – 110011

File No: 1/97/2019/CL-II(NR) Dated: 18.03.2020

To
The Regional Director,
Northern Region,
Ministry of Corporate Affairs,
New Delhi

Subject: In the matter of M/s Delhi Gymkhana Club Limited.

Sir,

I am directed to refer to your letter No 1587/JDI/1/2017/15908 dated 04.03.2020 on the above subject matter, You are advised to take necessary steps for following action and submit action taken report within 30 days.

(i) To file petition under section 241 and 242 of the Companies Act, 2013 and take over the management control of the company in public interest by the Government of India;

(ii) Charging the company and its General Committee members under section 447 of the Companies Act, 2013;

(iii) Immediate appointment of Government appointed administrator(s) in the General Committee and transfer of absolute power to such administrator(s);

(iv) Immediate ban on acceptance of any further membership applications and fees; and

(v) The prime location of the land with the company being worth thousands of crores to be better utilized for meaningful purposes to achieve the objectives of the company as laid down in the MoA, in the interest of the public.

2. This issues with the approval of the Competent Authority.

Yours faithfully,

वी. आर. शेठ/ V. R. Sheth
(आई. सी. एल. एस./ I.C.L.S)
सहायक निदेशक/ Assistant Director

Copy to:
1. Director (L & P)
2. ROC, Delhi.
3. Guard File

29. On a plain reading of the letter, it is clear that the Competent Authority has perused the material including the Inspection Reports and it is only upon consideration of such material that directions were given to file petition and take further action as spelt out in the letter. From the nature and character of directions given to Joint Director, it is unambiguously clear that the Competent Authority has applied its mind to the complaints and Inspection Reports. This is clearly gatherable from the directions which include filing of petition under Section 241/242 of the Act, 2013.

30. Sufficiency or otherwise of material for coming to such conclusion would not be subject of review by the Tribunal, more so when no malafides are attributed to Central Government which admittedly has not acted on its own motion but on the basis of complaints pouring in alleging gross irregularities including declining of membership to the aspiring candidates whose funds were allegedly utilized for the benefit of few chosen members, albeit with the blessings of the GC.

We find no merit in the issue raised. Arguments advanced on this score are accordingly repelled.

Existence of a *prima facie* case

31. Coming to the vital aspect of existence of a *prima facie* case warranting grant of interim relief be it seen that for demonstrating that a fair question has been agitated by Union of India involving public interest reference to the factual aspects would be inevitable. The chronology of dates and events from inception of the Club with its incorporation in 1913 as a Company limited by guarantee under the Companies Act, 1913 with nomenclature of Imperial Delhi Gymkhana Club Ltd. and the legacy that followed landing the Club in a situation where its functioning in conformity with law and the Articles of Association was questioned by alleging gross abuse of powers and mismanagement has been detailed in the impugned order and we don't intend to burden this judgment by reiterating the same except to the extent of demonstrating of existence of *prima facie* case for interim relief claimed by the Union of India. Land admeasuring slightly above 27 acres situated on Safdarjung Road came to be allotted to the Club in the nature of perpetual lease by the Government. It happened in 1928. The main objective of the club, as envisaged in its MOA and AOA was to promote sports and pastimes and other objectives within the legal and regulatory framework. Several complaints alleging mismanagement, irregularities, misuse of funds, fudging of financial

statements etc. were lodged with the Central Government against the management of Club prompting the Central Government to order an inspection for the period covering Financial Years 2012-13 to 2017-18. The inspection came to be conducted between January to July, 2019. The inspection report dated 31st July, 2019 came to be submitted to Central Government which revealed several violations qua management of funds and fabrication of financial documents and balance statements. It emerges from record that upon consideration of this inspection report, Central Government directed lodging of prosecution against the company for statutory violations besides filing of petition under Sections 241-242 of the Act, 2013. Government also directed a supplementary inspection to be carried out in regard to the affairs of the company. The supplementary inspection report dated 3rd March, 2020 while confirming the violations reported in earlier inspection report further revealed that the financial statements of the company were fabricated to depict a rosy picture in regard to the affairs of the company which was far from truth. It indicated manipulation of records and registers, deviation by the officers of Club from the Articles of Association, mismanagement of the affairs of Club and the GC acting in utter disregard to the Articles of Association and the provisions of the Act imperiling the public interest and the GC members acting in a manner that would confer benefit on chosen members of the Club in a hereditary manner at the expense of general public. The Company Petition, filed on the basis of the inspection report brings to fore gross violation of provisions of the Act and deviation from the Articles of Association. It projects

the violations of serious nature, misuse of funds, exclusion of general public, fraudulent conduct of the management, the inherently arbitrary mechanism adopted in regard to criteria for selection and voting for membership. There are allegations in the Company Petition that the funds collected from non-members were utilized for unjust enrichment and undue enjoyment/ wrongful gain of the existing members and other users of the Club and solely for promoting the benefit of existing members. The selection process was alleged to be dubious and shrouded in mystery. The petition would further allege violations and non-adherence to the statutory and AOA provisions primarily in two areas;

(i) differential treatment in allotment of memberships; and

(ii) lack of transparency in annual financial statements.

32. The spat of allegations are manifold but it would be appropriate to quote a few instances in this regard. It is alleged that the GC induced the prospective members/applicants to pay higher membership fees which was enhanced from time to time despite the GC members being aware of the fact that the average vacancy rate of the Club membership per annum ranged between 120 to 135 and from 1972 onwards there was a long waiting list. Further that the Club had a waiting list for the non-government category for a period of about 37 years. It is alleged that the action of culling out and giving the proportion meant for non-government category to the category of UCPs (use of club premises) in the new category of wait list thus, *ex facie* and unlawful way of inducting permanent members. The petition further alleged that the Club was

manipulating the creation of categories of membership only to ensure that certain individuals and children of existing members are accommodated by excluding the general public. In regard to charging of fee from different categories for membership the Club is alleged to be acting contrary to the provisions in Articles of Association. It was alleged that during the last five fiscals the Club has consistently failed to carry out the objects of the Club. Allegedly 30.34% of the total expenditure of the Club has been incurred towards catering consumables, wine, beverages and cigarette. Registration fees has been increased and more categories of members have been added contrary to the provisions of Articles of Association which is alleged to be falling within the purview of fraud. It was alleged that the Club had been collecting intractably increasing application money under self-devised unauthorized heads contrary to the Articles of Association. It was alleged that such enhancement, even with retrospective effect was never approved by the AGM or EGM of the Club. As regards the alleged dubious financial activities of the Club, it was alleged that the interest accrued over the registration fee from new applicants has been utilized for the benefits of existing permanent members, green card holders, UPC members etc. benefiting them by utilizing facilities at subsidized rates. Thus, it is alleged that the Club has been illegally distributing the dividend in kind amongst its members.

33. On consideration of the application for grant of interim relief when the Company Petition was pending consideration, the Tribunal, while dealing with formation of opinion by Central Government in regard to acts complained of

being prejudicial to public interest and affairs of Club being conducted in a manner prejudicial to public interest dwelling upon the existence of a prima facie case in regard to alleged mismanagement observed as under:-

> *"62. It is a case saying Section-8 Company, running on Government owned land, is run by a coterie of people bringing in the children of permanent members and children's children for using facilities of the club despite several members remaining outside for decades together, when Government Officer retires taking him into private members quota, and using crores of rupees collected from waitlist members as its own money, and using public property of 27 acres of land in the Lutyen's Delhi adjacent to Prime Minister residence worth of thousands of crores on minimal annual rent of Rs.1000 annual rent for lazing around in the evening for drinking amounts to prejudice to the public interest, all these are born out from the records, of course any interpretation could be given, but they cannot deny the fact that the club is basically for pastimes, in fact it is the case of the Respondent Club and its GC. To say public interest is involved, whole country public is not required to be effected; public interest is involved where actions of somebody will prejudice the public of that vicinity or a class of people. The members remain waiting years together for membership is nothing but causing prejudice to the public, when some are in waiting, some getting entry prior to others in waiting is prejudice to the public, some persons alone enjoying the state property is also prejudice to the public.*
>
> *63. With regard to formation of opinion, in Governments, one person can't do everything right from inspection to formation of opinion, it goes from one table to another in step wise functioning, when it comes to the highest official, he will examine summation and supporting documents to ascertain whether prejudice is being caused to public interest, moreover Government has to discharge various functions, this formation of opinion is one among many works, of course for club, it is the only work. For this is not anybody's personal job, it is to be*

assumed Government will remain impersonal, unless it is shown that certain officer has personally done something against somebody to settle personal score. No such material before this Bench. To elaborate this logic, the State has relied upon ***Gullapalli Nageswara Rao v. APSRTC (AIR 1959 SC 308)****, to say that when facts are available to arrive to an opinion, it is sufficient to proceed further. In this case, no doubt supplementary report dated 03.03.2020 runs into 5000 pages, but whereas main report prepared basing on supplementary report is of only 100 pages upon which the Central Government along with the assistance of its team, formed an opinion, which cannot be denied. The bottom line is whether material is there or not. Here the material is very much present to the satisfaction of the authority, it is a subjective satisfaction based on the material available, if opinion is based on the material, as to sufficiency, it is not in the realm of the court. But in this case, material available is clearly indicating mess is created in the club affairs causing prejudice to the public interest, therefore there is no merit in saying that filing is not based an opinion demonstrating reasons.*

xxx xxx xxx

74. This Tribunal having already held that the affairs of the Club are prejudicial to the public interest, now on putting the facts available to the scrutiny under section 242(1), it is perceived that if Government for any reason taken back the land leased out to the Club, then once the substratum is gone, the Club has to be wound up, or if action is taken under Section-8 then also it would become problem to the club, therefore to avoid such kind of situation, an interim arrangement is devised to resolve the issues afflicting the Club.

75. For the reasons aforementioned, I have found prima facie case demonstrating that the affairs of the Club are being conducted in a manner prejudicial to the public interest therefore I hereby direct Union of India to appoint two of its nominees of its choice as Members in the General Committee to monitor the affairs of the Club along with other GC Members and give suggestions to the GC, and direct the Union of India to constitute a Special Committee with five Members of its choice to enquire into the affairs of the Club, utility of the land leased out by

> *the State, with regard to constructions in progress without requisite approvals or with approvals, suggestions for changes in Articles and Memorandum of Association, membership issues including waitlist and about accelerated membership, adherence of the Club to the Rules governed by Section 8 of the Companies Act 2013 and other miscellaneous issues if any and file report of recommendations suggesting for better use of the club premises for the larger good in a transparent manner on equity basis within two months hereof."*

34. The finding recorded by the Tribunal has been seriously questioned, contending that no element of public interest was made out in the petition. Learned counsel for the Club submitted that the petition does not concern the welfare of public as a whole, affairs of the Club do not concern citizens generally, the public as a whole does not have any peculiar interest affecting their legal rights nor is economic welfare of the public involved. This argument, though appears to be attractive in technique, lacks substance. While it may be true that the mere fact of the Club carrying out its activities on the allotted land in regard to which it has perpetual lease hold rights, would not involve public interest as the conferment of such rights on the Club or for the purposes of Club whose activities may include banquette, concerts, dances as also lodging and boarding of its members in addition to its users for any purpose for which the same was customarily used would be lawful, the user in deviation of its laid down objective, coming in conflict with the legal framework, enhancing the membership fee, holding of the money of prospective candidates for membership, utilization of the interest component of such respective candidates waiting in queue for the exclusive benefit of indulgence in

pleasurable activities of permanent members, their dependents and users would definitely bring in public interest though it may not be all encompassing. The interest of society at large or public interest cannot be stretched too far as to include whole lot of Indian citizens. It would suffice if the rights, security, economic welfare, health and safety of even a section of the society like the candidates seeking membership from the category of common citizen are affected notwithstanding the fact that they are only a few individuals. Public interest cannot be construed as *enmasse* interest of all citizens. Where interest of a component of general citizenry of any age group, gender or belonging to any strata of society is affected as a class, apart from the legal rights of individuals, public interest can safely be said to be involved.

35. While dealing with expression 'in a manner prejudicial to public interest', their lordship of the Hon'ble Apex Court in ***"State of Bihar v. Kameshwar Singh reported in AIR 1952 SC 252"*** observed as under:

> *".....In the case of a company intended to operate in a modern welfare State, the concept of public interest takes the company outside the conventional sphere of being a concern in which the shareholders alone are interested. It emphasizes the idea of the company functioning for the public good or general welfare of the community, at any rate, not in a manner detrimental to the public good."*

36. The Hon'ble Apex Court so aptly observed in "***Krishan Lal Gera v. State of Haryana& Ors.-(2011) 10 SCC 529"*** as under:

> *"**28.** If a chunk of a Government stadium, being prime land in the heart of the city meant for developing sports and*

> *athletics is misused or illegally allowed to go into private hands, it cannot be said that no public interest is involved. While the High Courts are not expected to take policy decisions in regard to sports administration and infrastructure, nor expected to supervise the running of the sports stadia, they are bound to interfere and protect public interest when blatant misuse is brought to their notice. The High Court should direct the concerned authorities to perform their duties and take action in regard to the irregularities, omissions and negligence, so that the interest of the public, particularly human resources development, could be protected."*

37. It is abundantly clear that misuse of the Club meant for pastime and sports activities and denying access of membership even after accepting the enhanced membership fee and putting them in queue for decades together with utilization of the component of interest admissible on their invested membership fee for the benefit of permanent members and users seriously jeopardized interest of such prospective members and involved public interest. That apart, the interests of general public seeking membership but being made to wait for decades together with membership fee being held up and its interest component being utilized for the recreational and pleasurable activities of permanent members and users of the Club despite the Club being aware of the limited number of vacancies in membership occurring every year would be a predominant consideration concerning the rights of general public to gain access and seek membership of the Club, thus involving public interest.

38. In order to determine whether a prima facie case exists qua infraction of the AoA and MoA referable to the objects of the company be it seen that the

objects of the company, as enumerated in the object clause of the Club's MoA are:

> "(i) to promote polo, hunting, racing, tennis and other games, athletic sports and pastimes;
>
> (ii) to provide courses and grounds at Delhi or elsewhere and to layout, prepare and maintain the same for the purposes of the company and to provide club houses, pavilions, lavatories, kitchens, refreshment rooms, workshops, stables, sheds and other conveniences in connection therewith and to furnish and maintain the same and the permit the same and the property of the company to be used by members and other persons either gratuitously or for payment."

39. There is considerable force in the argument advanced by Mr. K. M. Nataraja, learned counsel for Union of India that promoting sports and pastimes has to be read disjunctively and any activities undertaken by the Club for pastimes must be relatable to promotion of sports only. Promotion of sports being the primary object of the Club, would not permit of any activity in the nature of pastime to be conducted unless the same bears nexus with the sports activity. Therefore, the Club would not be operating within its province of activities by merely concentrating on recreational activities or pursuing the same as its major objective since the Club was constituted as a company registered under Section 26 of the Companies Act, 1913 and reference in perpetual lease deed to activities of the Club have to be interpreted as activities

concerning the objects for which the company was formed. During the course of arguments, learned counsel for the Union of India vehemently stressed that barely 3% of total expenditure was being incurred by the Club towards sports activity and more than 60% was being spent on maintaining the recreational Club. He has also referred to the Inspection Report which unfolds specific acts of omission and commission attributed to the Club and would submit that the violation of the restrictions imposed by law, in the context of enjoyment of lease hold rights by the Club, are palpably injurious to public interest.

40. We now proceed to examine how public interest has been interpreted judicially. Learned counsel for Union of India relied upon ***"J.S. Luthra Academy v. State of Jammu and Kashmir- (2018) 18 SCC 65"*** which clearly lays down that the State has no authority to grant a largesse with the object of sub-serving private interests or recreational purposes of a private group of individuals. The Honble Apex Court observed that when violation by the grantee is noticed, it would be lawful for the Government to initiate such legal process as may be prescribed to gain control over such resources with a view to reform them, as institutions, rather than do a patch-work on piecemeal basis. With reference to ***"Krishan Lal Gera v. State of Haryana- (2011) 10 SCC 529"***, it is submitted that when the prime object of sports facility is taken over by the elite for recreational purposes and activities of the Company are hit by nepotism and favoritism while the Company was formed on the basis of State largesse, there was an injury to public interest. Largesse by the State cannot be said to be intended for enjoyment or use by highly placed individuals

only. The Constitution of India sets the goal of a Welfare State and establishment of an egalitarian society where the citizens are not discriminated on the basis of region, religion, caste, language, race or social strata. The Club has been perusing a policy under which membership of a person with a dependent child clothes him with the right to use the Club's facilities for his lifetime as also for his child subject to a formality of applying for membership when the child attains the age of 21 years and upon such child gaining membership before his child is 21 years old viz. the grand child of the basic member, the facility would be available for such child also with the process continuing *ad infinitium*. Such enjoyment of State largesse partaking of a hereditary character cannot be said to be promoting public interest. It would rather fall foul of Article 14 of the Constitution of India rendering such enjoyment abhorrent to public interest *ad nauseum*.

41. *Prima facie* it appears that there is violation of the restrictions as regards objects in MOA and AOA and the Government's land given on perpetual lease primarily for sports related activity has been converted into recreational Club for a chosen few with doors virtually shut for an aspirant belonging to the common stock. Under the garb of distinctive character of the Club which is a relic of the Imperial past, the doors for membership are virtually limited to people having blue blood in their veins thereby perpetrating apartheid and shattering the most cherished Constitutional goal of securing social justice and equality of status and opportunity.

42. We are conscious of the fact that the Tribunal has made some observations expressing its opinion in respect of certain socio-economic issues which were unnecessary and could have been avoided. Such observations were made with reference to some contemporary events that happened during the lockdown period imposed after outbreak of COVID-19 Pandemic which have no bearing on the outcome of the application before the Tribunal and the Tribunal has stated in the impugned order that these considerations have not influenced its findings and the directions passed in the impugned order. It is irrelevant whether such observations depicting the personal philosophy and thought process of the Hon'ble Members comprising the Bench came as a rebuff to the argument advanced by the Club on the aspect of public interest or were simply reflection of the mind of Court in regard to the goal of social and economic justice sought to be achieved as set out in the Preamble of the Constitution. Be that as it may, such observations have not been allowed to influence the decision and in appeal we have not at all taken into consideration such observations to ensure that the finding in regard to existence of *prima facie* case for grant of relief remains purely within the realm of legal considerations.

43. As regards the plea of colorable exercise of power raised against Union of India, be it seen that there is no specific allegation against any officer and the question is irrelevant as Central Government would be acting within its province to apply to the Tribunal for an order under Chapter XVI of the Act, 2013 when it is of the opinion that the affairs of the Company (Club) are being conducted in a manner prejudicial to public interest. This action of applying to

the Tribunal is a legally vested right in the Central Government which can be directly exercised. It is absurd to say that formation of opinion in regard to existence of affairs of the company being conducted in a manner prejudicial to public interest is beyond the power of the Central Government and exercise of such power would be a colorable exercise of power.

44. It has been noticed that the mechanism adopted in ensuring that the membership stays tied up and confined to a close group with an ordinary aspirant waiting for decades in queue with disappointment staring in his/ her face and the membership fee garnering interest for the benefit of existing members is in blatant violation of AOA and MOA. The Company having been virtually converted into recreational Club relegating the prime object of sports activity to the back burner has the effect of destroying its distinguished character as envisaged at the inception. The company, initially registered as Section 8 Company with specific objects related to sports and pastimes, obtained land on lease from the Government but over a period of time slightly started drifting away and deviated from the permitted objects which may also impact subsistence of lease depending on the degree of violation and deviation. The Inspection Report dated 31st July, 2019, directions of Ministry of Corporate Affairs dated 13th September, 2019 and the Supplementary Inspection Report dated 3rd March, 2020 placed on the record of the Tribunal, besides innumerable irregularities, reveal that various construction activities have been undertaken in the Club premises either without obtaining the necessary approval or in deviation of the approved plan thereby converting the land use

and frustrating the prime object of the Club. It is in reply Affidavit of the Club that the waitlisted applicants paid Rs.44.79 Crores till 2017-18 as fee for seeking membership with disappointment staring in their faces. The approval of draft refund letter at page 350/351 of Volume II of the convenience compilation clearly bears out the remark of the Club 'we are positively in trouble'. This is *prima facie* indication of irregularities being indulged in by the Club. However, that would be the subject of probe during inquiry and this is not the stage to record any finding on that aspect. The stand taken by Respondent No.18 would corroborate some of the allegations in the Company Petition. The considerations which must be present to the mind of Tribunal at the conclusion of the Inquiry while recording the finding that the acts of oppression and mismanagement complained of are of a degree warranting winding up of the Company but that it would be unfair to any class of stakeholders to wind up the company and therefore, would justify only passing of suitable direction, would not weigh at the stage of grant of interim relief when only Interlocutory order may be required to be passed for regulating the conduct of the Company's affairs. At this stage, interim relief can be granted on the basis of legal considerations justifying such grant to prevent continuance of or further prejudice to public interest in the affairs of the company. Having regard to the nature of allegations and the proof sought to be adduced in support of the same as coming to fore from the Inspection Reports, it can be stated without any fear of contradiction that the Union of India has been able to demonstrate that fair questions requiring probe have been raised in the

Company Petition which would entitle it to the final relief of replacement of Directors of the Club with Government nominees to conduct the affairs of the Club in accordance with the provisions of law and its charter.

45. Having regard to the issues raised in this appeal, the material on record and the arguments advanced on behalf of the parties, we are of the considered opinion that the impugned order, in so far as finding in regard to existence of a *prima facie* case demonstrating that the affairs of the Club are being conducted in a manner prejudicial to public interest, does not suffer from any legal infirmity. We accordingly uphold the same. Consequently, Company Appeal (AT) No.95 of 2020 is dismissed and Company Appeal (AT) No.94 of 2020 is upheld to the extent of such finding.

46. Now coming to the last limb of the issue raised in Company Appeal (AT) No.94 of 2020 in regard to the interim relief granted in terms of impugned order being inadequate, be it seen that induction of two nominees by Central Government as members in the GC to monitor the affairs of Club and give suggestions to the GC is of no consequence as the voice of such nominees, on account of their inferior numerical strength in GC is bound to be lost in the din and the interim relief as granted would become meaningless. The interim relief, to which the Union of India is found entitled to on the strength of a *prima facie* case demonstrated by it, has to be effective and adequate enough to ensure that the affairs of the Club are conducted in accordance with law and the charter of the Club. The interim relief must prove to be result oriented. We

accordingly modify the interim relief by directing suspension of the GC and appointment of an Administrator to be nominated by the Union of India to manage the affairs of the Club and also direct that acceptance of new membership or fee or any enhancement thereof till disposal of wait list applications be kept on hold till disposal of the Company Petition. The interim directions are accordingly modified and be carried into effect within two weeks.

The observations made hereinabove are limited to grant of interim relief. The same shall not be construed as an expression of opinion on the merits of the case.

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

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

[Justice Bansi Lal Bhat]
Acting Chairperson

[Justice Anant Bijay Singh]
Member (Judicial)

[Dr. Ashok Kumar Mishra]
Member (Technical)

NEW DELHI
15th February, 2021
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