IN THE NATIONAL COMPANY LAW TRIBUNAL,
PRINCIPAL BENCH

C.P.-71/241-242/PB/2020

IN THE MATTER OF:

Union of India **...Petitioner**

Versus

Delhi Gymkhana Club Limited & Ors. **...Respondents**

Order Reserved on 29.03.2022
Order delivered on 01.04.2022

Coram:
JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

Petitioner: Mr. Tushar Mehta, Ld. SG
Mr. K. M. Natarajan Ld. ASG with
Ms. Vatsal Joshi, Mr. Vinayak Sharma,
Dr. Raj Singh, RD(NR) Mr. D.K. Singh (JD),
Ms. Kusum Yadav (AD) for UOI, MCA

Respondents: Mr. Krishnendu Dutta, Sr. Adv. with
Mr. Gaurav M. Liberhan, Mr. Swapnil Gupta,
Mr. Angad Mehta, Ms. Mehak Khurana, Advs,

ORDER

1. This petition is filed by Regional Director, Ministry of Corporate Affairs, New Delhi duly authorized by the Central Government Petition, vide sanction order No. 1/97/2019-CL-II (NR) dated 18.03.2020 (Annexure P-1).

2. During the course of the proceedings an affidavit has been filed dated 28.03.2022 by Secretary to the Government through Ministry of Corporate Affairs. Para 4 of the affidavit reads as follows:

> *"**4.** It is submitted that the present petition has been filed after due approval by the then Secretary of Ministry of Corporate Affairs (the competent authority) on file, after examining the materials which are now part of the record of this Hon'ble Tribunal. The same is also evident from the letter dated 18.03.2020 (Annexure-I in Volume I at Pg. No.204) that the approval has been granted by the competent authority."*

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

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

Final Reliefs

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

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

4. The Articles of Association is at page 16 and Memorandum of Association is at page 13 of the convenience compilation of the Petitioner and has been annexed in the main petition in Vol-6. The primary objects of the Club as contained in MoA are as follows:

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

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

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

c) and other things required or which may be conveniently used, in connection with the courses, grounds, houses and other premises of the Company by persons: " frequenting the same whether members of the': Company or not;

d) to buy, prepare, make, apply, sell, deal in all kinds of apparatus used in connection with any sport, game or pastime and all kinds of provisions and refreshments

required to be used by members of the Company or other persons frequenting the courses, grounds, club houses or premises of the company;
Emphasis supplied.

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

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

g) *to promote or hold either alone or jointly with any Association, Club or persons meetings, competitions and matches relating to polo, hunting, racing, tennis and other games, athletic sports and pastimes and to offer, give or contribute prizes, medals and awards, and to promote, give or support, dinners, balls, concerts and other entertainment;*

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

i) *to invest and deal with the money of the Companynot immediately required upon such securities and insuch manner as may from time to time bedetermined;*

j) *to borrow or raise and give security for money by theissue of or upon bonds, debentures, bills ofexchange, promissory notes of other obligations orsecurities of the Company or by mortgage or chargeupon all or part of the property of the Company;*

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

5. The Articles of Association as amended up to 29.09.2012 deal with internal management of the company and *inter alia*provides about the Class of Members, Application for Admission, Procedure for election of Members and various types of Members, Entrance Fee, Eligibility of dependents, Rights of Permanent Members, Management of the Club to be vested in the General Committee, composition of the General Committee, Working of the sub-committees, Powersto make bye-laws, Holding of Annual General Meetings, Account etc.

6. In order to enable the company, Delhi Gymkhana Club to perform its role in terms of the MoA, on 28.02.1928 a Perpetual Lease was granted in favor of Delhi Gymkhana Club (hereinafter called the Lessee) by the Government of India acting through the Chief Commissioner of Delhi on consideration of Rs. 5460/- as premium together with annual rent of Rs. 15 per acre. The extent of land that was given under the perpetual lease is 27.3 acres approximatelyand it is located in the heart of the capital city of Delhi.In so far as, the present issue is concerned as indicated by the petitioner, Union of India as per covenant and condition No. 2(5) & 2(6) available at page No. 357 & 358 and Para 4 at page 362of Vol-2 of the convenience compilation has agreed as follows:

"2(5) The Lessee will within the period of two years from the date of these presents act the Lessees' own expense in a good substantial and workmanlike manner to the satisfaction of the

Chief Commissioner of Delhi or such officer as may be appointed by him in this behalf erect, complete and finish in an upon the said land a club building with all necessary outhouse, sewers, drains and other appurtenances in accordance with plans, specifications and designs to be approved in writing by the Chief Commissioner of Delhi or Such Officer or body as the Lessor or the Chief Commissioner of Delhi may appoint in this behalf and will not without the previous consent in writing of the Chief Commissioner or duly authorised officer as aforesaid erect or suffer to perpetuated on any part of the said demised premises any buildings other than and except the said club building and appurtenances hereby covenanted to be crepted. (Provided nevertheless that the lessee shall within a period of one year from the date of these presents completely enclose the said landwith compound walls or fencing and gates of a design to be previously approved by the Chief Commissioner as aforesaid.)

2(6)The lessees will not without such consent as aforesaid make any alteration in the plan or elevation of the said club building or attached buildings or carry on or permit to be carried on the said premises any trade or business whatsoever or use the same or permit the same to be used for any purpose other than as a Club and purpose for which the same are customarily used, including the holding of banquets, concerts and dances and the lodging and boarding of members resident in the premises.

4.If the demised premises or any part thereof are required for a public purpose then and in such case it shall be lawful for the Lessor or any person or persons duly authorised by him notwithstanding the waiver of any previous cause or right of reentry upon any part of the premises hereby demised or of the buildings thereon in the name of whole or such part to re-enter and thereupon this demise and everything contained therein shall cease and determine but in the event of part only being acquired then only to the extent of the land so acquired provided that the Lesser shall be liable to pay compensation to the Lessees for the demised premises or the part required thereof as the case may be, but such compensation shall not exceed the amount or the proportionate part as the case may be of the premium paid before the execution of these presents together

with the cost or the then value whichever be less of the buildings erected the amount of the proportionate part as the case may be of the premium paid before the execution of these presents together with the cost or the then value whichever be less of the buildings erected on the resumed land by the lessees in accordance with the terms of clause 2(5) of these presents but not of any other buildings erected on the resumed land by the lessees in accordance with the terms of clause 2(5) of these presents but not of any other buildings, which value shall be the event of dispute be determined by the Lessor or the Chief Commissioner of Delhi whose decision shall be final. Provided also that if the acquisition of the part so required as aforesaid would in the opinion of the Lessor or the Chief Commissioner of Delhi, which shall be final involve on the Lessees in respect of the remainder of the premises damage for which compensation calculated on the basis aforesaid for the part only would be insufficient, the Lessor acquire and pay compensation on the basis for the whole of the premises."

7. Before going into the details of the present petition, it is pertinent to discuss relevant orders passed by this Tribunal, the matter was first listed on 26.06.2020 and relevant extract of the order dated 26.06.2020 is reproduced below:

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

76. This Bench further directs the general committee that it shall not proceed with construction or further construction on the site, it shall not make any policy decisions and it shall not make any changes to the Memorandum of Association or Articles of Association and it shall not deal with the funds received for admission of Members and it shall not conduct balloting until further orders. The GC is given liberty to carry day to day functions of the Club by using funds of it other than fee collected from applicants. All these directions shall remain in force until further orders."

8. It is worthwhile to mention here that the present petition was first considered by this Tribunal on 26 June 2020, when the petitioner was directed to nominate persons on the General Committee of the Club vide order dated 26.06.2020.

The Respondents in response to the said order filed an appeal (Company Appeal (AT) No. 95 of 2020) before Hon'ble NCLAT. The Central Government also filed an appeal (AT) 94 of 2020 before the Hon'ble NCLAT to modify the interim order. The said appeal was considered by the Hon'ble, NCLAT on 15.02.2021. The Hon'ble Appellate Tribunal and after hearing both the sides in the matter modified the order of this Tribunal dated 26.06.2020 to the extent indicated below:

> *"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."

Accordingly, presently the club is under overall charge and administration of an Administrator.

It is further noted that the respondent after the order of Hon'ble NCLAT filed a Appeal (Diary No. 5221 of 2021) before the Hon'ble Supreme Court seeking certain relief with respect to the order of the Hon'ble NCLAT. The Hon'ble Supreme Court while deciding the said appeal did not interfere with the order of Hon'ble NCLAT. However, it directed the Tribunal to decide the matter expeditiously in its entirety vide order dated 30.09.2021 and permitted 4 months' time. Thereafter vide order dated 11.03.2022 passed in Misc. Application No. 422-423 of 2022 in CA No. 6124-6125 of 2021 filed by Mr. Rajeev Sabharwal, the Hon'ble Supreme Court has granted further 4 weeks' time to dispose of the present petition, which will end on 12.04.2022.

9. The facts that compelled the petitioner to file the captioned petition are as follows:

9.1 The respondent nos. 2-17 is the general committee (GC) members for the year 2019-2020 of the DGC, respondent no. 18 is col. Ashish Khanna (Retd.), present secretary/CEO of DGC and respondent no.19 is Ministry of Housing and Urban Affairs, Government of India, which

had allotted land admeasuring 27.03 acres to DGC on the perpetual lease.

9.2 The initial cause of action for ordering inspection u/s 206 of the Companies Act, 2013 arose from the complaints received by the Petitioner and to state briefly, it is as follows:

Shri. Rajiv Jain (Membership No. P-6468) by letter dated 14/08/2018 addressed to President of the Respondent No. 1 Company, has informed the ineligibility of M/s S.N. Dhawan and Company, who were appointed as Statutory Auditors of the Respondent No. 1 Company during its Annual General Meeting held on 27/09/2013. The ground for ineligibility was stated to be that Shri. S.N. Dhawan, Chartered Accountant and Shri. Vijay Dhawan Chartered Accountant, partners of the audit firm are permanent members of the Delhi Gymkhana Club, who exercise their voting rights in terms of Articles 16 r/w 4 (1) (a) of the Articles of Association (hereinafter referred to as 'AOA') of the Respondent No. 1 company. Besides this, being permanent members of the Club, both these chartered accountants have paid over Rs.3000/- as annual membership fees, in addition to other fees that they would have paid at the time of becoming a member. Thus, their interest in the Club is of a value exceeding Rs. 1000/- rendering the audit firm M/s S.N.Dhawan& Co. Chartered Accountants ineligible to be statutory auditorsof the Club with effect from 01/04/2014 as per Section 141(3)(d)(i) of the Companies Act, 2013.

Ms.NijiSapra, a permanent voting member (during the period 2018-19) of the DGC by her letter dated 19/03/2018, made allegations against the Club and has informed about irregularities in the management of the Club.

Complaint dated 12/09/2018, received in the office of Regional Director (Northern Region) of the Ministry of Corporate Affairs, from Mr. Amar Sinha (DIN0007915597), Mr.ArjunSawhny (DIN 01402904), Mr. Arjun Kapur (DIN 0841680), CDRC AJ Singh (DIN 0007910039), Ms.NeelamKapur (DIN 07917197), Mr. Krishna Varma (DIN 06428524) and Mr. B. S. Brar, allegingthat illegal adoption of Accounts for the financial year ended as an 31/03/2018, has taken place in the Respondent No. 1 Company

9.3 It is submitted based on the complaint theMinistry of Corporate Affairs issued an order for inspection under section 206 (4) companies act, 2013 vide order dated 16.03.2016 and is reproduced herein:

"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 Comp/ROC/7006/D/2014/572 dated 20.04.2015 on subject cited above and to advise you to direct ROC conduct Inquiry/Technical Scrutiny under section 206(4) of the Companies Act, 2013 and send a report through the Directorate within 30 days.
2. With regardtoviolation of Section 226 of the Companies Act,1956, fall underyour jurisdiction, therefore, you are advised to take necessary action. Further, you are advised to direct ROC to take appropriate action for the violation of Section 160 of the Companies Act, 1956, fall under jurisdiction of ROC and submit Action taken Report within 30 days from the issue of letter.

Yours faithfully,

(SwadhinBarua)
Joint Director"

9.4 Thereafter,Regional Director, Northern Region has issuedan order dated 29.06.2017, whereby directions were given to Sh. A.K. Sahoo, DROC and Sh. Sanjay Bose, DROC posted in the office of ROC, Delhi. The contents of the order dated 29.06.2017 are reproduced below:

"Order

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

Whereas Ministry of Corporate Affairs has vide Letter No. 7/29/2016/CL-II (NR) dated:30.05.2017 has ordered inspection of Books and Papers of the captioned company u/s 206(5) of the Companies Act, 2013.The subject inspection is hereby allotted to Sh. A.K.Sahoo, DROC and Sh. Sanjay Bose, DROC posted in the office of ROC, Delhi and are directed to take up the aforesaid Inspection immediately.

The draft Preliminary findings letter and draft Inspection Report shall be submitted by the Inspecting officer(s) directly to the Regional Director for necessary approval.

(M.P.Shah)
Regional Director (NR)"

9.5 An inspection was conducted by the inspector.In the report dated 31.07.2019 annexed as Annexure P-3 with letter dated 05.08.2019 of Regional Director (NR) to Ministry of Corporate Affairs, it was observed as follows:

"Dear Shri,

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

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

Inspecting officer has highlighted violations under section 209, 211 of the Companies Act, 1956 and section 128, 129 of the Companies Act. 2013. section 226 of the Companies Act, 1956, repeated violations of section129 of the Companies Act 2013, violation of section 134 of Companies Act, 2013, violation of section 217(3) of the Companies Act, 1956 in PART-B of Report. Inspecting Officers has recommended for revocation of license issued u/s 8 (6) of Companies Act, 2013 in the mine of company as it claims. In PART-C, Inspecting Officer has reported violation of section 179 of Companies Act, 2013.

By highlighting various irregularities in the affairs of the company and in construction activities over lease hold land which is situated in a high security zone, Inspecting , Officer: has strongly recommended to refer the matter to Ministry of Housing and Urban Affairs to examine the use of the lease hotel land allotted to the company in PART-D Of the Report.

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

Yours sincerely.

Dr. Raj Singh"

9.6 On 12.09.2019, ministry of Corporate Affairs issued an order directing follow up instructions to the Regional Director, Northern Region, Ministry of Corporate Affairs, New Delhi for supplementary inspection (annexed with volume iv of the Petition at page no. 976) and relevant portion with respect to the present petition has been reproduced below:

"You are also advised to take action u/s 241 r/w 242 of CA, 2013 for removal of the present management and for appointment of Government Directors and make a complaint before ICAI for taking disciplinary action against the Auditor for professional misconduct of the auditor with prior approval of the Ministry. You are further advised to order supplementary inspection and call for following information from the company and submit report expeditiously:

a) Please furnish details/clarification regarding refundable/adjustable registration fee shown under the head Long-term Liabilities in the balance sheet for the F.Y ended on 31.3.2011 to 31.3.2018. Also explain/state the amount already treated as revenue in earlier years (shown under registration fees) which should be treated as Long - term liabilities (since it is liable to be refunded to the applicant who has applied for membership) as per the pending applications applied for membership of the company;

b) Year wise income earned on the investment made out of registration fees received from the applicant seeking membership of the club clearly indicating the amount of outstanding registration fees and income earned as at 31st of March every year from 31.3.2010 to 31.3.2019;

c) Computation sheet of net asset value (NAV) of investment as on the end of the financial year 31.3.2017, 31.3.2017 and 31.3.2018 (individual investment wise details);

d). Brief note about various memberships granted by the company vis-a-vis the eligible clause of Article of Association of the company. The details and nature of registration fees as shown as income of the company in the financial year 2015-16 and additional registration fees as shown as income of the company in Financial year 2016-17 and 2017-18

e) Brief note about processing charges with nature of such charges as shown as income of the company in the years 2015-16, 2016-17 and 2017-18;

f) Brief note regarding pending applications received for membership with date of receipt, application and amount received against such application and details or amount received against such pending applications which are refundable in nature, but the amount has already been recognized as income in earlier financial year."

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

Dear Shri,

I am forwarding herewith the Supplementary Inspection Report under Section 206(5) of the Companies Act, 2013 in respect of M/s Delhi Gymkhana Club Limited conducted by Smt. SeemaRath, Deputy Registrar of Companies, Delhi & Inspector. The supplementary inspection of the company was directed by the Ministry vide letter No. 1/97/2019/CLII(NR) dated 12.09.2019 broadly on the following issues:

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

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

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

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

2. Shri Ajay Meena, Deputy Director RD (NR) had earlier submitted the Inspection report dated 31.07.2019. Shri A. K. Sahoo, DRoC, Delhi and Shri VyomeshSheth, Assistant Director, DGCoA were appointed as Inspectors vide letter dated 13.09.2019. Both the Inspecting Officers could not

join the supplementary inspection due to their involvement in other important and time-bound works. Subsequently, Smt.SeemaRath, Deputy Registrar of Companies, Delhi & Inspector was appointed as Inspectors vide letter dated 25.10.2019 for undertaking the Supplementary Inspection of the subjected company.

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

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

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

c. The company has furnished different sets of information with regard to the number of vacant memberships in the Club, as part of the Board Report viz-a-viz the reply dated 03-02-2020 to the Inspector. Which indicates manipulation of the registers and records kept by the company and furthermore, the furnishing of false information falls within the purview of violations specified under section 448 of the Companies Act, 2013.

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

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

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

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

4. The IO, in her concluding remarks, has recommended the following:

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

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

(iii)Immediate appointment of Government appointed administrator(s) in the General Committee and transfer of absolute power to such administrator(s); (iv)Immediate ban on acceptance of any further membership applications and fees; and

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

I agree with the recommendation of the Inspecting Officer as mentioned above."

9.8 It is submitted that that the inspectors have considered the following documents/materials during supplementary inspection while forming the supplementary inspection report:

a. Inspection Report dated 31/07/2019;

b. Directions vide order no. 1/97/2019/CL-II (NR) dated 13/09/2019, issued by Ministry of Corporate Affairs

c. E-records available with MCA-21 registry;

d. further complaint received from Ms.NijiSapra, Ex-Member of DGC with Membership No. P-6824, vide letter dated 13.02.2020.

e. Summons issued and recording of statements of the General Committee members and Secretary of the Respondent No.1 company for the financial year 2018-19 and of the present and past Auditors, Presidents, and

Secretaries, being key officials and auditors of the Respondent No.1 company.

f. further information/documents submitted by the company in their replies with respect to the queries raised by the inspectors. Documents like the following have been given due importance:

-the draft Deloitte Report on membership audit dated April, 2018

-the white paper of the DGC published in October, 2014

The Supplementary inspection report also talks about the queries raised and answer provided by the DGC to such queries.

It is further submitted that inspection report dated 31/07/2019 and the supplementary inspection report dated 03/03/2020 state that the Respondent No. 1 Company is managed by a General Committee. The General Committee (hereinafter may be referred to as 'GC') of the Respondent No. 1 company is akin to the Board of Directors as in other companies and comprises of 17 members, one of whom is the President of the GC.The

supplementary inspection report dated 03/03/2020 has detailed the numerous violations and the rampant mismanagement of the affairs by the General Committee of the Respondent No. 1. Company, wherein the GC has been acting ultra vires the Articles of Association of the Respondent No. 1 Company and the provisions of the Companies Act, 1956/2013, to the detriment of considerable public interest. The violations are of extremely serious and grave nature, which indicate that the GC members have been acting autocratically to the benefit of a few chosen members of the DGC in a hereditary manner at the expense of the general public. Besides factors related to financial dealings of the company, the report also highlighted the other acts that are contrary to the Article of Association of the Respondent No.1

9.9 Observation of the Inspectors is as follows:

"Section 26 under Companies Act, 1913 or section 25 under Companies Act, 1913 and section 8 under Companies Act, 2013 taken into consideration, to be a non-profit company, the company has to work on fulfilment of the conditions mentioned in the relevant section and the Central government grants a license subject to conditions and regulations which shall be binding on the association. Also,

the first and foremost object of the company should be the major object of the company, which is promotion of various sports which falls under the words 'any other useful objects'. The company can carry out any related business as per its object clause, however, it needs to align with the main object as stated in the MoAi.e., promotion of sports."

9.10 The Ministry of Corporate Affairs vide order dated 18.03.2020, issued the order to Regional Director, Northern Region after inspecting the Supplementary Report, content of the same is reproduced below:

"To

The Regional Director,
Northern Region,
Ministry of Corporate Affairs,
New Delhi
Subject: In the matter of M/s Delhi Gymkhana Club Limited.

Sir,

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

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

(ii) Charging the company and its General Committee members under section 447 of the Companies Act, 2013;
(iii) Immediate appointment of Government appointed administrator(s) in the General Committee and transfer of absolute power to such administrator(s);

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

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

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

9.11 The Present petition has been filed by the petitioner in view of the above facts and circumstances. It is averred that supplementary report covered the issue with reference to allotment of membership, money received from new applicants as registration fee, wrong accounting treatment of the amount received from new applicants, investment made by the DGC from such amount and processing charges received from new applicants. It is stated that while making the supplementary inspection report the inspector have considered the inspection report, records available with MCA-21, summons and recording of GC members and the secretary of DGC, healso considered the draft Deloitte Report on membership audit dated April, 2018, the white paper of DGC published on October, 2014.

The observations of the inspector in the supplementary report are discussed in the following paragraphs.

9.12 It is stated that from 2014-15 to 2018-19, the DGC has earned an income of Rs. 51.81 crores, Rs. 56.35 crores, Rs. 50.18 crores, Rs. 65.90 crores and Rs. 86.20 crores, however, no income has directly come from sports during the aforesaid period. Similarly, the expenses for the same period were Rs. 46.42crores, Rs. 50.84 crores, Rs. 49.26 crores, Rs. 55.63 crores and Rs. 70.16 crores respectively. Out of the total income the expense is less than 3% spent towards sports, towards employee benefit it is 38.78% and towards consumables 30.11%. Theabovefigures show that the DGC has spent minimal amount on promotion of sports activities which is not in tune with the object of the MOA of company.

9.13 It is averred that DGC is not adhering to Article 13(1) of AoA. Different fee structure has been prescribed for different categories of memberships pursuant to various GC meetings over the years. It is stated that Allotment of permanent membership and other memberships is prescribed u/A 8 of AoA i.e., balloting At-home, which

means an interview is taken and at the zest of GC, permanent membership is allotted to applicant and there is no uniform standard for such allotment. It is further stated that in case of allotment of permanent membership and memberships other than permanent members, maximum non-adherence to rules and avoidance of procedure has been reported and money has been collected fraudulently by the GC members by inducing and alluring new applicants (for membership) to apply for membership at a higher membership fees (which is enhanced time to time) when the GC itself is aware of the fact that the vacancy rate per annum is between 120 to 135 members and the company has a long waiting list from 1972 onwards. Whereas a minimal amount is being collected from the permanent members,andfulltime other members of the company enjoy the benefits and privileges of the Club at a subsidized rate even without having the voting power.

9.14 The DGC levied and increased from time to time the registration fees, additional registration fee and processing fee, etc. from the new applicants without amending the

amount of entrance fees as mentioned in AoA and without presenting the same before the AGM/EGM of DGC, which indicates the perfidious nature of DGC to collect money from new applicant.It is stated that initial pleadings and subsequent amendments never indicate admission under the category of Eminent members, green card membership and UCPs holders and transfer of membership retired Govt. Employeesto non-govt. Category etc., the malpractices have been continuing unabated as evident from white paper of DGC of the year 2014.

9.15 It is also important to discuss the observation made by the inspector on the reply made by the DGC to the queries raised through ministry's letter. It is submitted in the report that one of the items under long-term liability is refundable/adjustable registrationfee, the amount collected from applicants as registration fee, which is refundable and recognized as liability.However, as per note 31 to the Annual Financial Statements filed by the company in MCA 21 Registry for the financial year 2017-18,it is stated that till the financial year ending 31/03/2016, the registration fees received from various

applicants were to be treated as non-refundable and, therefore, they were accounted for as income of the year in which the registration fee was received. As per the decision taken by the General Committee during the previous year, the registration fee will have to be refunded to Registrants who do not wish to continue to be on the waitlist.The DGC has failed to give any particular reason as why the registration fee received till 31/03/2016 was treated as non-refundable and why from the financial year 2016-17 onwards the registration fee is treated as refundable.Such accounting treatment is in violation of AS-9 related to revenue recognition and the annual financial statement.

9.16 The inspector also commented that the DGChas not provided the bifurcated amount of income earned from investments out of money received against the amount collected as registration fees (from the applicant for F.Y. ending 2009-2010 to 2018-19).There is, therefore, no one to one correlation with regard registration fee collected from members.The inspector further commented that the DGC has furnished the requisite information regarding each type of membership and registration fee however, it

neither provided enabling clause in the AOA which permits them to collect such registration fees nor the resolution of Annual General Meeting of the DGC, the inspector further commented that AOA does not provide any bifurcation of membership fee as collected by the DGC, the AOA provided only one time registration fee and no such provision regarding collection of additional registration fee(collected over and above the amount of registration fee) etc., furthermore, amount of membership fees collected per member exceeds the limit as provided in AoA, therefore, it is in violation of AOA.

9.17 It is further stated that the DGC was asked to provide the information regarding the amount received from the applicants who have booked the venues, the DGC has only provided the party venue list from 2015-16 to 2017-18 without giving the revenue received from different members. It is submitted that since the DGC failed to provide replies to all the queries raised by the inspector, therefore, the GC members (including President) were summoned.The present and past auditors and to other past key managerial persons were also summoned.

9.18 It is submitted that only when an applicant becomes member then the bye-laws becomes applicable on such person.The DGC cannot apply the bye laws for a person who has not become member of the company as it is in violation of Article 6 r/w Article 23 of AoA.Hence, DGC cannot enhance membership fee or levy any additional fee, charges on admission of a member in the name of registration fee, additional registration fees, security deposit, processing charges, change of nominees, etc. In short, the GC is not empowered to make a call for various amounts in the form of registration fee from new applicant and enhance the entrance fees in the name of registration fees. Therefore, it is in violation of section 5 and section 8 of the companies Act, 2013.

9.19 It is averred that the DGC can have maximum number of permanent membersup to 5600 as per article 2 of AoA and article 4 prescribed different classes of members. On analysis of article 4 r/w article 13(2) and 11(2) the lady subscribers are not separate members from permanent members but should be inclusive in the class of permanent members.There is no separate category for lady

subscribers. Taking into account the permanent membership inclusive of lady subscribers, the company has exceeded article 2 of the AoA as the total permanent members including lady subscriber in the year 2015, 2016, 2017, 2018 and 2019 were 7085, 7077, 7076, 7099 and 7168 respectively and thus, acted in violation of its article of association.

9.20 It is further submitted that through its GC meetings, the DGC has created other memberships like Green Card Holders, UCP Holders, NRIs, Eminent Card Holders, etc. which are not admissible categories as per the AoA of the company. The company has further adopted novel procedures for making permanent memberships by transferring and converting the Green Card to UCP holders and then from UCP to Permanent member. All such new categories of membership and the procedure adopted for allotment of permanentmemberships to certain people are ultra vires to the AoA of the company. It is stated that Article 4(2)(d) r/w article 8(8) limits the Special category members to 150 company or corporate bodies and in any event not more than 15 Companies and corporate bodies

can be added as Special Category Members in any one financial year. The DGC has exceeded the limits of special category membership thereby giving membership to more than 150 companies and corporate bodies in a financial year.Furthermore, DGC has allotted eminent memberships to various persons under the Special category. As per article, there is no class of eminent membership mentioned.The special category of membership can onlybe given to corporate bodies or companies which have a turnover of more than Rs. 100 crores (as per article 4(2)(d) r/w 13(1)(b).Therefore, the various acts of the DGC and the officers in default areinviolation of the provisions of section 5 and section 8 of the Companies Act, 2013.

9.21 It is averred that GC cannot charge the enhanced registration fee from new applicant without altering its AOA in EGM/AGM and without previous approval of central government u/s 8(4) (i) of the Companies Act, 2013.Charging of exorbitant amount for pending membership applications by the GC in a situation where there is a moratorium in granting of new membership for more than 3 decades, definitely raises a red flag as to

thebasis on which consideration such exorbitant amount has been received by the company from the applicants/general public with no guarantee or time frame to allot the membership of the company. This money amounting to crores of rupees are lying in the company accounts and the interest from them goes on to subsidize the enjoyment of the Club's permanent members which not only violates the Deposit rules under the Companies Act, 1956 as well as the Companies Act, 2013 but also goes against all kind of democratic norms.

9.22 The inspector commented further on the other memberships provided by the DGC that are not in AoA, which are as follows:

a) Eminent: There is no mention of eminent category in the AoA. The special category does not include eminent members. Special category is for corporate memberships only. Eminent category was introduced on 05.04.1976 with a view to lend status to the Club and use of good eminent members to resolve various administrative and functional hurdles of the Club. This membership was given to officers of Armed

forces, judges of High Court and Supreme Court and civil officers under article 23 of the AoA.

b) Green Card Holders: Thereis no mention of Green Card category in the AOA. Nor the GC members are empowered to create a new category of members as Green Card Holders without amending the AoA. Article 13(3a) is only for dependents and Article 13(3b) is for a son of a permanent member to apply for full membership on attaining the age of 21 i.e., they have to apply afresh and stand in the waiting list of members. The GC has also issued Green Card apart from dependents of permanent member also to children of Lady Subscribers, UCPs and to dependents beyond the age of 21-22 years forextraneous reasons irrespective of their age, on penalty. TheGreen Card has been given to daughters of permanent member, Lady Subscribers, UCPs etc. All these have been done knowingly by the GC exceeding their powers and contrary to the AOA.

c) There is no mention of NRI category in the AOA.The Diplomat category is mentioned in Article 8(7) of AOA.

d) Lady Subscriber: The appointment of lady subscribers is inclusive in the category of 'permanent membership" with voting rights. The company has been enhancing its membership counts by taking lady subscribers as a separate category without giving voting rights. The lady subscriber category as defined under article 11(2) had been discontinued by the GC in its meeting held on 17.12.2014. Only the widows of permanent members were allowed to become lady subscribers, which itself is *ultravires* to article 11(2) of AoA.

e) Use of Club Premises Pending Elections (UCPs): Article 12 r/w article 8(1) of AoA, UCPs are those members whose names should appear for election for membership and as such the waiting period for UCPs to permanent membersshould be the difference of two successive General Committees only. The period of granting UCPs should not be the difference between two successive ' General committees. On examination of records and by record of statement of Col. Ashish Khanna, Club Secretary, it is found that the UCPs

Holders are given non-voting membership culling out 25% out of the proportion of the non govt. permanent members (having voting rights) which is 50% of total active members as per AoA. 'These UCPs are in queue for permanent membership through their UCP membership which may take 6 to 7 years to become a permanent member. The GC is well aware that there is a waiting list for the non-govt. category for a period of almost 37 years. Culling out the proportion from non-govt. category and giving it to a new category of waiting list i.e., UCPs, is an illegal way of inducting people for permanent membership. Further to say that UCPs include those members coming from another self-created category i.e. Green Card Holders who were dependents of the permanent members.In short, the wrong-doings of the previous GC members has been taken as precedence for granting different types of memberships and demanding different rates of membership fees, at their own prerogative without amending the AoA. The irregularities done in the previous years have now turned into massive

violations of law. Article 23 and 22 of the AoA have been misused continuously by GC members year after year basically to induct their own members in a short notice for memberships of the Club and to mint money from the new applicants and other members by levying penalty.

9.23 It is stated that the AoA of DGC does not contain any concept of Green Card Holders. The said category has been perfidiously created by the General Committee to accommodate, out of line, the dependent family members of the permanent members of the UGC. This in effect is a way to bypass the existing, long and self-created waiting-list ofthe general applicants, by the GC. It is to be noted that the Green Card Holders have been enjoying preference in grant of permanent memberships of the Club. These so-called Green Card Holders, more or less, consist of the dependents (who have crossed the age of 21 years) of the permanent members, but who have been summarily chosen for enjoyment of the Club. As such, the grant of privileges to use of the Club premises by arbitrarily chosen individuals (Green Card Holden) has become a norm,

which is nothing short of hereditary succession or *'parivaar-vaad'*. Similar modus-operandi is also being used for accommodating superannuated government officers who were members of the Club in the category of Govt. Members.

9.24 It is further stated that the DGC failed to provide procedure to be followed for giving life member and whether it is still making life members.It is submitted that the company without altering its article has amended the eligibility criteria stating that the corporate membership is for a company with turnover of Rs. 100 crores and fixed assets of Rs. 20 crores.The company has not provided the full details of all corporate members for each financial year from 2014-15 to 2018-19. The reply gives the details of the designated user of the company which they have admitted in the said financial years. As such, the company was not able to furnish the proper data. The company has not provided reply as to whether the companies who have been given the memberships from the year 2014-15 to 2018-19 are as per the eligibility criteria of having Rs. 100 crores and above as turnover. Furthermore, no reply was given as

to number of years the corporate as members are holding their memberships and the company has submitted two different rates for transfer of the designated user's membership, one is Rs. 5.90 lakhs and the other is Rs. 7.40 lakhs.

9.25 It is stated that the company is allowed to only charge entrance fees from the corporate members but Delhi Gymkhana Club, apart from entrance fees, is charging hefty amounts of processing fees, GST, Security Deposit from the Corporate Members. It is beyond imagination as to what for the processing fees of Rs. 15 Lakh each nominee and Rs. 5 Lakh for change of nominee is being charged whereas no processing fees are charged from their permanent members.It seems there is no uniformity in charging fees from the corporate members or on their transfer of user. It is stated that the company in a year can have only 150 corporates as their members, limited to 3 designated users of each corporate. However, the information furnished by the company which can be seen from the information in the petition, the company has more than 150 corporates as members and on analysis of

thedetails provided, there are more than 3 members of some companies viz. Deustche Bank, IOC Limited, ONGC Limited, ITC Limited, etc. Therefore, continuing violation of laws including Companies Act, 2013.

9.26 It is submitted that the DGC has furnished the wrong details/information while providing the details through relevant form. It is further averred that interested party has been appointed as the auditors of the DGC in the past, which raise the question regarding the auditor report and is also against the spirit of Companies Act, 2013.

9.27 It is contended that the grounds for reliefs are amply evident from the detailed findings of in the supplementary inspection report dated 03/03/2020, which make it imperative for this Hon'ble Tribunal to intervene to arrest the rampant mis-management of affairs by the General Committee of the Respondent No. 1 Company, in public interest. The continuing mismanagement of affairs by successive General Committees of the Respondent No. 1 company, have perversely twisted the objects of the company, to be benefit of a select few, who have managed to remain in control of the Respondent No. 1 company and

the Club, through an unauthorised and complicated hereditary succession mechanism. The admission process can only be described as *'parivaar-vaad'*. Yet at the same time, it can be seen from the supplementary inspection report dated 03/03/2020, that the general public applicants are being made to wait for decades for a membership of the Club, all the while having unauthorizedly collected lakhs of rupees in the form of registration fees, process fees, etc. over and above the entrance fee (which is authorised by the AOA). Till quite recently, the unauthorized collected fees was noteven refunded to the unsuccessful or waitlisted applicants. This can be clearly seen from the fact that there are applicants waitlisted for membership of the DGC, since 1972 and thereafter, who in fact have also been paying revised fees over time, as per the whims and demands of the General Committees of the Respondent No. 1 Company. This nefarious mismanagement of the affairs of the Respondent No. 1 Company is being carried out for years on prime land in the National Capital Region, for which the Respondent No. 1 Company has been paying a miniscule

amount of rent on the perpetual lease from the Ministry of Urban Affairs. The matter, therefore, clearly and squarely merits intervention of this Hon'ble Tribunal, as a huge amount of public interest is involved in the matter, as the Section 8 Respondent No. 1 company has been, in clear violation of its objects, been duping the general public and functioning only for the benefit of a select few and their chosen, for the past so many years. The Respondent No. 1 company, has due to the rampant mismanagement of affairs over the years has, in fact, lost its nature of being a Section 8 Company under the Companies Act, 2013. The Petitioner has accordingly prayed for the reliefs as mentioned in succeeding paragraphs and on the findings of the supplementary inspection report dated 03/03/2020, in public interest, under Section 241 and 242 of the Companies Act, 2013.

9.28 The findings of the supplementary inspection report dated 03/03/2020 provide abundant grounds for seeking the reliefs under the prayer clause of this petition. The findings of the supplementary inspection report dated 03/03/2020 are reproduced hereunder:

a) The Delhi Gymkhana Club was established in 1913 with an objective of promoting sports activities and pastimes. Being a non-profit company established under Section 26 of the Companies Act, 1913, the Central Government:

(i) has issued licence and allowed the association of person to be registered as a limited company without addition of the word 'Limited/Public Limited'; and

(ii) Ministry of Housing and Urban Affairs entered into a lease agreement and allotted the leasehold land to the Company.

(iii) the land has been allotted to the Company on perpetual lease in the year 1928. The Company at present is not working for its main object i.e. for promotion of sports and has become a recreational centre for a common section of the society. The Statement Profit & Loss of the Company for various financial years till date shows that there is no major direct revenue from sports nor expenditure towards sports activities, as compared to that of income and expenditure from and on wine, beverages and

cigarettes. Also, a major source of income is from registration and subscription fee collected by the company.

b) Promoting sports and pastime being the major objectives of the company should be read in-Toto and not separately. Thus, the word 'pastime' as referred in MoA interprets to any activities undertaken by the company for pastime should relate to promoting of sports only.

c) With the said objective, the premises of Delhi Gymkhana Club Limited was established on a prime location of New Delhi, with the intention of promoting sports and serving the pastime to the society on activities related to promotion of sports. The company pays a minimal lease rent on perpetual lease of about 27.03 acres. The said land is being continuously misused and the object of the company is not being adhered to. **As such, there is considerable public interest involved in the activities and objects of the company. The General Committee members have in effect**

become a select coterie of permanent members who have converted the section 8 company into a family fiefdom, by illegally fast-tracking the permanent membership applications of their dependents or the so-called converted Green Card Holders/UCPs. The General Committee has thereby ensured that the management of the company remains in the hands of their chosen few for times to come. That it has to be kept in mind that this company is a section 8 company with no promoters and the General Committee members have no financial stake in the company. The company is being operated to the detriment of considerable public interest for the benefit of a select few, in violation of the objects of the company.

d) Hence, a formidable check point for obtaining its membership as formulated in the AoA, which was initially restricted to only 200 permanent members at the time when the company was first registered, has now been increased to a ceiling of 5600 permanent

members in the EGM held on 26th July 2000. (Source: white Paper of DGC 2014)

e) To regulate the entry of individuals and to maintain the standard of the institution, certain guiding principles were laid down through the Memorandum of Association & Articles of Association of the Company. This was done primarily to regulate and for smooth operation and governance of the Club towards its objective.

f) Any change in MoA and AoA for a section 8 company has to have a previous approval of the Central Government for which the company had never approached the Ministry of Corporate Affairs.

g) An effort was made to increase the subscription fees of the permanent members in the year 2015-16, which did not take place.

h) The company has retained this money for more than 365 days in its account.

i) The registration fee is a non-refundable and adjustable fee for the new applicant. Even if he becomes a member after 2-3 decades, no adjustment

or benefit is done towards the membership fee as the registration fee. In the meantime, the registration fee received from the new applicants has been used for the working capital of the company and for investment and reinvestment over the years.

j) Money received as registration fee from the new applicants was initially non-refundable and treated as revenue, but from the year 2015-16 onwards, the Company made it refundable and treated it as a long-term liability and simultaneously, has been utilizing the collected amount for working capital requirement and for investment in mutual funds. As referred in the Inspection Report dated 31.07.2019, Shri S. N. Dhawan (expired) Chartered Accountant and Shri Vijay Dhawan, Chartered Accountant partners of the audit firm, are permanent members of the Club and who exercise their voting rights in terms of Articles.

k) In addition to the Inspection Report dated 31/07/2019, two more auditors of the Company firstly Mr. Anil Bhalla, Partner in J.C.

Bhalla&Company is a member of Delhi Gymkhana Club Limited. J.C. Bhalla& Company was a joint-auditor from 2007-08 to 2012-13 of Delhi Gymkhana Club. However, the signing partner was Mr.AkhilBhalla.

l) Secondly, Mr.Vinod Chander Chandiok who is a partner of the firm M/s Walker Chandiok & Co. and is the auditor of Delhi Gymkhana Club Limited. Walker Chandiok & Co. were joint partner in Delhi Gymkhana Club Limited in the year 2012-13. On personal appearance for recording the statement, Mr. Vinod Chander Chandiok had denied his membership in DGC although, on examination of the records, it has been found that he is holding membership in DGC since 1965.

m)In view of above, two auditors viz. Mr. Akhil Bhalla & Mr.Vinod Chander Chandiok in their respective financial years, disciplinary action for professional misconduct of the auditor should be taken in violation to section 226 of the CA, 1956 and section 141(3) (d)(i). They or their partners being members

and having voting rights had interest in the company and thus, were ineligible to be auditors of the company.

n) In view of the false statement given by Mr. Vinod Chander Chandiok during the pertinent query asked by the Inspecting Officer as to whether he or his firm or any other relative defined u/s 2(41) r/w section 6 of the Companies Act, 1956 have any management control or hold any membership in DGC for the year 2012-13. For which, Mr. Chandiok had answered that neither he nor his partners were holding the membership. However, he admitted that his late father was a member. Mr. Vinod Chander Chandiok having given a wrong statement knowing to be false attracts the provisions of section 229 r/w section 449 of the Companies Act, 2013 to be initiated against him.

o) Secondly, Mr. Vinod Chander Chandiok who is a partner of the firm M/s Walker Chandiok & Co. and is the auditor of Delhi Gymkhana Club Limited. Walker Chandiok & Co. was joint partner in Delhi

Gymkhana Club Limited in the year 2012-13. On personal appearance for recording the statement, Mr. Vinod Chander Chandiok had denied his membership inDGC although, on examination of the records, it has been found that he is holding membership in DGC since 1965.

p) Col. Ashish Khanna (Retd.), Present Secretary of the Club and is one of the Key Managerial Persons of the company under Section 2(51)(v) of the Companies Act, 2013 appointed on 12/04/2018 to the services of DGC. During his personal appearance for statement on oath, while answering apertinent question regarding his brief profile, Col. Ashish Khanna gave a statement that he has never been a member of DGC. However, on examination of the membership record provided by the company, it has been found that Col. Ashish Khanna is holding UCP membership no. U-3098 which is valid from 21/04/2018. As per the records, Col. Ashish Khanna neither had any Green Card nor was he dependent to any permanent member. The question arises as to

how he has been given membership of UCP to use the benefits of the Club at a subsidized rate when his details in the application form are incomplete and how the company has balloted him to get such membership.

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

r) While undertaking the supplementary inspection based on information/ documents/ papers submitted by theCompany and the Annual Financial Statements of the Company for last 5 financial years, it has been revealed that all the checks and balances as per the MoA and the AoA of the company have been thrown to the winds, and rules and guidelines have been violated with impurity and recklessly without adopting the procedural aspects of law. This makes most of the so-called, time to time alterations

made to the rules by the Governing Committee(s) as null and void.

s) It is interesting to observe that in spite of such adverse comments and indications, the subsequent GCs had not refrained from adopting non-transparent process of granting extensive membership or quasi-membership benefits to large number of applicants at their own sweet will and arbitrarily for instance the white paper of 2014 also reveals that age criteria for admission to Green Card Membership were violated by the GC without referring to the rules mentioned in AoA.

t) On scrutiny of the violations of norms in the DGC, it has been clearly found that time and again the rules have been twisted to cater to the needs of the ruling management committee i.e., GC and in that process, there have beenexamples of extending undue advantages to the existing members, their family members, relatives etc. This aspect has been clearly brought out by the Legal Opinion of M/s Dua Associates in their opinion dated 14th January 2014

where they have mentioned clearly that *"The General Committee cannot do as being against the structure of membership and use of Club facilityenvisaged in the charter, for instance, creating a class of membership which is NOT INCLUDED IN ARTICLE 4 and creating a class of persons to be allowed to use the Club facilities not permissible under Article 12 & 13. The issue of dependent and Green Card to the children of the UCPs is, therefore, not legal."* (Refer page 12 of the White Paper 2014).

u) Further, violation of the norms and disregard to the rules and AoA has been observed by the conclusion of the DraftReport of M/s Deloitte consultants who have been appointed by the Club to look into the issue of membership and to review the Club membership in conformity with the AoA. The so-called Draft Report of the consultant is attached herewith for the perusal of the authorities.

v) In a nutshell, the report speaks volumes on the irregularities and brazen disregard to the AoA norms by the GC time and again by creating membership

under various heads and sub-heads at their own will by passing the law to either facilitate the membership of the existing members or to grant membership status to the kith and kin of the existing members.

w) Deloitte Report has clearly observed the absence of policies and procedures and various process level issue including basic issues like verification of background of members or intending members. Inadequate record keeping, lack of data protection (sharing same e-mail ID and password with many risking manipulation of data) and serious lack of proper record keeping of the important documents of the members.

x) Financial Non-transparency - The basic cause flows again from the area of membership and blatant violation of the laid down norms and guidelines based on which, the institution is supposed to run.

(i) Charging of amount of exorbitant amount for pending membership application by the GC in a situation where there is a moratorium in

granting of new membership for more than 3 decades. It definitely raises a red flag, based on which consideration such exorbitant amount has been received by the company from the applicants/general public with no guarantee or time frame to allot the membership of the company. This money amounting to crores of rupees are lying into the company account and the interest from them goes on to subsidize the enjoyment of the Club permanent members which not only violates the Depositor rules under the Companies Act, 1956 as well as the Companies Act, 2013 but also goes against all kind of democratic norms.

ii. On perusal of the amount charged for membership by the company, it was found that the norms and additional charges/fees for change in nominee of corporate membership has been not only violated but are inconsistent as more number of changes in the nominees have been allowed by the company which as per its

AoA only restricts to not more than 3 times in a span of 10 years.

y) The Club was formed in the year when the country was under British rule. During that era, majority of officers in the Armed forces and Civil service officers were British. But, in the present scenario, the Club is not working in the trusteeship mode being a section 8 company and the membership of the Club is being used by the Elite and concentrated class for their own benefits. After perusal of the MoA, the AoA and Audit Reports, it is clear that the company and its properties were used like personal fiefdom of a selected few persons who have been controlling the GC. Also, it has been observed that internal contracts in the company are in majority given to the sons, daughters or relatives of the GC members who are appointed in that financial year. Thus, while allotting membership of the Club, the company has been treated like a *Riyaasat* of the persons especially the GC members by misusing the MoA and the AoA of the company.

z) The AoA of the company does not contain any concept of Green Card Holders. The said category has been perfidiously created by the General Committee to accommodate, out of line, the dependent family members of the permanent members of the DGC. This in effect is a way to bypass the existing, long and self-created waiting-list of the general applicants, by the GC. It is to be noted that the Green Card Holders have been enjoying preferences in grant of permanent memberships of the club. These so-called Green Card Holders, more or less, consist of the dependents (who have crossed the age of 21 years) of the permanent members, but who have been summarily chosen for enjoyment of the Club. As such, the grant of privileges to use of the Club premises by arbitrarily chosen individuals (Green Card Holders) has become a norm, which is nothing short of hereditary succession or *'parivaar-vaad'*. Similar modus-operandi is also being used for accommodating superannuated government officers

who were members of the Club in the category of Govt. Members.

aa) After going through the documents like the Auditor's Report, Annual Reports, the White Paper published by the Club in 2014, the Interim Report of the consultant Deloitte and other reports, it is opined that there has been brazen disregard of the rule of law, the laid down procedures as mentioned in the AoA, illegal and unethical collection of public money in exceptionally huge quantum in the name of membership applications and other related practices.

bb) There has been consistent lack of transparency, absolute disregard to integrity and minimum adherence to democratic and ethical practices for which a company/Club of this nature has been promoted by the government by giving the status of a Section 8 company and misuse of a huge land property having enormous potential for the Nation.

cc) The lapses, misuses, circumvention of law, absence of procedure and non-adherence to the law are too many, repeated and continued in nature and

fact, cannot be passed of as negligence of duty or service.

dd) Such frequent violation of rules and norms under the veil of approval of GC is nothing but a thin curtain to cover the malpractices which are rampant in nature starting from admission of a member or privilege holder to use the services and facilities of the company/Club, to misuse of public funds, award of preferential third-party contracts to related parties cannot be just covered under 'innocence of negligence or lack of knowledge or experience'.

ee) All the above acts have been committed by the GC or the management to corner unethically the gains for permanent members at the cost of public property in form of opportunity cost of the prime land in the heart of the city and public money received from the people standing in the wait-list for more than 3 decades.

9.29 It is stated that the findings by the inspectors in the inspection report dated 31/07/2019 and the supplementary inspection report dated 03/03/2020, are

evident of rampant, deep-seated mismanagement of the Respondent No. 1 Company by the General Committees over the years. The Respondent No. 1 Company is by its very nature, a non-profit company, under Section 8 of the Companies Act, 2013, which is being perversely used by a certain section of the memberslike a personal familial fiefdom, to the complete and blatant detriment of the general public. It is, therefore, most humbly submitted that the instant matter deserves the urgent indulgence of this Hon'ble Tribunal under Sections 241 and242 of the Companies Act, 2013, with a view to bring an end to the mismanagement of affairs of the Respondent No. 1 company and to immediately arrest the long-standing artificial hereditary succession mode of membership or *'parivaar-vaad'* in the DGC, which is being used to play fraud on the general public. The Petitioner, accordingly, most respectfully prays for relief as per succeeding paragraphs.

10. The DGC/Respondent No.1 also filed reply to the present petition raised the objection regarding maintainability stating that the petition is inherently defective for want of

opinion and that there is no public interest besides disputing the factual aspects pointed out in the inspect reports.

10.1 It is submitted that GC has been recently elected and all the allegations relate to a period prior to the present GC got elected, therefore, the petition is not maintainable in the light of above submissions. It is stated that DGC is a private club and formed for the use of its members or other permitted persons for various activities, hence, there can be no public interest in the matter of its management or its affairs, within the meaning of section 241 of the Act 2013. Furthermore, no element of public interest disclosed in the captioned company petition. It is argued that management of DGC or its affairs does not fall within the meaning of section 241 of the Act 2013. It is argued that no mind has been applied before formation of an opinion as can be gleaned from the fact that no material is placed to show application of mind. Within 24 hours of receipt of the supplementary report dated 3.3.2020, numbering more than 4000 pages, the Regional Director (North), wrote a letter on 4.3.2020 agreeing with the recommendation of

the Investigating officer and forwarding the same to the Director General. Corporate Affairs, MCA. Even if the Regional Director (North) is a speed reader, it is not humanly possible for him to read, peruse or understand the contents of more than 4000 pages. He has mechanically, without application of mind agreed with the Investigating Officer and recommended action, a glaring defect that goes to the root of his formation of his opinion and renders it non-est.

10.2 It is submitted by DGC that the captioned petition is filed with malafide intention as evident from above submission and further argued that ex-facie the activities which the Petitioner purports to find fault with namely, employee welfare and F&B consumables clearly fall within the ambit of the object themselves, as it is clear that sporting and pastime activities are amongst the objects of the answering Respondent. It may be noted that maintenance of refreshment rooms, utensils, plates, glasses, Linen, kitchens, etc. are also amongst the objects of the answering Respondent. The objects also include activities which are incidental to the achievement of the other

objects Generation of revenue from the bar (refreshment room) is, therefore, not in violation of the Articles. It is evident that the answering Respondent may generate revenue from any one or few or all of such activities, and merely because revenues generated from or expenses incurred towards certain activities are more than revenues generated from or expenses incurred towards other activities is per se no ground to assert that the objects of the DGC are not being adhered to. Such expenses so incurred and revenues so generated are in the normal and ordinary course of the running of any club, including other clubs such as Bombay Gymkhana Club, Wellington Club and Saturday Club to name a first few.

10.3 It is further submitted that the grant or non-grant of membership is the sole preserve and right of the Club and, irrespective of the fact as to whether or not there is any illegality or irregularity in the matter of membership, the grant or non-grant of such membership can never be the subject matter of a petition under Section 241(2) of Act 2013, there being absolutely no element of any public interest involved therein. It is argued that without

prejudice to the fundamental question that matters pertaining to membership are not matters of public interest, but private matters and issues of internal management, the Petitioner has failed to understand the AOA and the distinction between 'members' and other categories of persons permitted to use of the Club. At the outset it needs to be pointed out that UCP's, Green Cards etc. are not members, but are persons who have been given the privilege to use the club for which purpose they are issued a usage card nomenclature as Green Card or User of Club Premises termed a UCP card, the nomenclature of the card being for administrative convenience. It is the absolute discretion of the club to grant the privilege of the use of its premises and facilities to any person, which the club in its absolute discretion deems fit and same is not justifiable.

10.4 It is further argued that in so far as the issue of Lady Subscribers are concerned, the Articles themselves consider Lady Subscribers separately and consequently, the GC has also been doing the same. In any event, this issue is irrelevant as admittedly, since 2014, the Club has

ceased to accept fresh application from lady subscribers and only widows of permanent members are being given this privilege of Lady Subscribers which is contrary to the understanding of the Petitioner, is completely in consonance with Article 11(2). It is also submitted that a committee was set up to examine the veracity of the findings of the preliminary draft Delloitte report. It is stated that all clubs, including the answering Respondent receive a registration fee from applicants seeking membership of the Club. The levy or acceptance of registration fee is not something peculiar to Delhi Gymkhana Club and a fee is common to all such clubs including Bombay Club, Wellington Club, Tollygunj Club, Madras Gymkhana Club etc. to name a few. Furthermore, classifying registration fee as long-term liability will not make registration fee a deposit, even public deposits payable beyond 12 months are classified as long-term liabilities as per the requirement of schedule-III of the companies act. Moreover, the registration fees etc., naturally increases with passage of time and registration fee has been increased by GC from time to time over last

forty years and has never been objected by anyone. It is stated that contention regarding the fee being so charged is in excess of what is permitted by the Articles is again not a matter falling within the ambit of Section 241(2) of the Act 2013, as no element of public interest is involved.

10.5 It is also argued that the levy and acceptance of the registration fee does not amount to a deposit and does not amount to violation of either Section 58A of the Act 1956 or Sections 74 and 76 of the Act 2013. Without prejudice to the foregoing, it is respectfully submitted that the by-laws permit the GC to levy this fee. The decision to levy this fee was taken in first in the year 2013 and then in August 2016 and was not taken by the present GC. Therefore, it is not understood why supersession is being sought of this GC that was elected in September 2019 as all the alleged allegations in the petition relate to a period prior to the present GC, and accordingly the only prayer in the petition to change the present GC is without any basis or justification.

10.6 It is further averred that Applicants voluntarily apply for membership, without any inducement or any nature

whatsoever. Further, if there is no inducement or representation warranting the recourse of Section 17 of the Contract Act, the quantum of the registration fee ceases to be of any relevance, this is quite apart from the fact that there is nothing excessive or exorbitant in the levy of the registration fee and clubs far less prestigious and offering far less facilities to members than the answering Respondent, charge higher amounts. It is further submitted that the Petitioner has levelled allegations of unauthorised revision of membership fees. In this regard it is submitted that firstly there is no public interest involved in this allegation. Further, the registration fee has been increased by GC from time to time over last forty years and has never been objected by anyone. Even otherwise, the AOA (specifically Article 23) of Respondent No.1 gives enough powers to the GC to decide on the matter relating to fixation of registration fee.

10.7 It is argued that the relevant details/figures/information as required to be provided in e-Forms 23AC and 23ACA had been correctly provided in the relevant E-Forms 23AC and 23ACA filed for the financial year 2013-14. However, it

seems that while uploading e-Form 23AC (for the financial year 2013-14), the pdf file of balance sheet (for the year 2012-13) was inadvertently attached and filed. Further, it may be noted that while filing the relevant e-Forms 23AC and 23ACA for the next financial year (i.e., 2014-15), the relevant figures/details for the financial year 2013-14 had also been provided in the relevant column of e-Forms 23AC and 23ACA filed for the financial year 2014-15. In any event and without prejudice to the foregoing it is submitted that this allegation does not fall within the contours of section 241 (2) of the Act, 2013, even if there was an irregularity, which as stated, there is none.

10.8 There is further allegation on the premise that two partners of the firm, M/s S.N. Dhawan namely, Shri S.N. Dhawan and Shri Vijay Dhawan are the permanent members of the company with voting rights in Respondent No.1 and therefore, purportedly disqualified under Section 141(3)(d) of the Act. However, neither of these persons holds security or interest in Respondent No.1, and mere membership does not constitute 'interest'. Similar objections have been raised in respect of Walker, Chandiok

& Co. and J C. Bhalla & Co. who were earlier auditors of Respondent No.1. However, none of the partners of these firms holds security or interest in Respondent No.1. It is sought to be portrayed that the present auditors are members of the club. It is further submitted that the present auditors are not members of the company/club. In any event and without prejudice to the foregoing it is submitted that this allegation does not fall within the contours of section 241 (2) of the Act, 2013.

10.9 It is argued that DGC has shown the service tax demand of Rs.13,38,74,000/- as contingent liability with complete explanation in Note 22 (a) The treatment is a line with AS-29 dealing with Provisions, Contingent Liabilities and Contingent Assets. It is further mentioned that CESTAT has already decided this matter in favour of Respondent No 1 vide order dated 30.5.2018. A refund of Rs. 13.12 crores has already been received. Had provision been made in the accounts it would have resulted in distortion in the financial statement when the provision would have been reversed on receipt of the refund.

11 The Respondent No.7 also filed the reply to the captioned petition and reiterated all the facts and arguments as submitted by the DGC/Respondent No.7, therefore, not repeated.

12 The Petitioner also filed the rejoinder and denied all the averments made by the respondents and reiterated contentions as already discussed in the petition and further submitted that DGC during the Financial Years- 2014-15 to 2018-19, of the total income earned in the respective financial years, there is no income directly from sports during the said period. This reflects that the management or the General Committeeof the company are not able to generate any income for this company on account of sports which is a major objective of the company and for which lease of land was allotted by the Ministry of Urban Affairs in the year 1928. It is further stated that no uniform standard procedures laid down by the DGC for balloting. It is argued that on the basis of Income and expenditure statement of DGC, it has lost its character as a section 8 company under Companies Act, 2013 as it claims to be. It is also submitted that the Inspectors have noted that there

are cases where the application for green card holder has been made before attaining the age of 21, contrary to the submission made by the DGC, furthermore, no uniformity in allotment of UCP membership as pointed out by the Draft Deloitte Report. The GC has been appointed every year; however, no GC has taken the initiative to amend the AoA before the exercising the power which is otherwise ultravires to AoA, despite having the knowledge of above irregularities.

12.1 It is further averred in the rejoinder that the DGC converts permanent membership of the retired Government officers by shifting them to the block of non-Government portion, thereby usurping the share and space of non-govt. portion (30%) of the total permanent memberships. The GC of the company has allotted 25% of the non-Government category to UCPs. These are all fraudulent actions which the GC indulges into so as to have a legacy of members from the permanent members of the Government category and further extending it to their children and lady subscribers, tantamounting to concentration of majority

voting rights with a section of society. Granting membership in this way is one of the major reasons for new applicants being in the waitlist category of membership for more than two to three decades. The irregularities are also reported by the committees of DGC. At the end it is submitted that the grounds for relief are amply evident from the detailed findings of in the supplementary inspection report dated 03/03/2020, which make it imperative for this Hon'ble Tribunal to intervene to arrest the rampant mismanagement of affairs by the General Committee of the Respondent No. 1 Company/DGC, in public interest and prevent the DGC of becoming a family fiefdom from section 8 company.

13. <u>Contentions of ASG for the Petitioner</u>

13.1 In the light of above gross violation of Companies Act, 2013 and the MoA and AoA as detailed in Para 9.1 to Para 9.29 of this order.Ld. ASG pleaded for invoking Section 241-242 of Companies Act, 2013 and to supplement it, hebrought to our attention,the chart at page no.1237 of

volume 5, the content of the notice dated 17.05.2019 issued by the DGC is as follows:

"*NOTICE*

The GC has approved issue of Green Cards to children who were in possession of Dependent card but crossed the age of 22 years. Green Card will be issued on payment of penalty charges as under latest by 31st Jul'19

	Category	Penalty + Registration fee + GST
(i)	Under 25 years	Rs. 2lakhs + 1.50 Lakhs +GST
(ii)	26-35 years	Rs. 3lakhs + 1.50 Lakhs +GST
(iii)	36-45 years	Rs. 5lakhs + 1.50 Lakhs +GST
(iv)	46-55 years	Rs. 6lakhs + 1.50 Lakhs +GST
(v)	56 years and above	Rs. 7lakhs + 1.50 Lakhs +GST

Proof of dependant card is mandatory.

Members are requested to contact the Membership Office for same.

17th May, 2019
New Delhi

Col A Khanna (Retd)
Secretary"

The Ld. ASG also referred to Article 23 of Articles of Association, which is reproduced below:

"Powers to make bye-laws

23. The General Committee shall have power from time to time to make, alter and repeal, all such bye-laws as they may deem necessary or convenient for the proper conduct and management of the Club, and in particular but not exclusively, they may by such byelaws regulate:

(a) thetimes of opening or closing any Club property or any part thereof;

(b) The terms as to payment or to otherwise of admission of members to participate in the benefit of any of the privileges of the Club whether by donation or subscription or otherwisein addition to the monthly subscription by these Articles provided;

(c) the admission of visitors to the property and benefits of the Club;

(d) the rules to be observed by the members or visitors playing any games in or on the Club property;

(e) the prohibition of any particular games on the Club property entirely or at any particular time;

(f) the conduct of members of The Club in relation to one another and the Club servants;

(g) the setting aside of any part of the Club properly for particular purposes;
(h) the imposition of fines for the breach of any bye-law or any Article of Association of the Club.

(i) the procedure at General Meetings and meetings of the General Committee ofthe Club, and

(j) generally such matters as are commonly the subject matters of Club rules.

The General committee shall adopt such means as they deem sufficient to bring to the notice of members of the Club all such bye-laws amendments and repeals, and all such bye-laws, so long as they are in force shall be binding upon all members of the Club.

Provided that no bye-laws shall be inconsistent with or shall affect or repeal anything contained in the Memorandum or Articles of Association and that any bye-

law may be set aside by a resolution at a General Meeting of the Club."

It is the contention of the Petitioner that nowhere under article 23 of Article of Association, the General Committee is empowered to impose penalty as imposed in the notice dated 17.05.2019, therefore, the collection of money is arbitrary and such an act is violation of Article of Association.

13.2 Ld. ASG further brought our attention to Supplementary Inspection report dated 03.03.2020. He referred to point no.4 from page no.1026 to 1032 of the Petition, which is as follows:

"4. With reference to point no. 4 of the Ministry's letter dated 12.09.2019 the following question was raised:
"a). Please furnish a brief note on each type of membership granted by the company vis-à-vis the registration fees received against each type of membership. Also, clarify as how you have complied with the provisions of the Companies Act, 2013/1956 since no enable clause in the Articles of Association of the company is found.

b) Also, state the number of various types of members available in the Register of the Members as on 31.03.2016, 31.03.2017 and 31.03.2018.

c). Further, the nature of registration fees as shown as income of the company in the financial year ended in 31.03.2016 and additional registration fees as shown as income of the financial year ended on 31.03.2017 and 31.03.2018."

Reply of the Company

(a) The company in its reply has given details of the following categories of membership which they have in their club:

Permanent Government:

Registration Fee	*1,50,000*
At the time of granting membership	
Entrance fee	*10,000*
One-time contribution/ building fund	*1,000*
Additional Registration fee	*2,50,000*
GST @18%	*73,980*
Security Deposit	*50,000*
Total	*5,34,980*

Permanent Non-Government:

Registration Fee	*7,50,000*
At the time of granting membership	
Entrance fee	*25,000*
One-time contribution/ building fund	*1,000*
Additional Registration fee	*10,65,000*
GST @18%	*3,31,380*
Security Deposit	*50,000*
Total	*22,22,380*

Green Card: *Green Card is granted to member's children between 21-22 years of age provided they have used the club facilities as dependant cardholder. This application is also considered for their permanent membership. Fee structure for green card is as under:*

Registration fee	*1,50,000*
GST @ 18%	*27,000*
Security Deposit	*2,000*
Total	*1,79,000*

UCP: *Green Card Holder become eligible for up-gradation as UCP after completion of 20 years of his/her Green Card provided he/she is balloted successful in the At Home. Fee structure for UCP is under:*

Entrance fee	*10,000*
One-time contribution/building fund	*1,000*
Additional Registration fee	*1,50,000*
GST @18%	*28,980*
Security Deposit	*48,000*
Total	*2,37,980*

UCP to Permanent: *UCPs upgraded to permanent member as and when vacancy created. Fee structure for UCP to permanent is as under:*

Entrance fee	*15,000*
Additional Registration fee	*1,50,000*
GST @ 18%	*29,700*
Security Deposit	*50,000*

Total	*2,44,700*

Lady Subscriber Government Category: *Single lady class one officer of Central Government can apply under this category. Lady subscriber category has been discontinued by the GC in its meeting held on 17th Feb 2014 but applicants who have applied before 2014 have been considered for membership on prescribed fees as under:*

Registration fee	*1,00,000*
Entrance fee	*10,000*
One-time Contribution/ building fund	*1,000*
Additional Registration fee	*2,39,000*
GST @ 18%	*63,000*
Security Deposit	*50,000*
Total	*4,63,000*

Lady Subscriber Non-Government Category: *any single lady can apply under this category. Lady subscriber category has been discontinued by the GC in its meeting held on 17th Feb 2014 but applicants who have applied before 2014 have been considered for membership on prescribed fee as under:*

Registration fee	*2,00,000*
Entrance fee	*10,000*
One-time Contribution/ building fund	*1,000*
Additional Registration fee	*5,39,000*
GST @ 18%	*1,35,000*
Security Deposit	*50,000*
Total	*9,35,000*

Divorcee:

Additional Registration fee	*6,00,000*
GST @ 18%	*1,08,000*
Total	*7,08,000*

Eminent: *Eminent membership granted to officers from Armed forces, judges of High Court and Supreme Court and Civil Services under Article 23 of President Warrant of Precedence who are posted in Delhi for a period of 5 years on the following payment:*

Entrance fee	*10,000*
One-time contribution/ building fund	*1,000*
Additional Registration fee	*1,50,000*
GST @18%	*28,980*
Total	*1,89,980*

Foreign Nationals

Application fee	*$1000*
Entrance fee	*$10,000*
GST @ 18%	*$1,980*
Total	*$12,980*

Diplomat:

Entrance fee	*$2000*
One-Time Contribution/ building fund with GST	*$1,180*
GST @ 18%	*$360*

Total	$2,360

Corporate:

Corporate-10 years	One nominee	Two Nominee	Three Nominee	Change of Nominee
Entrance fee	15,00,000	15,00,000	22,50,000	
Processing fee	15,00,000	30,00,000	45,00,000	5,00,000
GST @ 18%	5,40,000	8,10,000	12,15,000	90,000
Security Deposit	1,50,000	3,00,000	4,50,000	
Total	36,90,000	56,10,000	84,15,000	5,90,000

(b) The company for details of number of membership has stated the following:

S. No.	Category	(Figures in nos.)				
		Financial years				
		2015	2016	2017	2018	2019
1.	Eminent (Tenure) * (NV)	203	198	190	197	195
2.	Permanent Government *(V)	5560	5510	5470	5464	5505
3.	Permanent Non-Government (V)					
4.	Temporary (NV)	-	-	-	-	-
5.	General (NV)	-	-	-	-	-
6.	Foreigner (NV)	-	-	-	-	-
7.	Corporate (Special Category Members)	194	190	171	158	154

	(NV)					
8.	Green Card (NV)	4952	5238	5200	5252	5333
9.	NRI (NV)	5	5	5		
10.	Diplomat (NV)	20	20	24	18	17
11.	Lady Subscriber Widow (NV)	1525	1567	1606	1635	1663
12.	Lady Subscriber Government Category (NV)					
13.	Lady Subscriber Non-Government Category (NV)					
14.	Life Member (V)	28	29	29	29	29
15.	UCP (NV)	2332	2423	2616	2807	2878
16.	UCP to Permanent (NV)	-	-	-	-	-
17.	Divorcee (NV)	-	-	-	-	-
18.	Foreign National (NV)	-	-	-	-	-
	Total Number	**14819**	**15180**	**15311**	**15560**	**15774**

*NV: Non-Voting

V: Voting

(c) The company in its reply has given the nature of the treatment of 'registration fees' and 'additional registration fees' as income of the company thereby stating that the registration fee collected from the applicants is treated as income when membership is granted and additional registration fee collected from members at the time of

granting membership is an amount over and above the registration fee collected at the time of registration. Both registration fee and additional fee are treated as income by the Company.

Inspecting officer's comments:

(a) & (b).The company was asked to give a brief note on each type of membership and the registration fee it received against each type of membership along with the enabling clause in the Articles of Association which permits them to receive such registration fee. In reply to this, the company has furnished the requisite information but neither have they provided the enabling clause in the Articles of Association of the company which permits them to collect such registration fees nor has provided the resolution of the Annual General Meeting of the company in this regard.

On examination of the records furnished by the company, it is submitted that Article 13 of the AoA prescribes the following fee structure:

S. No.	Category (amt. To be paid in lump sum	Entrance fees (amt. In Rs.)
1	Permanent Members (including lady subscriber)	25,000
2.	Government officers (from Armed forces of India and Civil Officer of Government) serving the Government of India should pay in lump sum	10,000
3.	UCP of Members Sons/Daughters	10,000
4.	Lady subscriber (widow)	No entrance fees
5.	Special Category (Corporate Members) (Rs. 15,00,000 up to	15,00,000

	two designated user and additional Rs. 7,50,000 for a third such user)	

At the first instance, the company is collecting the membership fee which bifurcates the fee structure into registration fee, entrance fee, one-time contribution/building fund, additional registration fee, security deposit, etc. The company, as per its Article, is only allowed to collect entrance fees that too in lump sum at the time of granting Membership (there is no bifurcation as per AoA for collecting such entrance fees).
Secondly, the amount of membership fees collected per member exceeds the limit as prescribed in its AoA which is ultra-vires of AoA.

(d) The company has stated that the registration fees and additional registration fees are treated as income of the company. and additional registration fee is the amount which is collected over and above the amount of registration fee. It is to mention here that the company till the financial year ending 31.03.2016 has been treating registration fee as income and from the year 2016-17 the registration fee so collected during the year was credited to Refundable/Adjustable Registration Fee accounted under the head 'Long-term Liabilities'. Also, from the financial year 2016-17 onwards, the company has given its applicant a choice to refund their application feeif they do not wish to continue in the waitlist."

Details of Increase in Amount of Subscription Fee and Registration Fee from Financial Year 2011-2012 onwards is mentioned below:

Delhi Gymkhana Club Ltd.
2 Safdardarjung Road, New Delhi – 110011

DETAILS OF INCREASE IN AMOUNT OF SUBCRIPTION FEES AND REGISTRATION FEES FROM FY 2011 TO 2019					
S. No.	**Existing Subscription**	**Date of Meeting**	**Type of Meeting (GC/AGM/EGM)**	**Amount increased to**	**Effective date of resolution**

1	250.00	29/09/2012	AGM	400.00	01/10/2012

S. No.	Registration Fee	Date of Meeting	Type of Meeting (GC/AGM/EGM)	Amount increased to	Effective date of resolution
1.	Govt. 30000	02/11/2011	GC	40000.00	03/11/2011
2.	Non Govt. 50000	02/11/2011	GC	80000.00	03/11/2011
3.	Govt. 40000	13/08/2012	GC	50000.00	14/08/2012
4.	Non Govt. 80000	13/08/2012	GC	100000.00	14/08/2012
5.	Govt. 50000	27/07/2016	GC	150000.00	04/08/2016
6.	Non Govt. 100000	27/07/2012	GC	750000.00	04/08/2016

14. Contentions of ASG with regard to amount received asDeposit:

It is the contention of the Ld. ASG that the amounts/deposit accepted by the DGC is a deposit as per Section 2(31) r/w Section 73 and itdoes not fall under exception i.e., Rule 2(c)(xi) of Companies (Acceptance of Deposit) Rules, 2014, as there is no segregation with respect to the money received from the fresh applicants and income received from other sources. Therelevant sections and rule referred by Ld. ASG to buttress his contentions are reproduced below:

Section 2 (31) of Companies Act, 2013

Definitions.

***** ***** ***** *****

2 (31) "deposit" includes any receipt of money by way of deposit or loan or in any other form by a company, but does not include such categories of amount as may be prescribed in consultation with the Reserve Bank of India.

Section 73 of Companies Act, 2013

73. Prohibition on acceptance of deposits from public.-(1) On and after the commencement of this Act, no company shall invite, accept or renew deposits under this Act from the public except in a manner provided under this Chapter:

Provided that nothing in this sub-section shall apply to a banking company and nonbanking financial company as defined in the Reserve Bank of India Act, 1934 (2 of 1934) and to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf.

(2) A company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfilment of the following conditions, namely:—

(a) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;

(b)filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;

(c) depositing such sum which shall not be less than fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;

(d) providing such deposit insurance in such manner and to such extent as may be prescribed;

(e) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

(f) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company:

Provided that in case where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular,

form, advertisement or in any document related to invitation or acceptance of deposits.

(3) Every deposit accepted by a company under sub-section (2) shall be repaid with interest in accordance with the terms and conditions of the agreement referred to in that sub-section.

(4) Where a company fails to repay the deposit or part thereof or any interest thereon under sub-section (3), the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

(5) The deposit repayment reserve account referred to in clause (c) of sub-section (2) shall not be used by the company for any purpose other than repayment of deposits.

Section 76 of the Companies Act, 2013

76. Acceptance of deposits from public by certain companies.—(1) Notwithstanding anything contained in section 73, a public company, having such net worth or turnover as may be prescribed, may accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the central government may, in consultation with the Reserve Bank of India, prescribe:

provided that such a company shall be required to obtain the rating (including its net worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits:

provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

(2) the provisions of this chapter shall, mutatis mutandis, apply to the acceptance of deposits from public under this section.

Section 76A of Companies Act, 2013:

76A. Punishment for contravention of section 73 or section 76.- Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section 76 or rules made there under or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made there under or such further time as may be allowed by the Tribunal under section 73,—

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with fine which shall not be less than one crore rupees but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years or with fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees, or with both:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions

knowingly or wilfully with the intention to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Rule 2(c) of Companies (Acceptance of Deposits) Rules, 2014

"Definitions-

2 (c) "deposit" includes any receipt of money by way of deposit or loan in any form, by a company, but does not include-

****** ****** ****** ******

(xi) any non-interest-bearing amount received or held in trust;"

The aboveplea is canvassed on the basis of the decisions of the Hon'ble Supreme Court with respect to money held in trust in the matter of ***RaiBahadur Seth Jessa Ram Fatehchand vs. Om Narain Tankha & anr*** ((1967) 2 SCR 429). Relevant extract of the judgment is reproduced below:

"13. We are of opinion that the question whether the security deposit in a particular case can be said to be impressed with a trust will have to be decided on the basis of the terms of the agreement and the facts and circumstances of each case, without any leaning one way or the other on the fact that the money was given as a security deposit. If the terms of the agreement, if it is in writing, clearly indicate that the deposit was in the nature of a trust,

the court will come to that conclusion in spite of the fact that interest is provided for in the agreement. ***But where the terms of the agreement do not clearly indicate a trust, the court will have to consider the facts and circumstances of each case along with the terms to decide whether in fact something in the nature of a trust was impressed on the security deposit. In such a case the fact whether segregation was provided for or not would be one circumstance to be taken into consideration. Where segregation is provided for the court would lean towards the deposit being in the nature of a trust. But where segregation is not provided for and the deposit is permitted to be mixed up with the funds of the person with whom the deposit is made, the court may come to the conclusion that anything in the nature of trust was not intended, for generally speaking in view of Section 51 of the Indian Trust Act, (No. 2 of 1882) a trustee cannot use or deal with the trust property for his own profit or for any other purpose unconnected with the trust.*** *It is true that where there is a clear trust and the trust deed if any provides that the trustee may use the trust property as he likes, the fact that the trustee can mix the trust property with his own may not make any difference. But where there is no clear indication that a security deposit was impressed with a trust, absence of segregation would be a circumstance against there being a trust.*

18. *In Frank M. McKey v. Maurcie Paradise, the question arose with reference to a claim of an employee welfare association against the employer and it was held that* ***without segregating any money as due to the association there could be no trust.*** *This case shows the significance of segregation in arriving at the inference whether there was a trust.*

19. A consideration of these English and American cases also in our opinion shows that the first question in each case where the court is dealing with a security deposit is to ask whether on the agreement in writing, if any, and on the facts and circumstances of the case and. conduct of the

parties it can be said that the security deposit was impressed with some kind of a trust. If that can be said then the question whether interest was provided for and whether the trustee could mix the deposit money with his own money would not be of importance and would not take away the character of the deposit being impressed with a trust. ***The mere fact that money was deposited as a security is not sufficient to come to the conclusion that it must be treated as trust money.*** *The court will have to look to all the terms of the agreement if in writing and to the facts and circumstances of the case and to the conduct of the parties before coming to the conclusion whether a security deposit impressed with a trust. If a trust can clearly be spelled out from the agreement that ends the matter spelled* ***but if the trust cannot be spelled out clearly the fact that there was no segregation provided for and the fact that interest was to be paid would go a long way to show that the deposit was not impressed with the character of a trust particularly where the person with whom the deposit was made could mix it with his own money and could use it for himself. In such a case the inference would be that the relationship between the parties was that of a debtor and creditor.*** *Further besidesthese circumstances if there is any other term which suggests one kind of relationship rather than the other that will also have to be taken into account. Illustrations of this will be found both in the Bombay case (i.e., in Manekji case) and in the Allahabad case (i.e., Maheshwari BrotherCase). In the Bombay case besidesabsence of segregation and presence of interest there was afurther fact that in certain circumstances segregation hadbeen provided for.* ***The court was entitled to take that factinto consideration and hold that the deposit was notimpressed with trust till segregation took place.*** *In theAllahabad case a floating charge was created which failedfor want of registration, and that circumstance was alsoused to show that the relationship between the parties wasthat of a debtor and creditor and not that of a trustee andbeneficiary."*

It is the argument of the Ld. ASG that the finding of Hon'ble Supreme Court in above discussed case is fully applicable to the DGC and the Rule 2(c)(xi) of Companies (Acceptance of Deposits) Rules, 2014does not apply to receipt of money by DGCand it cannot be held that money was held in trust as the element of segregation is missing in case of Respondent No.1 company. The Ld. ASG also referred to various violations enumerated in the Inspection Report Para 9.1 to 9.29 of the this order and other paragraphs to justify the petition filed under section 241 (2) of the Act.

15. Contentions of Ld. Sr. Counsel on behalf of Respondents

Learned Senior Counsel, Shri Krishnendu Dutta appearing on behalf of Respondent nos. 01 to 07 in the matter, made the submissions opposing the prayers sought in the present petition. The Learned Counsel has placed basically his 03 points which are mentioned as under: -

15.1 There is no formation of opinion or opinion by the Central Government before filing of the present Petition under Section 241-242 of Companies Act, 2013.

15.2 In the present Petition there is no public interest as it is restricted to the cause of a few Members of the Club.

15.3 The petitioner has not been able to make out any case of oppression with respect to any Member of the Club. Besides the allegation in the inspection report are factually incorrect.

15.4 The Learned counsel has further expanded his arguments on the aforesaid lines as regards to formation of opinion by the petitioner is concerned. It is submitted by him that the petitioner has not mentioned anything about the formation of opinion, the authority at which level the opinion has been formed, whether the process, the requirements of Section 458 of Companies Act, 2013 for forming the aforesaid opinion to proceed in terms of Section 241-242 of the Companies Act has been followed. He further submits that such formation of an opinion is nowhere stated in the letter dated 18.03.2020, whereby the direction to file the present Petition in terms of Section 241-242 of the Companies Act has been conveyed to Regional Director.

15.5 It is his submission that the said letter dated 18.03.2020 is not passed by the Competent Authority and lacks proper

sanction which is mandatory in terms of Section 241 (2) of the Companies Act, 2013. It is further submitted by the Counsel that powers of this Tribunal can be exercised only when it is shown to the Tribunal that to wind up the Company would have unfairly prejudiced, to such Member or Members of the company what that otherwise the facts would justify the making of winding up order on the ground that it was just an equitable that the company should be windup.

15.6 The Counsel has taken us to the finding of Hon'ble Supreme Court rendered in the matter of **Rohtas Industries Limited [(1969) 1 SCC 325]** and has stated that in view of the said finding, the formation of opinion on a sound and cogent basis is a pre-requisite for seeking any investigation as well as filing petition of the present nature. He has also relied upon the judgment given in **Barium Chemicals Ltd. &Anr. Vs. Company Law Board &Ors**.

15.7 As regards the present petition not being in public interest, the Counsel submits that in the present circumstances the Club in question is only a Private Club and, in fact, only a few complaints were received by the Central Government

in the year 2016, which triggered the ordering of inspection under the Companies Act in the beginning. He further submits that no public at large is interested in the affairs of the company and therefore, no public interest is affected by any alleged wrongdoings of Club management.

15.8 He further submits that the present matter is initially based on the said complaints of the members, the Government had received first Inspection Report dated 31st July, 2019 and thereafter supplementary inspection was ordered. In pursuance of the said order a Supplementary Report dated 03rd March, 2020 was received. He has drawn our attention, while relying upon the Government letter dated 12th September, 2019, whereby the follow up directions have been given to the Regional Director.

15.9 He also states that the petitioner had already made up its mind to proceed further and take action under Section 241-242 of the C.A. 2013 as is evident from petitioner's letter dated 12.9.2019 addressed to Regional Director. He further states with this background only the

supplementary inspection was also ordered through the same letter.

15.10 In view of this, he submitted that the petitioner had gone in a premeditated manner with the ordering of Supplementary Report and the decision to file present petition had already been taken even when the supplementary inspection was not taken up. In this background, he states that the entire exercise with respect to the filing of the present petition is Bad in Law and is vicious. Therefore, the present petition needs to be dismissed.

15.11 As regards running of affairs of the Club oppressive to the interest of any Member, he has drawn our attention to the fact that few of the Members had initially made certain complaints with the Petitioner, based on which the entire exercise with regard to ordering of inspection etc. and thereafter supplementary inspection has started.

15.12 He submits that Petitioner has not been able to put forth any evidence as to how public interest is involved in the matter to support his arguments, he had made reference to Law propounded by Hon'ble Supreme Court in the matter

of ***63 Moons Technologies Limited vs. Union of India***.In particular he referred to Paras 81, 82, 84 and 90 of the said judgment of Hon'ble Supreme Court. In this regard, he has specifically mentioned that the element of public interest as it should come in petitions of such kind have been explained in Para 81 of the said judgement. Para 81 of the said Judgement is reproduced below:

"*Public Interest*

81. The third prerequisite of Section 396 is that the Central Government must apply its mind when compulsorily two or more companies in the public interest. "Public interest" is an expression which is wide and amorphous and takes colour from the context in which it is used. However, like the expression "public Purpose", what is important to be note is that public interest is the general interest of the community, as distinguished from the private interest of an individual [see State of Bihar vs. Kameshwar Singh at pp. 1073-1075]."

He further referred to Para 82 of the said Judgment which says like this:

"*82. This is echoed in Manimegalai vs. LAO as follows: (SCC p.495, para 14)*

14. Similarly, public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general

interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally, the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a section of the society may be public purpose when it is benefitted by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily."

Likewise, Para 84 of the said Judgement is reproduced below:

"84. In Janta Dal vs. HS Chawdhary, this Court referred to stroud's judicial dictionary which defines "public interest", thus: (SCC PP. 330-331, paras 51, 52).

"51 in stroud's judicial dictionary, volume IV, 4th Edition Public Interest in defined thus: -

"Public Interest" 1. A matter of public interest or general interest does not mean that which is interesting as gratifying curiosity or love of information or amusement but that in which class of the community has a pecuniary interest, or some interest by which their legal rights or liabilities are affected (per Cambel CJ in R. v. Bedfordshire).

52. In Black's law dictionary (6th Edition), "public interest" is defined as follows:

"Public Interest"-Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular localities, which may be affected by the matter in question. Interest

shared by citizens generally in affairs of local, State or National Government."

In addition, Para 90 of the said judgement is given below:

"90. in the context of compulsory amalgamation of two or more companies, the expression "public interest would mean the welfare of the public or the interest of society as a whole, as contrasted with the "selfish" interest of a group of private individuals. Thus, "public interest" may have regard to the interest of production of goods or services essential to the nation so that they may contribute to the nation's welfare and progress, and in so doing, may also provide much needed employment. "Public Interest" in this context would, therefore, mean the combining of resources of two or more companies so as to impact production and consumption of goods and services and employment of persons relatable thereto for the general benefit of the community. Conversely, any action that impedes promotion of industry or obstructs growth which is in national or public interest would run counter to public interest as mentioned in this Section."

15.13 The Learned Senior Counsel while referring to aforesaid paras reiterated that none of the ingredients of public interest as propounded by the Hon'ble Supreme Court are present in the case of respondent company. He further states that the respondent company is having only private persons and limited numbers of persons who are the Members of the Club and the present application is an uncalled-for encroachment by the Petitioner into the affairs of the said company. Further

due process as prescribe under section 458 of the Companies Act, 2013 for formation of opinion/issuance of instructions by the petitioners has not been followed. The petitioners have proceeded in a premeditated manner as is evident from their letter dated 12.9.2019.

15.14 Summing up his arguments, he submitted that the petition was filed by the petitioner is not maintainable and needs to be dismissed in toto on the following grounds:

a. Section 241 of the Companies Act, 2013 can be invoked only by the Central Government i.e., in the name of the President of India or acting through a person authorized under Section 458 of the Companies Act, 2013.There is no authorization or delegation of authority in favour of Assistant Director who has signed the purported authorization dated 18.03.2020.

b. Formation of the opinion by Central Government regarding the satisfaction of the conditions of Section 241 of the Companies Act, 2013 is the sine qua non and jurisdictional condition for exercise of the power.

The letter dated 18.03.2020 does not either disclosed or constitute an opinion as required by Section 241 (2) of the Companies Act, 2013.No opinion formed by Secretary, Ministry of Corporate Affairs and no such opinion filed and no record of the supplementary Report being placed before him.

c. The opinion formed needs to be disclosed from the sanctioned order itself and cannot be supplemented by way of affidavit.Central Government has to form an opinion the affairs of the companies are being conducted in the manner prejudicial to public interest.

d. Public interest means the greater good of the and not the private interest of members and applicants.

e. 'Better utilization' of land is not a ground available to initiate an action under section 241(2) of the Act.

f. Sec. 241(2) of the Companies Act, 2013 only gives the power to the Central Government to invoke and seek reliefs under Section 242 of the Companies Act, 2013. However, conditions and limitation of Section

242 of the Companies Act, 2013 apply equally to the Central Government.

g. Petition does not either plead or make out a case that it is just and equitable to windup the company which is a pre-condition of Section 242 of the Companies Act, 2013.

h. Corporate Democracy is akin to parliamentary democracy and the right of shareholder to appoint or remove a director is an inherent right.

16. Major Issues Identified for consideration by this Tribunal.

A. <u>VIOLATION OF MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION AND FINANCIAL IRREGULARITIES-MISMANAGEMENT</u>

In the course of the inspection of the company the statement of Income & Expenditure account of the company for the last 5 financial years filed as Annexure 12 of the supplementary inspection report dated 03.03.2020 revealed that the company has earned an income of Rs. 51.81 crores, Rs. 56.35 crores, Rs. 50.18 crores, Rs. 65.90 crores and Rs. 86.20crores during the period from 2014-15 to

2018-19 respectively. There is no major income directly from sports activities which is the primary objective of the company and for which lease of public land was granted by the Ministry of Urban Affairs in the year 1928 on perpetual lease on a meagre rent. The expenses of the company was Rs. 46.42 crores, Rs. 50.84 crores, Rs.49.26 crores, Rs. 55.63 crores and Rs. 70.16 crores from 2015-16 to 2018-19 respectively. The expenditure towards sport during this period was Rs. 1.40 crores, Rs. 1.53 crores, Rs. 1.48 crores, Rs. 1.56 crores and Rs.1.84 crores whereas extraordinary higher sum was spent on catering, wine, beverages and cigarettes etc. So, the total expenditure for the said period 2.77% alone has been expended towards sports. In order to supplement the enormous expenditure, the company realizing that the number of Permanent Members has to be restricted to 5600 and there is no restriction in so far as Garrison Members, Temporary, Casual and Special category Members and in order to overcome the limit prescribed by Article 13(1) of AoA which prescribes the entrance fee at permanent (non-govt.) Rs. 25,000/-, permanent (govt. officers) Rs. 10,000/-, use of club premises pending election

(UCPs) Rs. 10,000/- and Special category Members(i.e. corporate members) Rs. 15,00,000/- with additional Rs. 7,50,000/- devised a method of including new Members and started issuing Green Cards to children of the permanent members and UCPs Members as well. For these Members they have issued a notice on 17.05.2019 which has been extracted in Para 13.1 of this order where details of penalty and registration fee deposits for issuance of Green cards to children has been indicated. In pages 1026 to 1030 of Volume V of the supplementary report dated 03.02.2020 the reply of the company has been recorded. They have admitted that though besides the entrance fee has been specifically defined under Article 13 (1) of the AoA, the company has been charging registration fee of Rs. 1,50,000/- for permanent government Members, additional registration fee of Rs. 2,50,000/-, security deposit etc., for permanent non govt. Members the entrance fee is Rs. 25,000/-, registration fee is Rs. 7,50,000/-, additional registration fee is Rs. 10,65,000/- besides other amounts, for Green card granted to Member's of children, the registration fee is Rs. 1,50,000/-,for UCP i.e. Green card

holder for up-gradation, entrance fee is Rs. 10,000/-, additional registration fee is Rs. 1,50,000/-, from UCP to permanent, entrance fee is Rs. 15,000/- and additional registration fee is Rs. 1,50,000/-. Similarly for lady subscriber Govt. category entrance fee is Rs. 10,000/-, registration fee is Rs. 1,00,000/-,for lady subscriber non govt. category registration fee is Rs. 2,00,000/-, entrance fee is Rs. 10,000/-, for divorcee additional registration fee is Rs. 6,00,000/-, for eminent Members namely Judges of High Court and Supreme Court and Civil Service officers, entrance fee is Rs. 10,000/-, additional fee is Rs. 1,50,000/-. This chart is at Para 13.2 of this order. From this it is evident that the company has been receiving this registration fee which is not contemplated under AOA. All that is provided for is entrance fee, the AOA has not been amended, which is a violation as explained in Para 9.21 of this Order. This is not provided in the AOA but appears to have been introduced by way of bye laws. What is not contemplated in the AOA have been indirectly brought in through byelaws. The source of this power is stated to be under Article 23 of the AOA. This is one aspect which

clearly establishes that the company has been arbitrarily collecting registration fee based on the general committee decision without proper mandate as required under the Companies Act as indicated in Para 9.14 of this Order.

B. <u>DEPOSITS FROM OUTSIDERS</u>

The Govt. contention is that Respondent received amounts from intending general public, who wish to become members of the club to register themselves and in the name of registration fee Rs. 1,50,000/- was initially collected and then increased to Rs. 7,50,000/- and subsequently reduced to Rs. 1,50,000/-. According to the petitioner-Govt. this is in the nature of the deposits attracting the provisions of Section 2 (31) of Companies Act read with section 73, 76 and 76A and Companies (Acceptance of Deposit), Rules 2014 i.e., Rule 2 (c). These provisions are set out in Para14 of this order. The section 76 deals with acceptance of deposits by certain companies subject to Rules as may be prescribed and the prohibition of acceptance of depositsis provided under Section 73. The meaning of deposit includes receiving of money by way of deposit or any other form by a company. In the present

case the respondent's contention is that it is not a deposit because no interest is to be paid and it is taken on trust. Respondent relyupon Rule 2(c)xi of 2014 Rules. Their contention appears to be that it is a non interestbearing deposit lying with the company because if the person, who makes the deposit, wants to get the refund it is paid back without any demur. The respondent-club has taken the stand that this amount is shown as a liability and refunded at the behest of the person making such payments if the person who makes the payment does not become a Member. However, the said amount is treated as an income and further subsumed forthe benefit of the club, if he becomes a Member. The refundable amount collected from intending member is kept apart and invested in the mutual funds and therefore, it is not treated as an income. The stand of the company that the amount is a non interest bearing amount and therefore it is not deposit is not correct. We place reliance upon the definition of Deposit which has been extracted in Para 14above.The decision of the Hon'ble Supreme Court in the case of Rai Bahadur Jessa Ram Fatehchand vs. Om Narain

Tankha & anr. (referred in Para 14 of this order) dispels the contention that it is held in trust. Therefore, we have no hesitation to hold this that amount is a deposit attracting the provisions of Section 73, 76 and the consequential action under Section 76A of the Companies Act 2013. The contention of the respondent is therefore rejected. Furthermore, the respondent-club states that periodically amounts were refunded at the request of the said depositors. While the club submits that amount does not bear any interest, the club however, has earned income out of such deposits admittedly invested in mutual funds. The club a non profit company has unjustly enriched from such deposits and there is a clear violation of the companies Act.

C. NO OPINION TO PROSECUTE THE CASE UNDER SECTION 242.

A strong objection has been raised by the Ld. Sr. Counsel for the Respondent is that for the Central Govt. to make an application before the Tribunal in a case of oppression and mismanagement under Chapter XVI and the invocation of Section 241-242 pre-supposes an opinion of the Central

Govt. that the affairs of the company are being conducted in a manner prejudicial to the public interest. That opinion despite repeated statement across the bar is not forthcoming. The Central Govt. should come to a definite opinion that it is case where the affairs of the company are being conducted in the manner prejudicial to the public interest. Such opinion is missing in this case. A mere letter dated 18.03.2020 will not suffice. The opinion has to be in writing and should be presented to this Tribunal when it has been asked for. It is pleaded that the opinion should be based on material and there should be reasons specified by the Govt. so as to enable this Tribunal to form an opinion for initiating further proceedings under Section 242.In the absence of such opinion the petition under Section 241-242 has to fail. Reliance is placed on Rohtas Industries case, the relevant Paras of which extracted below:-

"Rohtas Industries Ltd. v. S. D. Agarwal, (1969) 1 SCC 325 at page 334

6. The decision of this Court in Barium Chemicals case which considered the scope of Section 237(b)

illustrates that difficulty. In that case Hidayatullah, J., (our present Chief Justice) and Shelat, J., came to the conclusion that though the power under Section 237(b) is a discretionary power the first requirement for its exercise is the honest formation of an opinion that the investigation is necessary and the further requirement is that "there are circumstances suggesting the inference set out in the section, an action not based on circumstances suggesting an inference of the enumerated kind will not be valid; the formation of the opinion is subjective but the existence of the circumstances relevant to the inference as the sine qua non for action must be demonstratable; if their existence is questioned, it has to be proved at least prime facie; it is not sufficient to assert that those circumstances exist and give no clue to what they are, because the circumstances must be such as to lead to conclusions of certain definiteness; the conclusions must relate to an intent to defraud, a fraudulent or unlawful "purpose, fraud or misconduct. In other words they held that although the formation of opinion

by the Central Government is a purely subjective process and such an opinion cannot be challenged in a court on the ground of propriety, reasonableness or sufficiency, the authority concerned is nevertheless required to arrive at such an opinion from circumstances suggesting the conclusion set out in sub-clauses (i), (ii) and (iii) of Section 237(b) and the expression "circumstances suggesting" cannot support the construction that even the existence of circumstances is a matter of subjective opinion. Shelat, J., further observed that it is hard to contemplate that the legislature could have left to the subjective process both the formation of opinion and also the existence of circumstances on which it is to be founded; it is also not reasonable to say that the clause permitted the authority to say that it has formed the opinion on circumstances which in its opinion exist and which in its opinion suggest an intent to defraud or a fraudulent or unlawful purpose.

7. We shall first take up the decisions read to us by the learned Attorney. In State of Madras v. C.P.

Sarathy (1953) SCR 334] this Court was called upon to consider the scope of Section 10(1) of the Industrial Disputes Act, 1947. There the question for decision was whether the opinion formed by the State Government that there existed an industrial dispute is open to judicial review. While dealing with that question this Court observed:

"But it must be remembered that in making a reference under Section 10(1) the Government is doing an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative in character. ***The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination.*** *No doubt, it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and*

that, therefore, the Tribunal had no jurisdiction to make the award. But, if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

Per contra the Ld. SG pointed out that the opinion inthe present case cannot be equated tothe opinion as in the case of Rohtas Industries. In the case of Rohtas Industries it is an opinion for the purpose of investigation under Section 237 of the erstwhile Act by the Central Govt. whereas in the present case the opinion is only to satisfy itself as to whether the affairs of the company are being conducted in the manner prejudicial to the public interest. According to petitioner, inthe present case the opinion has been formed on the basis of two reports filed by the RD

which also contains statement of the office bearers of the club obtained during the course inspection. Those material were the basic material on the basis of which the Central Govt. was of the opinion that it should apply to the Tribunal for appropriate orders under chapter XVI of the companies Act. If there is enough material to form an opinion, sufficient enough to move an application before Tribunal under Section 241 it will suffice. We find no reason to differ with the above said view of the SG. He relied upon the decision of KB Shukla. v Unionof India to plead that at this stage there is no need for the Court to judge the propriety or the sufficiency of the opinion by objective standard. The relevant Paras from the said Judgement are extracted below:-

> ***"K.B. Shukla v. Union of India, (1979) 4 SCC 673***
>
> ***1980 SCC (L&S) 114 at page 680***
>
> ***26.*** *It is true that formation of opinion by the Central Government as to the existence of "exigencies of the Service" requiring appointment by such method, is a prerequisite for the exercise of the power. But the formation of such opinion is a matter which, in view of*

the peculiar nature of the function and the language of the provision, has primarily been left to the subjective satisfaction of the government. Indeed, it is as it ought to be. The responsibility for good administration is that of the government. The maintenance of an efficient, honest and experienced administrative service is a must for the due discharge of that responsibility. Therefore, the government alone is best suited to judge as to the existence of exigencies of such a Service, requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatic sense as a rule, the Court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective process of forming it, is vitiated by mala fides, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the legislation.

He also relied upon the Rohtas Industries case to highlight that formation of opinion is subjective existence of circumstance relevant to the inference is necessary and if proof is required it should be atleast prima facie proof. In

the present case there is enough material prima facie in the nature of inspection report and response by the members of the General Committee of the company accepting various violations. He also relied upon other judgments (NCT of Delhi v. Sanjeev, (2005) 5 SCC 181 and Satish Chandra Khandelwal v. Union of India, 1981 SCC OnLine DeL41) to say what are parameters of subjective satisfaction. The Govt. acted in good faith and found material tocome to the opinion that the affairs of the companyare being conducted in the manner prejudicial to thepublic interest and that requirement is satisfied in the present case. The decision in Rohtas Industries' case is relating to an order passed by the Central Government under Section 237 of the erstwhile Companies Act. In this case the Central Govt. is only requesting to the Tribunal to consider the petition in terms of Section 242 of the Companies Act and therefore, we hold that this decision relied upon by the respondent-club is distinguishable on facts.

According to him for the purpose of invocation of Section 241(2) subject to the satisfaction of the Government to form an opinion that the affairs of the have been conducted in the manner prejudicial to the Public Interest is enough to initiate the proceedings before this Tribunal. The question of judicial review does not arise at this stage. The opinion in this case is not only based on the two reports which have been received on the basis of information for which power is available under Section 206 of Companies Act. On the basis of the prima facie material that has been culled out during the inspection as also the details provided by the members of the administration of the company, in the course of question and answer based on relevant data recorded in the inspection report, an opinion has been formed by the Government taking various parameters into consideration. That prima facie is enough for initiating the proceedings.

The opinion of the Central Government which is contemplated under Sub Sections (3) (4) & (5) of Section

241 of the Companies Act, is not the same as in the case of opinion required under Section 241(2).

D. PUBLIC INTEREST

Another issue raised by the respondent-club is that Section 241(2) speaks about public interest and they referred to the decision in 63 Moons Technologies Limited Vs Union of India (2019) 18 SCC 401. Based on this decision it is pleaded there is no public interest because it is company which is involved.

In so far as the public interest is concerned, besides violation of the provisions of the Companies Act, namely Section 73, 76, 76-A and the Deposit Rules made there under, the Solicitor General also highlighted the fact that as per the Memorandum of Association of the Respondent company is formed for the primary objective of sports and sports related activity and various clauses of the Memorandum of Articles speaks only about such sports activity, which has a public connotation in the wider sense.

Furthermore, to enable the company in furtherance of its objects of sports and allied activities, the Government of India has granted a perpetual lease of a vast tract of land in the heart of capital of Delhi. That land is public land in the custody of the Government and it is, therefore, to be considered that if such land is being misused by the company, the same is prejudicial to public interest. Both in terms of violation of the Companies Act in relation to receiving of huge amounts in the nature of Registration fee, Penalty etc. and as well as use of the public land to enrich themselves would enable the central Government to invoke Section 241(2) of the Act in public interest.

On the plea of public interest it is pleaded that the public interest has a different connotation and different laws. It should be understood in the sense that is required of interpretation of particular provision of law and not on a General Principle and for this The Ld. SG relied upon following decision:

"Hindustan Lever Employees' Union v. Hindustan Lever Ltd., 1995 Supp (1) SCC 499 at page 508

5. *What requires, however, a thoughtful consideration is whether the company court has applied its mind to the public interest involved in the merger. In this regard the Indian law is a departure from the English law and it enjoins a duty on the court to examine objectively and carefully if the merger was not violative of public interest. No such provision exists in the English law. What would be public interest cannot be put in a strait-jacket. It is a dynamic concept which keeps on changing. It has been explained in Black's Law Dictionary as:*

> *"Something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, or as the interests of the particular locality which may be affected by the matters in question. Interest shared by citizens generally in affairs of local, State or national Government."*

It is an expression of wide amplitude. It may have different connotation and understanding when used in service law and a yet different meaning in criminal law than civil law ***and its shade may be entirely different in company law.*** *Its perspective may change when merger is of two Indian companies. But when it is with subsidiary of foreign company the consideration may be entirely different.* ***It is not the interest of shareholders or the employees only but the interest of society which may have to be examined****. And a scheme valid and good may yet be bad if it is against public interest."*

To further this stand the Ld. SG pleaded that large tract of land has been given to a non-profit company to run that club with the primary objective for sports and allied activities. This is a valuable land in the heart of capital city of New Delhi and the rent is meager sum of Rs. 1000/- (approx.) per month. This property is not only being used to enrich the club contrary to the Memorandum of Association but they have acted in violation of the Ministry of Urban Development Regulations. The land belongs to

the people. The Govt. holds the same in trust and that land has been parted to the respondent-club which is being used by them in violation of the Companies Act, Urban Development Regulations and in violation of the terms of the lease deed. If their conduct in collecting money from public and investing the same in mutual funds and earning more income out of it, is seen in the proper perspective it will be very clear that the affairs of the company are being conducted in the manner prejudicial to public interest.

A question has been raised as to what is the public interest that the Government find in this case. To address this issue we would like to invite our attention to the fact that the land is a public property held by the Government. In the year 1928 the power vested with the British, who were ruling the country and the club was formed mostly by British Citizens living in undivided India, for the sports and related activities with entrance/admission fee at a nominal rate. A large tract of land was given by way of perpetual lease by the British Governing Authorities to the British Oriented Club. At that point of time the population

density was very low and the land was available for such dispensation. In the present day every cent of land in New Delhi capital city is worth as much as the precious metal or mineral that it holds. Millions of people living in and around the capital city are hard pressed for few yards of Land for housing. In this backdrop the 27 acres of Land in the heart of Delhi is a motherload to DGC. To profit out of it in many ways as indicated by the petitioner will be nothing but travesty of Justice to the public at large.

If this is not public interest we fail to understand what else is?

Hence, the plea of no Public Interest and reference to various Judgments will have no relevance to the peculiar facts of the present case.

E. CONTENTION OF THE RESPONDENT COUNSEL WITH RESPECT TO NON-COMPLIANCE OF SECTION 458 OF THE COMPANIES ACT IN REGARD TO ISSUANCE OF INSTRUCTION TO FILE PRESENT PETITION.

During the course of hearing the Counsel for Respondents has also assailed the order dated 18.3.2020 issued by the

Petitioners directing the Regional Director to file the present petition on the ground that the same is not signed by competent authority. Nothing has been shown by the petitioner that the said order is issued in accordance with any notification issued under section 458 of the Companies Act, 2013. It is contended that the said order has not been issued by following due process as specified under the said section.

The Ld. ASG appearing for the Petitioners submits that the present petition has been filed after following due process. He further submits that the Secretary, Ministry of Corporate Affairs in his affidavit dated 28.3,2022 has made the matter clear. The Ld. ASG has also relied upon the ratio propounded in the matter of Ishwarlal Girdharlal Joshi Etc. Vs. State of Gujarat and Another (AIR 1968 SC 870). The relevant extract of the said judgment is as follows:

"4. In the High Court sub-ss. (1) and (4) of s. 17 of the Act were assailed under Arts. 14 and 19(1)(f) of the Constitution. This argument was placed at the fore front. In

this Court this submission was relegated to the end. Apparently not much faith was reposed in its potency. The other arguments urged before the High Court and found against the appellants, were pressed with vigor upon us. These arguments concern the issue of notifications invoking the shorter procedure and those notifications are questioned. ***These arguments involve the validity of the notifications as (a) unauthorised by Government, (b) without formation of the necessary opinion on relevant matters, and (c) on erroneous assumption of facts. The first ground, when amplified, is that D.P. Raval, Under Secretary, who signed the notifications under s. 6 was not duly authorised to do so under the Act and the notifications were, therefore, invalid and of no effect. The second ground is based on the assertion that there was no formation of opinion by the Government as regards urgency or that the lands were arable, and on both the points the Act requires Government to reach a decision, which fact has not been established if not disproved.*** *The third ground proceed son the meaning of the expression 'arable land'*

which, it is claimed, denotes land capable of cultivation or village but not land already under the plough. We shall now proceed to consider each point in turn.

5. Raval's authority to issue the notification under s.6 is questioned on the wording of the latter portion of that section where it is mentioned that "the declaration shall be made under the signature of a Secretary to such Government or some officer duly authorised to certify its orders." ***The argument is without substance. The word "Secretary" is not defined either in the Land Acquisition Act or the General Clauses Act so as to exclude Additional, Joint, Deputy, Under or Assistant Secretaries. If this were established, then it might be said that the word was intended to designate only the head of the secretarial department concerned with land acquisition. No such indication is available from any source.*** *Nor was it necessary to invest any particular Secretary specially under the Act for no such requirement can be spelled out from the words relied upon. On the other hand, the business of Government is regulated by the Rules of Business made under Art. 166 of the Constitution. How*

those Rules operate will be more fully considered presently when we deal with the second point. For the present it is sufficient to point out a few provisions of the Rules, Rule 7 provides:

"7. Each Department of the Secretariat shall consist of the Secretary to the Government, who shall be the official head of that Department and of such other officers and servants subordinate to him as the State Government may determine:--

Provided that-

(a) more than one Department may be placed in charge of the same Secretary;

(b) the work of a Department may be divided between two or more Secretaries."

If this Rule stood by itself, it might have been necessary to place on record evidence to establish that the work of this Department was divided among the Secretaries and how, but Rules 13 and 15 additionally provide:

"13.Every order or instrument of the Government of the State shall be signed either by a Secretary, an Additional Secretary, a joint Secretary, a Deputy Secretary, an Under Secretary or an Assistant Secretary or such other officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument."

"15.These rules may to such extent as necessary be supplemented by instructions to be issued by the Governor on the advice of the Chief Minister,"

Rule 13 specifically places all Secretaries on equality Rule 13 specifically places all Secretaries on equality for authentication of orders and instruments of Government and Rule 15 further authorises supplemental instructions which as we shall presently see were in fact issued. Thus Raval was competent to sign the declaration as a Secretary. It is not necessary to consider whether he can be treated as an officer 'duly authorised' because he already had authority by virtue of his office and rule 13 of the Rules of Business contemplates officers other than Secretaries. But if

he didnot possess the power as a Secretary he would undoubtedly have been competent as an officer duly authorised by virtue of rule 13 of the Rules of Business and that is all that s. 6requires. No further special authorisation under the Act was necessary.

11. *The High Court having before it allegations, counter allegations and denials dealt first with the legal side of the matter. Then it readily accepted the affidavits on the side of Government. If it had reversed its approach it need not have embarked upon (what was perhaps unnecessary) an analysis of the many principles on which onus is distributed between rival parties and the tests on which subjective opinion as distinguished from an opinion as to the existence of a fact, is held open to review in a court of law.* ***As stated already there is a strong presumption of regularity of official acts and added thereto is the prohibition contained in Art. 166(2). Government was not called upon to answer the kind of affidavit which was filed with the petition because bare denial that Government had not formed an opinion could not raise an issue.*** *Even if Government under advice offered to*

disclose how the matter was dealt with, the issue did not change and it was only this. Whether any one at all formed an opinion and if he did whether he had the necessary authority to do so. ***The High Court having accepted the affidavits that Raval and Jayaraman had formed the necessary opinion was only required to see if they had the competence. The High Court after dealing with many matters held that they had.***

In addition to the above, Ld. ASG has also drawn our attention to the case law relating to judgment of Hon'ble Supreme Court in the matter of A. Sanjeevi Naidu. Etc. Vs. State of Madras and Anr. (1970(1) Supreme Court cases 443). The relevant extract of judgment is as follows:

"The cabinet is responsible, to the legislature for every action taken in any of the ministries. That is the essence of joint responsibility. That does not mean that each and every decision must be taken by the cabinet. The political responsibility of the Council of Ministers does not and cannot predicate the personal responsibility of the Ministers to discharge all or any of the governmental functions.

Similarly, an individual Minister is responsible to the legislature for every action taken or omitted to be taken in his ministry. This again is a political responsibility and not personal responsibility. Even the most hard-working minister cannot attend to every business in his department. If he attempts to do it, he is bound to make a mess of his department. In every well planned administration, most of the decisions are taken by the civil servants who are likely to be experts and not subject to political pressure. The Minister is not expected to burden himself with the day-to-day administration. His primary function is to lay down the policies and programmes of his ministry while the Council of Ministers settle the major policies and programmes of the 'government. ***When a civil servant takes a decision, he does not do it as a delegate of his Minister. He does it -on behalf of the government. It is always open to a Minister to call for any file in his ministry and pass orders. He may also issue directions to the officers in his ministry regarding the disposal of government business generally or as regards any specific case. Subject to that over all power, the officers designated***

by the 'Rules' or the standing orders, can take decisions on behalf of the government. These officers are the limbs of the government and not its delegates."

In view of the affidavit dated 28.3.2022 filed by the Secretary, Ministry of Corporate Affairs as also the aforesaid judgments relied upon by the Ld. ASG, we are of the considered view that the order dated 18.3.2020 does not suffer from the infirmity as alleged by the Respondents.

F. DISCRIMINATION

Another contention raised by the Respondent-club is that the Petitioner-Union of India has chosen to take action against the Respondent-club in a discriminatory manner. It is pleaded that the conduct of the affairs of the Company, which is a club is almost identical in respect of all other clubs across the country to name a few i.e., Gymkhana Club Chennai, Gymkhana club Mumbai, Wellington Club, Tollyganj Club, Saturday Club (Para 10.4 of this order). Some of these clubs are registered under the

provisions of the Companies Act. No such action as contemplated in the present case is taken against them. This hostile discriminatory action should be viewed seriously by this Tribunal.The Govt. should be restrained from meddling in the internal affairs of the club and its Members. On this plea, Ld. ASG, Shri K. N. Natarajan stated in definite terms, that,"there is no question of discrimination of any kind against any club including the Respondent club." He further stated that whichever club is a company registered under the Companies Act, if the members of the club engaged inoppression or mismanagement as indicated in Section 241(1) or the affairs of the company is conducted in the manner prejudicial to the public interest as set out in Section 241(2) it will be looked into on the basis of complaints or otherwise if there is a case of activities prejudicial to public interest or prejudicial or oppressiveto Members or prejudicial to the interest of the company, the Central Govt. will certainly take action againstall such clubs without discrimination. The provisions of the Companies Act have to be strictly followed in respect of all clubs if the

mandate of the provisions of the Companies Act is breached. We record the submissions of Ld. ASG affirmatively.

G. One argument raised by Mr. Krishnendu Dutta, Ld. Sr. Counsel is that the Directors of the Company are answerable only to the general body. He placed reliance on the decision of the Hon'ble Supreme Court in the case of ***Life Insurance Corporation of India v. Escorts Ltd. and Ors.,*** (1986) 1 Supreme Court Cases 264, para 95. Para 95 of the said judgment reads as under :-

"A Company is, in some respects, an institution like as State functioning under its "basis Constitution" consisting of the Companies Act *and the memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes "the members in general meeting" and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government, subject to a measure of control by Parliament through its power to force a change of Government. Like the Government, the Directors will be answerable to the 'Parliament' constituted by the general*

meeting. But in practice (again like the Government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it clearly would not be practicable (except in the case of one or two - man - companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as general law expressly provides must be exercised in general meeting. Gower's Principles of Modern Company Law. Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as section 31 *of the Companies Act provides that an alteration of an article would require a special resolution of the company in general meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the Government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the* Companies Act, *there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognises that the analogy of the legislature and the*

executive in relation to the members in general meeting and the Directors of a Company is an over-simplification and states "to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution." As already noticed, the only effective way the members in general meeting can exercise their control over the Directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the Directorate and appoint others in their place. The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a director and appoint another."

According to him the Members of the governing council will attend day to day administration of the Company and in exercise of that power various acts were done and that should not be called in question. The Government should not interfere in the internal affairs of the Company. This argument is fallacious because the action taken by the petitioner is by invoking the provisions of the Companies Act and every action taken is based on specific provisions of law like ordering inspection, and based on the

inspection report, enquiry of the Directors of the Company and thereafter initiating proceedings in accordance with the provisions of the Companies Act hence, the decision has no relevance to the facts of the present case.

H. The respondent relied upon in the case of Delhi Golf Club Employees v. Union of India [(2021 280 DLT 250] plead that Delhi Golf Club is not performing the functions of the State it only provides facilities for members. This judgment has no relevance because in this case the action was taken for violations of the provisions of the Companies Act and violations of Memorandum of Association and Articles of Association.

FINDINGS OF THE TRIBUNAL

What connects the dots? In the instant case, the land of the Government held in trust for the people of this country was granted by the way of a perpetual lease in the large extent to the respondent company in question. So long as the leased land was put to use for the purposes mentioned in the Memorandum of Association, the primary objective being sports and related activities which also serves the

public interest or the public cause there appears to be no problem with the Govt.

A few members as recorded in the inspection report have flagged the improper working of the club in question forcing the govt. to order inspection. In the course of inspection, several issues came out in the fore front and those issues of mismanagement, irregularities of grave nature and conduct of the affairs contrary to Memorandum of Association, AOA and the Companies Act, 2013 became evident in detail in the inspection report. Statements of General Council members of the club justified most of the issues identified in the course of inspection. The facts and figures stated in the inspection report highlighted gross irregularities committed by the company and the persons who are conducting the affairs of the company. The Govt. initially thought it fit to go into the allegations and in the course of inspection various acts of mismanagement were unearthed. What has been unearthed in the course of inspection is that for the period beginning from 2014-15 onwards the club adopted the method of increasing the registration fee, additional

registration fee, application processing fee etc. and invested this amount on the interest bearing investment/mutual funds and the amount of Income generated thereon become part of the income of the respondent club. On one hand the inspection report states that amount received as registration fee was subsumed as income. The counsel for the respondent club pleads that it is shown as a liability and has been refunded as and when desired by the person to make the repayment. For some period, it has treated as an income and for some period as a liability. In any event we find such a course of action deserves to be treated only as a method adopted to enhance the finances of the club for the benefit of the members at the cost of third party because the amounts were received as interest free refundable deposits. The increase in the number of members namely, Green cards and UCP which we find in Annexure-B & C of Volume-XIII clearly establish the allegation that the General Council has been increasing the numbers to enhance its revenue by way of registration fee and penalty which clearly is a case of breach of the MOA and the AOA. Annexure-H

notice at volume V clearly establishes that even for dependents green cards are issued for the age 21 onwards upto the age of 56 years over and above, collecting penalty and this clearly establish a case of an intention to unjustly enrich themselves and grant membership so as to allow them to use club even though those persons failed to apply immediately on attaining the age of 21 years. The two reports and the answers given by the General Committee members make it evident that the affairs of the company have been mismanaged. The affairs of the company have not been properly handled besides being prejudicial to public interest as we have held earlier. Even the manner in which the amounts have been handled and utilized for the benefit of the members attracts violation of the Companies Act and therefore, it is prejudicial to the interest of the company as well. In this case the members of the club Permanent, Temporary, Garrison, Casual and others are people of repute and the affairs of the company run by such persons should be on much higher pedestal that is required by ordinary citizens. Looking at the conduct of the affairs of the company we are of the clear opinion that

on the basis of the report that for the last five years period there is a clear case of increase in the number of Green cards and UCPs with an intention to collect the registration fee and penalty and also collect funds from outside persons who do not become a member for long number of years. The conduct of the general council to device methods to collect more amounts in the name of registration fee and penalty clearly establishes a case of conduct prejudicial to interest of the company and against public interest. The further act of investing the amounts in mutual funds and taking the benefit for the use of the company also does not augur well for a club of this nature. Assuming that this amount was kept as liability in respect of new entrants because it is taken as interest free deposit, the club while returning the same cannot justify in retaining the interest components. This will amount to unjust enrichment for no justifiable reason. We are compelled to state so because this company as per the MOU is non-profit company and its primary objective of sports and sports related activities which is nothing but a public interest.

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

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

report and it is unsigned was taken by the respondent but that was proved to be false by the petitioner by supplying a letter of the respondent company addressed to the individual members referring to very same M/s Deloitte Touche Tohmatsu India LLP.Report which report has highlighted various irregularities and mismanagement of the affairs of the company.

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

> *"In my opinion the allegations in the said paragraphs of the affidavit do not provide any ground for interference nor do they disclose a state of urgency, which would justify interference by an order for supersession of the board of directors of the company. While alleging that in the event of withdrawal of the guarantee given by him the company will be wound up being unable to pay its debts, the applicants have said nothing to show or establish that a winding up order*

would unfairly prejudice them or other supporting members of the company. It is not enough for an applicant to allege that the company's affairs are being conducted in such a manner that a winding up order would be appropriate, but he must also show that such an order would unfairly prejudice the applicant and other members. No such grounds have been made out of the possibility of prejudice to the applicants or supporting members."

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

refunded based on decision of the GC meetings, this speaks for itself.

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

to collect amounts in breach is a clear case where the Company requires to be wound up. However, the petitioner have only indicated in the prayer that the petition is filed for the purpose of correcting the respondent company in terms of the MOA and therefore, this Tribunal is of the view that at the present there is no requirement of passing an order for winding up.

The documentation of inspection is voluminous and it may need further probe for in-depth understanding of the mismanagement of the Club over the period of time. Hence, the prayer in terms of final relief is justified.

We, therefore, hold that it will be just and equitable to allow the prayer of the Union Government to nominate 15 persons to be appointed as Directors on the General Committee of the respondent no. 1 company to manage the affairs of the company in order to function as per the terms of the memorandum and Articles of Association.

To conclude, we find that there is sufficient material for holding that it is a case of mismanagement for the affairs of the company and the general council members of each financial year have been propagating the same violations year after year and some have been continuing from one period to another giving credence to the stand ofthe Govt. that the club is run in the nature of "*parivadvaad*" which cannot be countenanced in the light of provisions of the Companies Act. The continued conduct of the governing body of the company whose acts are prejudicial to the public interest and against the interest of the company justify that the company of this kind should be wound up. However, keeping in mind the inspection report and the nature of action proposed contemplated in the petition we are inclined to invoke the power under Section 242 (1) & (2) of the Companies Act, 2013.

ORDER

In view of our findings and opinion as above;

1. The petition is allowed and the Central Government is permitted to nominate 15 number of persons to be appointed as Directors on the General Committee of Respondent No. 1-Company and manage the affairs of the Company in accordance with the memorandum and Articles of Association and the Companies Act, 2013.

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

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

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

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

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

Petition stands allowed in above terms and all Interlocutory applications stand closed.

SD/-

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)

SD/-

(RAMALINGAM SUDHAKAR)
PRESIDENT

Vineet/Deepak