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

% *Date of Decision: 15th April, 2025*

\+ CS(OS) 210/2025 & I.A. 8546/2025

SURAJ PRAKASH ARORA & ORS. .....Plaintiffs

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

versus

ROSHANARA CLUB LIMITED & ORS. .....Defendants

Through: Mr. Manik Dogra, Senior Advocate with Mr. Lalltaksh Joshi, Mr. Dhruv Pande, Mr.Imon Benerjee and Ms. Ananya Sanjiv Saraogi, Advocates for Defendant No.1.
Mr. Santosh Kumar Rout, Standing Counsel with Ms. Dharna Veragi, Mr. B.N. Mishra and Ms.Shilpa Chaursia, Advocates for BoB/ Defendant No.14.
Mr. Arun Aggarwal and Mr. Shivam Saini, Advocates also for BoB/Defendant No.14.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

1. Plaintiffs are stated to be veteran members of Roshanara Club Limited ('RCL'), a Public Limited Company incorporated under Companies Act, 1956 ('1956 Act'). RCL was established as a not-for-profit charitable company promoting commerce, art, science and charity under Section 25 of the 1956 Act and is now governed under Section 8 of Companies Act, 2013 ('2013 Act'). Present suit has been filed by the Plaintiffs seeking the following reliefs against Defendants No. 2 to 10:

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

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

3. Declare that all actions, decisions, and transactions undertaken by Defendant Nos. 2-10 post 01.10.2023, in the name of Roshanara Club Limited, assuming themselves to be members of the Executive/Managing Committee of RCL, are null and void, having been undertaken without authority, and are consequently non-binding and of no legal effect upon RCL, being void ab initio, and/or

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

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

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

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

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

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

10. Declare that Defendant Nos. 2 to 10 have committed acts of misfeasance and malfeasance with regard to the resources of Roshanara Club Limited (RCL) and have illegally and unauthorizedly withdrawn amounts from the bank accounts. Direct that the withdrawn amounts be restored by issuing recovery order from each and every Defendant, who shall be jointly and severally liable for the same, and/or

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

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

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

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

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

16. Pass a decree of awarding Cost of the present litigation."

2. As per the averments in the plaint, Defendants No. 2 to 10 were elected as members of Executive Committee of RCL for one year from 01.10.2022 till 30.09.2023 in terms of Clause 43 of Memorandum of Association ('MoA') dated 15.08.1922. The allegations against the said Defendants are that despite the expiry of their term, Defendants are wrongfully continuing as members of the Executive Committee and are

illegally occupying management positions. Plaintiffs also allege misappropriation of assets; financial exploitation; wrongful financial transactions; unauthorized deals with DDA in respect of 23 acres of RCL land without members' consent; illegal withdrawal of over Rs.5 crores from bank accounts, post-expiry of the tenure, without transparency or audit; failure to hold Annual General Meeting due by 30.09.2023; impersonation as RCL office bearers in legal proceedings including false claims to being the Secretary etc. In a nutshell, the allegations are of oppression and mismanagement of RCL.

3. Defendant No.1/RCL has raised a preliminary objection to the maintainability of the suit and it is asserted that this Court has no jurisdiction to try and entertain the suit in view of the absolute bar contained in Section 430 of 2013 Act and therefore, the plaint be rejected at the threshold. It was argued that perusal of the prayer clause *ex-facie* manifests that each of the reliefs sought by the Plaintiffs relates to allegations of oppression, misfeasance and mismanagement of the affairs of RCL and therefore falls within the jurisdiction of National Company Law Tribunal ('NCLT') under Sections 241 and 242 of the 2013 Act. It was urged that in fact, Plaintiffs themselves admit in paragraph 6 of the plaint that the reliefs sought are covered under Sections 241 and 242 of the 2013 Act but only because they do not meet the threshold of Section 244 i.e. 10% of strength or 100 members of RCL, Plaintiffs have approached this Court and not NCLT, which is also a fallacious ground.

4. It was argued that prohibition under Section 430 of the 2013 Act is absolute as it expressly stipulates an express bar on jurisdiction of this Court to entertain any suit or proceedings in respect of any matter which NCLT is

empowered to determine under the 2013 Act and admittedly, subject matter of present suit is covered under provisions of Sections 241 and 242 of the said Act. In support of this plea, learned Senior Counsel placed reliance on the judgment of Co-ordinate Bench of this Court in ***SAS Hospitality Pvt. Ltd. And Another v. Surya Constructions Pvt. Ltd. and Others., 2018 SCC OnLine Del 11909,*** wherein the plaint was rejected on account of express bar under Section 430 of the 2013 Act, holding that powers of NCLT are broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 of CPC. NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies. Court, in turn, relied on the judgments of the Supreme Court in ***Union of India v. R. Gandhi, President, Madras Bar Association, (2010) 11 SCC 1*** and ***Madras Bar Association v. Union of India and Another, (2015) 8 SCC 583.*** Reliance was also placed on the judgment of the Co-ordinate Bench in ***Delhi & District Cricket Association v. Sudhir Kumar Aggarwal and Others, 2020 SCC OnLine Del 1223,*** wherein it was held that NCLT has been specifically conferred power to address grievances relating to affairs of the company, which may be prejudicial or oppressive to any member of the company or issues of appointment of Directors and that Civil Court will have no jurisdiction in these matters and significantly, even in this case, there were only two Plaintiffs who did not meet the required threshold under Section 241 of the 2013 Act.

5. It was further argued that this Court has the power and jurisdiction to reject the plaint at the outset if it does not meet muster and the suit is barred under Section 430 of the 2013 Act and need not wait for the appearance of the Defendant and/or for filing an application for rejection of the plaint

under Order VII Rule 11 CPC. Emphasis is laid on the expression 'shall' in Order VII Rule 11(d) of CPC to bring home the point that where the suit appears from the statement in the plaint to be barred by law, the plaint shall be rejected and there is no discretion with the Court. In ***Sopan Sukhdeo Sable and Others v. Assistant Charity Commissioner and Others, (2004) 3 SCC 137,*** the Supreme Court held that Rule 11 of Order VII CPC casts a duty on the Court to perform its obligations in rejecting the plaint when the same is unsustainable on account of disability under any of the categories of Rule 11, without intervention of the Defendant. In ***Patil Automation Private Limited and Others v. Rakheja Engineers Private Limited, (2022) 10 SCC 1,*** the Supreme Court held that Order VII Rule 11 CPC does not provide that Court can reject a plaint only on an application and in fact the provision is itself silent of any such requirement. Since summons have to be issued only in a duly instituted suit, in a case where the plaint is barred under Rule 11(d) of Order VII, the stage for consideration begins when the Court can reject the plaint under Order VII Rule 11 CPC. Reliance was also placed on a judgment of this Court in ***Jaiveer Singh Virk v. Sir Sobha Singh & Sons Private Limited, 2020 SCC OnLine Del 498,*** where the Court observed that once the Legislature in its wisdom deemed it appropriate that less than prescribed number of shareholders or those holding less than the prescribed number of shares should not be permitted to initiate legal proceedings with respect to management and affairs of the company, it would be travesty of Statute to hold that less than prescribed number of shareholders, though not entitled to approach NCLT, can interfere with the Management of the company's affair by approaching the Civil Court.

6. Responding to the preliminary objection raised by Defendant No. 1, Mr. Mohit Chaudhary, learned counsel for the Plaintiffs submits that the suit is maintainable and summons be issued to the Defendants after registering the plaint as a suit. It was argued that in case of companies governed by provisions of Companies Act, 2013, including RCL which is a Section 8 company, dispute redressal mechanism is provided in Section 241 of the 2013 Act, which enables filing of application to NCLT for relief in cases of oppression etc. and sub-Sections (1) to (3) detail who can apply under the said provision. However, right to apply under Section 241 is not absolute and there is a threshold provided under Section 244 of the 2013 Act. For a company with a share capital, the eligibility to apply arises when there are 100 shareholders or 1/10th strength of total members while for a company not having a share capital, the eligibility requires a strength of not less than 1/5th of the total number of its members. In this light, it was urged that the present suit is filed by five members of RCL out of 4000 members and as Plaintiffs do not meet the threshold of Section 244, suit is maintainable. Moreover, Section 9 of CPC provides that Courts shall have jurisdiction to try all suits of civil nature except suits of which their cognizance is either expressly or impliedly barred.

7. It was vehemently argued that a bare look at the provisions of Sections 241 and 242 makes it clear that power under Section 430 will not apply to the case in hand as the threshold is not met and therefore, at this juncture, two remedies are available to the Plaintiffs i.e. either to approach NCLT or file a suit which means that this Court and NCLT have concurrent jurisdiction and therefore availability of one remedy will not preclude the other and provision of Section 430 cannot impose an absolute bar to oust

Civil Court's jurisdiction. Division Bench of this Court in ***Jai Kumar Arya & Ors. v. Chhaya Devi & Anr., 2017 SCC OnLine Del 11436,*** has held that provisions which operate to exclude ordinary jurisdiction of Civil Courts are to be strictly construed and exclusion of such jurisdiction is not to be lightly inferred and that principle of exclusion of jurisdiction is never absolute.

8. In the present case, in any event, Defendant No.1 cannot take a plea of absolute bar by Section 430 inasmuch as the remedy before NCLT is not available in the absence of meeting the threshold in terms of Section 244. No doubt, proviso to Section 244 empowers NCLT, on an application made in this behalf, to waive all or any of the requirements specified in clause (a) or clause (b) so as to enable members to apply under Section 241 but there is no certainty that such a waiver will be granted and if it is not granted on an application made by the Plaintiffs, they will have no remedy but to fall back on a remedy before this Court. Therefore, Defendant No.1 cannot raise the objection on maintainability and oust the Plaintiffs from the jurisdiction of the Civil Court on a hypothesis that NCLT shall exercise the power in favour of the Plaintiffs to waive the requirement of the given minimum strength. Learned counsel strenuously pointed out to an order passed by NCLT on 29.11.2024 in CP No.38/ND/2024, where RCL was Defendant No.1 and where NCLT declined to grant waiver to stress on the point that approaching NCLT will be a futile exercise. This order was also highlighted to assert that when parties therein approached NCLT, RCL took a conflicting stand and opposed the grant of waiver as the threshold of requisite strength of 1/5th members was not met.

9. Learned counsel also relied on the judgment of the Division Bench of the Calcutta High Court in case of ***Eastern Indian Motion Picture***

Association and Others v. Milan Bhowmik and Others, 2024 SCC OnLine Cal 1325, where in a similar situation it was held that the learned Single Judge had rightly declined to reject the plaint since the remedy of approaching NCLT is conditional upon grant of application by the Tribunal to waive the eligibility requirement and even if Plaintiffs did approach NCLT, there was no guarantee that the Tribunal would allow the application and in the event the application was rejected, Plaintiffs will have to approach the Civil Court. It was observed that Plaintiffs were justified in taking recourse to suit remedy which existed, rather than one which did not exist but could come into existence on fulfilment of uncertain conditions.

10. On the judgments cited by learned Senior Counsel on behalf of Defendant No. 1, learned counsel for the Plaintiffs argued that as to the legal proposition laid down in ***SAS Hospitality Pvt. Ltd. (supra),*** there was no quarrel that there is a bar in Section 430 in respect of entertaining any suit or proceedings which NCLT is empowered to determine and the powers are broader than those by a Civil Court under Section 9 of CPC or that NCLT is a specialised Tribunal constituted for purpose of speedier and effective regulation of affairs of the company, however, present is not a case where the absolute bar will apply for lack of the initial threshold to apply under Section 241 read with Section 244 of the 2013 Act. The judgment in ***Delhi & District Cricket Association (supra)*** has no applicability to the present case as there was no argument on the issue of initial threshold as is in the present case. Similarly, judgment in ***Jaiveer Singh Virk (supra)*** does not relate to the threshold under Section 244 and moreover, it was a case of the shareholder of a profit making company and not a Section 8 company, which is a 'no profit no loss' entity. Last but not the least, it was argued that

in the case of ***Firm Seth Radha Kishan (Deceased) Represented by Hari Kishan and Others v. Administrator, Municipal Committee, Ludhiana, 1963 SCC OnLine SC 138***, the Supreme Court held that a Statute expressly or by necessary implication can bar the jurisdiction of Civil Courts in respect of a particular matter but mere conferment of special jurisdiction on a Tribunal in respect of the said matter does not by itself exclude the jurisdiction of Civil Courts.

11. Mr. Manik Dogra, learned Senior Counsel, arguing in rejoinder reiterated the observations of this Court in ***SAS Hospitality Pvt. Ltd. (supra)*** and ***Delhi & District Cricket Association (supra)***. Distinguishing the judgment of the Division Bench in ***Jai Kumar Arya (supra),*** it was argued that the judgment is distinguishable on facts and circumstances of the present case and moreover in all the three judgments i.e. ***SAS Hospitality Pvt. Ltd. (supra), Delhi & District Cricket Association (supra)*** and ***Jaiveer Singh Virk (supra)***, Co-ordinate Benches of this Court have referred to the said judgment and distinguished it holding that in matters where NCLT has jurisdiction, Civil Court will not exercise the jurisdiction and plaint ought to be rejected.

12. It was further argued that no doubt, there is a threshold laid down to apply for seeking relief against oppression etc. but the power to waive the threshold eligibility requirements under proviso to Section 244(1)(b) of the 2013 Act also lies with NCLT. It is not for the Plaintiffs to pre-judge or speculate that if and when, waiver is sought for applying under Section 241, the same shall be declined by NCLT. Assuming for the sake of argument that NCLT rejects the application for waiver under proviso to Section 244(1)(b) of the 2013 Act, the remedy is not to approach the Civil Court but

to file a statutory apply under Section 421 of the 2013 Act before National Company Law Appellate Tribunal ('NCLAT').

13. Heard learned counsel for the Plaintiffs, learned Senior Counsel for Defendant No. 1 and learned counsels for Defendnant No.14 and examined their rival contentions.

14. In view of the preliminary objection raised by Defendant No. 1 to the maintainability of the suit, the question that needs to be considered is whether this Court has the jurisdiction to entertain the suit, in light of provisions of Section 430 of the 2013 Act. A connected issue was also raised and needs determination as to whether the plaint can be rejected at the threshold in the absence of a formal application under Order VII Rule 11 CPC.

15. There is merit in the contention of Defendant No. 1 that under Order VII Rule 11(d) of CPC, a plaint shall be rejected where the suit appears from the statement in the plaint to be barred by law and Court need not wait for the Defendant to appear on issuing summons and/or on appearance of the Defendant to file a formal application for rejection of plaint. In ***Sopan Sukhdeo Sable (supra),*** the Supreme Court held that Rule 11 of Order VII CPC lays down an independent remedy made available to the Defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate any stage when the objection can be raised and also does not say in express terms about the filing of a written statement. The word 'shall' used in the Rule clearly implies that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in four clauses of Order VII Rule 11 CPC, even without

intervention of the Defendant. In ***Patil Automation Private Limited (supra),*** the Supreme Court held that Order VII Rule 11 CPC does not provide that the Court is to discharge its duty of rejecting the plaint only on an application. The Rule is in fact silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where plaint is barred under Rule 11(d), the stage begins at that time when Court can reject the plaint. Relevant passage from the judgment is as follows:-

> ***"94.3.*** *Order 7 Rule 11 does not provide that the court is to discharge its duty of rejecting the plaint only on an application. Order 7 Rule 11 is, in fact, silent about any such requirement. Since summon is to be issued in a duly instituted suit, in a case where the plaint is barred under Order 7 Rule 11(d), the stage begins at that time when the court can reject the plaint under Order 7 Rule 11. No doubt it would take a clear case where the court is satisfied. The Court has to hear the plaintiff before it invokes its power besides giving reasons under Order 7 Rule 12. In a clear case, where on allegations in the suit, it is found that the suit is barred by any law, as would be the case, where the plaintiff in a suit under the Act does not plead circumstances to take his case out of the requirement of Section 12-A, the plaint should be rejected without issuing summons. Undoubtedly, on issuing summons it will be always open to the defendant to make an application as well under Order 7 Rule 11. In other words, the power under Order 7 Rule 11 is available to the court to be exercised suo motu. (See in this regard, the judgment of this Court in Madiraju Venkata Ramana Raju [Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy, (2018) 14 SCC 1].)"*

16. In light of the binding dictum of the Supreme Court in the aforementioned judgments, there can be no debate that at the threshold itself, the Court can reject a plaint where it is barred on account of any infirmity or disability under Rule 11 of Order VII CPC and as observed by the Supreme Court, it is in fact that the duty and obligation of the Court to examine if the plaint has any infirmity based on the averments in the plaint, before issuing summons and therefore, there is no requirement of waiting for a formal

application under Order VII Rule 11 CPC in that event and contention of the Plaintiffs to this extent merits rejection.

17. Coming to the only other issue of bar under Section 430 of the 2013 Act to entertain the suit, I may first examine the provision which is extracted hereunder, for ready reference:-

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

18. Clearly, Section 430 of the 2013 Act on a plain reading bars the Civil Court from entertaining any suit or proceeding in respect of any matter which NCLT is empowered to determine by or under the Companies Act, 2013 or any other law for the time being in force. This is a settled position and in this context, I may only refer to judgment of the Division Bench in ***Jai Kumar Arya (supra)*** and also of the Co-ordinate Benches of this Court in ***SAS Hospitality Pvt. Ltd. (supra)*** and ***Delhi & District Cricket Association (supra).*** There is also no quarrel with the proposition that provisions such as Section 430 which operate to exclude the ordinary jurisdiction of Civil Courts are to be strictly construed and exclusion of such jurisdiction is not to be lightly inferred or that principle of exclusion of jurisdiction is never absolute. While so observing, the Division Bench of this Court in ***Jai Kumar Arya (supra),*** culled out certain principles from the judgments of the Supreme Court and observed that the primary indicia which would govern determination of the question whether jurisdiction of Civil Courts is, in any particular case, ousted or not would appear to be:

(i) whether the decision of the Tribunal, on which jurisdiction is conferred, is also attributed finality by the Statute; and (ii) whether such Tribunal can do what the Civil Court would be able to do and is, therefore, an efficacious alternative to the Civil Court. Having so held, Division Bench further noted that even when these two indicia stand satisfied, the jurisdiction of the Civil Court would continue to exist where the action, complained against, violates the Statute.

19. Taking note of these observations, Co-ordinate Bench of this Court in ***SAS Hospitality Pvt. Ltd. (supra),*** emphasised that wherever NCLT has jurisdiction to go into allegations pertaining to oppression or mismanagement of the company or where conduct of the affairs of the company is prejudicial to the interest of the company under Section 241 of the 2013 Act, jurisdiction of Civil Court will be excluded by virtue of Section 430 of the 2013 Act. It was also observed that powers of NCLT are extremely broad and are more than what a Civil Court can do under Section 9 CPC. NCLT is a specialised Tribunal constituted for speedier and effective regulation of the affairs of the company. The Court in turn relied on the observations of the Supreme Court in ***R. Gandhi, President, Madras Bar Association (supra)*** and ***Madras Bar Association (supra),*** in the context of the creation of the NCLT and NCLAT by a specific amendment in the law. Relevant passages of the judgment are as follows:-

> *"15. The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceedings" which the NCLT is "empowered to determine". The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos. 5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant*

Nos. 5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No. 1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to regulate the affairs of the company.

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

17. Moreover, the powers of the NCLT being broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 CPC. The NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies. As observed by the Supreme Court in Union of India v. R. Gandhi, (2010) 11 SCC 1 (hereinafter, 'R. Gandhi') and thereafter, in Madras Bar Association v. Union of India, (2015) 8 SCC 583 (hereinafter, 'Madras Bar Association') the NCLT has been created by a specific amendment in the law. The constitution of the NCLT has been upheld. The relevant observations in the said R. Gandhi (supra) is set out below:

> *"33. The argument that there cannot be 'whole-sale transfer of powers' is misconceived. It is nobody's case that the entire functioning of courts in the country is transferred to Tribunals. The competence of the Parliament to make a law creating Tribunals to deal with disputes arising under or relating to a particular statute or statutes cannot be disputed. When a Tribunal is constituted under the Companies Act, empowered to deal with disputes arising under the said Act and the statute substitutes the word 'Tribunal' in place of 'High Court' necessarily there will be 'whole-sale transfer' of company law matters to the Tribunals. It is an inevitable consequence of creation of*

Tribunal, for such disputes, and will no way affect the validity of the law creating the Tribunal."

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

"11. First of all the creation of Constitution of NCLAT has been specifically upheld in 2010 judgment. It cannot be denied that this very Petitioner had specifically questioned the Constitutional validity of NCLAT in the earlier writ petition and even advanced the arguments on this very issue. This fact is specifically noted in the said judgment. The provision pertaining to the constitution of the Appellate Tribunal i.e. Section 10FR of the Companies Act, 1956 was duly taken note of. Challenge was laid to the establishments of NCLT as well as NCLAT on the ground that the Parliament had resorted to tribunalisation by taking away the powers from the normal courts which was essentially a judicial function and this move of the Legislature impinged upon the impartiality, fairness and reasonableness of the decision making which was the hallmark of judiciary and essentially a judicial function. Argument went to the extent that it amounted to negating the Rule of Law and trampling of the Doctrine of Separation of Powers which was the basic feature of the Constitution of India. What we are emphasising is that the petitions spearheaded the attack on the constitutional validity of both NCLT as well as NCLAT on these common grounds. The Court specifically went into the gamut of all those arguments raised and emphatically repelled the same.

12. The Court specifically rejected the contention that transferring judicial function, traditionally performed by the Courts, to the Tribunals offended the basic structure of the Constitution and summarised the position in this behalf as under: We may summarize the position as follows:

(a) A legislature can enact a law transferring the jurisdiction exercised by courts in regard to any specified subject (other than those which are vested in courts by express provisions of the Constitution) to any tribunal.

(b) All courts are tribunals. Any tribunal to which any existing jurisdiction of courts is transferred should also be a Judicial Tribunal. This means that such Tribunal should have as members, persons of a rank, capacity and status as nearly as possible equal to the rank, status and capacity of the court which was till then dealing with such matters and the members of the Tribunal should have the independence and security of tenure associated with Judicial Tribunals.

(c) Whenever there is need for 'Tribunals', there is no presumption

that there should be technical members in the Tribunals. When any jurisdiction is shifted from courts to Tribunals, on the ground of pendency and delay in courts, and the jurisdiction so transferred does not involve any technical aspects requiring the assistance of experts, the Tribunals should normally have only judicial members. Only where the exercise of jurisdiction involves inquiry and decisions into technical or special aspects, where presence of technical members will be useful and necessary, Tribunals should have technical members. Indiscriminate appointment of technical members in all Tribunals will dilute and adversely affect the independence of the Judiciary.

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

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

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

xxx *xxx* *xxx*

25. In Jai Kumar Arya (supra), a Division Bench of this Court, dealing with the bar under Section 430 of the 2013 Act, held as under:

> *"99. While examining the merits of these rival contentions, we are fully aware of the interpretative principle, now trite in law, that provisions which operate to exclude the ordinary jurisdiction of civil courts are to be strictly construed, and exclusion of such jurisdiction is not to be lightly inferred. The principle of exclusion of jurisdiction is, moreover, never absolute."*

26. The bar under Section 430 of the 2013 Act has, therefore, to be strictly construed and there can be no doubt about that. The Division Bench also considered Dhulabai v. State of M.P., AIR 1969 SC 78 (hereinafter, 'Dhulabai'), and held as under:

> *"101. As, perhaps, the most authoritative pronouncement on the issue, the Constitution Bench of the Supreme Court, in Dhulabhai v. State of M.P., AIR 1969 SC 78, set out the following 7 clear principles (of which only the first and last are really relevant to the present case), to be applied for deciding whether a suit was barred under Section 9 of the CPC:*
>
> > *"(1) Where the statute gives a finality to the orders of the special Tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory Tribunal has not acted in conformity with the fundamental principles of judicial procedure.*
> >
> > *(2) Where there is an express bar of the jurisdiction of the court, an examination of the scheme of the particular Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil court.*
> >
> > *Where there is no express exclusion the examination of the remedies and the scheme of the particular Act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case it is necessary to see if the statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by the Tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.*
> >
> > *(3) Challenge to the provisions of the particular Act as ultra vires*

cannot be brought before Tribunals constituted under that Act. Even the High Court cannot go into that question on a revision or reference from the decision of the Tribunals.

(4) When a provision is already declared unconstitutional or the constitutionality of any provision is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the Limitation Act but it is not a compulsory remedy to replace a suit.

(5) Where the particular Act contains no machinery for refund of tax collected in excess of constitutional limits or illegality collected a suit lies.

(6) Questions of the correctness of the assessment apart from its constitutionality are for the decision of the authorities and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in the particular Act. In either case the scheme of the particular Act must be examined because it is a relevant enquiry.

(7) An exclusion of the jurisdiction of the civil court is not readily to be inferred unless the conditions above set down apply."

(Emphasis supplied)"

27. The Division Bench in Jai Kumar Arya (supra), after applying Dhulabai (supra), lays down the following test:

"102 From the above authorities, the primary indicia, which would govern determination of the question of whether the jurisdiction of civil courts is, in any particular case, ousted, or not, would appear to be (i) whether the decision of the tribunal, on which jurisdiction is conferred, is also attributed finality by the statute, and (ii) whether such tribunal can do what the civil court would be able to do and is, therefore, an efficacious alternative to the civil court. Even when these two indicia stand satisfied, the jurisdiction of the civil court would continue to exist where the action, complained against, violates the statute.

28. If these two tests are applied i.e., as to whether the Tribunal's order is attributed finality and as to whether the Tribunal would be able to do what a Civil Court could do, it is clear that an order under Section 59 of the 2013 Act has specific consequences for non-compliance. The order is appealable to the appellate tribunal. The Tribunal has to apply the principles of natural justice. Under Section 242(2)(d) of the 2013 Act, the Tribunal can impose restrictions on the transfer or allotment of the shares of the company. It can also pass an interim order under Section 242(4) of the 2013 Act. Consequences for non-compliance have also been provided under Section 242(4) of the 2013 Act. The Plaintiffs have a right to apply

Section 242 of the 2013 Act as they own 99.96% shareholding which has been diluted to 21.44%. Any member with more than 1/10 of the issued share capital can approach the Tribunal. Thus, even as per Jai Kumar Arya (supra), the order being one, which can be passed under Section 242 of the 2013 Act, the NCLT has the jurisdiction. In Jai Kumar Arya (supra), the Court was concerned with the power of removal of directors, which is distinct from the disputes involved in the present case. However, by applying the tests laid down therein, it is clear in the facts of this case that involving issues relating to allotment of share capital, alteration and rectification of the register of members, the NCLT is 'empowered to decide' -leading to the conclusion that this Court has no jurisdiction."

20. In ***Delhi & District Cricket Association (supra),*** this Court was considering an appeal under Section 104 read with Order 47 Rule 1 CPC impugning an order of the Trial Court in a suit where two applications, one under Order VII Rule 10 CPC and the second under Order VII Rule 11 CPC were rejected. Appellant sought rejection of the plaint under Order VII Rule 11 CPC on account of lack of jurisdiction in view of the unequivocal bar placed on Civil Courts by Section 430 of the 2013 Act. Relying on the judgment of the Supreme Court in ***Shashi Prakash Khemka (Dead) Through Legal Representatives and Another v. NEPC Micon (Now NEPC India Limited) and Others, (2019) 18 SCC 569;*** judgment of this Court in ***SAS Hospitality Pvt. Ltd. (supra);*** as also the judgment of the Madras High Court in ***Viji Joseph v. P. Chander and Others, 2019 SCC OnLine Mad 10424,*** and on a comparison of the reliefs sought in the suit as also examining relevant Sections of the 2013 Act detailing the powers of NCLT, Court came to a conclusion that Sections 241, 242 and 244 of the 2013 Act deal with all issues which were raised in the suit and hence, Trial Court ought to have decided the issue of maintainability of the suit first. It was observed by the Court that NCLT has been specifically empowered to address grievances relating to the affairs of the company which may be

prejudicial or oppressive to any member of the company etc. and the scope of Section 430 being vast, jurisdiction of the Civil Court will be barred when power to adjudicate vests in the Tribunal. Relevant paragraphs are as follows:-

> *"18. The learned Senior Advocate for the appellant submits that the Companies Act and the National Company Law Tribunal Rules, 2016, are together a complete code. Ample power has been provided to the NCLT - akin to a civil court - to deal with all issues for which powers have been conferred upon the Tribunal. For instance Rule 11 deals with inherent powers of the NCLT to conduct a full trial, in order to prevent abuse of justice; Rule 34 specifically allows for determination of procedure not provided for already in accordance with the principles of natural justice; Rules 39 and 40 provide for production of evidence; Rule 43 empowers the Tribunal to call for further information or evidence; Rule 47 provides for administration of oath to witnesses; Rule 51 gives power to regulate procedure; Rules 56 and 57 deals with the execution of orders passed by the Tribunal; Rule 58 provides for the effect of non-compliance with orders. Viji Joseph, as mentioned above in paragraph 24, also states that the powers of the Tribunal cannot be termed as 'summary'. As discussed hereinabove, complete jurisdiction has been given to the NCLT to deal with all aspects of issues, as agitated in the suit.*
>
> *xxx xxx xxx*
>
> *20. What emanates from the preceding arguments and on consideration of the comparative chart hereinabove, is that sections 241, 242 and 244 of the Companies Act deal with all the issues which have been raised in the suit. The NCLT has been specifically conferred powers to address grievances relating to the affairs of the company, which may be prejudicial or oppressive to any member of the company, or for issues of appointment of directors. The appointment of an Ombudsman, would also form a part of the conduct and management of the affairs of the company. The Supreme Court has held in Shashi Prakash Khemka that the scope of Section 430 is vast, and jurisdiction of the civil court is completely barred when the power to adjudicate vests in the Tribunal.*
>
> *21. As has been held in Viji Joseph, the issue of election to the Board of Directors would be amenable to jurisdiction of the NCLT. The issue is the same in the present suit. Likewise, the lis and grievances raised in the suit can be agitated only before the NCLT. A civil court would have no jurisdiction. As far as the specific allegation apropos the manner in which the Ombudsman was appointed are concerned, it too, is an issue which will come within the ambit of Tribunal i.e. appointment of people who would conduct the affairs of the company/the management. The video*

recording of the manner of appointments at the AGM in question, could well be examined by the NCLT. That being the position, the issue of maintainability ought to have been determined first by the trial court. It did not have jurisdiction to entertain the suit. Accordingly, the impugned order is set aside. The appeal is allowed."

21. The judgment of the Madras High Court relied on in ***Delhi & District Cricket Association (supra)*** is also significant as there the Court was examining an election dispute under Section 20 of Companies (Management and Administration) Rules, 2014. Analysing Section 242 and attending circumstances of the case, it was concluded that only NCLT could deal with the issue and Civil Courts have no jurisdiction. In ***Viji Joseph (supra),*** Madras High Court discussed the expanse of Section 430 and referred to the decision in ***Jai Kumar Arya (supra)*** but found the same to be inapplicable. Court also discussed the expression 'oppression' regarding company's affairs and in that context, referred to the celebrated judgment of the Supreme Court in ***S.P. Jain v. Kalinga Tubes Ltd., 1965 SCC OnLine SC 15***. In order to avoid prolixity, I may only refer to few passages from ***Delhi & District Cricket Association (supra),*** where Court has extensively referred to the observations of the Supreme Court in ***S.P. Jain (supra)*** as also to the observations in ***Jai Kumar Arya (supra)*** and ***Viji Jospeh (supra):-***

"15. The appellant contends that : i) the trial court erred in not determining first, its jurisdiction to entertain the suit, ii) sections 241, 242 and 244 of the Companies Act, deal with all grievances raised in the suit, iii) the powers of the Tribunal under those provisions are sufficient, and iv) section 430 specifically ousts the jurisdiction of the civil courts apropos the matter with respect to such cases for which powers have been specifically conferred upon the Tribunal. The appellant has relied upon the decision of the Madras High Court in Viji Joseph v. P. Chander, 2019 SCC OnLine Mad 10424, which was examining an election dispute under Section 20 of the Companies (Management and Administration) Rules, 2014, involving the maintainability of the election of the Board of

Directors through electronic means. After analyzing section 242 and other circumstances pertaining to the case, it concluded that only the Tribunal had powers to deal with the issue raised in the suit and the civil court had no jurisdiction to entertain the suit.

16. An identical issue has been raised in the present case, challenging matters relating to the AGM, the Board of Directors of the appellant company, the appointment of an ombudsman, and other related issues. Sections 242(1), 242(2), and 242(4) confer ample powers upon the Tribunal to deal with the issue raised in the civil suit. Viji Joseph held, inter alia, as under:

> ***"14.*** *Section 242 deals with the powers of the Tribunal. This provision has to be seen contextually and co-existing with Section 241. On a complaint, power is to be exercised towards redressal. Prejudice may either to a member, group of the company or the public at large.*
>
> ***15.*** *A complaint touching upon the election conducted to the management of the company would go to the root. Such a challenge is to the very right to manage the affairs. A wrong election would certainly have a cascading effect on the affairs in the form of decisions and functioning of a company. Thus, it cannot be said that Section 241 of the Act would only involve a complaint touching upon the other affairs as against the process of election. As discussed above, the challenge is to the very election itself and therefore, there is no authority available to the office bearers to act and decide on behalf of the company if held bad. Certainly such a challenge would come within the purview of oppression and mismanagement. A technical view contrary to that will make the entire object behind Section 241 of the Act as redundant.*
>
> ***16.*** *Section 242(h) of the Act also provides for removal of Managing Director, Manager or any other Directors of the Company. As discussed above, to understand Section 241 of the Act, a little peep into Section 242 of the Act would be necessary. To put it differently, it can never be accepted that on a complaint involving an act of oppressiveness or mismanagement, a Managing Director, Manager or any other Directors of the company can be removed as against their alleged wrongful entry to function in the said capacity. Can it be ever said that an election dispute of a company would never come within the purview of Section 241 of the Act and therefore, no power can be exercised under Section 242 of the Act. In our considered view, the answer will have to be in the negative. Section 242(h) of the Act cannot be read in isolation. When a power is given to exercise to act, it has to be related to the core section, which provided for such an exercise. In our considered view, the learned single Judge has not considered the scope and object behind Sections 241 and 243 of the Act.*

17. *We may also note that Section 242(k) of the Act also gives a larger power to the Tribunal in appointing such number of persons as Directors. Therefore, the power of the Tribunal in giving effect to an order passed on a complaint under Section 241 of the Act is quite exhaustive, keeping in mind the interest of the company. After all, every provision of a statute has to be given its meaning and therefore, can never be ignored.*

xxx *xxx* *xxx*

23*. Section 430 of the Act provides for an absolute bar to a Civil Court to entertain any suit or proceedings, which the Tribunal is empowered to do so under the Act. This provision starts with a negative covenant and thus, makes the intention of the legislature very clear. The object is to decide the disputes of the company. This section gives power to the Tribunal to determine, enforce law qua the company for any violation. Law includes any other law also. Therefore, it is certainly a peremptory provision. This provision has to be read along with other provisions in Sections 241, 242 and 424 to 429.*

24*. The powers of the Tribunal cannot be termed as summary per se. A summary proceedings would come into place when a Court acts upon a common law principle as against a different procedure authorised by law. However, a proceeding cannot be termed as a summary when further procedural strengthening was done by the enactment along with the common law principles. As discussed above, common law principles are not given a go-by in the proceedings of the Tribunal, but it can go beyond. Once this position is made clear, then it is very easy to understand the scope and ambit of Section 241. The intendment of the legislature is to redress the disputes, more particularly, internal ones of a company within the four walls of the Tribunal. Therefore, the contention that complex or disputed issues to be adjudicated upon only through the Civil Court would never arise at all. Though, summary proceeding may be required by the Tribunal in a given case, the Tribunal is not meant to follow it in all cases. Such a leverage and flexibility is conferred on the Tribunal either act as a regular or a special Court depending upon the nature of the complaint behind it.*

xxx *xxx* *xxx*

32*. Reliance has been made on the Division Bench judgment of the Delhi High Court in Jai Kumar Arya v. Chhaya Devi (FAO (OS) 253/2017 & CM No. 33724/2017 dated 07/11/2017), we have already discussed the application of principle of Ejusdem Generis. In the light of Section 430 of the Act, which has been dealt with by the Apex Court in Shanti Prasad Jain v. Kalinga Tubes Ltd., ((1965) 2 SCR 720 dated 14.01.1965) coupled with the fact that there also the appeal is filed as*

against the order made in interlocutory application filed under Order XXXIX Rules 1 and 3 of the Code of Civil Procedure, we accordingly hold that the said decision will not help the case of the respondents.

xxx *xxx* *xxx*

***37**. On the effect of Section 430 of the Act, the Apex Court in Shashi Prakash Khemka v. NEPC Micon Ltd., (2007 SCC OnLine SC 17), after having noted all the earlier decisions, held as follows:*

> *"5. The effect of the aforesaid provision is that in matters in respect of which power has been conferred on the NCLT, the jurisdiction of the civil court is completely barred.*
>
> *6. It is not in dispute that were a dispute to arise today, the civil suit remedy would be completely barred and CA 1965-66/20143 the power would be vested with the National Company Law Tribunal (NCLT) under Section 39 of the said Act. We are conscious of the fact that in the present case, the cause of action has arisen at a stage prior to this enactment. However, we are of the view that relegating the parties to civil suit now would not be the appropriate remedy, especially considering the manner in which Section 430 of the Act is widely worded.*
>
> *7. We are thus of the opinion that in view of the subsequent developments, the appropriate course of action would be to relegate the appellants to remedy before the NCLT under the Companies Act, 2013. In view of the lapse of time, we permit the appellants to file a fresh petition within a maximum period of two months from today."*

***38.** The decision of the Apex Court referred above clearly spells out the scope of Section 430."*

***17.** Viji Joseph, discusses the expanse of s. 430, while relying on Shashi Prakash Khemka. It also mentions Jai Kumar Arya, as relied upon by R-1 and R-2 in the present case, but finds it inapplicable. It has also dealt with the expression 'oppression' regarding company affairs, as under:*

> ***"12.** In this connection, it is appropriate to refer the celebrated judgment of the Apex Court in Shanti Prasad Jain v. Kalinga Tubes Ltd., ((1965) 2 SCR 720 dated 14.01.1965), wherein it has been held as under.*
>
> *15. It gives a right to members of a company who comply with the conditions of S. 399 to apply to the court for relief under s. 402 of the Act or such other reliefs as may be suitable in the circumstances of the case, if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying. The court then has power to make such orders under s. 397 read with s. 402 as it*

thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that wind up the company would unfairly prejudice such member or members, but that otherwise the facts might justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. The law however has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression. as calls for action under this section.

16. We may in this connection refer to four cases where the new s. 210 of the English Act came up for consideration, namely, (1) Elder v. Elder and Watson (1), (2) George Meyer v. Scottish Cooperative Wholesale Society Ltd. (2), (3) Scottish Co-operative Wholesale Society Ltd. v. Meyer (3), which was an appeal from Meyer's case (2), and (4) Re. H. R. Harmer Limited. Among the important considerations which have to be kept in view in determining the scope of s. 210, the following matters were stressed in Elder's case (1) as summarised at p. 394 in Meyer's case (2):

> *"(1) The oppression of which a petitioner complains must relate to the manner in which the affairs of the company concerned are being conducted; and the conduct complained of must be such as to oppress a minority of the members (including the petitioners) qua shareholders.*
>
> *(2) It follows that the oppression complained of must be shown to be brought about by a majority of members exercising as shareholders a predominant voting power in the conduct of the company's affairs.*
>
> *(3) Although the facts relied on by the petitioner may appear to furnish grounds for the making of a winding up order under the 'just and equitable' rules, those facts must be relevant-to disclose also that the making of a winding up order would unfairly prejudice the minority members qua shareholders.*
>
> *(4) Although the word 'oppressive' is not defined, it is possible, by way of illustration, to figure a situation in which majority shareholders, by an abuse of their predominant voting power, are 'treating the company and its affairs as if they were their own property' to the prejudice of the minority shareholders-and in which just and equitable grounds would exist for the making of a winding up order…. but in which the 'alternative' remedy provided by S. 210 by way of an appropriate order might well be open to the minority shareholders with a view to bringing to an end the oppressive conduct of the majority.*

(5) The power conferred on the Court to grant a remedy in an appropriate case appears to envisage a reasonably wide discretion vested in the Court in relation to be order sought by a complainer as the appropriate equitable alternative to a winding-up order."

19. In Harmer's case (1), it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that "the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression". It was also held that "the result of applications under s. 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision". The circumstances must be such as to warrant the inference that "there had been, at least, an unfair abuse of powers and an impairment of confidence in the probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the conduct complained of "should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. ... But, apart from this, the question of absence of mutual confidence per se between partners or between two sets of shareholders, however relevant to a winding up seems to have no direct relevance to the remedy granted by S. 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within s. 210. It is not lack of confidence between shareholders per se that brings s. 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

20. These observations from the four cases referred to above apply to s. 397 also which is almost in the same words as s. 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary

to the application of s. 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.It is in the light of these principles that we have to consider the facts in this case with reference to s. 397."

18. *The learned Senior Advocate for the appellant submits that the Companies Act and the National Company Law Tribunal Rules, 2016, are together a complete code. Ample power has been provided to the NCLT - akin to a civil court - to deal with all issues for which powers have been conferred upon the Tribunal. For instance Rule 11 deals with inherent powers of the NCLT to conduct a full trial, in order to prevent abuse of justice; Rule 34 specifically allows for determination of procedure not provided for already in accordance with the principles of natural justice; Rules 39 and 40 provide for production of evidence; Rule 43 empowers the Tribunal to call for further information or evidence; Rule 47 provides for administration of oath to witnesses; Rule 51 gives power to regulate procedure; Rules 56 and 57 deals with the execution of orders passed by the Tribunal; Rule 58 provides for the effect of non-compliance with orders. Viji Joseph, as mentioned above in paragraph 24, also states that the powers of the Tribunal cannot be termed as 'summary'. As discussed hereinabove, complete jurisdiction has been given to the NCLT to deal with all aspects of issues, as agitated in the suit.*

19. *The appellant contends that the dicta of the Supreme Court in Aruna Oswal v. Pankaj Oswal Civil Appeal No. 9340/2019, would not be applicable as that dealt with the locus standi of the petitioner whose infinitesimal shareholding was yet to be determined. Whereas in the present case, the process of election to the Board of Directors/Members of the Apex Council, has been challenged because of it being allegedly contrary to the procedure laid down in the AoA and the notice calling for the AGM, and that the elections were held on the basis of a voice vote instead of paper ballot, contrary to what was mentioned in the AGM notice."*

22. From the extensive discussions and conclusions in the aforementioned judgments, the inevitable conclusion is that Section 430 of the 2013 Act bars the jurisdiction of the Civil Court in matters falling in the domain of NCLT, which it is empowered to adjudicate under different provisions of the Act and these powers are wider and broader than the powers of the Civil Court under Section 9 CPC, being a specialised Tribunal created for the purpose of regulating adjudication of the affairs of the companies expeditiously as observed in ***SAS Hospitality Pvt. Ltd. (supra).***

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

24. It is relevant to note at this stage that Plaintiffs do not contest the position that the disputes sought to be raised in the suit and/or reliefs claimed are covered under Sections 241 and 242 of the 2013 Act and as rightly flagged by Defendant No. 1, they have so admitted in paragraph 6 of

the plaint. Therefore, this issue need not detain this Court and the only issue arising for consideration is whether Plaintiffs can be non-suited and relegated to the jurisdiction of NCLT, when according to them they do not meet the threshold of eligibility provided in Section 244. In a nutshell, contention of the Plaintiffs is that in the absence of meeting the eligibility under Section 244(a) of having 10% of total strength of RCL which has 4000 members, they are not eligible to apply under Section 241. While it is conceded that proviso to Section 244(1)(a) and (b) empowers the Tribunal, on an application made in this behalf, to waive the eligibility requirements, the argument is that various orders passed by NCLT in the past including an order in the case where RCL was a party, NCLT invariably declines to waive the eligibility condition and therefore approaching the NCLT would be a futile exercise and in this context, heavy reliance was placed on the judgments of the Division Benches of Calcutta High Court in ***Eastern Indian Motion Picture Association (supra),*** and this Court in ***Jai Kumar Arya (supra).***

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

the Plaintiffs is to apply before NCLT under Section 241 and seek a waiver under the said proviso. For easy of reference, Section 244 of the 2013 Act is extracted hereunder:

> ***"244. Right to apply under section 241.****—(1) The following members of a company shall have the right to apply under section 241, namely:—*
>
> *(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;*
>
> *(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:*
>
> *Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.*
>
> *Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.*
>
> *(2) Where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them."*

26. The contention that precedents reflect that NCLT ordinarily or invariably declines to grant waiver can be no argument in the teeth of a statutory provision. By making this submission, Plaintiffs are virtually calling upon the Court to pre-judge the outcome of an application for waiver, if and when filed by the Plaintiffs, which cannot be a yardstick to decide the maintainability of the suit, which cannot be entertained in view of the bar under Section 430, especially, when Plaintiffs admit that the reliefs sought by them pertaining to allegations essentially of oppression and mismanagement fall in the domain and jurisdiction of NCLT. In the earlier part of the judgment, the reliefs sought have been extracted and for the ease

of reference, I may only highlight the allegations in the plaint being: (a) Defendants No. 2 to 10 along with two others were elected as Executive Committee of RCL for one year expiring on 30.09.2023 in terms of Clause 43 of MoA and the tenure could not be extended in terms of Clause 44 but they have continued unlawfully and are not permitting fresh elections; (b) misappropriation of assets; (c) diversion of funds; (d) wrongful financial exploitation of RCL accounts and malfeasance; (e) impersonation and misrepresentation by Defendants of continuing as Executive Committee; and (f) making unauthorized deals/compromises with DDA in respect of 23 acres of land of RCL etc. Each of these issues relate to oppression and mismanagement and/or elections and clearly fall within the scope of NCLT's jurisdiction thus barring the jurisdiction of this Court.

27. Insofar as the judgment of the Division Bench of this Court in ***Jai Kumar Arya (supra)*** is concerned, reliance by the Plaintiffs is not understood as the judgment does not inure to their advantage. The prime issue for consideration before the Division Bench was a notice by Defendant No. 1 to the shareholders/Directors of the Petitioner company notifying a date for holding an EGM, which sparked a number of litigations. The Court came to a conclusion on the facts of the case that the dispute with respect to the said notice was not amenable to adjudication by NCLT either under Section 169(4) or Section 241 but insofar as Section 430 is concerned, the Court noted that there was a bar for the Civil Court to adjudicate issues, where NCLT was empowered to exercise jurisdiction and in fact in paragraph 13 of the judgment, Court took note of the fact that insofar as allegations of oppression and mismanagement of the affairs by Plaintiff No. 1 therein were concerned, the petition was pending before NCLT and

would not impact the adjudication of the appeal. With respect to the judgment of the Division Bench of the Calcutta High Court, I may say with all due respect, this Court is not persuaded to follow the said view in light of the judgments of the Supreme Court as also Division Bench of this Court and several Co-ordinate Benches reiterating and reinforcing the embargo under Section 430. With respect, it cannot be anticipated at this stage that if Plaintiffs were to approach NCLT, their application for waiver would necessarily be rejected and thus on the basis of mere speculation, this suit cannot be entertained. Moreover, this Court also respectfully differs with the view taken that when the NCLT declines to grant waiver of the threshold eligibility condition, Plaintiffs will have to fall back to a remedy before the Civil Court inasmuch as if the NCLT declines to grant waiver, for the sake of arguments, Plaintiffs have a remedy of statutory appeal under Section 421 of the 2013 Act before NCLAT.

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

JYOTI SINGH, J

APRIL 15 , 2025*/shivam*