

(Capt.) Vadlamannati Jaya Pushpakumar vs Madras Race Club on 30 March, 2022

NATIONAL COMPANY LAW APPELLATE TRIBUNAL AT CHENNAI

(APPELLATE JURISDICTION)

Company Appeal (AT) (CH) No. 17 of 2022

and IA No. 185 of 2022

(Under Section 421 of the Companies Act, 2013)

(Arising out of the Order dated 17.11.2021 in CP/46(CHE)/2021

passed by the National Company Law Tribunal, Chennai Bench-II, Chennai)

In the matter of:

(Capt.) Valdamannati Jaya Pushpakumar

H6/3, Habib Complex, DBD Road,

R A Puram, Chennai 600 028

...Appellant

V

1. Madras Race Club, ... Respondent No.1
Represented by President/Secretary
Mr. A.C. Muthiah
Having registered office at
P.O. Box No.2639, Guindy,
Chennai - 600032.
2. Mr. Devanathan Yadav, ... Respondent No.2
Director, M/s Madras Race Club,
P.O. Box No.2639, Guindy,
Chennai - 600032.
3. State of Tamil Nadu ... Respondent No.3
Rep. by its Secretary of Revenue Dept.
Secretariat, Fort St. George,
Chennai - 600 009
4. Principal Commissioner of GST, ... Respondent No.4
No. 26/1, GST Bhavan, Uthamar
Gandhi Road, Nungambakkam,
Chennai - 600 034

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5. Commissionerate of Service Tax, ... Respondent No.5
Chennai
692, 6th Floor, MHU Complex, Anna
Salai, Nandanam, Chennai - 600 034.
6. Ministry of Finance and Corporate Affairs ... Respondent No.6
'A' Wing, Shastri Bhawan,

Rajendra Prasad Road,
New Delhi - 110 001.

7. Registrar of Companies, Chennai ... Respondent No.7
"Shastri Bhavan", II Floor, 26,
Haddows Road, Chennai - 600 006
 8. The Hd. Dy. Tahsildar, ... Respondent No.8
Guindy Taluk,
Chennai - 600 032.
 9. Commissioner of Police ... Respondent No.9
Chennai
No. 132, Commissioner Office Building,
EVK Sampath Road, Vepery, Periamet,
Chennai - 600 007.
 10. Ministry of Home Affairs ... Respondent No.10
North Block, Central Secretariat,
New Delhi - 110001
 11. Principal Commissioner of Income Tax ... Respondent No.11
Chennai
Tamil Nadu and Puducherry
Uthamar Gandhi Salai, No.46,
Nungambakkam High Road,
Chennai - 600 034.
 12. M/s. Magnolia Park Flat Owners Association ... Respondent No.12
Door No.2, Five Furlongs Road,
Velachery Village, Guindy,
Chennai - 600 032.
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13. M/s. Madras School of Equitation ... Respondent No.13
No.1, Blue Cross Road, (Near Blue Cross)
Velachery Check Post,
Chennai - 600 036.
 14. Serious Fraud Investigating Organisation ... Respondent No.14
Corporate Bhavan, 29, Rajaji Salai,
Chennai - 600 001.
 15. Sub Registrar Office ... Respondent No.15
Velachery
38, 3rd Main Road, Jagannatha Puram,
Velachery, Chennai - 600 042.
 16. Inspector General of Registration ... Respondent No.16
Chennai
No.100, Santhome High Road,
Chennai - 600 028.

Present:

For Appellant : Mr. Rohan Rajasekaran &
Mr. Chirag Gupta, Advocates

For Respondents 1 & 2 : Mr. P.H. Arvindh Pandian, Senior Advocate
For Mr. R.S. Murari, Senior Advocate

JUDGMENT

(Virtual Mode) JUSTICE M. VENUGOPAL, MEMBER (JUDICIAL) PREAMBLE:

1. The 'Appellant'/'Petitioner'/'Applicant' has preferred the instant Company Appeal (AT) (CH) No.17 of 2022 as an 'affected person' being Comp App (AT) (CH) No. 17 of 2022 Page | 3 dissatisfied with the 'Impugned Order' dated 17.11.2021, passed by the National Company Law Tribunal, Division Bench-II, Chennai in CP/46(CHE)/2021.

2. The National Company Law Tribunal, Division Bench-II, Chennai while passing the Impugned Order dated 17.11.2021 in CP/46(CHE)/2021 (filed by the 'Appellant'/'Applicant'/'Petitioner' inter alia at Paragraph 10 to 22 had observed the following:

10. "It was submitted that the petitioner herein is a legal heir and grandson of the owner of 12.53 acres of land in S.No.76/2 & 77 and the 1st Respondent Club had admittedly entered into a lease agreement with the late grandfather of the Petitioner with respect to the said property on 27.07.1927 and further extended the term up to 26.10.1936. It was submitted that the 1st Respondent is still in possession of the said property and has refused to pay lease rentals. Apart from the said 12.53 acres of land, the 1st Respondent is in possession and occupation of 160 acres of Government land whose market value is 11500 Crores and Government value is 5000 Crores, for which also, the lease rentals have not been paid. It is averred in the Petition that, a mere perusal of the Balance sheets of the 1st Respondent would reveal that it has made a turnover of Rs. 995 Crores in the FY 2018-19 but however, refuses to pay lease rentals. As on the date, the lease rentals due to the State Government is estimated to be approximately a sum of Rs.1386.13 Crores and lease rental due to this Petition by virtue of being the legal heir of the owner/lessor, is a sum of Rs.150 Crores approximately.

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11. It was further submitted that the 1st Respondent has filed several frivolous litigations and obtained ex-parte injunction orders from being evicted from the leased properties and that, in the pleadings of the said cases, the 1st Respondent admits that it is not the owner of any of the said properties and hence, the said fact is undisputed. Further, it was submitted that upon perusal of the balance sheets of the 1st Respondent for the past 10 financial years would further reveal that up to FY 2017- 18, the value of land owned by it constantly appears to be a meagre sum of Rs.85,000/-.

However, in the FY 2018-19, it is seen that 5.5 acres of land had been alienated to M/s. DLF Energy Pvt. Ltd. for a sum of Rs. 360 Crores. When admittedly, the 1st Respondent Company does not possess capital or own lands, the said transaction appears suspect and warrants thorough investigation.

12. It was submitted by the Petitioner that the 1st Respondent claims to be in possession of 10.53 acres of land in S. Nos. 76/2 & 77 at Door No. 1, Five Furlong Road, Velachery, however, over the very same portion of land, a multi-storey apartment by the name "Magnolla Park Apartments" building has been constructed by one developer, M/s. S I Property Development Ltd. and 70 apartments therein along with UDS have been sold to the common public. On further enquiry, it is seen that an alleged Sale Certificate contradictory to the actual facts has been shown to the vendors of the apartments and represented to be the title document of the said land. It is averred in the petition that, the 1st Respondent claims of still being in possession of the land and rights over it in several petitions/documents filed in the Hon'ble High Court and Civil Court as per their written statements in CS No. 366 of 2004. Comp App (AT) (CH) No. 17 of 2022 Page | 5

13. It was submitted that there is a portion of land wherein the 1st Respondent appears to have unlawfully sub-leased and / or leased the same to M/s. Madras School of Equitation and is deriving an income from the same. The said act of refusing to pay lease rentals to the actual owners of the properties and simultaneously sub-leasing/ leasing the said property to drive income, is contrary to the rule of law and public property.

14. It was further submitted that the modus operandi of the 1st Respondent is to alienate the lands over which they possess only lease hold rights and by creating and forging documents and fraudulently profiting from such alienation and that, they have actively involved in land grabbing from the Government of Tamil Nadu and private parties by fabricating title documents and colluding with private parties and multinational corporations.

15. The petitioner alleges that, the 1st Respondent is a habitual tax evader and has evaded service tax and GST from the year 1994 and 2017 respectively, on lease rentals payable, to the tune of Rs. 250 crores apart from income tax claims amounting to the tune of Rs.75 Crores. It is further averred that, the 1st Respondent has evaded Service Tax and GST from 2006 as they had leased/sub-leased a land parcel to DLF where, DLF has been remitting periodically lease rent since June 2006 to the tune of Rs. 307.8 Crores. The GST/Service Tax for these have not been paid to the Government of India.

16. It was submitted that the Government of Tamil Nadu through its Tahsildar has raised a claim against the 1st Respondent for unpaid lease Comp App (AT) (CH) No. 17 of 2022 Page | 6 rentals to the tune of Rs. 1386 crores for the year 2015-16. However, no coercive action has been taken against the 1st Respondent either towards the recovery or eviction. It is further averred that, the unlawful operations of the 1st Respondent have caused severe losses to the Government exchequer and general public. Further, it was submitted that the Petitioner has filed several RTI's with respect to the affairs of the 1st Respondent; however; no effective response has been received till date.

17. The Petitioner has submitted the following documents in relation to the facts above mentioned:

- (i) 10 years lease to MRC
- (ii) Will dated 24/02/1960

(iii) ULC Proceedings Urban Land Ceiling T. Nagar and final approve plan dated 16.03.1993

(iv) Patta Chitta Adangal of 2 Acres + 12.53 Acres dated 15.09.1959

(v) Magnolia Park Documents

(vi) Ordinance MRC

(vii) P&B Balance Sheet of last 10 years

(viii) Injunction order for peaceful possession in T.O.P. No.234 of 2012

(ix) All RTI Questions Asked

(x) Reply from the Information Officer

(xi) Calculation of Lease Rental claims Additional Documents

(xii) Representation of the Petitioner Comp App (AT) (CH) No. 17 of 2022 Page | 7

(xiii) Lease Deed entered into between the 1st Respondent and M/s.

DLF Retail Developers Limited

(xiv) Annual Report of the 1st Respondent as filed with the RoC

(xv) Form 8 filed by the 1st Respondent (xvi) News article in the Times of India.

18. We have heard the submissions made by the Petitioner and also the submissions made by the Learned Senior Counsel for R1 and R2 and also the Counsel for R12. The present Petition has been filed under Section 213 of the Companies Act, 2013 by the Petitioner seeking inter alia to appoint an Inspector to carry out the Investigation into the affairs of the 1st Respondent Company. Section 213 of the Companies Act, 2013 read as follows:

213. Investigation into Company's Affairs in other cases

-The Tribunal may, --

(a) On an application made by--

(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) On an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that--

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(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its member or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an Inspector or Inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct;

Provided that if after investigation it is proved that -

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was informed for any fraudulent or unlawful purpose; or

(ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the Comp App (AT) (CH) No. 17 of 2022 Page | 9 management of its affairs shall be punishable for fraud in the manner as provided in section 447.

19. The present Petition falls under sub-section (b) of Section 213 of the Companies Act, 2013 and as per the said Section the Petitioner is required to satisfy this Tribunal that there are circumstances

suggesting that the business of the 1st Respondent company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose.

20. In the present case, we have gone through the averments made in the Petition. All the averments made in the Petition by the Petitioners are not supported by any material documents in order to substantiate such allegations. The documents filed by the Petitioner and listed in para 17 supra and a perusal of the said documents filed along with the Petition would show that the allegations made by the Petitioner are not corroborated with the documents filed therewith. Prima facie, the Petitioner has miserably failed to make out a case under Section 213(b) of the Companies Act, 2013 and has also failed to satisfy this Tribunal that the affairs of the 1st Respondent Company have been conducted in a fraudulent manner or unlawful purpose and on the said count itself this Petition is liable to be dismissed.

21. It is pertinent to note here that the trigger for the Petitioner filing the present Petition is with respect to the findings given by the Hon'ble Apex Court in the matter of Dr. K.R. Lakshmanan (supra) whereby, the Hon'ble Apex Court held that there are no materials on record to Comp App (AT) (CH) No. 17 of 2022 Page | 10 show that any inquiry or investigation had been conducted by the State Government prior to passing of the 1986 Act and that even if it were to be accepted that the 1st Respondent Club was being mismanaged, since it is company registered under the Companies Act, 1956, the said Act provides elaborate machinery and well-established procedural safeguards for dealing with mismanagement in Companies registered under the Act.

22. The above said Judgment was passed by the Hon'ble Supreme Court in the year 1996 and the Petitioner now in the year of 2021 has filed the present Petition seeking thereof to initiate the Investigation into the affairs of the 1st Respondent Company. As already stated in the preceding paragraphs the Petitioner has prima facie not made out a case for ordering investigation into the affairs of the Company. However, it is relevant to point out here that the allegations made in the petition pertain to non-payment of the lease dues to the Petitioner by the 1st Respondent Company and even though no period of limitation is prescribed under Section 213 of the Companies Act, 2013, Section 433 of the Companies Act, 2013 contemplates that the Provisions of the Limitation Act, 1963 shall, as far as may be, apply to proceedings or appeals before the Tribunal or the Appellate Tribunal, as the case may be. Under the said circumstances, the Petitioner has also miserably failed to explain the unsurmountable delay in filing the present Petition. It is also seen that the Petitioner could not satisfy this Tribunal with documents in support of the allegations. Further no reasons are attributed for inordinate delay in filing this Application based on the Comp App (AT) (CH) No. 17 of 2022 Page | 11 cause of action occurred prior to 1996. Hence, the Petition is devoid of facts and not maintainable in law either."

and dismissed the Petition in Limine (under Section 213 of the Companies Act, 2013) but without costs.

APPELLANT'S SUBMISSIONS:

3. According to the 'Appellant', he is the 'Legal Heir and Grandson of the Owner' of 12.53 Acres in S. Nos. 76/2 and 77 and that the 1 st Respondent/Club had entered into a Lease Agreement with the Appellants' late Grandfather in regard to the property, on 27.07.1927, which was extended till 26.10.1936. As a matter of fact, the 1st Respondent/Club is still in possession of the said property and has refused to pay the 'Lease Rentals'. That apart, out of the 12.53 Acres of land, the 1st Respondent/Club is in possession and occupation of 160 Acres of the 'Government Land', its market value is Rs.11,500 Crores and the Government Value is Rs.5000 Crores, for which also, 'Lease Rentals' were not paid.

4. As on date, the 'Lease Rentals' due to the State Government is estimated to be at a sum of Rs.1386.13 Crores and the 'Lease Rentals' due to the 'Appellant' by virtue of being the 'Legal Heir' of the Owner/Lessor is approximately a sum of Rs.55 Crores.

5. The Learned Counsel for the 'Appellant' contends that the 'Impugned Order' passed by the 'National Company Law Tribunal, Division Bench-II, Comp App (AT) (CH) No. 17 of 2022 Page | 12 Chennai in CP/46/CHE/2021 is an incorrect and invalid one because of the fact that the same was passed in a 'Summary Fashion' without the detailed Hearing, thereby negating the 'Principles of Natural Justice'.

6. The Learned Counsel for the 'Appellant' puts forward a plea that the 'Tribunal' had committed an error in failing to appreciate and consider that 'Fraud' vitiates everything, (including the 'Timeline' and 'Limitation').

7. According to the Learned Counsel for the 'Appellant' that the 'Impugned Order' was passed by the 'Tribunal' without issuing 'Notice' to the 'Respondents' or permitted them to file their 'Reply'.

8. The Learned Counsel for the 'Appellant' proceeds to point out that the 'Mismanagement' and 'Fraud' in the conduct of business of the 1 st Respondent is in 'die in diem' and 'continuous in nature'.

9. The other submission of the Learned Counsel for the 'Appellant' is that the 'Appellant' had approached the 'Tribunal' as soon as he had attained knowledge of numerous 'Fraudulent' and 'Unlawful Activities' committed by the 1st Respondent/Company.

10. It is the version of the 'Appellant' that the 'Tribunal' failed to consider that the 1st Respondent/Club had grossly misused the 'Lands' that purportedly in their capacity as 'Lessees', is in possession of and occupying 160 Comp App (AT) (CH) No. 17 of 2022 Page | 13 Acres of Property belonging to the Government of Tamil Nadu and 12.53 Acres belonging to the 'Private Parties'.

11. The clearcut stand of the 'Appellant' is that a perusal of the 'Balance Sheets' of the 1st Respondent/Club for the past 10 years would reveal that upto the Financial Year 2017-18, the value of Land owned by it appears to be a meagre amount of Rs.85,000/-. But, in the Financial Year 2018-19, it is seen that 5.5 Acres of Land was allegedly alienated to M/s. DLF Energy Pvt. Ltd., for a whopping amount of Rs.360 Crores.

12. It is the contention of the 'Appellant' that when the 1st Respondent/Company does not possess Capital or own lands, the said transaction ought to have warranted the 'Tribunal' to order an investigation as per Section 213 of the Companies Act, 2013.

13. Besides the above, it is the stand of the 'Appellant' that the 1st Respondent/Club in Civil Suit No.366 of 2004 had stated to have Leased 160 Crores from the 'Government of Tamil Nadu' however, the 1st Respondent appears to have suspiciously Mortgaged the Lands and raised funds, as early as in the year 1978. Therefore, the 'Appellants' plea is that, the 'Tribunal' should have ordered an 'Investigation' in the subject matter in issue.

14. The Learned Counsel for the 'Appellant' comes out with an argument that the 1st Respondent/Club appears to have received Rs.306.8 Crores Comp App (AT) (CH) No. 17 of 2022 Page | 14 in 'Rentals' but neither paid the 'Service Tax' nor the 'General Sales Tax'. Indeed, the Habitual Tax Evasion of the 1st Respondent/Club should have been considered by the 'Tribunal' and thorough 'Investigation' ought to have been ordered by the 'Tribunal'.

15. The Learned Counsel for the 'Appellant' contends that in Block No.16 T.S. No.7 Old S. No. 77, 1.36 Acres of Land was in 'illegal possession' of the 1st Respondent/Club and the same was 'alienated' to the 'Developers' without following the 'Due Process Of Law'.

16. The Learned Counsel for the 'Appellant' submits that in Block NO.15, T.S. No.24/1, Old S. No.77, 2.06 Acres of Land was grabbed by the 1st Respondent/Club and kept under lock illegally by the 1st Respondent/Club without any Documentation or Legal Right over the said property.

17. The Learned Counsel for the 'Appellant' advances an Argument that the 'Tribunal' had failed to consider that there was a 'Lease Deed' between the 1st Respondent/Club and DLF Retail Pvt. Ltd. for a period of three years and later another 'Memorandum of Understanding' for Leas Rentals' by which the 1st Respondent/Club had collected Lease Rentals' to the tune of Rs.200 Crores for which Stamp Duty was not paid to the 'Government'. Therefore, a contention is projected on the side of the 'Appellant' that the 'fraudulent' nature of the 'Business' of the 1st Respondent/Club is quite apparent.

18. It is the emphatic plea of the 'Appellant' that the 'Tribunal' had failed to consider that the 1st Respondent/Club had illegally alienated 3.82 Acres of Land valued at Rs.300 Crores in S. No.76/2, T.S. No.24/2, Block-16 without putting the 'Land Owners' on 'Notice' and without following the 'Due Process of Law'.

19. The Learned Counsel for the Respondents No.1 and 2 submits that the 'Appellant', alleges that he is the grandson and 'Legal Heir' of the owner of 12.53 Acres of 'Land' has not produced any documentary evidence to identify the 'Owner' or establish the claim to ownership of the said 12.53 Acres of 'Land'.

20. The Learned Counsel for the Respondents No.1 and 2 takes a stand that 'a person having no manner of interest or concern in the 'Company' as a 'shareholder', 'Creditor' or otherwise has no loci standi to prefer an 'Application' under the Companies Act, to pray for an investigation into the affairs of the 'Company' and in this regard, Section 213 of the Companies Act, 2013 squarely applies, to the facts of the 'instant Case'.

21. It is represented on behalf the Respondents No.1 and 2 that the Term 'any other person' employed in Section 213 (b) of the Companies Act, 2013 ought to be construed to mean an 'Aggrieved Party' and not a 'Stranger'. In this Comp App (AT) (CH) No. 17 of 2022 Page | 16 connection, the Learned Counsel for the Respondents No.1 and 2 advances an argument that the 'Appellant' is not a 'shareholder', 'Creditor', 'contributory' or a 'person' related in any manner to the 1st Respondent/Club.

22. The Learned Counsel for the Respondents No.1 and 2 contends that the main Petition filed by the 'Appellant'/'Petitioner' is not maintainable per se, as it was filed not on the basis of any right or interest of the 'Appellant' and in fact, the main Petition was filed by the 'Appellant'/'Petitioner' with a view to harass the 'Respondents' and its 'Officials'.

23. In regard to the 'Lease Rental' issues are concerned, the issue of payment of 'Lease' an Interim Order of Stay operating as against the 'Collection Of Rentals' from the 1st Respondent. In so far as the averment relating to the arrears of 'Lease Rentals' to the tune of Rs.55 Crores to the 'Appellant', there is not even a semblance of an endeavour to point out the basis on which the same is being claimed and no documentary evidence was filed by the 'Appellant' in this regard.

Also, that in support of the 'Appellants' representative capacity to claim the 'Arrears' no supporting documents were filed by the 'Appellant'.

24. It is projected on the side of the Respondents No.1 and 2 that the 'Title' to the 'Lands' measuring 12.53 'Acres' is a subject matter of litigation with various legal Proceedings pending before the City Civil Court, Chennai, which had the 'Appellant' been a 'Legal Heir' as it claims to be, would have had Comp App (AT) (CH) No. 17 of 2022 Page | 17 knowledge of and being made a 'Party' to. In respect of the 'Land Conveyance' made in favour of 'DLF' is concerned, the same is a Private transaction

between the 'Club' and another entity, carried out in accordance with law and it is not known as to on what basis it was alleged by the 'Appellant' that the same warrants an enquiry into the conduct of the affairs of the 'Club'.

25. In regard to the issue of 'Mangolia Park' is concerned, the 1 st Respondent/Club has no nexus with the said transaction whatsoever, and this cannot form the basis for seeking an 'Investigation' into the 1st Respondent/Club's Affairs.

26. In so far as the allegations of sub lease to the 'Madras School of Equitation' is concerned, it is the stand of the Respondents No.1 to 2 that M/s.

Madras School of Equitation is part and parcel of the 1st Respondent/Club and hence, the question of any 'Sub Lease' does not arise. Moreover, no income is obtained from the said School, by the 1st Respondent/Club.

27. The Learned Counsel for the Respondents No.1 and 2 takes a plea that the 1st Respondent/Club till date has not received any 'Notice' from the 'Income Tax Department' in this 'Dispute Resolution Scheme' in the year 2019 and in reality, 'Notices' from the 'Department' seeking documents for the 'Service Tax Payable' for the period between 2012-2013 and 2017-2018 were duly responded to and further process is awaited as on date. Continuing further, in regard Comp App (AT) (CH) No. 17 of 2022 Page | 18 to 'GST Dues', documents relating to payment of GST on 'Lease Rentals' were filed with the 'Government' on 22.04.2021 and further process is awaited. In any case, it is submitted on behalf of the Respondents No.1 and 2 that the 'Appellant' being a stranger has no Loco Standi to question the same and it is for the 'Statutory Authorities' to take appropriate action and further that, this cannot be in any way treated as a ground for claiming an Investigation under Section 213 of the Companies Act.

28. The Learned Counsel for the Respondents No.1 and 2 contends that 'No Prima Facie' case is made out by the 'Appellant'/'Petitioner to justify the Petition under Section 213(b) of the Companies Act, 2013 and in this regard relies on the 'Judgment' of the Hon'ble Supreme Court in the matter of 'Barium Chemicals Ltd.' v CLE reported in (1966) 36 Company Cases 33 (Delhi) wherein it is held that the exercise of power to order an 'Investigation' is discretionary and it depends upon the honest 'Formation of an Opinion' that an 'Investigation' is necessary. Further, in the said Judgment it is observed as under:

"in dealing with this problem the first point to notice is that the power is discretionary and its exercise depends upon the honest formation of an opinion that an investigation is necessary. The words "in the opinion of the Central Government" indicate that the opinion must be formed by the Central Government and it is of course implicit that the opinion must be an honest opinion. The next requirement is that "there are Comp App (AT) (CH) No. 17 of 2022 Page | 19 circumstances suggesting etc." These words indicate that before the Central Government forms its opinion it must have before it circumstances suggesting certain inferences. These inferences are of many kinds and it will be useful to make a mention of them here in a

tabular form:-

(a) that the business is being conducted with intent to defraud -

(i) creditors of the company, or

(ii) members, or

(iii) any other person;

(b) that the business is being conducted -

(i) for a fraudulent purpose or

(ii) for an unlawful purpose;

(c) ...

(d) ...

Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead the conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct of the withholding of information of a particular kind."

29. The Learned Counsel for the Respondents No.1 and 2 contends that the 'Investigation Of Companies' in 'Law' means that the 'Existence Of Circumstances' relevant to the inference must be of a 'Sine qua non' for the Comp App (AT) (CH) No. 17 of 2022 Page | 20 exercise of jurisdiction. Besides these, the observations made by the Hon'ble Supreme Court in the decision Dr. K.R. Lakshmanan v State of Tamil Nadu and Anr. reported in (1996) 2 SCC Page 226 pertain to the statutory 'Provisions' forming part of the framework of the Companies Act, 1956 and cannot in any manner be read as conferring a right to the 'Appellant' to construe the same as a 'cause of action' to file the 'instant Petition'.

30. It is the contention of the Learned Counsel for the Respondents No.1 and 2 that the 'whole proceedings' before the 'National Company Law Tribunal, Chennai Bench' and the proceedings before this 'Tribunal' in 'Appeal' are nothing but a 'Misguided Attempt' to tarnish and taint the reputation of the 1st Respondent/'Club'.

APPRAISAL:

31. Before the 'National Company Law Tribunal', Chennai in CP/46/(CHE)/2021 (Filed by the 'Appellant'/'Petitioner' under Section 213 of the Companies Act, 2013 read with Rules, 11, 13, 14 and 18 of the NCLT Rules, 2016) it is among other things averred that the 'Modus Operandi' of the 1st Respondent / Club is to alienate the 'Lands' over which they possess only 'Lease Hold Rights', by creating and forging documents and fraudulently profiting from such alienation.

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32. Furthermore, the 'Appellant'/'Petitioner' in the Company Petition/46 (CHE)/2021 had mentioned that of the 160 odd 'Acres' that was leased to the Club, by the Government of Tamil Nadu and the 12.53 'Acres' leased by 'private persons', one can only speculate as to the extent of land fraudulently alienated by the 1st Respondent/Club. In short, the 1st Respondent/Club was actively involved in 'Land Grabbing' from the 'Government of Tamil Nadu' and 'private parties' by creating optical illusions to purchases, fabricating title documents and colluding with 'private parties' and multinational Corporations.

33. The 'Appellant'/'Petitioner' in the main Company Petition before the 'Tribunal' had proceeded to make a mention that the 1st Respondent / Club is an habitual 'Tax Evader' and had evaded 'Service Tax' and GST from the year 1994 and 2017 respectively on lease rentals payable, to the tune of Rs.250 Crores apart from Income Tax Claims amounting to an extent of Rs.75 Crores.

34. A perusal of the contents of the main Company Petition No/46(CHE)/21 filed by the 'Appellant'/'Petitioner' exhibits that the 'Government of Tamil Nadu' through its Tahsildar had raised a claim against the 1 st Respondent/Club' for the 'unpaid Lease Rentals' to an extent of Rs.1386 Crores for 2015-16. However, no action was taken against the 1st Respondent / Club either towards eviction or recovery and that the 'fraudulent' and unlawful operations' of Comp App (AT) (CH) No. 17 of 2022 Page | 22 the 1st Respondent/Club had caused several losses to the 'Government Exchequer' and the general public.

35. The stand of the 'Appellant'/'Petitioner' in the main Company Petition before the 'Tribunal' is that the 'Government of Tamil Nadu' had formed a prima facie opinion of the various illegalities and mismanagement of the 1 st Respondent/Club as early as in the year 1986. Further, it is the version of the 'Appellant' that just because an 'Investigation' was not conducted and the procedure established under the Companies Act, 1956 was not followed, the Hon'ble Supreme Court had struck down the 1986 Act.

36. The 'Appellant'/'Petitioner' in the main Company Petition in CP/46(CHE)/2021 had prayed for the relief of (i) appointing one or more competent persons as Inspectors to investigate the affairs of the 1st Respondent/Company thoroughly report thereon in such manner prescribed under Law and to punish the persons 'guilty of fraud' in accordance with law. Further, the 'Appellant'/'Petitioner' had prayed for issuance of a direction in directing the 1st Respondent/Club to reimburse and compensate him, other losses all other affected persons for the pecuniary loss incurred or suffered on account of failure to pay 'Lease Rentals'.

37. Apart from the above, the 'Appellant'/'Petitioner' in the main Company Petition, had prayed for the relief of appointing an 'Administrator' in Comp App (AT) (CH) No. 17 of 2022 Page | 23 respect of the affairs of the 1st Respondent/Club and also sought a relief of the appointment of a 'Receiver' for the 1st Respondent/Club. As an 'Interim Relief' before the 'Tribunal' the Appellant had prayed for an 'Interim Injunction' restraining the 1st Respondent, their men, agents, servants, etc. from in any manner, whatsoever, further alienating, encumbering or otherwise dealing with the property stated to be in their possession pending disposal of the main Petition. Also, a relief was sought by the 'Appellant'/'Petitioner' for an appointment of an 'Administrator' in respect of the affairs of the 1st Respondent and also for an appointment of a 'Receiver' for the 1st Respondent/Club, pending disposal of the Petition.

FILING OF COMPANY PETITION:

38. Be it noted, that as per Section 244 of the Companies Act, 2013, only a 'Member' of a Company can file a Petition. Under Section 241 of the Companies Act, 2013, an 'Application' can be made only by an eligible 'Member' or two or more of them together or by any one or more with the consent of other 'Members' of the Company.

39. It is incumbent on the part of the Petitioner to establish that he is a 'Member' of a 'Company' in accordance with Section 2(55) of the Companies Act, 2013, and further, he is entitled to file a 'Petition' in accordance with the criteria specified in Section 244 of the Companies Act, 2013. Comp App (AT) (CH) No. 17 of 2022 Page | 24 SECTION 241 OF THE COMPANIES ACT:

40. The aim of Section 241 of the Companies Act, 2013 is frivolous litigation is not projected by a 'person' who has no real stake in the 'Company'.

Undoubtedly, a 'shareholder' has an 'interest' in a 'Company', i.e., an interest which is represented by his shareholding. No wonder, a 'share' is a movable property with all attributes of such property as per decision Life Insurance Corporation of India v Escorts Ltd., reported in AIR 1986 SC Page 1370.

Taking Long Time:

41. It must be borne in mind that if a 'person' with an absolute knowledge of facts takes a long time to prefer an action before the 'Tribunal', the 'Tribunal' will not assist him i.e. Law will not come to a rescue of an individual who sleep on his rights.

LIMITATION:

42. It is to be remembered that Section 433 of the Companies Act, 2013 enjoins that the Provisions of the Limitation Act, 1963 shall as far as may be apply to the 'Proceedings' or 'Appeals' before the 'Tribunal' or 'Appellate Tribunal' as the case may be. The words occurring in Section 433 of the Companies Act, 2013 'as far as may be' means to the extent applicable in the proceedings under the Act.

Comp App (AT) (CH) No. 17 of 2022 Page | 25 LATCHES:

43. The term 'Latches' in law means a failure to do something at the proper time. Further, it points out an undue delay in asserting a 'Legal Rights' or 'privilege'. It cannot be brushed aside that the 'Delay' and 'Latches' will come into operative play and commence from the date of knowledge as per decision *Nirmla Thakkar (Dr. Mrs.) v Bluebird Enterprises*, reported in 2012 72 Company Cases Page 28 (CLB). The plea of Limitation is a mixed question of Law and fact.

Equitable Consideration:

44. The 'Doctrine of Latches' is rested upon the 'equitable consideration' and depends on the general principles of 'Justice And Fair Play'.

The aspect of 'Latches' is to be gone into by the 'Tribunal' at its subjective discretion, as opined by this 'Tribunal'.

45. It is within the discretion of a 'Tribunal' to entertain a Petition or to grant relief pertaining to the conduct of the 'Company' affairs in which the Petitioner had taken part without protest before filing the 'Petition'. As a matter of fact, 'equitable' is defined as marked by a due consideration for what is fair, unbiased and impartial, in tune with the principles of 'Natural Justice', untrammelled by technical nuances and niceties of 'Law'.

Comp App (AT) (CH) No. 17 of 2022 Page | 26 EXERCISE OF DISCRETIONARY POWER:

46. The 'Discretionary Power' under Section 213 of the Companies Act, 2013 is to be exercised honestly and not for corrupt or ulterior purposes. The 'Tribunal' is to act in a reasonable manner and not in a capricious manner or arbitrary manner. The ingredients of Section 213(b) of the Companies Act, 2013 cannot be interpreted to mean a 'conclusive and a decisive proof'.

INVESTIGATION:

47. An 'Investigation' into the 'Company's Affairs' cannot be initiated simply on the basis of allegations made by one 'shareholder'. In reality, no 'investigation' can be ordered merely because a 'shareholder' opines that he is aggrieved about the manner in which the 'company business' is being carried on.

Section 213 of the Companies Act, 2013 is not to be pressed into service based on mere surmises, conjectures, suspicions, assumptions or presumptions.

48. An 'investigation' into the affairs of a 'Company' may be ordered when 'public interest' is involved or when detriment to the 'Members Interest' had been caused in a 'clandestine manner' and not by way of fishing expedition.

49. An 'investigation' may be necessary in 'public interest' to enable the Central Government to assume 'power' to step in where there is reason Comp App (AT) (CH) No. 17 of 2022 Page | 27 to suspect that a 'Company/ may be conducting its affairs in manner prejudicial to the 'Public Interest'. The term 'Public Interest' means an 'interest' in which the public has a vital interest in either pecuniary or personal sense.

TRIBUNAL'S ACTION:

50. A 'Tribunal' is to act only on the 'materials' placed before it and the said materials ought to be such as to satisfy the 'Tribunal' that a deeper probe into 'Company's Affairs' is palatable/desirable, in the 'interest of Company' under the Companies Act, 2013.

PURVIEW OF SECTION 210 AND 213 OF THE COMPANIES ACT

51. Section 210 of the Companies Act deals with an 'investigation' into the 'Affairs of a Company'. Section 212 of the Act, 2013 deals with an 'investigation' into the 'Affairs of a Company' by the 'Serious Fraud Investigation Office'. The words 'employed' in Section 210(2) of the Companies Act, 2013 'Shall Order' connotes that when an Order is passed by a 'Court'/'Tribunal', it is mandatory for the Central Government to order an 'Investigation'.

52. Section 212 of the Act 2013 concerns with a different situation than the situations caused by Section 210 of the Act. In the case of an 'Investigation' by the 'Serious Fraud Investigation Office' the Central Government forms an opinion that it is necessary to order an 'Investigation' by 'SFIO'. Comp App (AT) (CH) No. 17 of 2022 Page | 28

53. Section 212(1) of the Companies Act, 2013 refers to the opinion being formed that it is necessary to investigate into the affairs of the 'Company' by 'Serious Fraud Investigation Office', as per decision of the Hon'ble High Court of Andhra Pradesh in 'The Medak Diocese of Church of South Indian Trust Association v The Union of India dated 16.11.2017'.

SERIOUS FRAUD:

54. The Companies Act, 2013 does not define the expression 'Serious Fraud'. The Companies Act, 2013 contains provisions relating to 'Corporate Frauds' in the Companies Act, 2013. At this juncture, this 'Tribunal' points out that the explanation under Section 447 of the Companies Act, provides for punishment for 'Fraud'. The offences under Sections 7(5), 7(6), 34, 36, 38(1), 46(5), 56(7), 66(10), 140(5), 206(4), 213, 229, 251(1), 339(3) and 448 which attract the punishment for 'Fraud' in Section 447 of the Companies Act, 2013 shall be cognizable and the 'Court' shall take cognizance based on a written Complaint by the 'Director SIFO' or an 'Officer' of the Central Government.

In fact, the explanation to Section 447 'Punishment for fraud' (Chapter XXIX Miscellaneous reads as under:

Explanation - For the purpose of this Section -

"(i) 'fraud' in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position Comp App (AT) (CH) No. 17 of 2022 Page | 29 committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) "wrongful gain" means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) "wrongful loss" means the loss by unlawful means of property to which the person losing is legally entitled."

PROCEEDING:

55. The term 'Proceeding' is very wide which means a prescribed course of action to enforce a 'legal right'. It indicates the specified mode in which the judicial business is conducted as per decision P.L. Kantha Rao v State of Andhra Pradesh reported in AIR 1995 SC page 807, 809.

ENGLISH DECISION:

56. In associated Provincial Picture Houses Ltd. v Wednesbury Corporation reported in 1947(2) ALL ER 680 (CA) Lord Denning M.R. said citing Lord Green M.R. to the effect that "A Person entrusted with a discretion must direct himself properly in law". 'He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to the matters that he has to consider'.

Comp App (AT) (CH) No. 17 of 2022 Page | 30 EXPERT AGENCY:

57. It is to be pointed out that the 'Department of the Central Government' deals with 'Companies' is an 'Expert Body' in Company Law related matters. The standard required must be of an 'Expert'. An order of investigation is only a means to ascertain the full facts of act complained with reference to the facts.

An 'investigation' under Section 210 of the Companies Act is not an 'investigation' in respect of a 'Criminal Case'. The aim of 'investigation' under the Companies Act, 2013 is only to streamline the working of a 'Company'.

SECTION 213 OF THE COMPANIES ACT 'Investigation into Companies Affairs in other cases'

58. It is to be borne in mind that materials are to be placed before the 'Tribunal' to arrive at a subjective satisfaction that a deeper probe into the 'affairs of a Company' is desirable in the Company itself.

ANY PERSON AGGRIEVED:

59. The words seen in Section 421(1) of the Companies Act, 2013 mean only a 'person' who has suffered a legal grievance.

APPELLATE TRIBUNAL'S ORDER:

60. Be it noted, that in the 'Order' of this 'Tribunal' dated 02.12.2019 (National Company Law Appellate Tribunal, New Delhi) in the matter Comp App (AT) (CH) No. 17 of 2022 Page | 31 of Union of India, through Serious Fraud Investigation Office (SFIO) v Maharashtra Tourism Development Corporation and Anr. (vide Company Appeal (AT) (INS) 964 of 2019 with Company Appeal (AT) (INS) 965 of 2019 it is inter alia at Paragraph No. 6, it is observed as under:

6. Similar issue fell for consideration before this Appellate Tribunal in 'Company Appeal (AT) (Insolvency) No. 574/2019 - "Mr. Lagadapati Ramesh Vs. Mrs. Ramanathan Bhuvaneshwari' wherein this Appellate Tribunal by its judgment dated 20th September, 2019 observed and held as follows:

"27. The 'offences and penalties' as prescribed and dealt with in Chapter VII and appropriate order of punishment can be passed only by way of trial of offences by a Special Court in terms of Section 236 of the 'I&B Code'. However, no such Court can take cognizance of any offence punishable under the Act, save on a complaint made by the 'Insolvency and Bankruptcy Board of India' (IBBI) or the Central Government or any person authorised by the Central Government in this behalf. This will be apparent from the relevant provisions of Section 236 as quoted below:

"236. Trial of offences by Special Court.□(1) Notwithstanding anything in the Code of Criminal Procedure, 1973, offences under this Code shall be tried by the Special Court established under Chapter XXVIII of the Companies Act, 2013.

(2) No Court shall take cognizance of any offence punishable under this Act, save on a complaint made by the Board or the Comp App (AT) (CH) No. 17 of 2022 Page | 32 Central Government or any person authorised by the Central Government in this behalf.

(3) The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting a prosecution before a Special Court shall be deemed to be a Public Prosecutor.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in case of a complaint under sub-

section (2), the presence of the person authorised by the Central Government or the Board before the Court trying the offences shall not be necessary unless the Court requires his personal attendance at the trial."

28. Normally, the 'IBBI' or the 'Central Government' are not party to a 'Corporate Insolvency Resolution Process'. Even if the matter is referred to 'IBBI', it cannot file straightaway a compliant before the Special Court without any investigation and only if a prima facie case is made out. Therefore, the question arises as to how in such cases the matter can be referred to by the 'Adjudicating Authority' to the 'IBBI' or the 'Central Government' for trial of offences by Special Court under Section 236 of the 'I&B Code'.

29. In terms of sub-section (1) of Section 60, the 'National Company Law Tribunal' is the 'Adjudicating Authority' for the purpose of 'I&B Code'. It is having concurrent jurisdiction as the 'National Company Law Tribunal' under the Companies Act, as also as the Adjudicating Authority under the 'I&B Code'.

30. Section 212 of the Companies Act, 2013 though relates to 'investigation into the affairs of company by Serious Fraud Comp App (AT) (CH) No. 17 of 2022 Page | 33 Investigation Office' and such investigation can be made only if the Central Government is of the opinion that it is necessary to investigate into the affairs of a company by the 'Serious Fraud Investigation Office', as detailed below:

"212. Investigation into affairs of Company by Serious Fraud Investigation Office.--

(1) Without prejudice to the provisions of section 210, where the Central Government is of the opinion, that it is necessary to investigate into the affairs of a company by the Serious Fraud Investigation Office--

(a) on receipt of a report of the Registrar or inspector under section 208;

(b) on intimation of a special resolution passed by a company that its affairs are required to be investigated;

(c) in the public interest; or

(d) on request from any Department of the Central Government or a State Government, the Central Government may, by order, assign the investigation into the affairs of the said company to the Serious Fraud Investigation Office and its Director, may designate such number of inspectors, as he may consider necessary for the purpose of such investigation. (2) Where any case has been assigned by the Central Government to the Serious Fraud Investigation Office for investigation under this Act, no other investigating agency of Central Government or any State Government shall proceed with investigation in such case in respect of any offence under Comp App (AT) (CH) No. 17 of 2022 Page | 34 this Act and in case any such investigation has already been initiated, it shall not be proceeded further with and the concerned

agency shall transfer the relevant documents and records in respect of such offences under this Act to Serious Fraud Investigation Office.

(3) Where the investigation into the affairs of a company has been assigned by the Central Government to Serious Fraud Investigation Office, it shall conduct the investigation in the manner and follow the procedure provided in this Chapter; and submit its report to the Central Government within such period as may be specified in the order.

(4) The Director, Serious Fraud Investigation Office shall cause the affairs of the company to be investigated by an Investigating Officer who shall have the power of the inspector under section

217.

(5) The company and its officers and employees, who are or have been in employment of the company shall be responsible to provide all information, explanation, documents and assistance to the Investigating Officer as he may require for conduct of the investigation.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), [offence covered under section 447] of this Act shall be cognizable and no person accused of any offence under those sections shall be released on bail or on his own bond unless--

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(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence referred to this subsection except upon a complaint in writing made by--

(i) the Director, Serious Fraud Investigation Office; or

(ii) (ii) any officer of the Central Government authorised, by a general or special order in writing in this behalf by that Government.

(7) The limitation on granting of bail specified in subsection (6) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

(8) If the Director, Additional Director or Assistant Director of Serious Fraud Investigation Office authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of any offence punishable under sections referred to Comp App (AT) (CH) No. 17 of 2022 Page | 36 in sub-section (6), he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest. (9) The Director, Additional Director or Assistant Director of Serious Fraud Investigation Office shall, immediately after arrest of such person under subsection (8), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Serious Fraud Investigation Office in a sealed envelope, in such manner as may be prescribed and the Serious Fraud Investigation Office shall keep such order and material for such period as may be prescribed. (10) Every person arrested under sub-section (8) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's court.

(11) The Central Government if so directs, the Serious Fraud Investigation Office shall submit an interim report to the Central Government.

(12) On completion of the investigation, the Serious Fraud Investigation Office shall submit the investigation report to the Central Government.

(13) Notwithstanding anything contained in this Act or in any other law for the time being in force, a copy of the investigation report may be obtained by any person concerned by making an application in this regard to the court.

Comp App (AT) (CH) No. 17 of 2022 Page | 37 (14) On receipt of the investigation report, the Central Government may, after examination of the report (and after taking such legal advice, as it may think fit), direct the Serious Fraud Investigation Office to initiate prosecution against the company and its officers or employees, who are or have been in employment of the company or any other person directly or indirectly connected with the affairs of the company. (15) Notwithstanding anything contained in this Act or in any other law for the time being in force, the investigation report filed with the Special Court for framing of charges shall be deemed to be a report filed by a police officer under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974).

(16) Notwithstanding anything contained in this Act, any investigation or other action taken or initiated by Serious Fraud Investigation Office under the provisions of the Companies Act, 1956 (1 of 1956) shall continue to be proceeded with under that Act as if this Act had not been passed.

(17) (a) In case Serious Fraud Investigation Office has been investigating any offence under this Act, any other investigating agency, State Government, police authority, income-tax authorities having any information or documents in respect of such offence shall provide all such information or documents available with it to the Serious Fraud Investigation Office;

(b) The Serious Fraud Investigation Office shall share any information or documents available with it, with any Comp App (AT) (CH) No. 17 of 2022 Page | 38 investigating agency, State Government, police authority or income-tax authorities, which may be relevant or useful for such investigating agency, State Government, police authority or income-tax authorities in respect of any offence or matter being investigated or examined by it under any other law."

31. From bare perusal of Section 212 of the Companies Act, 2013, it will be evident that such investigation into affairs of company can be made only on receipt of a report of the Registrar or Inspector under Section 208 of the Companies Act, 2013 or on intimation of a special resolution passed by a company that its affairs are required to be investigated; or in the public interest; or on request from any Department of the Central Government or a State Government.

32. Section 212 does not empower the National Company Law Tribunal or the Adjudicating Authority to refer the matter to the Central Government for investigation by the 'Serious Fraud Investigation Office' even if it notices the affairs of the Company of defrauding the creditors and others.

33. However, investigation into affairs of company at the instance of the Tribunal has been prescribed under Section 213 and reads as follows:

"213. Investigation into company's affairs in other cases.-- The Tribunal may,--

(a) on an application made by--

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(i) not less than one hundred members or members holding not less than one-tenth of the total voting power, in the case of a company having a share capital; or

(ii) not less than one-fifth of the persons on the company's register of members, in the case of a company having no share capital, and supported by such evidence as may be necessary for the purpose of showing that the applicants have good reasons for seeking an order for conducting an investigation into the affairs of the company; or

(b) on an application made to it by any other person or otherwise, if it is satisfied that there are circumstances suggesting that--

(i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to

any of its members or that the company was formed for any fraudulent or unlawful purpose;

(ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members; or

(iii) the members of the company have not been given all the information with respect to its affairs which they Comp App (AT) (CH) No. 17 of 2022 Page | 40 might reasonably expect, including information relating to the calculation of the commission payable to a managing or other director, or the manager, of the company, order, after giving a reasonable opportunity of being heard to the parties concerned, that the affairs of the company ought to be investigated by an inspector or inspectors appointed by the Central Government and where such an order is passed, the Central Government shall appoint one or more competent persons as inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct: Provided that if after investigation it is proved that-- (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or (ii) any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the Comp App (AT) (CH) No. 17 of 2022 Page | 41 management of its affairs shall be punishable for fraud in the manner as provided in section 447."

34. In terms of clause (b) of Section 213, on an application made to it by any other person ('Resolution Professional') or otherwise (suo motu), if the National Company Law Tribunal is satisfied that there are circumstances suggesting that (i) the business of the company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose, or in a manner oppressive to any of its members or that the company was formed for any fraudulent or unlawful purpose as alleged by the 'Resolution Professional' in the present case and or by; (ii) persons concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, misfeasance or other misconduct towards the company or towards any of its members etc., (which is also the allegation made by the 'Resolution Professional'), in such case, the Tribunal after giving a "reasonable opportunity" of being heard to the parties concerned, that the affairs of the company ought to be investigated by an 'Inspector' or 'Inspectors' appointed by the Central Government and where such an order is passed, in such case, the Central Government is bound to appoint one or more competent persons as Inspectors to investigate into the affairs of the company in respect of such matters and to report thereupon to it in such manner as the Central Government may direct.

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35. If after investigation it is proved that (i) the business of the company is being conducted with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose, or that the company was formed for any fraudulent or unlawful purpose; or (ii)

any person concerned in the formation of the company or the management of its affairs have in connection therewith been guilty of fraud, then, every officer of the company who is in default and the person or persons concerned in the formation of the company or the management of its affairs shall be punishable for fraud in the manner as provided in section 447.

36. For punishment of fraud in a manner as prescribed in Section 447 of the Companies Act, 2013, the matter is required to be tried by a Special Court as established under Section 435 which requires speedy trial for offences under the Companies Act, 2013. The same Court i.e. Special Court established under Section 435 is the Court empowered under Section 236 of the 'I&B Code' for trial of such offence under the 'I&B Code' also.

37. In view of the aforesaid position of law, we hold that the Tribunal/ Adjudicating Authority, on receipt of application/complaint of alleged violation of the aforesaid provisions and on such consideration and being satisfied that there are circumstances suggesting that defraud etc. has been committed, may refer the matter to the Central Government for investigation by an Inspector or Inspectors as may be appointed by the Central Government. On such investigation, if the Comp App (AT) (CH) No. 17 of 2022 Page | 43 investigating authority reports that a person has committed any offence punishable under Section 213 read with Section 447 of the Companies Act, 2013 or Sections 68, 69, 70, 71, 72 and 73 of the 'I&B Code', in such case, the Central Government is competent to refer the matter to the Special Court itself or may ask the Insolvency and Bankruptcy Board of India or may authorise any person in terms of sub-section (2) of Section 236 of the 'I&B Code' to file complaint.

38. The National Company Law Tribunal is the Adjudicating Authority under Part-II of the 'I&B Code' in terms of sub-section (1) of Section 60, which reads as follows:

"60. Adjudicating Authority for corporate persons.□(1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located....."

39. The Civil Procedure Code is not applicable for any proceeding before the Tribunal and in terms of Section 424, the Tribunal is guided by principle of natural justice and subject to other provisions under the Companies Act, 2013 or the 'I&B Code' or any Rule made thereunder. The Tribunal and the Adjudicating Authority have also been empowered to regulate their own procedure.

40. In view of the aforesaid position of law also, the procedure laid down under Section 213 of the Companies Act, 2013 can be exercised by the Tribunal/ Adjudicating Authority, as held above. Comp App (AT) (CH) No. 17 of 2022 Page | 44

41. Further, after the investigation by the Inspector, if case is made out and the Central Government feels that the matter also requires investigation by the 'Serious Fraud Investigation Office' under Section 212 of the Companies Act, 2013, it is open to the Central Government to decide whether in

such case the matter may be referred to the 'Serious Fraud Investigation Office' or not. This will depend on the gravity of charges as may be found during the investigation by the Inspector.

42. In view of the aforesaid position of law, we are of the view that the Adjudicating Authority was not competent to straight away direct any investigation to be conducted by the 'Serious Fraud Investigation Office'. However, the Adjudicating Authority (Tribunal) being competent to pass order under Section 213 of the Companies Act, 2013, it was always open to the Adjudicating Authority/Tribunal to give a notice with regard to the aforesaid charges to the Promoters and others, including the Appellants herein and after following the procedure as laid down in Section 213, if prima facie case was made out, it could refer the matter to the Central Government for investigation by the Inspector or Inspectors and on such investigation, if any, actionable material is made out and if the Central Government feels that the matter requires investigation through the 'Serious Fraud Investigation', it can proceed in accordance with the provisions as discussed above. Impugned order shows parties have been heard on the charges claimed by the 'Resolution Professional'.

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43. We, accordingly, modify the impugned order dated 16th April, 2019 and refer the matter to the Central Government for investigation through any Inspector or Inspectors."

EVALUATION:

61. As far as the present case is concerned, the 'Appellant'/'Applicant' is not a 'shareholder' or a 'Creditor' or a 'person' related in any manner to the '1st Respondent'/'Club'. As regards, the 'Title', in respect of the lands measuring 12.53 'Acres' is concerned, the same is a subject matter of 'litigation' with numerous legal proceedings before the City Civil Court, Chennai.

62. In respect of the 'conveyance' to and in favor of 'DLF' is concerned, the same, according to the 1st Respondent/Club is a private transaction between the 'Club' and another entity. As far as 'Madras School of Equitation' is concerned, it is the stand of the 1st Respondent/Club that it is a part and parcel of the 1st Respondent/Club and the issue of Sub-Lease may not arise.

63. In regard to the 'Income Tax' dues and the 'GST' dues are concerned, the 'Appellant'/'Petitioner' being an alien under stranger to the 1st Respondent/Club has no 'Locus Standi' to question the same. And in this regard, the 'Income Tax' and 'GST' Authorities are to take such action as they deem fit and proper, in the considered opinion of this 'Tribunal'. By no stretch of Comp App (AT) (CH) No. 17 of 2022 Page | 46 imagination, these 'dues' cannot be prudently considered as a basis praying for an 'Investigation', as per the ingredients of Section 213 of the Companies Act, 2013.

64. A cursory perusal of the relevant Provisions of the Companies Act, 2013 point out that there are prescribed procedures to deal with a contingency like 'Mismanagement' of a 'Affairs of Company'.

65. There is no two opinion of a premodial fact that a person whose name is not on the 'Register of Members' is not entitled to prefer a 'Petition' before a 'Tribunal'. It is for the concerned person to establish that he is a 'Member of a Company' on the date of filing of a Petition/Application under the Companies Act, 2013. When a person is not a 'Member of the Company', he cannot even come out with an allegation of 'Oppression' to invoke the ingredients of relevant Provisions of the Companies Act, 2013, as the case may be.

66. If a Petition filed by a 'Petitioner'/'Applicant' under the Companies Act, 2013 seeking certain reliefs, suffers from 'Delay and Latches', the same is not maintainable in 'Law'. Although a plea of 'Limitation' is not to be raised before a 'Tribunal' because of the exercise of 'Equitable Jurisdiction' in a proceeding initiated by an Applicant/Petitioner, the plea of 'Delay and Latches' will squarely apply in a given case and the delay/latches will of course, begin undoubtedly, from the 'Date of Knowledge', in the considered opinion of this 'Tribunal'.

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67. In the Instant Case, the 'Appellant'/'Petitioner', has not made out an Ex-Facie case to avail the remedy under Section 213(b) of the 'Companies Act'. The Power of a 'Tribunal'/'Appellate Tribunal' is not to be exercised in an 'Arbitrary' or 'capricious' manner. Per contra, the power of the 'Tribunal' is to be exercised with utmost care, caution and circumspection, based on its sound Application of Judicial mind and Discretion. A 'Tribunal' cannot exercise its power under the Companies Act just for the asking of an Alien/Stranger, simply on the basis of allegations made by a 'Non-shareholder'. Also, in the present case, no endeavor was made by the 'Appellant'/'Petitioner' to avail/exhaust the remedies available, if any, under the Companies Act, 2013 as per procedure prescribed.

68. Suffice it for this 'Tribunal' to make a pertinent mention that when the 'cause of action' (Bundle of Facts) purportedly arose before the year 1996, in the present case, then the Company Petition/46(CHE)/2021 filed by the 'Appellant'/'Petitioner' before the National Company Law Tribunal, Chennai suffers from the Plea of 'Delay and Latches', as held by this 'Tribunal'. Looking at from any angle, the main Company Petition CP/46/CHE/2021 filed before the National Company Law, Tribunal, Chennai is not maintainable either in 'Law' or on facts. Viewed in that perspective, the Company Appeal AT No.72 of 2022 sans merits.

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In fine, the Company Appeal (AT) (CH) No.17 of 2022 is dismissed. No cost. Connected IA No.185 of 2022 is closed.

[Justice M. Venugopal] Member (Judicial) [Kanthi Narahari] Member (Technical)
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