2023:DHC:4590

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

Date of decision: 10th JULY, 2023

IN THE MATTER OF:

\+ **W.P.(C) 8634/2023 & CM APPLs. 32755/2023, 32804/2023, 33377/2023**

SIDDHARTH SAHIB SINGH ..... Petitioner

Through: Mr. Sachin Puri, Sr. Advocate, Mr. Rahul Mehra, Sr. Advocate with Mr. Vishnu Langawat, Mr. Vishal Bhatnagar, Mr. Praveen Kumar Sharma, Mr. Chaitanya Gusain and Mr. Anand Thumbayil, Advocates.

versus

APEX COUNCIL OF DDCA ..... Respondent

Through: Mr. Rajeev Nayyar, Sr. Advocate; Mr. Sandeep Sethi, Sr. Advocate; Mr. Mohit Mathur, Sr. Advocate; Mr. Rajshekhar Rao, Sr. Advocate; Ms. Aishwarya Bhati, ASG; Mr. Shyam Sharma, Mr. Manik Dogra, Mr. T. Singhdev, Ms. Ramanpreet Kaur, Mr. Rohit Bhagat, Ms. Ameya V. Thanvi, Mr. Abhijit Chakrabarty, Mr. Aabhas Sukhramani, Mr. Tanishq Srivastava, Ms. Anum Hussain, Mr. Vikram Singh, Ms. Shreya Sethi, Ms. Tanvi Tewari and Mr. Bhanu Gulati, Mr. Saurabh Chadda, Advocates.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Petitioner herein, who is the Secretary of the Delhi and District Cricket Association (*hereinafter referred to as 'the DDCA'*) has approached

this Court by filing the present Writ Petition under Article 226 of the Constitution of India challenging the notice dated 10.06.2023, issued by the Apex Council of DDCA, for convening the Extra-Ordinary General Meeting (*hereinafter referred to as 'the EGM'*) of the Members of the DDCA on 05.07.2023 at 09:00 AM at the registered office of the DDCA at the Arun Jaitley Stadium, Ferozshah Kotla Ground, New Delhi.

2. Shorn of unnecessary details, the facts, leading to the present Writ Petition are as under:

a. DDCA is a company incorporated under Section 8 of the Companies Act, 1956 (hereinafter referred to as 'the Companies Act'). It is the governing body for cricket activities in the State of Delhi and the Delhi Cricket Team. The Apex Council of the DDCA is the principal body of the DDCA tasked with the governance of the affairs of DDCA.

b. It is stated that a Notice dated 10.06.2023 was issued by the Apex Council of the DDCA for convening the EGM of the Members of the DDCA on 05.07.2023 at 09:00 AM at the registered office of the DDCA for ratifying its resolution dated 10.04.2023 by which the Apex Council had appointed Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA. At this juncture it is pertinent to mention that. Justice Indu Malhotra (Retd.), Former Judge of the Supreme Court of India had been appointed as the Ombudsman cum Ethics Officer of the DDCA. Material on record indicates that Justice Indu Malhotra (Retd.) resigned from the post of

Ombudsman cum Ethics Officer of the DDCA on 31.03.2023 pursuant to which Justice M M Kumar (Retd.) was appointed as the Ombudsman cum Ethics Officer of the DDCA by the Apex Council *vide* its Resolution dated 10.04.2023.

c. Petitioner herein is the Secretary of the Apex Council of the DDCA. It is stated that the Resolution dated 10.04.2023, appointing Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA had been passed clandestinely and is, therefore, invalid and the notice calling for a meeting for ratification of the said Resolution should be quashed and set aside.

3. Mr. Rahul Mehra, learned Senior Counsel appearing for the Petitioner, has taken this Court through various provisions of the Articles of Association of the DDCA to contend that the notice dated 10.06.2023 calling for an EGM of the Members of the DDCA on 05.07.2023 at 09:00 AM at the registered office of the DDCA for ratifying its resolution dated 10.04.2023 by which the Apex Council had appointed Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA is completely contrary to the procedure laid down in the Articles of Association of the DDCA. He contends that Article 1(f) of the Articles of Association (*hereinafter referred to as* 'AoA') defines the Apex Council as the principal body of the DDCA tasked with the governance of the DDCA as set out in Article 17 of the AoA. He then takes this Court through Article 10 of the AoA which lays down the rules regarding conduct of the Annual General Meeting of the

General Body of the Apex Council. Article 10(1) of the AoA stipulates that the Annual General Meeting of the General Body shall be held every year, not later than 30th September, at such place and time as the President may fix. Mr. Mehra then draws the attention of this Court to Article 10(5) of the AoA which stipulates the businesses that have to be transacted only at the Annual General Meeting of the General Body of the DDCA. He states that Article 10(5)(f) of the AoA provides that the Ombudsman cum Ethics Officer of the DDCA can be appointed only at the Annual General Meeting of the General Body of the Apex Council which is held annually. He then takes this Court to Article 17(2) of the AoA which deals with the composition of the Apex Council of the DDCA. He states that Article 17(2) of the AoA stipulates that the Apex Council shall consist of a total of 18 Directors including the Secretary of the DDCA. Mr. Mehra then takes this Court to Article 18(9) of the AoA to contend that only a Resolution passed by circulation to all members of the Apex Council is valid and effective, furthermore, only a Resolution by circulation to all members of the Apex Council can be ratified at the next meeting of the Apex Council. Mr. Mehra then draws the attention of this Court to Article 18(2) of the Articles of Association to contend that the Apex Council has all the powers of the General Body and has the authority and discretion to do all acts and things except such acts which are expressly directed to be done by the General Body. Exercise of such powers, authorities and discretion shall be subject to the control and regulation of the General Body. In short the contention of Mr. Mehra is that the Resolution which is alleged to have been passed on 10.04.2023 by which Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir has been appointed as the Ombudsman

cum Ethics Officer of the DDCA is not valid since the Petitioner herein, who is the Secretary of the Apex Council, has not signed the resolution. He further contends that Article 10(5)(f) of the AoA specifically provides that the appointment of Ombudsman cum Ethics Officer of the DDCA can be done only at the Annual General Meeting of the General Body of the Apex Council which is held annually and in view of the fact that Article 18(2) of the Articles of Association bars the Apex Council to do such acts which are expressly directed to be done by the General Body, the Apex Council ought not to have appointed Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA in a clandestine manner and the same cannot be ratified by the EGM which is to be held on 05.07.203. He, therefore, states that the Resolution dated 10.04.2023 is invalid and, therefore, the notice dated 10.06.2023, calling for an EGM of the Members of the DDCA for ratifying its resolution dated 10.04.2023 appointing Justice M M Kumar (Retd.), former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA is invalid in law and this Court should exercise its power under Article 226 of the Constitution of India to strike it down.

4. Mr. Rajiv Nayyar, learned Senior Counsel appearing for Respondent, raises a preliminary objection on the maintainability of the present Writ Petition. He states that the DDCA is a company incorporated under Section 8 of the Companies Act, 2013 and, therefore, the remedy for the Petitioner is to move an appropriate application before the National Company Law Tribunal (*hereinafter referred to as 'the NCLT'*) for redressal of his grievances. Mr. Nayyar has taken this Court to Section 242(2)(a) of the

Companies Act to state that the NCLT has the power to regulate the conduct of affairs of the company. He, thereafter, took this Court to Section 242(4) of the Companies Act to contend that the NCLT has the power to make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as the NCLT feels to be just and equitable. Mr. Nayyar also takes this Court through Section 245(1) of the Companies Act to contend that the NCLT can pass orders restraining a company from committing breach of any provision of the company's memorandum or articles as well as to restrain the company and its directors from acting on such resolution which it thinks are prejudicial to the interests of the company or its members. He further submits that Section 241 of the Companies Act specifically grants power to the NCLT to appoint persons who can conduct the affairs of the company and pass orders to restrain the company from committing breach of any of the company's memorandum or articles. Mr. Nayyar, therefore, contends that in the presence of an equally efficacious alternative remedy to the Petitioner to approach NCLT, this Court must desist from exercising its jurisdiction under Article 226 of the Constitution of India.

5. Mr. Nayyar has also taken this Court through an Order dated 28.02.2020, passed by this Court in **W.P.(C) No.1878/2020**, titled as Rajinderr Kumar v. UOI & Anr. in which the Petitioner therein had approached this Court challenging the Annual Report and Statement of Accounts of the company therein. On being confronted with the availability of an equally efficacious alternative remedy of approaching the NCLT, the Petitioner therein had chosen to withdraw the said Writ Petition with liberty to approach the NCLT. Mr. Nayyar has also drawn the attention of this

Court to a judgment passed by this Court in Delhi & District Cricket Association v. Sudhir Kumar Aggarwal and Others, **2020 SCC OnLine Del 1223,** wherein this Court has held that the NCLT has powers to deal with the issues regarding violation of the AoA by a company.

6. In rejoinder, Mr. Sachin Puri, learned Senior Counsel appearing for the Petitioner, draws the attention of this Court to Section 244 of the Companies Act to contend that the Petitioner in his own capacity could not have approached the NCLT by filing an application under Section 241 of the Companies Act as Section 244 of the Companies Act provides that an application under Section 241 of the Companies Act can only be filed if such an application is supported by at least 20% of the total number of members of the company and, therefore, the Petitioner had no other remedy for redressal of his grievance. Mr. Puri further contends that against the judgment of this Court in Delhi & District Cricket Association v. Sudhir Kumar Aggarwal and Others (supra) an SLP being, SLP (C) No.9285/2020, has been filed before the Apex Court and the Apex Court has disposed of the said SLP and had left the issue of maintainability open.

7. This Court on 04.07.2023 heard the case only on the issue of maintainability of the Writ Petition and not on the merits of the case.

8. It is well settled that the jurisdiction of a High Court under Article 226 of the Constitution of India is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles but the exercise of the jurisdiction is discretionary and it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations and the

resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute.

9. In Thansingh Nathmal v. Supdt. of Taxes, **(1964) 6 SCR 654,** the Apex Court has observed as under:

> *"**7**. ..... Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy.....*
> *.....Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."*

10. In CIT v. Chhabil Dass Agarwal, **(2014) 1 SCC 603,** the Apex Court has observed as under:

> *"**10**. In the instant case, the only question which arises for our consideration and decision is whether the High Court was justified in interfering with the order passed by the assessing authority under Section 148 of the Act in exercise of its jurisdiction under Article 226 when an equally efficacious alternate remedy was available to the assessee under the Act.*
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> ***11**. Before discussing the fact proposition, we would notice the principle of law as laid down by this Court. It is settled law that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy,*

convenience and discretion rather than a rule of law. Undoubtedly, it is within the discretion of the High Court to grant relief under Article 226 despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exist sufficient grounds to invoke the extraordinary jurisdiction under Article 226. (See State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] , Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107] and State of H.P. v. Gujarat Ambuja Cement Ltd. [(2005) 6 SCC 499])

***12**. The Constitution Benches of this Court in K.S. Rashid and Son v. Income Tax Investigation Commission [AIR 1954 SC 207] , Sangram Singh v. Election Tribunal [AIR 1955 SC 425] , Union of India v. T.R. Varma [AIR 1957 SC 882] , State of U.P. v. Mohd. Nooh [AIR 1958 SC 86] and K.S. Venkataraman and Co. (P) Ltd. v. State of Madras [AIR 1966 SC 1089] have held that though Article 226 confers very wide powers in the matter of issuing writs on the High Court, the remedy of writ is absolutely discretionary in character. If the High Court is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere, it can refuse to exercise its jurisdiction. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of the principles of natural justice or the procedure required for decision has not been adopted. [See N.T. Veluswami Thevar v. G. Raja Nainar [AIR 1959 SC 422] , MunicipalCouncil, Khurai v. Kamal Kumar [AIR 1965 SC 1321 : (1965) 2 SCR 653] , Siliguri*

Municipality v. Amalendu Das [(1984) 2 SCC 436 : 1984 SCC (Tax) 133] , S.T. Muthusami v. K. Natarajan [(1988) 1 SCC 572] , Rajasthan SRTC v. Krishna Kant [(1995) 5 SCC 75 : 1995 SCC (L&S) 1207 : (1995) 31 ATC 110] , Kerala SEB v. Kurien E. Kalathil [(2000) 6 SCC 293] , A. Venkatasubbiah Naidu v. S. Chellappan [(2000) 7 SCC 695] , L.L. Sudhakar Reddy v. State of A.P. [(2001) 6 SCC 634] , Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra [(2001) 8 SCC 509] , Pratap Singh v. State of Haryana [(2002) 7 SCC 484 : 2002 SCC (L&S) 1075] and GKN Driveshafts (India) Ltd. v. ITO [(2003) 1 SCC 72] .]

***13**. In Nivedita Sharma v. Cellular Operators Assn. of India [(2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court has held that where hierarchy of appeals is provided by the statute, the party must exhaust the statutory remedies before resorting to writ jurisdiction for relief and observed as follows: (SCC pp. 343-45, paras 12-14)*

> *"12. In Thansingh Nathmal v. Supt. of Taxes [AIR 1964 SC 1419] this Court adverted to the rule of self-imposed restraint that the writ petition will not be entertained if an effective remedy is available to the aggrieved person and observed: (AIR p. 1423, para 7)*
>
> > *'7. ... The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by the statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute,*

the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.'

13. In Titaghur Paper Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] this Court observed: (SCC pp. 440-41, para 11)

'11. ... It is now well recognised that where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute only must be availed of. This rule was stated with great clarity by Willes, J. in Wolverhampton New Waterworks Co. v. Hawkesford [(1859) 6 CBNS 336 : 141 ER 486] in the following passage: (ER p. 495)

> *"... There are three classes of cases in which a liability may be established founded upon a statute. ... But there is a third class viz. where a liability not existing at common law is created by a statute which at the same time gives a special and particular remedy for enforcing it. ... The remedy provided by the statute must be followed, and it is not competent to the party to pursue the course applicable to cases of the second class. The form given by the statute must be adopted and adhered to."*

The rule laid down in this passage was approved by the House of Lords in Neville v. London Express Newspaper Ltd. [1919 AC 368 : (1918-

19) All ER Rep 61 (HL)] and has been reaffirmed by the Privy Council in Attorney General of Trinidad and Tobago v. Gordon Grant and Co. Ltd. [1935 AC 532 (PC)] and Secy. of State v. Mask and Co. [(1939-40) 67 IA 222 : (1940) 52 LW 1 : AIR 1940 PC 105] It has also been held to be equally applicable to enforcement of rights, and has been followed by this Court throughout. The High Court was therefore justified in dismissing the writ petitions in limine.'

14. In Mafatlal Industries Ltd. v. Union of India [(1997) 5 SCC 536] B.P. Jeevan Reddy, J. (speaking for the majority of the larger Bench) observed: (SCC p. 607, para 77)

> *'77. ... So far as the jurisdiction of the High Court under Article 226—or for that matter, the jurisdiction of this Court under Article 32—is concerned, it is obvious that the provisions of the Act cannot bar and curtail these remedies. It is, however, equally obvious that while exercising the power under Article 226/Article 32, the Court would certainly take note of the legislative intent manifested in the provisions of the Act and would exercise their jurisdiction consistent with the provisions of the enactment.'"*
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> *(See G. Veerappa Pillai v. Raman & Raman Ltd. [(1952) 1 SCC 334 : AIR 1952 SC 192] , CCE v. Dunlop India Ltd. [(1985) 1 SCC 260 : 1985 SCC (Tax) 75] , Ramendra Kishore Biswas v. State of Tripura [(1999) 1 SCC 472 : 1999 SCC (L&S) 295] , Shivgonda Anna Patil v. State of Maharashtra [(1999) 3 SCC 5] , C.A. Abraham v. ITO [AIR 1961 SC 609 : (1961) 2 SCR 765] , Titaghur Paper*

> *Mills Co. Ltd. v. State of Orissa [Titaghur Paper Mills Co. Ltd. v. State of Orissa, (1983) 2 SCC 433 : 1983 SCC (Tax) 131] , Excise and Taxation Officer-cum-Assessing Authority v. Gopi Nath and Sons [1992 Supp (2) SCC 312] , Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1] , Tin Plate Co. of India Ltd. v. State of Bihar [(1998) 8 SCC 272] , Sheela Devi v. Jaspal Singh [(1999) 1 SCC 209] and Punjab National Bank v. O.C. Krishnan [(2001) 6 SCC 569] .)*
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> ***14**. In Union of India v. Guwahati Carbon Ltd. [(2012) 11 SCC 651] this Court has reiterated the aforesaid principle and observed: (SCC p. 653, para 8)*
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> > *"8. Before we discuss the correctness of the impugned order, we intend to remind ourselves the observations made by this Court in Munshi Ram v. Municipal Committee, Chheharta [(1979) 3 SCC 83 : 1979 SCC (Tax) 205] . In the said decision, this Court was pleased to observe that: (SCC p. 88, para 23)*
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> > > *'23. ... [when] a revenue statute provides for a person aggrieved by an assessment thereunder, a particular remedy to be sought in a particular forum, in a particular way, it must be sought in that forum and in that manner, and all the other forums and modes of seeking [remedy] are excluded.'""*

11. In Maharashtra State Board of Wakfs v. Shaikh Yusuf Bhai Chawla and Others, **2022 SCC OnLine SC 1653**, the Apex Court has held as under:

> *"**215**. Now, we may resume our discussion of the facts in greater focus. We notice that the High Court has interfered under Article 226. In keeping with what is laid down in the judgment we have referred to, perhaps*

it could be said that the High Court would have been better advised to relegate the parties to the Tribunal. There are however, certain aspects to it. Firstly, we may notice that this is not a case where the challenge was laid only to the lists or the survey. Rather we have noticed that the challenge was laid to the very incorporation of the Board and its constitution. A challenge was also laid to the proceedings of the Charity Commissioner. These decisions which were impugned could not have been adjudicated by the Tribunal under Section 6 of the Act. ***The second aspect which we cannot ignore is that as held by this Court, Article 226 confers a jurisdiction or a power on the High Courts. It is a power under the Constitution. While it may be true that a statute may provide for an alternate forum to which the High Court may relegate the party in an appropriate case, the existence of an alternate remedy by itself cannot exclude the jurisdiction of the High Court under the Constitution. No doubt, it has been a self-imposed restraint which is fairly faithfully adhered to by the High Courts and it is largely a matter of discretion. We find that there are dicta which has held that on the basis of an alternate remedy, a writ petition is not maintainable. We would understand that the position to be that a constitutional remedy cannot be barred or excluded as when the High Court exercises its power under Article 226, it cannot be a case of lack of inherent jurisdiction. No doubt, when High Courts stray outside the limits with reference to certain principles as have been laid down in the decision which we have referred to, it can be corrected.*** *Another factor which is to be borne in mind is that in a case where the High Court has entertained a matter and the matter comes for hearing in this Court in the jurisdiction under Article 136, our woes are compounded by the long passage of time as is demonstrated by the facts of this case. The judgment of the High Court was rendered in the year 2011. This*

> *Court is hearing the matter after more than a decade. It is nearly two decades after the filing of the writ petitions that this Court is hearing the matter."*
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> (emphasis supplied)

12. The Apex Court in its latest judgment in South Indian Bank Ltd. and Others v. Naveen Mathew Philip and Another, **2023 SCC OnLine SC 435**, has observed as under:

> *"**13**. In view of the fair stand taken by the learned Senior Counsel appearing for the Appellants, we do not wish to interfere with the impugned orders passed. We may, however, reiterate the settled position of law on the interference of the High Court invoking Article 226 of the Constitution of India in commercial matters, where an effective and efficacious alternative forum has been constituted through a statute. We are also constrained to take judicial notice of the fact that certain High Courts continue to interfere in such matters, leading to a regular supply of cases before this Court.*
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> *****
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> ***16**. Approaching the High Court for the consideration of an offer by the borrower is also frowned upon by this Court. A writ of mandamus is a prerogative writ. In the absence of any legal right, the Court cannot exercise the said power. More circumspection is required in a financial transaction, particularly when one of the parties would not come within the purview of Article 12 of the Constitution of India. **When a statute prescribes a particular mode, an attempt to circumvent shall not be encouraged by a writ court. A litigant cannot avoid the non-compliance of approaching the Tribunal which requires the prescription of fees and use the constitutional remedy as an alternative.** We wish to quote with profit a recent*

decision of this Court in Radha Krishan Industries v. State of H.P., (2021) 6 SCC 771,

> *"25. In this background, it becomes necessary for this Court, to dwell on the "rule of alternate remedy" and its judicial exposition. In Whirlpool Corpn. v. Registrar of Trade Marks, (1998) 8 SCC 1, a two-Judge Bench of this Court after reviewing the case law on this point, noted : (SCC pp. 9-10, paras 14-15)*
>
> > *"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
> >
> > ***15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction****. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the*

order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field".(emphasis supplied)

26. Following the dictum of this Court in Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1], in Harbanslal Sahnia v. Indian Oil Corpn. Ltd. [(2003) 2 SCC 107], this Court noted that : (Harbanslal Sahnia case, SCC p. 110, para 7)

"7. So far as the view taken by the High Court that the remedy by way of recourse to arbitration clause was available to the appellants and therefore the writ petition filed by the appellants was liable to be dismissed is concerned, suffice it to observe that the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies : (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1].) The present case attracts applicability of the first two contingencies. Moreover, as noted, the

> *appellants' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings." (emphasis supplied)*

27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

> *27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.*
>
> *27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.""* (emphasis supplied)

13. It is well settled that availability of alternative remedy does not operate as an absolute bar to the maintainability of the writ petition and that the rule which requires a party to pursue the alternative remedy provided by the statute is a rule of policy for convenience and discretion rather than a rule of law. Undoubtedly, entertainability and maintainability of the writ petition are two distinct concepts. If the objection to maintainability is sustained then the Courts are rendered incapable of receiving the *lis* for adjudication. However, on the other hand, the question of entertainability is entirely within the discretion of the High Courts and writ remedy is a discretionary remedy. A writ petition, despite being maintainable may not be entertained by High Courts for many reasons or relief could be refused to the Petitioner despite setting up a sound legal point. Wherein alternate remedies are available, the writ courts should not normally entertain a writ petition if the Petitioner has not availed the alternative remedy without examining whether an exceptional case has been made out for such entertainment.

[Refer to : Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority & Ors., **2023 SCC OnLine SC 95**]

14. Keeping the above principles in mind, this Court proceeds to examine whether on the facts as presented before this Court, this Court should entertain the writ petition in light of the availability of an alternative remedy and whether the case set up by the Petitioner falls within the exceptions as enumerated by the Apex Court in its various judgments. The Petitioner has approached this Court praying for quashing of notice dated 10.06.2023, issued by the DDCA for convening the EGM of the Members of the DDCA on 05.07.2023 at 09:00 AM at the registered office of the DDCA at the Arun Jaitley Stadium, Ferozshah Kotla Ground, New Delhi for ratifying its resolution dated 10.04.2023 by which the Apex Council had appointed Justice M M Kumar (Retd.), Former Chief Justice of High Court of Jammu & Kashmir as the Ombudsman cum Ethics Officer of the DDCA on the ground that the said EGM is contrary to the procedures laid down in the AoA.

15. Chapter 16 of the Companies Act deals with prevention of oppression and mismanagement. Section 241 of the Companies Act provides that any member of a company who complaints that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or to any other member or members or in a manner prejudicial to the interests of the company may approach the NCLT. Section 241 of the Companies Act reads as under:

> "***241***. *Application to Tribunal for relief in cases of oppression, etc.—*
>
> *(1) Any member of a company who complains that—*

> *(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or*
>
> *(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members,*
>
> *may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.*
>
> *(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter*"

16. Section 242 of the Companies Act provides that if NCLT is of the opinion that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company then the NCLT can pass orders for regulating the conduct of the affairs of

the company. Section 242 (4) of the Companies Act gives power to the NCLT to make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as the NCLT deems to be just and equitable. Section 242 reads as under:

> "***Section 242***. *Powers of Tribunal*
>
> *(1) If, on any application made under section 241, the Tribunal is of the opinion—*
>
> > *(a)* ***that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and***
> >
> > *(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.*
>
> *(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—*
>
> > *(a)* ***the regulation of conduct of affairs of the company in future****;*
> >
> > *(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;*

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(h) removal of the managing director, manager or any of the directors of the company;

(i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the

manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(l) imposition of costs as may be deemed fit by the Tribunal;

(m) ***any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made****.*

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) ***The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.***

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any

alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both." (emphasis supplied)

17. Section 244 of the Companies Act which stipulates the rights of a member of the company to file an application under Section 241 of the Companies Act reads as under:

*"**Section 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 subsection (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."* (emphasis supplied)

18. Section 245 of the Companies Act gives the power to the NCLT to restrain a company from committing an act which is *ultra vires* the articles or memorandum of the company. It also restrains the company from committing breach of any provision of the company's memorandum or articles and to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by misrepresentation to the members or depositors and also

restrain its directors from acting on such resolution. Relevant portions of Section 245 of the Companies Act reads as under:

> *"**Section 245. Class action***
> *(1) Such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:--*
>
> *(a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;*
>
> *(b) to restrain the company from committing breach of any provision of the companys memorandum or articles;*
>
> *(c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;*
>
> *(d) to restrain the company and its directors from acting on such resolution;....."*

19. A perusal of the abovementioned Sections shows that NCLT has the power to redress the grievances of the Petitioner and the prayers sought in the present Writ Petition before this Court, especially the prayer for quashing the notice dated 10.06.2023 calling for an EGM of the Members of the DDCA on 05.07.2023 at 09:00 AM at the registered office of the DDCA for ratifying its resolution dated 10.04.2023.

20. Though Section 244(1)(b) of the Companies Act provides that an application under Section 241 of the Companies Act can be entertained only if it is supported by one-fifth of the total number of members of the company but the NCLT has power to waive of this requirement. The Petitioner, therefore, ought to have approached the NCLT and if the NCLT would have refused to waive off the stipulated requirement of support of one-fifth members of the company then it was always open for the Petitioner to approach this Court by contending that no equally efficacious alternative remedy is left to him. It cannot be said that if this Court does not exercise its jurisdiction under Article 226 of the Constitution of India an irreversible damage would be caused to the DDCA and the same cannot be rectified by the Courts or that the DDCA will be subjected to an irreparable loss which needs urgent restraint orders.

21. Article 41 of the AoA of DDCA deals with Ombudsman and the same reads as under:

> *"**41. THE OMBUDSMAN***
>
> *1. The Company shall appoint an Ombudsman at the Annual General Meeting for the purpose of providing an independent dispute resolution mechanism. The Ombudsman shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court so appointed by the Company after obtaining his/her consent and on such terms as determined by the Company in keeping with the dignity and stature of the office. The term of the Ombudsman shall be one year, subject to a maximum of 3 terms in office.*
>
> *2. If found expedient, the Ombudsman may also act as the Ethics Officer.*

> *3. The Apex council shall, in consultation with the CEO frame Regulations regarding the discipline and conduct of the Players, Match Officials, Team Officials, Administrators, Committee Members and others associated with the DDCA. The same shall come into force, once approved by the General Body of the Company."*

22. If the appointment of Ombudsman is contrary to the laws laid down in the AoA, it is always open for the NCLT to stay the effect of the resolution dated 10.04.2023 and reverse any order passed by the Ombudsman or any action taken by him/her if it is not in the interest of the DDCA. The Petitioner has not made out a case that it is imperative for this Court to entertain the present Writ Petition even though an equally efficacious alternative remedy/forum is available to the Petitioner and that the Ombudsman can pass such orders which are irreversible in nature and cannot be rectified if they are found to be faulty. This Court can take judicial notice of the fact that the NCLT is situated in Delhi and it was always open for the Petitioner to approach the NCLT which is the forum under the Companies Act to address the grievances which are raised by the Petitioner in the present Writ Petition. The present case also does not fall within the exceptions that have been laid down by the Apex Court in South Indian Bank Ltd. (supra) which would compel this Court to entertain the present Writ Petition even in the presence of an equally efficacious alternative remedy to the Petitioner.

23. This Court is, therefore, not inclined to entertain the present Writ Petition at this stage and grants liberty to the Petitioner to approach the NCLT for the redressal of its grievances.

24. It is made clear that this Court has not made any observations on the merits of the case.

25. With these observations, the Writ Petition is disposed of. Pending applications, if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JULY 10, 2023
Rahul