

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**

**Company Appeal (AT) No. 367 of 2019**

(Arising out of order dated 24.09.2019 passed by National Company Law Tribunal, Chennai Bench in CP/31/2017 with CA/196/2017 with I.A/244/2018)

**IN THE MATTER OF:**

**1.Mr. Dinesh Pujar,**

S/o D.Vengappa 366: 1<sup>st</sup> Stage Police layout  
Nethaji Nagar Alanahalli  
Mysore : 570 028

**...Appellant No.1**

**2.Mr.Dinesh Mathias,**

S/o Dr. Jayaseelan Mathias  
124, Mayston, Grays Hill,  
Coonoor – 643 101

**... Appellant No.2**

**3.Mr. Praveen Krishnan,**

S/o N.Krishnan  
'A' Block, No.503, Chartered Beverly Hills,  
Gubbalala, Subramanyapura Post,  
Uttarahalli Hoobli,  
Bangalore – 560 061

**... Appellant No.3**

**4.Mr.T.C.Venkataramani,**

S/o Late T.K.Chandramouliswaran  
Address:47/1, Anuraag,  
13<sup>th</sup> Cross, 3<sup>rd</sup> Main road,  
Vayalikaval, Bangalore – 560 003

**...Appellant No.4**

**5.Mr. TK Kamesh**

S/o N.Krishna  
No.82/A, Kempstowe Enclave,  
Club road, Ooty – 643 001

**... Appellant No.5**

**6.Mr. K.Manoj Kumar,**

S/o Krishnappa  
No.102, Ramakrishnappa road,

Cox town,  
Bangalore – 560 005

... Appellant No.6

**7.Mr.Suraj Ramjee,**  
S/o S.Ramasubramanian  
'Swagatham',  
Havelock road,  
Next to Hill woods School,  
Ooty – 643 001

... Appellant No.7

**8.Mr. P.Pradeep,**  
S/o Puttuswamy  
No.970/1, Wood Cock road,  
St.Marys Hill, Ooty – 643 001

...Appellant No.8

**9.Mr. S.Ramasubramaniam,**  
S/o Late Santhanam,  
'Swagatham'  
Havelock Road,  
Next to Hill woods School,  
Ooty – 643 001

...Appellant No.9

**10.Mr.R.Seethapathy,**  
S/o Late. T.SRamasubramanian  
No.2, Syndicate Bank Colony,  
1<sup>st</sup> Street B.V.Nagar,  
Adyar, Chennai 600 005

... Appellant No.10

**11.Mr. Vinod Singhvi,**  
S/o Grickhabchand Jain,  
No.50, Pillaiyar Koil Street,  
Triplicane, Chennai – 600 005

... Appellant No.11

**12.Mr. Sujay Chandrahas,**  
S/o Bolor Chandrahas,  
D601, royal Classic,  
Link road, Next to Citi Mall,  
Andheri West,  
Mumbai – 400 053

...Appellant No.12

**13.Mr.Praveen Bora**

S/o Sampath Bora,  
Mr.OCM 74, Commercial Road,  
Ooty 643 001

... Appellant No.13

**14.Mr.K.Gopi**  
S/o Krishnappa,  
No.11 LIG 1<sup>st</sup> Main Road,  
2<sup>nd</sup> Stage, KHB Colony,  
Bashaweshwera Nagar,  
Bangalore – 560 079

...Appellant No.14

**15.Mr.D.V.Gangadhara Bharathi,**  
S/o Late V.Venketesulu,  
No.1681, 2<sup>nd</sup> Cross Anikethana Road,  
North Kuvempu Nagar,  
Mysore – 570 023

... Appellant No.15

**16.Mr. N.Padmanabhan**  
S/o S.Neelakandan,  
No.250 D, Royal House, Wood Cock Road,  
Ooty – 643 001

... Appellant No.16

**17.Mr.Srikanth Badruka,**  
S/o Onkarlal Badruka  
No.503, ABK Olbee Plaza,  
Banjara Hills,  
Hyderabad – 500 034  
Telengana

... Appellant No.17

**18.Mr.Thomas Iype,**  
S/o P.O.Iype  
No.222, Defence Colony,  
Chennai – 600 032

...Appellant No.18

**19.Ms.S.Rohini Iyengar,**  
D/o.Late Srinivas Iyengar  
No.4, 9<sup>th</sup> Main, 9<sup>th</sup> Cross,  
2<sup>nd</sup> Block, Jaya Nagar,  
Bangalore – 560 011

... Appellant No.19

**20.Mr.Karthik Balakrishnan,**

S/o N.Balakrishnan,  
No.23/302. Bollineni Hill Side,  
Perumbakkam road,  
OMR Sholinganallur,  
Chennai – 600 126

... Appellant No.20

**21.Mr. Mohan Raje**

S/o Late T.K.Devarje Urs  
No.105, 4<sup>th</sup> Main, 3<sup>rd</sup> Stage  
Gokulam, Mysore – 570 002

...Appellant No.21

**22.Mr.Ajith V.Shetty,**

S/o V.Shetty,  
G2, Sona Palace, No.34, Morris road,  
Richmond Town,  
Bangalore – 560 025

...Appellant No.22

**23.Mr.B.Jaikishan Gark,**

S/o C.Baskarlal,  
113, Butt Road,  
St.Thomas Mount  
Chennai – 600 016

...Appellant No.23

**24.Mr.S.Harish Kumar**

S/o C.Shyam Sundar,  
107, Butt Road,  
St.thomas Mount,  
Chennai – 600 016

... Appellant No.24

**25.Mr.S.Dheeraj Kumar,**

S/o C.Shyman Sundar,  
107, Butt Road,  
St.Thomas Mount,  
Chennai – 600 016

...Appellant No.25

**26.Mr.B.Sunil Agarwal**

S/o C.Baskarlal,  
113, Butt Road,  
St. Thomas Mount,  
Chennai – 600 016

...Appellant No.26

**27.Mr.Ajay Kumar**  
S/o C.Rajendar Kumar  
3/36, Mount Poonamallee Road,  
St. Thomas Mount,  
Chennai – 600 016

**...Appellant No.27**

**28.Mr.R.Pradeep Kumar**  
S/o C.Rajendar Kumar  
3/36, Mount Poonamallee Road,  
St. Thomas Mount,  
Chennai – 600 016

**...Appellant No.28**

**Vs.**

**1.M/s.Madras Race Club**  
Post Box No. 2639  
Race Course  
Guindy, Chennai- 600 032

**... Respondent No.1**

**2.M.Muthukaruppan,**  
No. 7 Rosary church road,  
Mylapore, Santhome  
Chennai – 600 004

**Respondent No.2**

**AND**

**Company Appeal (AT) No. 332 of 2019**

**IN THE MATTER OF:**

**1.R.D RAMASAMY**  
Son of Duraimanickam,  
No.3/45, Sadaiyamangalam,  
Ponbethi Post, Avudayarkoil Taluk,  
Pudukkattai District,  
Tamil Nadu – 614 291

**...Appellant No.1**

**2.MageshKumar M.**  
S/o R.Munusami,

No.5/17, Velachery Road,  
Little Mount, Chennai – 600 015  
Tamil Nadu

... Appellant No.2

Vs.

**1.M/s.Madras Race Club**  
Post Box No. 2639  
Race Course  
Guindy, Chennai- 600 032

... Respondent No.1

**2.M.Muthukaruppan**  
No.7 Rosary Church Road  
Mylapore, Santhome,  
Chennai – 600 004

... Respondent No.2

**Present:**

**For the Petitioner** : **Mr.D.Sreenivasan with Mr.G.A Ananda  
Selvam and Ms. G.Kanimozhi, Advocates.**

**For the Respondent** : **Mr.Murali Raghavan, Sr. Advocate with  
Mr. Ajith S.Ranganathan, Ms.Preeti Mohan  
And Mr. Rohit Rajershi, Adocates.**

## **J U D G M E N T**

(29<sup>TH</sup> MAY, 2020)

### **DR. ASHOK KUMAR MISHRA, TECHNICAL MEMBER**

1. The above stated appeals are arising from the order of National Company Law Tribunal, Chennai Bench ('for short the Tribunal') dated 24.09.2019.

2. The impugned order dated 24.09.2019 passed in CP No.31/2017 with CA 196/2017 with IA/244/2018 against the Respondent club i.e. Madras Race Club. This is a detailed order directing apart from other issues the followings:

- i. Directed the Respondent Club to convene and hold its Annual General Meeting for the years ending 2016 to 2019, the Bench also appointed Hon'ble Justice R.S.Ramanathan (retired Judge of the Hon'ble High Court of Madras) as the Independent Chairman for conducting all AGMs after issuing relevant notice in accordance with the Companies Act both by way of registered post with acknowledgment due and also by e-mail. The notice shall be published in newspaper in English in Hindu and in Vernacular i.e. Tamil (Dina Thanthi).
- ii. The Bench has also directed that the Chairman shall appoint two scrutinisers and also be fix the quorum at 200 members. In case the quorum is not completed at the designated time, the "AGMs" will be adjourned for half an hour, thereafter, the Members of the Company present shall be deemed to constitute the quorum.
- iii. Although, the Petition was filed in National Company Law Tribunal under Section 97 of the Companies Act to convene Annual General Meeting of the Company for consideration of Financial Statements, appointment of Member of the Committee of management, appointment of Statutory Auditors and other matters as required in terms of the Companies Act, and Article of Associations of the Madras Race Club and also to provide any ancillary or consequential directions as Tribunal deems fit.

3. This National Company Law Appellate Tribunal in Company Appeal (AT) No. 71 of 2018 and No.87 of 2018 vide its order dated 3<sup>rd</sup> April, 2018 remanded the matter to the NCLT Chennai Bench to decide the case on merit after notice to the parties who may be affected. It was also stated that if the report submitted by Hon'ble Justice K.P.Siva Subramaniyan a Retired judge of the Hon'ble Madras High Court, who has been appointed by the NCLT to conduct an enquiry, if his report is accepted, in such case the persons who have been shown to have not complied with the requirements and if they are debarred from taking part in the AGM be given notice, if necessary by paper publication. Pursuant to the said direction notices were issued by the Madras Race Club in accordance with the directions of the Bench, publication affected in newspapers, a total of 179 persons sought to intervene in the proceedings before the Tribunal. It was also submitted that these 179 persons who even chose to intervene after several notices affected by the club pursuant to the proceedings pending before the NCLT and who in fact advance their objections and were heard by the NCLT. Hence, the question of any individual who were not an intervener before the NCLT seeking to challenge the impugned order does not arise. However, in the second appeal a total of 8(eight) persons were not even intervener during the hearings before the NCLT and these persons do not even have the necessary standing to file the second appeal to



establish their claims to membership. This itself is sufficient to dismiss the Application.

4. It was stated by the appellant that Madras Race Club ('for short MRC') has two set of members Club Members and Stand Members. Only Club Members have the right to vote at AGM and the present appeal relates to rights of the Club Members.
5. The Appellants have also stated that they came to know in the year 2016 that there were several irregularities and discrepancy in the membership data base of the Club. There are 1200 club members approximately out of which 924 members were admitted between 2000 to 2015.
6. It is pertinent to mention that Madras Race Club was incorporated as a "not for profit company" under Section 26 of the Companies Act, 2013 and as per its objects contained in its Memorandum and Article of Associations, Madras Race Club (for short MRC) has to utilise its profit and other incomes for promoting its objects. The affairs of MRC is managed by Management committee comprising of 12 members and they are liable to retire by rotation. However, to serve the public interest the Govt. of Tamil Nadu had appointed 4 Management Committee Members who shall not retire by rotation.

7. The Appellants have submitted that they were issued a club membership card signed by Additional Secretary of MRC and have paid annual subscription and other charges.
8. The Appellants have also submitted that out of 635 Club Members who are ordered to be removed from the registered of the members by MRC were issued identity card with distinctive memberships number by MRC, have paid annual subscription for 10 to 15 years, annual usage charges, proportionate electricity and water charges etc. and their names were included in list of members filed with Registrar of Companies (for short ROC) and they were entitled to participate and vote in at AGM.
9. The MRC had commissioned a special investigation audit by an Independent Auditor viz. Brahmayya & Company Chartered Accountant in the year 2016; this was done in order to recover the dues and large number of irregularities observed in MRC. Thereafter, the NCLT Chennai directed that notices issued to the person who were identified as being in default in Chartered Accountant report and also appointed Hon'ble Justice K.P.Siva Subramaniyan a retired Judge of the Hon'ble Madras High Court to conduct a further independent enquiry to determine the genuineness of the members of the MRC. The Hon'ble Justice K.P.Siva Subramaniyan a retired Judge of the Hon'ble Madras High Court identified 5 person out of

640 as genuine members and thereafter NCLT passed the order directed the AGM be held by issuing notice only to the genuine members then this Appellate Tribunal in Company Appeal (AT) No. 71 of 2018 dated 3<sup>rd</sup> April, 2018 for limited purpose of issuing notice to those person aggrieved by the report of the learned Retired Judge. It is also observed that the cut off year 2000 to 2015 is based on Independent Audits Report. It is also observed that out of total membership of 1245, 924 members were allegedly admitted during this period from the audit report and from the enquiry conducted by Hon'ble Justice K.P.Siva Subramaniyan a retired Judge of the Hon'ble Madras High Court. It is very clear that these 635 have not paid the **entrance fee**.

10. On the intervention of NCLAT, MRC was agreeable to offer the appellants in both the Company Appeals as Stand Member but they refused.

11. Hence, we agree with the order of NCLT Chennai with an amendment that let the AGM 2018-19 to additionally consider also inter alia the issue of paying entrance fees along with interest at State Bank of India fixed deposit rate for the years of delay in payment. In order to have a clarity that the AGM be held for the years 2015 -16, 2016 -17, 2017 -18 & 2018-19 within a period of next two months from the date of this order based on the genuiness of the members as identified by Independent Auditors Report,

followed by the scrutiny Hon'ble Justice K.P.Siva Subramaniyan a retired Judge of the Hon'ble Madras High Court. Hence, we uphold the order of NCLT with above modifications.

(Justice Jarat Kumar Jain)  
Member (Judicial)

(Mr. Balvinder Singh)  
Member (Technical)

(Dr. Ashok Kumar Mishra)  
Member(Technical)

RK

New Delhi