

**BEFORE JUSTICE DEEPAK VERMA (RETD.) OMBUDSMAN
DELHI & DISTRICT CRICKET ASSOCIATION**

HEARING DATED: 08.03.2020 AT 04:00 PM TO 07:10 PM
VENUE: D19, THIRD FLOOR, GEETANJALI ENCLAVE,
NEW DELHI -110017

1. The presence of Learned Counsel for Parties and representative of Parties present in person is marked in a separate sheet annexed hereto.

2. Matter was today fixed for hearing arguments on behalf of Mr. Ajay Sharma (in terms of the Complaint filed by him against Mr. Rakesh Bansal), who had been provided last opportunity to present his case, however, he and his Counsel remained absent from today's hearing also and as such his right to present his case is now closed. Matter was also fixed for hearing on the Application forwarded by Delhi and District Cricket Association ("DDCA") on 04.03.2020. Apart from the above, I was also informed of the Order dated 29.02.2020 passed by Ld. ADJ, Tis Hazari Court, its repercussions and further developments on the same. Extensive arguments had been led by Mr. Ankur Chawla, Counsel for DDCA on the above-mentioned aspects which have been recorded in detail below:

WITH RESPECT TO AGM DATED 29.12.2019

3. It is in everyone's knowledge that an AGM was held on 29.12.2019, wherein certain members of DDCA had alleged that, the said AGM was unauthorized, illegal and void. Therefore, all consequential acts, actions, deeds, representations and claims made in pursuance of the said AGM, including the appointment of new Ombudsman be set aside as being illegal, unauthorised and void. To this effect a suit had been filed by certain member of DDCA before the Ld. ADJ, Tis Hazari Courts, New Delhi. An Application seeking for interim injunction had also been filed by the Plaintiffs in the said suit.

4. On 29.02.2020, an Order has been passed by the Ld. ADJ whose Operative Part reads as follows:

“With regard to the application of the plaintiffs under Order 39 Rule 1 & 2 CPC, the following order is passed.

(1) The resolutions adopted in AGM dated 29.12.2019 except for the appointment of Hon'ble Ombudsman are stayed, till the decision of the Hon'ble Ombudsman regarding the irregularities as claimed by the plaintiffs (and others) in the holding of AGM dated 29.12.2019.

(2) In view of the above prayer no. (b) and (c) regarding the removal of previous hon'ble Ombudsman and appointment of new hon'ble Ombudsman in the application are declined.

(3) In view of the order regarding relief no. 1, the prayer in relief no. (d), (e) and (f) are granted, in terms of the relief as granted in prayer no. 1.

(4) Prayer no. (g), In this regard, it is pertinent to mention that during the course of arguments, Ld. Counsel for defendants no. 1, 2 & 13 stated that in the order dated 03.02.2020 of the Hon'ble Ombudsman in para no. 21 there is mention of election process having been initiated.

(5) Prayer no. (b), Defendant no. 13 is directed to file the latest list of eligible members before Hon'ble Ombudsman within 15 days from the date of this order. The affected parties, regarding the eligibility of any member for voting may submit their objections before the Hon'ble Ombudsman.

9.1 The interim application of the plaintiffs under Order 39 Rule 1 & 2 CPC is partly allowed in the above terms.”

5. I have been informed that, DDCA has challenged the said Order dated 29.02.2020 passed by Ld. ADJ before the Hon'ble High Court of Delhi and the matter is coming up on 12.02.2020. Looking at the fact that the said Order has been

challenged before the High Court and is sub-judice, it would be better to deal with this issue once the challenge filed in High Court attains finality. It would not be proper at this stage to comment on the correctness or otherwise of the AGM held on 29.12.2019, more so when the matter is sub-judice in High Court. Same will be dealt with at an appropriate stage later on.

**FINDINGS OF THE DISCIPLINARY COMMITTEE WITH RESPECT TO
AGM DATED 29.12.2019**

6. Pursuant to the Order(s) passed by me on 03.01.2020, 18.01.2020 and 30.01.2020, I had directed the Apex Council to apprise me about the disciplinary action taken and submit a report of the preliminary enquiry with regard to the incidents which took place in the AGM dated 29.12.2019.
7. In pursuance of the above, Disciplinary Committee has sent the report of its preliminary enquiry, yesterday i.e. on 07.03.2020. In the said report, Disciplinary Committee has stated that it had conducted the enquiry regarding the incidence of ruckus created at the AGM. Thereafter, Apex Council deliberated in the Preliminary Enquiry and accordingly, Show Cause Notices were issued to 2 members of the DDCA (Mr. Rajan Manchanda and Mr. Maqsood Kareem) on 29.02.2020. As per the Report, Personal Hearing of the Disciplinary Committee was held on 07.03.2020. Report also stated that, Mr. Manchanda alleged that he had not received a copy of complaint and the video footage of the AGM. I have been informed that a copy of complaint and video footage had been duly provided to Mr. Rajan Manchanda, however he still remained absent on the date of personal hearing before Disciplinary Committee.
8. Report further states that, Mr. Maqsood Kareem duly appeared before the Committee and offered his apology and unconditional regret for the incident. He further submitted that, it was Mr. Rajan Manchanda who attacked him and hit him on his face. He also stated that, when he saw Mr. Rajan Manchanda snatching the

mike from Secretary, he was merely trying to stop Mr. Rajan Manchanda from disrupting the meeting.

9. Committee further requested taking strict action(s) against these 2 members.

SHOW CAUSE NOTICE TO MR. RAJAN MANCHANDA AND MR. MAQSOOD KAREEM ON THE COMPLAINT FILED BY APEX COUNCIL

10. On receipt of the Report from the Enquiry Committee, I hereby direct Mr. Rajan Manchanda and Mr. Maqsood Kareem to appear before me in person or through their advocate and to also file their replies to the Complaint filed by Apex Council against them.
11. DDCA is directed to serve and deliver a copy of Complaint along with all the Annexures attached to it, as soon as possible. Apart from the above, persons who have been show-caused be provided a copy of the videotape of the AGM, if not already provided.
12. In terms of the above, Mr. Maqsood Kareem and Mr. Rajan Manchanda are directed to file their respective replies to the Complaint filed by DDCA on or before 31.03.2020.

DIRECTIONS TO APEX COUNCIL – AID TO MR. NAVIN CHAWLA

13. After having a long and elaborate telephonic conversation with Mr. Navin Chawla (Electoral Officer), he was desirous of appointing 2 Assistants and a Secretary to help and aid his work in conducting the DDCA Elections. To this effect, Apex Council is directed to enquire from him about the persons who shall act as Assistant(s) and Secretary to Mr. Navin Chawla. Said list shall be forwarded by Mr. Navin Chawla to the Apex Council, who in turn will intimate them about their appointment.

14. With regard to the remuneration to be paid to Mr. Navin Chawla, looking at his stature, the amount of work involved, and experience in this field, I propose that Mr. Chawla be paid a lumpsum Rs. 15,00,000/- (Rupees Fifteen Lakhs Only) in total for conducting the elections. His Assistants may be paid Rs. 3,00,000/- (Rupees Three lakhs) each in total and the Secretary be paid 10% of what is being paid to Mr. Chawla.
15. Apart from the above, Mr. Navin Chawla again stressed on the fact that updated list/roll of all the members/voters with all their relevant details be provided to him as soon as possible. In this regard, a direction has already been issued to DDCA, who has promised to do so at the earliest, say within seven days or so from today.

DISPOSAL OF APPLICATION DATED 04.03.2020 FILED BY DDCA

16. On 04.03.2020, an Application has been received from the Learned Counsel of DDCA wherein it has sought for release of expenses incurred by it and for payment of fees to its Learned Advocates who are appearing for DDCA in various matters pending in different Courts. In the said Application, it has also been stated that, vide an Order dated 29.02.2020, the Ld. ADJ, Tis Hazari Court, New Delhi has granted an Interim Injunction against the Vice President, Secretary of DDCA and two unnamed directors of DDCA.
17. It has also been stated in the Application that, Mr. Rakesh Bansal (Vice President of DDCA) has filed FAO No. 108 of 2020 and Mr. Vinod Tihara (Secretary of DDCA) has filed FAO No. 109 of 2020 before the Delhi High Court, challenging the directions passed against them by Ld. ADJ. Moreover, DDCA stated that, it has also challenged Order dated 29.02.2020 by means of FAO No. 92 of 2020. As such, the persons mentioned above are barred from taking any decision on behalf of or for the company, till the time said FAOs attain finality. I have been informed that, the matter has already been heard a couple of times and is now listed on 12.03.2020

before High Court of Delhi, for further hearing, but so far no Interim Stay has been granted in any of the matters.

18. It was further stated that, since Vice President and Secretary are barred from taking any decisions, there is some confusion and lack of clarity regarding day to day functioning of DDCA. It is pertinent to mention here that DDCA at present does not have a President and a Treasurer as well. In absence of 4 key managerial personnel, it would indeed be very difficult for DDCA to perform its day to day functions.
19. Counsel for DDCA further stated that, various Professionals, Ld. Senior Advocates and other esteemed Advocates appearing on behalf of DDCA have raised their bills of fees and expenses, which have not been processed and delay in payment thereof is likely to cause irreparable loss of reputation of DDCA. In absence of timely payment, it would be difficult for them to appear as no Professional or an Advocate would continue to provide legal assistance in case of non-payment of Fees. As already mentioned, 4 key managerial personnel are already absent from the Apex Council, who are also the authorised Signatories on behalf of DDCA, therefore, there needs to be a mechanism wherein day to day working of DDCA does not get hampered, disrupted and all the genuine and requisite bills, payments etc. are made to them who have raised their Invoices for previous services already rendered and are going to render further in future.
20. For the above-mentioned purpose of developing a mechanism, I propose that 4 persons from the Finance Committee of DDCA be selected who shall first scrutinise, settle and then pass the relevant bills for payments which are pending. Said exercise shall be conducted in consultation/cooperation of the Standing Counsel of DDCA. I have been provided names of 4 members who form part of the Finance Committee i.e. Mr. Rajan Manchanda, Mr. Apurv Jain, Mr. Alok Mittal and Mr. S.N. Sharma. However, since Disciplinary Committee has issued a Show Cause Notice against Mr. Rajan Manchanda (against which he has not replied or

appeared in person) followed by a Complaint against him, he shall not form part of the Committee clearing the bills and expenses, till the time this Complaint is decided. Mr. Sanjay Bhardwaj, who is also an authorised signatory of DDCA shall also work with the Finance Committee as there is requirement of at least 2 signatories for signing of cheques and bills. Therefore, following persons have been designated who shall scrutinize all the bills/payments to be made by DDCA – 1. Mr. Sanjay Bhardwaj, 2. Mr. Apurv Jain, 3. Mr. Alok Mittal, 4. S.N. Sharma.

21. Above-mentioned persons being the authorised signatories and members of Finance Committee shall scrutinize all the bills/payments to be made by DDCA (including the fees to be paid to Senior Advocates, Professionals, other esteemed Advocates and even with regard to the payments already made and to be made in future to the Ombudsman) in consultation/cooperation of the Standing Counsel of DDCA and pass such bills/payments for clearance which it deems are genuine and required. However, foremost priority of the Committee of members so formed, shall be disbursement of salaries of all the employees and staff of DDCA. Let this exercise be completed at the earliest, under intimation to me.
22. Apex Council is again directed to provide updated list and roll of all the members of DDCA as soon as possible, which shall be forwarded to the Electoral Officer. Said list will help the Electoral Officer in issuing notices for the AGM/SGM in which Elections are to be held. Apart from the above, certain other details with respect to the previous elections were also sought from the Apex Council. Same shall also be provided as soon as possible.
23. In terms of the above, Application dated 04.03.2020, is disposed off.

COMPLAINTS AGAINST MR. RAKESH BANSAL

24. As has been already stated in my Order dated 03.02.2020, various Complaints have been filed by certain members of DDCA against Mr. Rakesh Bansal (Vice

President). To deal with the issue, Complaints filed by Mr. Sunil Kumar Jain, Mr. Vishwajit Senapati and Mr. Ajay Sharma were taken up on the hearing dated 03.02.2020, however no one on behalf of Mr. Ajay Sharma had appeared on the said date.

25. Today, Matter was taken up again, and last opportunity of hearing was provided to Mr. Ajay Sharma. However, even today, neither Mr. Ajay Sharma or anyone on his behalf appeared before me nor any reason for his absence was given. Therefore, Mr. Ajay Sharma's right to present his case, has now been closed. Since this was the last opportunity provided to Mr. Ajay Sharma (who has not appeared in the last 3 hearings), necessary Order with respect to the disposal of Complaints shall be passed on the basis of pleadings received from the Complainants and also on the basis of Oral Submissions made by Mr. Vishal Singh (Learned Counsel representing Mr. Sunil Jain and Mr. Biswajit Senapati).
26. Complainants, in the Complaints filed by them have stated that Mr. Rakesh Bansal shall be disqualified from his post by virtue of Article 17(4)(g) and Article 8(5) of the Article of Association (AOA) of DDCA. Complainants further stated that Criminal Complaint Cases being – (i). Nishi Export Pvt. Ltd. v. Rattan Industries Ltd. (Case No. 3622/2018), (ii). Nishi Export Pvt. Ltd. v. Rattan Industries Ltd. (Case No. 3623/2018) and (iii). Nishi Export Pvt. Ltd. v. Bonmart Pvt. Ltd. (Case No. 3624/2018) have been filed against Mr. Rakesh Bansal and his Company, wherein by the Order dated 09.09.2019, in notice under Section 251 CrPC, Mr. Rakesh Bansal has been charged with commission of offence punishable under Section 138 of Negotiable Instruments Act, 1881 ('NI Act'), and that cognizance of the offence has been taken by trial court. Article 17(4)(g) and Article 8(5) of the AOA have been reproduced herein below:

Article 17(4)(g) of AOA

17. Apex Council

(1).....

(2).....

.....

(4) A person shall be disqualified from being a Councillor if he or she:

(a)....

(b)....

....

(g) has been charged by a Court of Law for having committed any criminal offence i.e. an order framing charges has been passed by a court of law having competent jurisdiction.”

Article 8(5) of AOA

“8. ELECTION AND TERM OF OFFICE BEARERS

...

(5) A person shall be disqualified from being an Office Bearer or a member of any Committee or a representative to BCCI or any similar organization if he or she:

...

(g) has been charged by Court of Law for having committed any criminal offence, i.e. an order framing charges has been passed by a court of law having competent jurisdiction.

...”

27. Mr. Rakesh Bansal in reply to the said Complaint has stated that the Complaints under Section 138 of NI Act has been made against Rattan Industries Limited & Bonmart International and he has been made a party in the capacity of being one of the Director and authorised signatory of the Companies. Mr. Bansal further stated that Complaints filed against the 2 companies mentioned above and its directors show that there exist some disputes relating to alleged loan transactions with Nishi Exports Pvt. Ltd.

28. Mr. Bansal also stated that, in all the three complaints, summoning of accused has been sought under NI Act and also under Section 406/420, however notice has

only been framed for offences under Section 138 of the NI Act. He further stated that, the case instituted against him (being the Director of Companies) is a summons case and not a warrant case. As per Section 2(w) of CrPC, a "Summons case" means a case relating to an offence and not being a warrant case. Similarly, a "Warrant Case" means a case relating to an offence punishable with death, imprisonment for life for a term exceeding two years.

29. Mr. Bansal also stated that, words in Article 8(5)(g) and Article 17(4)(g) are quite clear, in that person stands disqualified if such person has been "charged" by a court of law for having committed any criminal offence. Evidently words used are neither such person having been "summoned as an accused, nor someone who has been "arrested". Framing of charge on such person is essential. Mr. Bansal further submitted that offences under NI Act are civil in nature, that have no serious penal consequences, as contrasted from the cases that relate to offences that are penal in nature. He lastly stated that, Articles in AOA which deal with disqualification(s) has been inserted to ensure that person against whom charges have been framed by a court are disqualified to be a Director, however such disqualification would only accrue in case of serious offences in which formal charge has to be framed under Section 228, 240 or 246 of the CrPC. Therefore, he should not be disqualified as his case does not meet the criteria mentioned under Article 8(5)(g) and Article 17(4)(g) of the AOA.
30. Mr. Vishal Singh, Learned Counsel representing Mr. Sunil Jain and Mr. Biswajit Senapati (the Complainants herein) advanced his arguments on the said issue on 03.02.2020 and had argued that Mr. Rakesh Bansal should be disqualified to be a member of the Apex Council under Article 8(5)(g) and Article 17(4)(g) the Unamended Articles of Association of DDCA as a complaint has been filed under Section 138 of the Negotiable Instruments Act, 1881 against Mr. Rakesh Bansal before the Metropolitan Magistrate, Karkardooma Courts, New Delhi and a notice has been framed against him under Section 251 of the Criminal Procedure Code, 1973. Learned Counsel further placed reliance on the judgment *Board of Control for*

Cricket in India & Ors v. Cricket Association of Bihar & Ors., (2018) 9 SCC 624 and argued for automatic disqualification of Mr. Rakesh Bansal presently holding the post of Acting President of DDCA.

31. In reply to the arguments advanced by Complainant's Counsel, Mr. Ankur Chawla, Learned Counsel representing DDCA had raised a preliminary objection that according to Article 42(b) of the Unamended Articles of Association, the complaint against Mr. Rakesh Bansal ought to have been filed before the Apex Council of DDCA. The Counsel has further submitted that the framing of notice under Section 251 of the Criminal Procedure Code, 1973 ("CrPC") does not amount to framing of charges under Criminal Procedure Code, 1973 and thus does not fall under the disqualification of Article 8(5)(g) the Unamended Articles of Association of DDCA. Moreover, no cognizance has been taken so far.
32. After going through the pleadings (Complaints and their replies) and after hearing the extensive arguments advanced by the Counsel of each party, I am of the opinion that, Mr. Rakesh Bansal's case does not meet the criteria of disqualification, mentioned under Article 8(5)(g) and Article 17(4)(g) of the AOA. Since the notices have been issued under Section 251 of CrPC, it provides that, "*When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defense to make, but it shall not be necessary to frame a formal charge*". Moreover, there is no express provision for discharge, as in the cases for warrant cases.
33. It is clear that, an offence under NI Act, 1881, is to be tried as a Summons Case. Maximum punishment provided for an offence under Section 138 read with 141 of NI Act is less than 2 years and therefore, would be tried as a 'Summons case'. I find merit in the pleading raised by Counsel of Mr. Rakesh Bansal that, in a Summons case, there is no provision of discharge and therefore there is no question of application of judicial mind.

34. It is further clarified that, words in Article 8(5)(g) and Article 17(4)(g) of the AOA are quite clear, in that a person stands disqualified if such person has been “charged” by a court of law for having committed any criminal offence. Evidently, the words used are neither such person having been “summoned” as an accused, nor someone who has been “arrested”. It is further clarified that cases under NI Act are essentially civil in nature, that have no serious penal consequences as compared to the cases which are penal in nature. Various case laws have been cited by Counsel for Mr. Rakesh Bansal stating that NI Act is essentially a Civil Dispute which has been made a Criminal Offence by the legislature for ensuring effective Commercial transactions. To this effect reliance can be placed on following case laws:

i. ***Kaushalya Devi Massand v. Roopkishore Khore***, (2011) 4 SCC 593 at Para 11

“11. Having considered the submissions made on behalf of the parties, we are of the view that the gravity of a complaint under the Negotiable Instruments Act cannot be equated with an offence under the provisions of the Penal Code, 1860 or other criminal offences. An offence under Section 138 of the Negotiable Instruments Act, 1881, is almost in the nature of a civil wrong which has been given criminal overtones.”

ii. ***R. Vijayan v. Baby & Anr.***, (2012) 1 SCC 260 at page 266

“16. It is sometimes said that cases arising under Section 138 of the Act are really civil cases masquerading as criminal cases. The avowed object of Chapter XVII of the Act is to “encourage the culture of use of cheques and enhance the credibility of the instrument”. In effect, its object appears to be both punitive as also compensatory and restitutive, in regard to cheque dishonour cases. Chapter XVII of the Act is a unique exercise which blurs the dividing line between civil and criminal jurisdictions. It provides a single forum and single proceeding, for enforcement of criminal liability (for dishonouring the cheque) and for enforcement of the civil liability (for realisation of the cheque amount) thereby obviating the need for the creditor to move two different fora for relief.

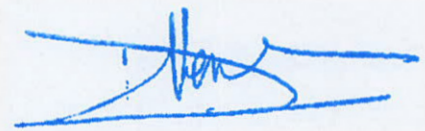
17. *Though a complaint under Section 138 of the Act is in regard to criminal liability for the offence of dishonouring the cheque and not for the recovery of the cheque amount (which strictly speaking, has to be enforced by a civil suit), in practice once the criminal complaint is lodged under Section 138 of the Act, a civil suit is seldom filed to recover the amount of the cheque. This is because of the provision enabling the court to levy a fine linked to the cheque amount and the usual direction in such cases is for payment as compensation, the cheque amount, as loss incurred by the complainant on account of dishonour of cheque, under Section 357(1)(b) of the Code and the provision for compounding the offences under Section 138 of the Act. Most of the cases (except those where liability is denied) get compounded at one stage or the other by payment of the cheque amount with or without interest. Even where the offence is not compounded, the courts tend to direct payment of compensation equal to the cheque amount (or even something more towards interest) by levying a fine commensurate with the cheque amount. A stage has reached when most of the complainants, in particular the financing institutions (particularly private financiers) view the proceedings under Section 138 of the Act, as a proceeding for the recovery of the cheque amount, the punishment of the drawer of the cheque for the offence of dishonour, becoming secondary.*

18. *We are conscious of the fact that proceedings under Section 138 of the Act cannot be treated as civil suits for recovery of the cheque amount with interest."*

35. I find merit in the case laws mentioned above and it can be clearly stated that offences under NI Act being summons case, cannot be set on a same pedestal as a warrant case. Moreover, the relevant articles have been framed to disqualify such individuals/persons against whom charges have been framed under more serious offences i.e. charges being framed under Section 228, 240 or 246 of CrPC. Such cases are of serious nature where charges are to be framed by a Criminal Court. In the instant case, there is no provision to seek discharge and as such, there cannot be an automatic disqualification on any office bearer just because he/she has been summoned for an offence. Moreover, Mr. Rakesh Bansal has pleaded not guilty and the matter is sub-judice before the Trial Court.


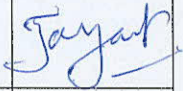
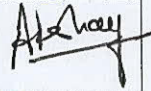
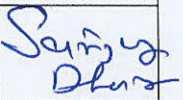
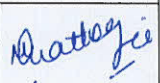
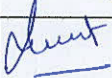

36. In terms of the above, Complaints filed by Mr. Sunil Kumar Jain, Mr. Vishwajit Senapati and Mr. Ajay Sharma are disposed off and it is clarified that mere issuance of summons under NI Act does not amount to an automatic disqualification under Article 8(5)(g) and Article 17(4)(g) of the AOA. Thereby, Mr. Rakesh Bansal can continue working on his post as the Vice President of DDCA.
37. By virtue of Order dated 29.02.2020, Ld. ADJ, Tis Hazari Court has issued an interim injunction against Mr. Rakesh Bansal and since the said Order has been challenged in High Court, injunction would only be lifted once the issue attains finality in High Court.
38. After perusal of the records and as submitted by the Ld. Counsel for DDCA Mr. Ankur Chawla and Mr. Gautam Datta, as on date no complaint is pending for disposal, against the present Secretary Mr. Vinod Tihara.
39. **Matter is now directed to be listed for hearing on 31.03.2020 at 04:00 PM at D-19 (3rd Floor), Geetanjali Enclave, New Delhi - 110017, for the aforesaid purposes.** Copy of this Order be sent to all through email.

Date - 08.03.2020
Place - New Delhi

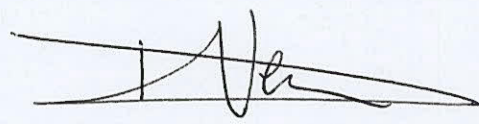


Justice Deepak Verma
Ombudsman
DDCA

DDCA HEARING DT.: 08/03/2020

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Place: NEW Delhi



Justice Deepak Verma (Retd.)
Ombudsman / Ethics Officer