IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(STATUTORY ORIGINAL JURISDICTION)

COMPANY MATTER NO. 08 OF 2019
(Judgment has been pronounced in virtual Court)

IN THE MATTER OF:
An application under Section 43 of the Companies Act, 1994.

AND
IN THE MATTER OF:

Engr. Md. Anwar Hossen
……..…Petitioner

-VERSUS-

Chittagong Club Ltd and others
……Respondents

Mr. Moudud Ahmed, Senior Advocate
Mr. Abdullah Al Mahmud Advocate
.....For the Petitioner
Mr. M.A. Hannan, Advocate
.....For the Respondent Nos. 1 - 3

Judgment on 31/05/2020

Present
Justice Muhammad Khurshid Alam Sarkar

By invoking Section 43 of the Companies Act, 1994 ('the Companies Act'), the petitioner approached this Court for rectification of the Members' Register of the Chittagong Club Ltd, a private company limited by guarantee without having any share capital incorporated under the Companies Act (hereinafter referred to either as the club or as respondent No. 1 or as the company) towards restoration of the petitioner's name therein, through obtaining a declaration from this Court that the decision of the General Committee (GC) taken in the club's/company's 28th

meeting held on 04.12.2018, so far as it relates to suspension of the membership of the petitioner for one (01) year, as contained in the letter under ref: No. CCL/ADMIN/110/1087 dated 12.12.2018, is illegal and not binding upon the petitioner.

The fact of the case, briefly, as stated in this petition, is that the petitioner is an engineer by profession and a permanent member of the club with membership code No. H-0228; that the respondent company is a social club, which is established primarily for extending to its members and their families/friends certain privileges, advantages, conveniences and accommodation befitting a social club; that the petitioner, as a permanent member of the respondent club, has been enjoying the facilities of the club since long and there has been no allegation of misbehavior or misconduct whatsoever against the petitioner from any corner; that the petitioner received a letter purporting to be a show cause notice bearing ref: No. CCL/ADMIN/110/989 dated 23.10.2018 to be replied in writing within 72 hours of receiving the same and, in the event of non-receipt of the written response from the petitioner, the GC of the club shall proceed as per the rules of the club; that the aforesaid letter dated 23.10.2018 did not contain any specific allegation against the petitioner nor did it mention about any inquiry conducted in respect of the same and, in fact, no inquiry was held in respect of the alleged undesired behavior; that the petitioner was never called by the GC to explain his conduct

against any allegation; there was no statement by the petitioner before the GC admitting commission of an offence or of misbehavior; that the petitioner upon receipt of the said letter on 24.10.2018 gave a written reply on 25.10.2018 having clearly stated that it was a misunderstanding only and apologized if there was any unconscious conduct on his part; that thereafter the club issued the impugned letter under ref: No. CCL/ADMIN/101/1087 dated 12.12.2018 informing the petitioner that the reply of the petitioner was put up in the 28th meeting of the GC held on 04.12.2018 and in the said meeting the GC after threadbare discussion, unanimously decided for suspension of the petitioner's club membership for 1 (one) year to be effective from the next day of his receiving the said letter; that having been aggrieved by the aforesaid decision of the GC, the petitioner by a letter dated 13.12.2018 requested the Chairman of the club to rescind/cancel the aforesaid decision, so far as it relates to suspension of the petitioner's club membership, but the petitioner did not receive any response whatsoever in this regard. Hence, this application.

By filing an affidavit, on behalf of the respondent No. 1 (club), the respondent No. 3 states, *inter alia*, that the club appointed Bangladesh Industrial Development and Construction (BIDCO) as contractor for renovation and restoration of the main building of the club and for construction of a new sports complex. As per the decision taken in Extra Ordinary General Meeting

(EGM) of the club held on 26.10.2017, a high-powered enquiry committee was formed to inquire into the difference of measurement and total expenditure incurred by the BIDCO. Accordingly, after conducting enquiry, an enquiry report was submitted on 14.06.2018 wherein it was found that excess amount was paid to BIDCO under different heads and the club incurred extra expenses on request of the BIDCO including payment to architect, payment on account of additional service charges on supplies and salaries, payment on account of tools & plan, electric design charge, additional service charges for dismantling and removal of debris etc. After the said report was accepted by the EGM of the club held on 28th June, 2018, the GC of the club had a meeting on 18.10.2018 with the petitioner who is a member of the club as well as a Managing Partner of BIDCO. In the said meeting, the petitioner behaved arrogantly and talked insolently in his bid to deny the report of the enquiry committee. Hence, the GC in its 23rd meeting held on 22.10.2018 discussed the matter and unanimously decided to issue a show cause notice upon the petitioner wherein the allegations brought against him have been clearly stated. The admitted position is that the petitioner, upon receiving the said show cause notice dated 23.10.2018, apologized for his conduct vide his reply dated 25.10.2018. Since the conduct of the petitioner, as admitted by himself, amounts to misconduct or misdemeanor being detrimental to discipline, good order and harmony, directly involving the members of the GC which they

have experienced in person jointly as the committee members, the GC of the club, under authority of Article 41 of the MoA of the club unanimously passed an order on 12.12.2018 suspending the petitioner's membership for a period of 1 (one) year. Thereafter, the petitioner by letter dated 13.12.2018 requested the club's Chairman to rescind/cancel the said periodical suspension order and, in response of which, the Chairman vide letter dated 27.03.2019 bearing ref: No. CCL/ADMIN/110/156 disposed of the petitioner's prayer stating that the Chairman has no authority of his own under the said Article to cancel or withdraw the suspension order of the petitioner and the said reply was received by the petitioner by hand delivery and by registered post.

Mr. Moudud Ahmed, the learned Senior Advocate, appearing for the petitioner contends that admittedly the petitioner appeared in the meeting dated 18.10.2018 as the Managing Director of BIDCO, not as a member of the club and, thus, the dispute raised here is a dispute between BIDCO and the club, where the petitioner had no role as a member of the club; rather he appeared in the meeting as a partner of BIDCO. He further contends that nowhere in the entire materials submitted before this Court by the club is there a single sentence containing any allegation of misbehavior, disobedience of the rules of the club etc against the petitioner as a member of the club. He argues that had the petitioner not been a partner of BIDCO, the club could not

take any action against him and, therefore, the dispute between BIDCO and the club being merely a business dispute, such dispute could have been settled otherwise, or appropriate legal steps could have been taken if the club was satisfied that BIDCO was responsible for any irregularities or illegalities.

By taking this Court through the show cause notice dated 23.10.2018 and, side by side, by placing Article 41 of the AoA of the club, he submits that the purported show cause notice is not a show cause notice as contemplated in Article 41 of the AoA of the club. Further, as he continues to submit, under Article 41(b) of the AoA, the Chairman of the club ought to have constituted a committee within a reasonable time to facilitate a hearing for the petitioner as to his grievances against the decision of the General Committee, instead of evading his duty by saying that the Chairman has no authority to cancel or withdraw the order of suspension. He alleges that disposing of the petitioner's aforesaid application for cancellation of the suspension order after 3 (three) months of receiving the same by the club's Chairman on a vague/nebulous ground demonstrates the malafides of the action taken against the petitioner.

He forcefully submits that if the suspension or punishment is given effect to without exhausting the formal grievance proceedings, the decision is liable to be struck down on the ground of violation of the principle of natural justice. He argues that

since, in this case, the General Committee without any evidence or reference most illegally found the petitioner guilty of breach of club discipline, as they did not specify exactly how the petitioner committed the misconduct which is detrimental to the discipline, good order and harmony of the club, the impugned suspension order is liable to be declared illegal and not binding upon the petitioner.

On the issue of maintainability of this application, the learned Senior Advocate for the petitioner submits that due to the suspension order, the petitioner's all rights as a permanent member of the club have been withdrawn. In a bid to elaborate his above submissions, he contends that the petitioner has been barred from entering and using club facilities, including exercising his voting right which amounts to withdrawal of his membership without any legal basis or ground and, therefore, suspension of the membership of the petitioner, having amounted to cessation of his membership from the Member's Register of the club for one year, attracts the jurisdiction of this Court under Section 43 of the Companies Act. In an endeavour to pursue this Court on the issue of maintainability of the instant application under Section 43 of the Companies Act, the learned Senior Advocate Mr. Moudud Ahmed places the meanings of the following terminologies: 'expel', 'expulsion', 'suspend', 'suspension', 'cease', 'rectification', 'rectification of register' and 'rectify' from Black's

Law Dictionary and some other dictionaries and, side by side, the wordings engraved in Section 43 of the Companies Act together with the provisions of Articles 38 to 43 of the AoA of the club, and submits that since Article 41 of the club's AoA falls under the heading "Cessation of Membership", it can be concluded that 'termination', 'suspension' and 'expulsion' of membership of the club are essentially 'cessation of membership' of a member of the club, but in different form and, moreover, since the dictionary meaning of the word 'cease' includes 'to suspend' and 'cessation' includes 'suspension', therefore, an application under Section 43 of the Companies Act is the most appropriate course for the petitioner. He adds further on this issue that though Section 43 of the Companies Act does not contain the word 'suspended' but the same contains the words 'omitted' and 'ceased' and since the words 'warn', 'suspend' and 'expel' as used in Article 41 of the AoA of the club are meant for punishment of different kind/s for any misconduct and misdemeanor committed by any member of the club, any person of ordinary prudence will regard it as an absurd and unreasonable proposition to say that an application under Section 43 of the Companies Act before the High Court Division is maintainable only by a member of the club who is expelled, not by a member who is suspended.

In his bid to profess further on the issue of maintainability, he submits that it is important to understand the meaning of the

word/s ‘rectify’ and ‘rectification’ employed in Section 43 of the Companies Act in order to have an appropriate interpretation of the same. He submits that since both the words essentially mean to correct something which is wrong and erroneous, therefore, for bringing an application under Section 43 of the Companies Act, by a member of the club, his/her name need not be omitted/deleted/removed from the Members’ Register of the club, rather if the membership of any member of the club is suspended for a certain period i.e. the name of the said member lying suspended in the Members’ Register of the club, and that is done illegally/wrongly, the Court has the power under Section 43 of the Companies Act to pass an order for rectification of the Members’ Register. In his further bid to make the words ‘rectify’ and ‘rectification’ applicable in a scenario of suspension, he submits that when the question of interpretation of a statutory provision arises, it is always imperative to take into account the intention of the Legislature and the purpose of the enactment of such statutory provision. In detailing his submissions on interpretation of the wordings employed in Section 43 of the Companies Act, he argues that the Legislature used the word ‘rectify’ which carries a wider meaning i.e. to correct anything which is wrong or erroneous. He continues to submit that had it been the intention of the Legislature in using the word ‘omitted’ that this provision can only be invoked by a member of any company, be it a company limited by guarantee, only when his name is

deleted/removed/expelled permanently from the Members' Register of the company, then, the Legislature could have used the word 'restore' (ফিরিয়ে দেওয়া / পুনরুদ্ধার করা / প্রত্যর্পণ করা / পুনরানয়ন করা) instead of the word 'rectify' (সংশোধন). He submits that the word 'omitted' as used in Section 43 of the Companies Act should be given a wider meaning to include the word 'ceased' and thereby to include the word 'suspended' to attain the purpose of the provision and if the word 'omitted' is interpreted literally by excluding the words 'ceased' and 'suspended', such interpretation will produce some gross or manifest absurdity. He submits that there is always a presumption in favour of the more simple and literal interpretation of the words of a statute, but such construction cannot prevail if it is opposed to the intention of the Legislature as apparent by the statute and if the word/s are sufficiently flexible to admit of some other construction by the intention is better effectuated. He submits that it is a recognized rule of interpretation of statutes that expressions used in a statute should ordinarily be understood in a sense in which they best harmonize with the object of the statute. To substantiate his submissions on the interpretation of statute, he refers to a catena of case-laws of our jurisdiction, Indian jurisdiction and Privy Council.

Lastly, by placing Rule 8 of the Companies Rules, 2009 (shortly, the Companies Rules) and simultaneously by referring to

the case of Abdul Wadud Vs Heaven Homes Pvt Ltd, 65 DLR 143, he submits that this Court has got inherent jurisdiction under Rule 8 of the Companies Rules to pass appropriate order for ends of justice in a case in which non-compliance with the provision of law comes to its notice.

Per contra, Mr. M.A Hannan, the learned Advocate appearing for the club, at the very outset raises the question of maintainability of the present application and submits that Section 43 of the Companies Act is about rectification of the Members' Register by this Court if the name of any person is without sufficient cause entered in or omitted from the Register of Members of a company or neglect is made or unnecessary delay takes place in entering names of any person as to becoming member or ceased to be a member of the company and, in the present case, since no alteration has taken place in the Register of Members of company, there is no cause of action under Section 43 of the Companies Act and, thus, the petitioner has no standing to file the present application. By taking this Court through the prayer portion of the instant application, Mr. Hannan submits that the petitioner has sought setting aside of the decision of the General Committee taken in the company's 28th meeting held on 04.12.2018, but under Section 43 of the Companies Act, there is no scope of setting aside a temporary suspension order imposed by the General Committee of the club upon one of its members for

disciplinary grounds in summary proceedings. His second count of submission on the issue of maintainability is that although the petitioner had scope to take recourse to a grievance proceeding within seven (07) days from the date of receipt of the order to the Chairman under Article 41(a) of the AoA of the club, he did not do so, rather he, without asking the Chairman for constituting a committee for facing the grievance procedure, simply requested the club's Chairman to cancel the decision taken by the GC of the club; because he admitted his misconduct and misdemeanor with all members of the Executive Committee and as such he had no grievance to agitate.

With regard to the substantive issue, Mr. Hannan submits that the order of suspension passed by the General Committee is a valid and legal one inasmuch as the disciplinary action taken against the petitioner vide suspension letter dated 12.12.18 was passed by the General Committee of the club under authority of Articles 41 and 42 of the AoA of the club and without violating any other laws or Byelaws. He contends that in view of the findings by the enquiry committee as to the petitioner's arrogant interactions and insolent conversation with the Executive Committee, the club could have suspended the petitioner for more than 1 (one) year; But taking into consideration the petitioner's approach to the club to forgive him, the club, having taken a lenient view has, in fact, imposed a lesser punishment upon the

petitioner in commensurate with the offence committed by the petitioner. He pinpoints to the fact that the victims of the offence of misconduct and misdemeanor committed by the petitioner are not outsiders; rather they are the members of the General Committee who have directly experienced the petitioner's misconduct in person. The learned Advocate for the club contends that a number of irregularities were found as apparent from the inquiry report against BIDCO wherein the petitioner is a Managing Partner who used his membership for obtaining illegal and unethical benefits from the construction project of BIDCO but the present action has not been taken for the said irregularities, rather for the cause that arose under Article 41 of the Articles of Association.

On the case-laws referred to by the learned Advocate for the petitioner, he submits that the unreported Judgment dated 03.05.2016 in Company Matter No.280 of 2015 (Kamrul Hasan Bacchu Vs RJSC and others) as referred to by the petitioner has no manner of application in the present case, as the petitioner in the aforesaid case was permanently expelled from the club resulting in omitting his name from the Members' Register and, in this case, the present petitioner's club membership has been suspended only for a limited period retaining his name in the Members' Register; secondly, in the case reported in 65 DLR 143, when the Company Court found that there is a violation of a

provision of the Companies Act, the Court entertained the case invoking the Court's inherent jurisdiction under Rule 8 of the Companies Rules, but in this case, no provision of the Companies Act has been violated by the Club and, thirdly, the facts of other Judgments and decisions relied upon by the petitioner being completely different, the *ratios* are not applicable in the present facts and circumstances of the case. Lastly, he submits that the petitioner has not come before this Court with clean hands inasmuch as although the petitioner has admitted the charge raised against him and apologized for his conduct, but the petitioner did not disclose the said facts to this Court and, therefore, the petitioner does not deserve any remedy from this Court.

By making the above submissions, the learned Advocate for the club prays for dismissing the application with cost.

Hearing of the learned Advocates for the petitioner and the Company (club), perusal of the petition, affidavits-in-opposition together with their annexures and reading of the relevant statutory laws, Byelaws and case-laws lead this Court to consider mainly two issues. Firstly, whether the impugned order of suspension of the petitioner's membership of the club is legal and, secondly, whether this Court has the jurisdiction to try this case.

In order to adjudicate upon the first issue, this Court would require to examine the following sub-issues: (i) whether the club is empowered to suspend membership of any of its members, (ii)

if the club is found to have the power to suspend its member/s, then, on what ground a member can be suspended, (iii) whether there is any procedure to be followed for adjudging a member guilty, (iv) whether there is any provision of appeal or review against the decision/order passed by the club, (v) whether the Civil Court or this Court or any other competent Court of law is empowered to interfere with the decision/order passed by the club and (vi) if any Court is empowered to examine a club's decision/order, then, whether the Court would be competent to carry out scrutiny of the legality and propriety of the decision/order as a whole, or only to a limited aspect.

However, since the learned Advocate for the petitioner has raised the question of jurisdiction of this Court, therefore, without adjudicating upon the said issue at first, this Court cannot proceed to deal with the above-mentioned sub-issues towards trial of the instant case in its entirety.

In order to adjudicate upon the jurisdictional issue, it is imperative to look at the provisions under which the instant application has been filed. And the said provision being Section 43 of the Companies Act, the same is quoted below:

> 43. **Power of Court to rectify register:-** (1) If-
> (a) the name of any person is without sufficient cause entered in or omitted from the register of members of a company, or
> (b) default is made or unnecessary delay takes place in entering on the register the fact of any

> person having become, or ceased to be, a member,
> (c) the person aggrieved, or any member of the company, or the company, may apply to the Court for rectification of the register.
> (2) The Court may either refuse the application, or may order rectification of the register and payment by the company of any damages sustained by any party aggrieved and may also make such order as to costs as it may consider proper.
> (3) On any application under this section the Court may decide any question relating to the title of any person who is a party to the application to have his name entered in or omitted from the register whether the question arises between members or alleged members or between members or alleged members on the one hand and the company on the other hand and generally may decide any question necessary or expedient to be decided for rectification of the register and may also decide any issue involving any question of law. (underlined by me)

From a plain reading of the provisions of Section 43 of the Companies Act, it is abundantly clear that the power of this Court to rectify the Members' Register of a company can be exercised only when the name of any person (member) is omitted (বাদ দেওয়া হয়) from the Members' Register. From the Bengali text of the aforesaid provision, it is crystal clear that if the name of a member of a company is no more in the record of the company, then, there shall be an occasion for this Court to hear an application under Section 43 of the Companies Act towards disposal of the same, either rejecting it or directing the company to rectify the Members' Register of the company by inserting the name therein. There is, thus, no ambiguity in the above-quoted law so as to call for an interpretation of the word 'omitted' with reference to the

meanings provided in the different dictionaries. When the Bengali version of the law employs the expression "বাদ দেওয়া হয়", there hardly remains any scope for extracting any meaning other than omitting or deleting; that is to say, if the company's Members' Register (record-book) does not contain the name of a member, only in that event the aggrieved person may invoke the provision of Section 43 of the Companies Act. Similarly, when any person's name is unduly/illegally recorded in the Members' Register and a member of the company becomes aggrieved by the aforesaid entry in the Members' Register, this Court, then, assumes its jurisdiction for rectification of the Register of Members of the company and, if the petitioner succeeds, this Court in that event directs the company that the disputed name/s must not be in the record; this Court does not, and has never in the past, order the company to suspend the name for a specific period. So, clearly the provision of Section 43 of the Companies Act is not about suspension of membership of any person in a company.

I may now, after being acquainted with the relevant provisions of law, conveniently revert to the scenario of this case. Evidently, the club is a private company without having any share capital and the liabilities of the members of this company are limited by guarantee. Since Section 34 of the Companies Act mandatorily requires that every company (be it a company with share or without share, or be it a private or public company) shall maintain Register of the Members of the company, the club is

duty bound to maintain a Members' Register. And, while it is the claim of the petitioner that his name has been deleted from the Members' Register i.e. is not in the Members' Register in the guise of suspension, the contention of the club is that the petitioner's name has not been omitted from the Members' Register. The learned Advocate for the petitioner has desperately strived to give the meaning of the word 'suspended' as 'omitted' by showing the consequence of a suspension order; contending that since the petitioner shall be debarred from enjoying all the facilities of the club during the suspended period, it amounts to omitting the name form the Members' Register.

However, a company's order/decision depriving any of its member from enjoying certain facilities of the company, whether the company is with share capital or without share capital, can be in no way relevant/connected with retention of the aggrieved member's name in the Members' Register. For example, when a member of a company with share capital is made *persona non-grata* in attending the AGM depriving the said member from casting his vote or if he is ordered that he shall not be allotted the dividend for some obvious reason, he cannot relate the said grievance with the provisions of Section 43 of the Companies Act. Likewise, when a member of a company without having a share capital is ordered that he is barred to cast his vote in the AGM or enjoying any other facilities for a specific period, it cannot be the subject matter of Section 43 of the Companies Act. Secondly,

pursuant to allowing an application under Section 43 of the Companies Act, this Court is under an obligation under Section 44 of the Companies Act to direct the company to notify the Registrar of Joint Stock Companies and Firms (RJSC) about rectification of its Members' Register; because when a company omits the name of its member from, or includes in, the Members' Register, the company requires to inform the RJSC and, therefore, when the company's action as to inclusion or omitting is overturned by the Order of this Court, the RJSC accordingly again should be informed about the rectification of the Members' Register. But in the case of suspension of membership of a member of company, if an application is allowed by this Court, the aforesaid provision of Section 44 of the Companies Act becomes redundant. Thirdly, there is no scope for this Court to import a meaning for the word 'suspended' as 'omitted' in the backdrop of availability of its unambiguous literal meaning as found hereinbefore. It is the consistent view of all the Apex Courts across the globe that when the meaning of any word/terminology is simple and plain, a Court shall not indulge in carrying out an exercise of interpreting the said word for finding out a different meaning, going against the rules of statutory interpretation; for, it is the well-established principles of statutory interpretation that normally the plain literal meaning of any word or expression shall be taken and applied by the Court unless the said meaning creates contradiction with the other provision of the same statute. And, if

the interpretation of the word/terminology leads to such an alternative meaning which is likely to introduce a confusion hampering smooth functioning/working of the prevailing/existing system, then, it is incumbent upon the Court to reject the alternative meaning. On the issue of statutory interpretation, this Court in the case of Ghulam Mohiuddin Vs Rokeya Din 71 DLR 577 (Para 29), made the following observations;

> The golden rule of statutory interpretation is that when any ambiguity appears in a provision of a statute, the first option for the Court is to find out its literal meaning. And, in the event that it becomes a complex task for the Court to go with the above rule, only then, the Court would endeavour to discover its meaning with the help of the preamble and other provisions of the concerned statute without making any of its provisions nugatory.

In this case, if the meaning of the word 'omitted' is taken as 'suspended', then, it shall create a chaos and confusion for the persons who would approach this Court for striking down/deleting the name of a person from the Register of the Members of the company in that the respondent would have the scope to make out a case for suspending the name instead of omitting it, which this Court cannot do and, in fact, has never made any order in that direction making the operation, application and use of the provisions of Section 44 of the Companies Act nugatory. This Court, in the aforesaid type of scenario, either has rejected the petitioner's application for omitting a person's name from the Members' Register or has ordered the company for rectification of the Members' Register by omitting the name-in-question from the

Members' Register. So, it is apparent that the facts and circumstances of the petitioner's case do not attract the provisions of Section 43 of the Companies Act.

The above resolution on the provisions of Section 43 of the Companies Act leads me to embark upon examination of the petitioner's submission that this Court by applying and invoking its inherent jurisdiction may entertain this application. Since the above submission has been made in reference to Rule 8 of the Companies Rules and also with reference to a case-law, I prefer to look at them sequentially.

> Rule 8 of the Companies Rules: The Court shall have inherent jurisdiction while deciding a matter under the Act to pass any order or to follow any procedure including any of the provisions of the Code or the Original Side Rules framed under the erstwhile Letters Patent for ends of justice and to prevent abuse of the process of the Court.

Whenever I had an occasion to read the above-quoted Rule, every-time I found difficulties to have/pick up/garner the proper meaning of this law. Because, firstly, jurisdiction of any Court usually is not conferred upon the Court by incorporating a provision in the Rules framed under an Act of Parliament; provision as to jurisdiction of any Court is always engraved in the parent law. Secondly, even if the question as to the constitutionality of the Rule 8 is ignored and the said Rule is taken to be fine, the meaning that I can grasp from the said Rule is that in course of deciding a matter under the Companies Act, this Court has been bestowed with a power to pass any order upon

adopting/applying any procedural law of the land. So, in that sense, Rule 8 of the Companies Rules is about inherent power of the Court; not about the inherent jurisdiction of the Court. But, since the Companies Rules specifically enshrine inherent power of the Court in Rule 263, it implies that Rule 8 is about inherent jurisdiction of the Court. Rule 263 of the Companies Rules is quoted below:

> **Saving of Inherent Power of Court**
> 263. Nothing in these Rules shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders or to give such directions as may be necessary for the ends of justice or to prevent the abuse of the process of law.

The wordings of the above provisions vividly express the inherent power of the Court. Since it does not become possible for the Legislature to incorporate a law covering all types of problems, disputes, grievances and lis, in their wisdom, they usually consider it prudent to keep a codified provision for the Courts to exercise Courts' inherent power. Because, if the said power is provided in the Act of Parliament, the Courts become in a position to carry out their duties/performances more smoothly and speedily.

Be that as it may, since as of now, Rule 8 of the Companies Rules is in operation as a valid piece of Legislation heralding that this Court shall have jurisdiction to deal with any provisions of the Companies Act, thus, to me, it is like one-step forward provision than the previous statutory provisions; for, before incorporation of

the provisions of Rule 8 in the Companies Rules on 07.12.2009, the Company Bench and the Appellate Division had been encountering a dilemma with regard to entertainment of an application for direction upon the company to comply with certain provisions of the Companies Act, meaning that, if there was a non-compliance or violation of a particular provision of the Companies Act (for example, Section 95 of the Companies Act which stipulates that notice of the Board meeting must be given in writing at the director's Bangladesh address), the aggrieved person was not allowed to file a petition before this Court on the ground that unless a Section of the Companies Act specifically sets out provision for approaching this Court, this Court does not have jurisdiction to try the case. In many cases, despite finding apparent non-compliance/violation of a provision of the Companies Act by this Court, this Court used to decline hearing the petitioner's grievance and, it is in that context, as appears to me, that the provisions of Rule 8 in the Companies Rules might have been incorporated to supplement the relevant law of the Companies Act which provides the jurisdiction of the Court. The said relevant law, namely, Section 3 of the Companies Act is extracted below:

> 3. **Jurisdiction of the Court**- (1) The Court having jurisdiction under this Act shall be the High Court Division;
>
> Provided that the Government may by notification in the Official Gazette and, subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall as regards

> the jurisdiction so conferred, be the Court in respect of all companies having their registered office in the district.
> Explanation – For the purposes to wind up companies the expression "registered office" means the place where the registered office of the company, during the six months immediately preceding the presentation of the petition of winding up was situated.
> (2) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court. (underlined by me)

The Bengali text of the above-underlined provision is "এই আইনের অধীন এখতিয়ার সম্পন্ন আদালত হইবে হাইকোর্ট বিভাগ"। And, Section 2(1)(d) of the Companies Act provides the definition of the word 'Court' as 'the Court having jurisdiction under this Act'. Let me, now, gather the meaning of the expressions "the Court having jurisdiction" (এখতিয়ার সম্পন্ন আদালত) as employed in Sections 2(1)(d) and 3(1) of both English and Bengali text of the Companies Act. Does it provide a meaning that the High Court Division is the Court to try all types of the cases under the Companies Act or it does mean that this Court may be petitioned for aspired remedy only under some particular provisions of the Companies Act, which have conferred jurisdiction upon the Court. In the case of Abdul Mohit Vs Social Investment Bank 61 DLR (AD) 82 (Judgment delivered on 3rd November 2002) and in other score of cases, which were disposed of before framing the Companies Rules, 2009, the consistent view of this Court was that the Company Court is competent to entertain only those grievances/lis for which the Companies Act specifically mandates

the aggrieved person to approach the Court. However, after the Companies Rules came into force, the Hon'ble Judges of this Court started to show their inclination towards entertaining application for non-compliance/violation of any provision of the Companies Act, even though the said provisions of the Companies Act do not license an aggrieved person to take recourse to the Company Court. In the case of Abdul Wadud Vs Heaven Homes Pvt Ltd 65 DLR 143 referred to by the learned Advocate for the petitioner, when this Court found that there has been an infraction of compliance of a provision of the Companies Act, relief was granted invoking the inherent jurisdiction under Rule 8 of the Companies Rules. So, in order to avail the provisions of Rule 8 of the Companies Rules, a petitioner requires to show the Court that a provision or provisions of the Companies Act has or have been breached. With regard to jurisdiction of the Court, this Court, in the case of AKM Lutful Kabir Vs Neeshorgo Hotel 2019(3) 17 ALR 101, made the following observations:

> Similarly, in an application under Section 233 of the Companies Act this Court is empowered to pass any type of Order/Direction which the Court considers to be necessary for the betterment of the company. Although there are differences of opinion as to the jurisdiction of this Court that the jurisdiction of this Court is limited within the certain provisions of the Companies Act, where the said provisions prescribe the petitioner/aggrieved person for approaching the Company Court (such as Sections 12, 13, 14, 41, 43, 59, 71, 81, 82, 83, 85, 115, 151, 171, 175, 176, 191, 193, 228, 229, 233, 241, 245, 248, 249, 253, 255, 258, 259, 261, 262, 263, 264, 265, 267-286, 294, 296, 299, 300, 301, 302, 303, 305, 309, 311, 312, 314, 316, 326, 328, 331, 333, 338, 339, 340, 342, 346,

> 349, 395, 396), however, upon minute perusal of the Preamble and the entire provisions of the Companies Act, my view is that in the absence of any prohibitory provision in any Section of the Companies Act, in particular in Section 3 of the Companies Act which seeks to state about the jurisdiction of this Court, this Court is competent to deal with any issues/grievance relating to or arising out of or in connection with any provisions of the Companies Act. (Para 15)

Although the apparent expansion of the Company Court's jurisdiction by virtue of Rule 8 of the Companies Rules took place, however, in order to avoid any confusion or further debate on the issue, the Legislature should add a paragraph underneath Section 3(1) of the Companies Act codifying the above proposition of law, which may be in the following words *"without being inconsistent with or contradictory to any provisions of this Act, the Court shall have jurisdiction to try a case in connection with/arising out of/related to any provisions of the Companies Act"* or by incorporation of any other suitable and appropriate expressions/wordings.

Now, let me see whether there has been an infraction of any provision of the Companies Act in the case in hand. It has already been held by this Court hereinbefore that the petitioner's grievance does not fit in the provisions of Section 43 of the Companies Act. Apart from the aforesaid provision of the Companies Act, the petitioner has also sought to connect, albeit faintly, his grievance with the provisions of Sections 22 and 32 of the Companies Act stating that as per Section 22 of the Companies Act, the MoA and AoA of the company bind the

company and the members to the same extent as if they respectively had been signed by each member and are bound to observe all the provisions of MoA and AoA subject to the provisions of the Companies Act; and as per Section 32 of the Companies Act, every subscriber of the MoA of a company shall be deemed to have agreed to become a member of the company and on its registration shall be entered as a member in the Register of Members.

With reference to the above two provisions of law, the petitioner feebly sought to connect his grievance by saying that as a member of the company, the petitioner's name must be in the Register of Members of the company. However, since the name of the petitioner is very much in the Members' Register, no question of violation of the above provisions of law arises. This Court, thus, finds that the Legislature has not made any provision in the Companies Act directly, or even impliedly, to provide remedy from the Company Court for the persons like the present petitioner. The plain and simple grievance of the petitioner is that the impugned decision taken by the club depriving him from enjoying the club's facilities for 1 (one) year is illegal and the said grievance being a dispute of purely civil nature, the petitioner is competent to seek declaration from the civil Court challenging the propriety and legality of the impugned order coupled with making other prayers, including seeking temporary injunction and/or mandatory injunction upon the club.

Let it be known to all, if it is not already known, that civil Courts of our country are well-competent, and in fact better equipped, to deal with all the provisions of the Companies Act; it would be a misconstruction of Section 2(1)(d) and Section 3(1) of the Companies Act to hold that the civil Court's door would be available only for those cases for which the Companies Act does not specifically mandate the Company Court to entertain an application. The basis of the above proposition is that there is no expression in Sections 2(1)(d) and 3(1) of the Companies Act by which the jurisdiction of the civil Court has been taken away. And, that is why, this Court on some occasion, but not on regular basis, suggests a petitioner under Section 43 or Section 233 of the Companies Act to approach the civil Court where serious complicated question of facts are involved necessitating recording of testimonies of a number of witnesses. This Court very seldom adopts the aforesaid path only in the rarest of rare cases on the ground of its overwhelmingly over-burdenness of cases; not on the ground that this Court is powerless/incompetent to record oral evidence. The above view has been expressed by this Court in greater detail in the case of Md Delwar Khan Vs RJSC 2019(2)16 ALR 196.

However, since this Court now-a-days shows its inclination to receive and dispose of a case wherein a complaint about dereliction/violation of any provisions of law is made, in spite of absence of an enabling provision permitting a petitioner to

approach this Court, the present case could have been entertained by this Court had there been an apparent non-compliance/violation of any provision of the Companies Act. But the present case merely involves adjudication of a grievance as to non-compliance with the provisions of Memorandum of Association and Articles of Association of the club; no provision of the Companies Act directly is resorted to for disposal of the petitioner's case. It is for information of all the concerned that this Court is always in favour of remedying a petitioner ignoring the technical issues of a case even in a roundabout manner; but the Court cannot be adventurous for expansions of its jurisdiction going beyond the scope of the law. Therefore, when this Court finds that it has not been empowered to try a case/suit/proceedings, this Court becomes helpless to extend its hands to be petitioner.

It follows that the petitioner's appropriate forum being the civil Court, this petition is liable to be dismissed only on the ground of maintainability of this case. This Court, thus, is not going to dwell on the issue No. 1, as framed by this Court hereinbefore, namely, whether the impugned order of suspension of the petitioner's membership of the club is legal or not.

Nonetheless, at least, one factual aspect deserves to be recorded here. The petitioner approached the Chairman of the club with a request to cancel the suspension order vide his letter dated 13.12.2018 invoking Article 41(a) of the Articles of Association of the club which empowers the club's Chairman to form a 5(five)

member committee for giving a hearing to the delinquent member and, thereafter, he filed this case on 14.01.2019. Then, the Chairman of the club apparently opted not to form a committee for proceeding with the petitioner's grievance, rather on 27.03.2019 during pendency of the instant case, he simply disposed of the petitioner's aforesaid letter by saying something otherwise. Hence, in order to cover up that scenario, for ends of justice, this Court finds it proper to make an observation that if the Chairman of the club has disposed of the petitioner's aforesaid letter dated 13.12.2018 under a conception that during pendency of the petitioner's case in this Court, it might be a contemptuous step for him to form a committee to proceed with the petitioner's grievance letter, it is clarified here that the Chairman of the club must not be under an impression that because of dismissal of this case, he would be barred or he has become *functus officio* to proceed with the grievance procedure; rather he shall be at liberty to constitute a committee within a reasonable time, preferably within 1(one) month of receiving this Judgment, affording the petitioner an opportunity to place his explanations. But, if the Chairman of the club had disposed of the petitioner's grievance letter dated 13.12.2018 - not being based on the apprehension made by this Court in the penultimate line, then, the civil Court shall examine the legality and propriety of the impugned letter in its present form. And, if the Chairman of the club constitutes the committee under Article 41(a) of the AoA of the club, in that

event, the said committee shall be at liberty to keep the impugned decision intact or alter the same, whatever it may appear to them to be fit and proper upon consideration of the petitioner's explanations.

If the committee, after hearing the petitioner, decides to maintain the impugned order as it is, in that case, the civil Court shall try the suit on the touchtone of the following established principles of law governing the field; (1) whether the company/club has taken the decision within the purview of its Byelaws and (2), in absence of any provisions as to imposition of quantum of fine and penalty for a specific type of misdemeanors/misbehavior, whether the club has failed to exercise its discretionary power which otherwise amounts to commission of a glaring illegality. It is to be borne in mind by the learned Judge of the trial Court that the Court, in these types of cases, needs to strike a balance between maintaining the right of an individual and the right of a social entity to let it run with its own norms and etiquette. It is the trite law that the Courts would not interfere with the merits of a domestic tribunal, save and except in the rarest case where ex-facie a severe illegality has been committed by the domestic tribunal causing irreparable loss to the private individual. Because, since a domestic tribunal is not formed under any statutory provision, it is not legally obliged to follow the formal procedures - like a formal tribunal or Court in

(i) summoning the delinquent, witness/es, (ii) in filing petitions/letters, (iii) in producing evidence etc and, thus, mere irregularities or defects in complying with some insignificant procedures is not capable of vitiating the decision of a private body. In other words, the rules governing tribunals and Courts cannot mutatis mutandis be applied to the private bodies like social club, workers' private union/organization etc. The jurisdiction of the Courts in regard to tribunals of a domestic nature has been discussed in many cases but, in my opinion, the observations which fairly apply in most of the cases, including the present case, are those contained in the Judgment of Maugham J., as he then was, in the case of Maclean v. The Workers' Union, 1929-1 Ch. 602: (98 L. J. Ch. 293). The Tribunal in that case was the executive committee of the Union and Maugham J. observed (at page 620 med,);

> "At the outset it may be expedient to point out that the question will not be whether the Court considers that the conduct of the defendants or their executive committee was fair and just: but the very different question whether the case is one in which the Court has power to interfere.
>
> The jurisdiction of the Courts in regard to domestic tribunals-a phrase which may conveniently be used to include the committees or the councils or the members of trade unions, of members' clubs, and of professional bodies established by statute or Royal Charter while acting in a quasi-judicial capacity -is clearly of a limited nature. Parenthetically I may observe that I am not confident that precisely the same principles will apply in all these cases; for it may be that a body entrusted with important duties by an Act of Parliament is not in the same position as, for example, the executive committee in the present

> case. Speaking generally, it is useful to bear in mind the very wide differences between the principles applicable to Courts of justice and those applicable to domestic tribunals. In the former the accused is entitled to be tried by the judge according to true evidence legally adduced and has a right to be represented by a skilled legal advocate. All the procedure of a modern trial including the examination and cross- examination of the witnesses and the summing up, if any, it based on these two circumstances. A domestic tribunal is in general a tribunal composed of laymen. It has no power to administer an oath and, a circumstance which is perhaps of greater importance, no party has the power to compel the attendance of its witnesses. It is not bound by the rules of evidence: it is indeed probably ignorant of them. It may act, and it sometimes must act, on mere hearsay, and in many cases the members present or some of them (like an English jury in ancient days) are themselves both the witnesses and the judges. Before such a tribunal counsels have no right of audience and there are no respective means for testing by cross-examination the truth of the statements that may be made. The members of the tribunal may have been discussing the matter for weeks with persons not present at the hearing, and there is no one even to warn them of the danger of rating on preconceived views.
>
> It is apparent and it is well settled by authority that the decision of such a tribunal cannot be attacked on the ground that it is against the weight of evidence, since evidence in the proper sense there is none, and since the decisions of the tribunal are not open to any sort of appeal unless the rules provide for one."

The purpose of outlining the guidelines for the civil Court, without delving into the factual aspects of the petitioner's case, is to assist the trial Court to expeditiously dispose of the suit upon applying the correct proposition of law governing this field, if the petitioner approaches the civil Court challenging the impugned decision of the club. And, in any event, since this Court had to frame issues on the petitioner's case hereinbefore, it would

obviously help the petitioner to have a quick disposal of the suit. Additionally, the petitioner may also ask the Court to frame issues as to (a) whether there is any past instance of the club to forgive a delinquent for the infractions of similar magnitude or, at least, met with lesser penalties and (b) whether there has been any infraction on the part of the club's General Committee which can be said to have been fatal to the disciplinary exercise undertaken and the decision arrived at. But it would be beyond the power of the civil Court to examine as to whether the General Committee has acted too harshly instead of becoming a bit more generous to the petitioner given the unconditional apology made by the petitioner, as was attempted to plead before this Court.

Finally, the question comes up for consideration as to whether this application should be dismissed with cost or not. After hearing the learned Advocate for both the sides at length on the issue of maintainability of this case, when this Court found that there is no point of allowing the petitioner to harp on the jurisdictional issue any further at the cost of wasting invaluable time of this Court, this Court suggested the learned Advocate for the petitioner Mr. Abdullah Al Mahmud (the filing lawyer) to approach the civil Court with an assurance that the interim order of stay passed by this Court at the time of admission of this case shall be kept operative and will be continued till institution of the said suit and, accordingly, the learned Advocate for the petitioner

was asked to consult with the petitioner. However, upon receiving instructions from the petitioner, the learned Advocate opted to receive a full-fledged Judgment, even at the expense of the cost if slapped by this Court. At that juncture, the learned junior Advocate for the petitioner Mr. Abdullah Al Mahmud was asked to reminisce the benevolence and latitude shown by this Court to the learned Senior Advocate Mr. Moudud Ahmed at the time of admission of this case. It is worthwhile to record here that the learned filing lawyer Mr. Abdullah Al Mahmud initially approached this Court mentioning the instant application to be a case under Section 22 of the Companies Act and, upon summary hearing, this Court was about to reject the petitioner's present application *in limine* on the ground that no application lies under the said provisions of the Companies Act. However, when a Senior Advocate of high stature of this country, none less than Mr. Moudud Ahmed, was insisting upon this Court to admit the case, it was observed by this Court that he may try his luck by converting this application to be one under Section 43 of the Companies Act, although the chance would be very slim to succeed in the final hearing.

Thus, on top of the prayer made by the learned Advocate for the club to award cost, this Court is also of the view that it is a fit case where the petitioner should be slapped an exemplary cost for not conceding to this Court's suggestion to approach the civil

Court to save this Court's valuable time, which requires to deliver a full-fledged Judgment. Ostensibly when the petitioner is not going to lose anything from this Court; rather is getting a very reasonable order conducive to his circumstance and overall a better opportunity to fight his cause in a well-equipped forum, it is apparently a whimsical craving of the petitioner to have a detailed Judgment from this Court by wasting its invaluable time, by ignoring that this Court everyday is struggling to cope with huge backlog of cases. In a series of cases, the latest of which is the case of ABB India Ltd Vs Power Grid Company of Bangladesh Ltd 2020 ALR Online (HCD) page 1, this Court, upon castigating the petitioners of the said cases for their stubbornness for receiving a full-fledged Judgment in meritless cases, has slapped exemplary cost upto Tk. 10,00000/- (ten lacs).

In this case, it was announced in the open-Court that there will be a cost of Tk. 5,00000/- (five lacs). However, considering the humble prayer made by the learned Senior Advocate Mr. Moudud Ahmed, this Court imposes only a token cost of Tk. 1,00000/- (one lac) upon the petitioner.

In the result, the petition is dismissed with a cost of Tk. 1,00000/- (one lac).

The petitioner is directed to pay the cost of Tk. 1,00000/- (one lac) in favour of the National Exchequer by way of submitting a Treasury Challan in the Sonali Bank, Supreme Court

Branch, Dhaka. And, the Chittagong club Ltd is directed to donate an amount of Tk. 1,00000 (one lac) to Anujani Zami Masjid and Pathagar, Chatak, Sunamganj. This Judgment and Order shall be effective subject to compliance of the above direction as regards donations. On furnishings receipts of the payment, this Order may be drawn up, if so prayed for.