

**BEFORE JUSTICE BADAR DURREZ AHMED (RETD),
OMBUDSMAN, DDCA**

Re: **Reference by DDCA in the matter of Mr Vinod Tihara**

**ORDER
05.12.2018**

1. The present complaint dated 14.08.2018 for and on behalf of the Delhi & District Cricket Association (“DDCA”) has been referred to me, inter alia, by Mr Rajan Manchanda, Joint Secretary, DDCA. The Complaint is directed against Mr Vinod Tihara (Secretary, DDCA) and in particular, his act of issuing an office circular dated 12.08.2018 which was allegedly contrary to, inter alia, decisions taken in the Board Meeting of 02.07.2018 and the board resolution by circulation dated 29.07.2018, to both of which Mr Tihara was a party. Along with the complaint, an extract of the resolutions passed in the Board meeting of 14.08.2018 was also sent to me. The extract of resolutions indicates that Mr Vinod Tihara, by a majority of 11:3, was suspended with immediate effect “till pending inquiry which requires the adjudication by Ombudsman in terms of Clause 62 of the Articles of Association of the Company”. The extract of resolutions also indicates that it had been resolved that a copy of the resolution and complaint be sent to the Ombudsman for conduct of an inquiry in accordance with the Articles of Association. In the said meeting of 14.08.2018, it was also resolved to, inter alia, quash the circular dated 12.08.2018 issued by Mr Tihara.
2. At the outset, it is pertinent to point out that, on 28.08.2018, Mr Tihara filed a suit (CS 5963/2018), challenging, inter alia, his suspension by the Board on 14.08.2018, before the learned Additional District Judge-06 (Central), Delhi, who, by an ex-parte ad-interim order dated

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28.08.2018 stayed the suspension. The said ex-parte interim order was not vacated by an order dated 30.08.2018. However, the application under Order 39 Rules 1 & 2 of the Code of Civil Procedure, 1908, upon which the said orders were passed is pending final disposal. Aggrieved by the two orders dated 28.08.2018 and 30.08.2018, the DDCA filed an appeal (FAO 413/2018) before the Hon'ble High Court of Delhi which was disposed of by an order dated 20.09.2018, the operative portion of which reads as under:-

“...the impugned orders dt.28.08.2018 & 30.08.2018 of the learned Trial Court are modified to the extent that the operation of the suspension order of the Respondent No.1 purportedly dt.14.08.2018 as issued by the Delhi & District Cricket Association and its Board of Directors i.e., the appellant herein, is stayed till the decision on the interim application under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 on merits, and furthermore, the Respondent No.1, the Delhi & District Cricket Association is restrained from obstructing the Respondent No.1 in discharge of his duties and functions as Secretary, Delhi & District Cricket Association to the extent that he functions in accordance with the Articles of Association of the Delhi & District Cricket Association till adjudication of the application under Order XXXIX Rules 1 & 2 of the CPC before the learned Trial Court or till adjudication by the learned Ombudsman in terms of Article 62 of the Articles of Association of the Delhi & District Cricket Association, i.e. the appellant, of the reference made on 14.08.2018 to the Learned Ombudsman of the complaint against the Respondent No.1, whichever is before.”

(emphasis supplied)

3. This order of the Hon'ble High Court has been appealed against (CA 4235/2018) before the Hon'ble Supreme Court and the same is

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pending. As is evident, the issue before the Courts is/was essentially with regard to the suspension of Mr Tihara.

4. Accordingly, in the course of hearing of this complaint, as is evident from the proceedings dated 04.10.2018, the hearing on the complaint was confined to the issue of the Circular being in consonance with the Articles of Association, the Companies Act, and with law in general and since the matter of suspension of Mr Tihara was pending before the courts, the same was not the subject matter of the present proceedings. It is, therefore, clear that the hearing before me was confined to the complaint vis-à-vis the issuance of the Circular dated 12.08.2018 by Mr Tihara. Essentially, the grievance being that the said Circular having been issued unilaterally by Mr Tihara, in contravention of the Board Resolutions, amounted to gross indiscipline and misconduct on the part of Mr Tihara, who was the Secretary, DDCA and, therefore, was covered within the expression “Administrator”, as indicated in the Articles of Association.
5. The proceedings leading up-to the filing of the appeal before the Hon'ble Supreme Court have already been indicated above. Insofar as the present complaint is concerned, it was, as pointed out above, sent to me on 14.08.2018. Mr Tihara was required to submit his reply, as indicated by an email dated 30.08.2018. A request was made by Mr Tihara for extending the period granted to him for making the reply. That request was acceded to and finally Mr Tihara submitted his detailed reply, which including the documents filed along with the said reply amounted to 410 pages. A rejoinder was submitted on behalf of DDCA, which along with the Annexures thereto, was of 116 pages. Hearings were held on 04.10.2018, 30.10.2018 (when an adjournment



was sought on account of non-availability of Mr Tihara's counsel), 13.11.2018, 28.11.2018 (when adjournment was granted on account of Mr Tihara's counsel being unwell) and finally on 01.12.2018 (when arguments were concluded and the order was reserved).

6. It is the contention on behalf of the Complainant/DDCA that once the decision was taken by the Board of Directors in which Mr Tihara was also present, Mr Tihara acting on his own could not have issued the Circular dated 12.08.2018, which was very disruptive to the functioning of the DDCA as also to the game of cricket, inasmuch as all appointments made by the Board through its Resolution dated 29.07.2018 were sought to be cancelled. The Cricket Committee and Selection Committee were also sought to be cancelled and annulled by virtue of the Circular dated 12.08.2018.
7. According to the Complainant, these acts on the part of Mr Tihara constitute indiscipline and gross misconduct, which was detrimental to the interest of DDCA and the game of cricket. It was also alleged that Mr Tihara acting alone could not usurp power and jurisdiction of Board of Directors. It was also submitted that the DDCA, which is a Company under the Companies Act, functions under the doctrine of corporate democracy and a single member cannot hold the DDCA to ransom. It was, therefore, contended that not only was the Circular dated 12.08.2018 illegal and invalid, but the conduct of Mr Tihara, who was an Administrator, smacked of indiscipline and that he misconducted himself causing detriment to the functioning of the DDCA as also to the game of cricket.



8. On the other hand, it was contended on behalf of Mr Tihara by his learned counsel Mr Gautam Dutta that Mr Tihara functioned under the powers given to him in the Board Meeting of 02.07.2018 and particularly by virtue of Resolution Nos.2 and 7. He also submitted that Mr Tihara had been empowered to ensure that the DDCA is run in line with the recommendations of Justice Lodha Committee, approved by the Hon'ble Supreme Court by virtue of its judgment dated 09.08.2018 passed in CA No.4235/2014. It was also submitted on behalf of Mr Tihara that the Board Resolution, which was passed by circulation on 29.07.2018, approved the appointment of key managerial positions such as CEO, COO, CFO and CSPO. According to the learned counsel for Mr Tihara, it was submitted that this could not be done by virtue of a circulated resolution and had to be done in a Board Meeting. Reliance was placed on Sections 196 and 203 of the Companies Act for this proposition. It was also submitted that any resolution by circulation to be valid had to be circulated in advance to the members of Board and since there was no such advance circulation, in view of Section 175 of the Companies Act, the resolution by circulation dated 29.07.2018 was invalid. It was submitted that although Mr Vinod Tihara had himself signed the resolution, he later realized that there was a legal problem with it and, therefore, he issued the Circular dated 12.08.2018. Although, this point is not expressly mentioned in the said circular.
9. He also submitted that it was essential that the terms and conditions of employment including the remuneration of the officers appointed by virtue of the Resolution dated 29.07.2018 were to be indicated. That is not mentioned. He further submitted that the qualification norms prescribed for the position of CEO was not in accord with the judgment



of the Hon'ble Supreme Court dated 09.08.2018. It was also pointed out by the learned counsel for Mr Tihara, referring to Article 62(ii) that the Ombudsman has the power to impose penalty, as provided in the regulations for, inter alia, Administrators of the Company (i.e., DDCA). However, no such regulations have been framed and, therefore, no penalty can be imposed by the Ombudsman. He further submitted with reference to Article 62(i)(b) that although there is a reference to act of indiscipline or misconduct, which is detrimental to the interest of the company (i.e. DDCA) and the game of cricket, it is not specified as to which acts would fall within such indiscipline or misconduct. In this context, it was submitted that Mr Tihara was only trying to follow the Justice Lodha Committee's recommendations and therefore, he cannot be faulted, consequently, his conduct cannot be regarded as indiscipline or under the category of misconduct which is detrimental to the interest of DDCA and the game of cricket. Although it was also submitted that the suspension order passed on 14.08.2018 was not valid, inasmuch as there was allegedly no pending enquiry on that date, it is made clear that I am not examining the question of suspension because the same is pending before the courts. It was also contended on behalf of Mr Tihara that no complaint / reference could have been made by DDCA to the Ombudsman without first conducting a preliminary enquiry and issuing a show cause notice to Mr Tihara. It must however be pointed out at this juncture that no such plea was taken in the reply submitted by Mr Tihara, but this submission was made on the ground that it was a requirement of natural justice.

10. In rejoinder, learned counsel appearing on behalf of the DDCA submitted that admittedly Mr Tihara had signed the Resolution of



29.07.2018 as the Secretary of DDCA and as an Administrator / Member of the Board. He had also participated in the Board Meeting of 02.07.2018 and had not raised any objection to either of them till his emails of 10.08.2018 which culminated in the Circular being issued by him on 12.08.2018. It was submitted that an Administrator / office bearer of DDCA functions either under the Articles or the Act or through powers entrusted upon him by a Board Resolution. It was submitted that no powers had been given to Mr Tihara as the Secretary of DDCA to issue the directions, which he did by virtue of Circular dated 12.08.2018. It was further submitted that once a decision has been taken by the Board in a board meeting or by a circulated resolution, that can only be undone by the Board itself or by an appropriate authority such as a court of law/ Company Law Tribunal. A lone director cannot take law in his hands and override the Board decision and disrupt the well-known system of corporate democracy. It was, therefore, submitted that the act of issuing the Circular dated 12.08.2018 smacked of indiscipline by a lone functionary, when the overwhelming majority decision of the Board was otherwise. It was also disruptive and detrimental to the interest of DDCA and the game of cricket, inasmuch as the Cricket Committees were sought to be scrapped, which would have put the entire cricketing activity in jeopardy. It was also pointed out that the argument that the formation of the Cricket Committees etc., and the appointment of personnel was not in consonance with the Supreme Court order dated 09.08.2018, is not a valid ground, inasmuch as the same were in consonance with the Articles as existing on 25.07.2018, which were in accord with the directions of the High Court order dated 23.03.2018 in WP(C) No.7215/2011 and the Supreme Court judgment came later on



09.08.2018. It was submitted that the directions in the Circular were mala-fide and bereft of any authority or power and was essentially to blackmail other functionaries and bulldoze the functioning of the DDCA. Learned counsel for the DDCA further submitted that the present complaint was limited to the issue of determining whether the actions of Mr Tihara and, in particular, issuing of Circular dated 12.08.2018, amounted to indiscipline or misconduct, which was detrimental to the interest of the DDCA and the game of cricket and the DDCA was not asking for imposition of any penalty by the Ombudsman. Referring to Resolution Nos.2 and 7 of the Board Meeting held on 02.07.2018, it was submitted that these resolutions did not in any way empower Mr Tihara to issue the directions contained in the Circular dated 12.08.2018.

11. It was also submitted that although the exact nature of indiscipline or misconduct has not been spelled out in the Articles of Association, it is always open to consider reasonably as to what conduct can be treated as misconduct. A reference was made to the decision in *W M Avnani v. Badri Das & Ors: (1961) 2 LLJ 684 (Para 15)* and *M S Dhantwal v. Hidustan Motors Limited & Ors: (1976) 4 SCC 606 (Para 23)*.
12. In view of the complaint, reply and rejoinder as also submissions of the learned counsel for the parties, it is evident that the only question before me is whether Mr Tihara, in issuing the Circular dated 12.08.2018, was guilty of indiscipline or misconduct that was detrimental to the interest of DDCA and the game of cricket. For this purpose, it would be necessary to set out the Minutes of Meeting held on 02.07.2018, a copy of which was filed as Annexure A-8 (Colly.) along with Mr Tihara's reply. The same are as under:



ANNEXURE-A8
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DELHI & DISTRICT CRICKET ASSOCIATION

(AFFILIATED TO THE BOARD OF CONTROL FOR CRICKET IN INDIA)

FEROZESHAH KOTLA GROUNDS, NEW DELHI - 110 002

Tel: 23319323, 23312721, 23752667 Fax 91-11-23722087

CIN No. U92411DL1909PLC000407

ddca@ddca.co

MINUTES OF THE MEETING OF THE MEMBERS OF THE DELHI AND DISTRICT CRICKET ASSOCIATION LIMITED HELD ON MONDAY, 2ND JULY, 2018 AT 17.30 HOURS AT THE OFFICE OF THE COMPANY SITUATED AT FEROZSHAH KOTLA GROUND, NEW DELHI-110002

Time of Commencement of the Meeting: 17:30 Hours
Time of Conclusion of the meeting : 18:30 Hours

Present

Mr. Rajat Sharma	President
Mr. Rakesh Bansal	Vice President
Mr. Vinod Tihara	Secretary
Mr. Rajan Manchanda	Joint Secretary
Mr. D. P. Sharma	Treasurer
Mr. Sudhir Kumar Agarwal	Director
Mr. Sanjay Bhardwa	Director
Mrs. Renu Khanna	Director
Mr. Alok Mittal	Director
Mr. Apurv Jain	Director
Mr. Nitin Gupta	Director
Mr. Shiv Nandan Sharma	Director
Mr. Sardar R. P. Singh	Government Nominee
Mr. Gaytam Gambhir	Government Nominee

Welcome address by the Administrator Justice Vikramjit Sen (Retd. Judge of the Supreme Court of India) and declaration of elected members as President, Vice President, General Secretary, Treasurer, Joint Secretary, and Directors and handling over the charge of DDCA to the elected President Mr. Rajat Sharma on behalf of elected members.

Elected President Mr. Rajat Sharma has taken over the charge of the DDCA and introduced his team members and expressed his gratitude to the Administrator Justice Vikramjit Sen (Retd. Judge of the Supreme Court of India) for his valuable contribution in the functioning of the DDCA.

1. Election of the Chairman and Quorum of the Meeting

Mr. Rajat Sharma appointed as President, noted that the required quorum was present at the meeting and hence, the meeting could commence and presided over the meeting as its Chairman.

The Chairman placed before the Board Agenda of the meeting and the following resolutions were passed unanimously:

2. RESOLUTION FOR INFORMING THE CHANGE IN THE EXECUTIVE COMMITTEE TO THE CONCERNED DEPARTMENTS.

RESOLVED THAT newly elected Executive Committee of DDCA be informed to all the concerned Government Departments, Vendors, Suppliers & other Associates along with letter of the Election Officer declaring the election results.

RESOLVED FURTHER THAT The secretary Mr. Vinod Tihara be and is hereby authorized to inform the same accordingly.

RESOLVED FURTHER THAT a certified copy of this resolution may be furnished to the concerned departments, for giving effect to this resolution.

3. FORMATION OF VARIOUS COMMITTEES

RESOLVED THAT newly elected President be and is hereby authorized and empowered to form various committees and subcommittees for the proper functioning of the Association. The President Mr. Rajat Sharma shall be the Ex Officio member of the all committees so formed.

4. AUTHORIZATION FOR OPERATION OF BANK ACCOUNTS.

RESOLVED THAT all the bank accounts of the association shall be operated jointly by the following:

- Treasurer-Mr. Om Prakash Sharma
- Joint Secretary -Mr. Rajan Manchanda

Or in the absence of Joint Secretary then Secretary Mr Vinod Tihara is authorized by the President in this regard.

Further, the bank be informed accordingly & the required formalities of the bank be completed.

RESOLVED FURTHER THAT the bank be and is hereby instructed to honour all cheques, promissory notes and other order drawn by and all bills accepted on behalf of the company whether such account be in credit or overdrawn and to accept and credit to the account of the company all money deposited with or owing by the bank or any account or accounts at any time or times kept or to be kept in the name of the company and the amount of all cheques, notes, bills other negotiable instruments order or receipts provided they are endorsed/ signed as above on behalf of the company and such signature(s) shall be sufficient authority to bind the company in all transactions between the bank and the company including those specifically referred to herein."

Mr

RESOLVED FURTHER THAT this resolution shall remain in force until notice in writing of its withdrawal or cancellation is given to the bank by duly Authorised person."

5. REVIEW OF ALL DECISIONS TAKEN AFTER NOTIFICATION OF ELECTION BY DELHI HIGH COURT.

RESOLVED THAT all the decision taken by Administrator after the date of announcement of election by the Hon'ble High Court of DDCA shall be reviewed by the Executive Committee under the chairmanship of President & decisions taken not in the interest of the Association shall be amended accordingly.

6. NOMINATION OF MEMBERS FOR BCCI.

RESOLVED THAT President Mr. Rajat Sharma be & is hereby authorized to nominate the names of the members including himself for BCCI as per provisions.

7. INFORMATION OF THE AUDITED ACCOUNTS AND OTHER INFORMATION TO BCCI

RESOLVED THAT the Secretary Mr. Vinod Tihara be & is hereby authorized to send the Audited Accounts of DDCA together with other resolution as passed in AGM of DDCA to BCCI.

FURTHER RESOLVED that Mr. Vinod Tihara, the Secretary be and is also hereby authorised to provide the Compliance Certificate in accordance with the recommendations of the Lodha Committee.

8. POWER TO THE PRESIDENT FOR SMOOTH RUNNING OF THE ASSOCIATION

RESOLVED THAT the President Mr. Rajat Sharma the president of DDCA is also empowered to take the necessary decision as he deemed fit for the smooth running of the affairs of the association.

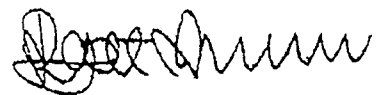
RESOLVED FURTHER THAT Mr. Rajat Sharma is also empowered to appoint any of the member/members for taking the decision on his behalf for smooth running of association.

Vote of Thanks

There being no other business to be transacted, the meeting concluded with a hearty vote of thanks to the Chair.

Date: 02.07.2018

Place: New Delhi



Chairman
(Mr. Rajat Sharma)



13. It will be immediately clear that Mr Vinod Tihara, Secretary, DDCA, was present at the said meeting. By virtue of the Resolution No.2, Mr Vinod Tihara was authorized to inform all the concerned Government Departments, vendors, suppliers and other associates about the newly elected Executive Committee of the DDCA. By virtue of Resolution No.7, Mr Vinod Tihara, Secretary, DDCA, was authorized to send the audited accounts of DDCA together with other resolutions as passed in the AGM of DDCA to BCCI. Mr Vinod Tihara was further authorized to provide the Compliance Certificate in accordance with the recommendations of the Justice Lodha Committee. These were the only specific powers / authorities given to Mr Vinod Tihara, Secretary, DDCA by virtue of Board Meeting held on 02.07.2018. At this juncture, it may be pointed out that the Compliance Certificate, which is referred to in the resolution, is in respect of High Court directions dated 23.03.2018 in WP(C) No.7215/2011, whereby DDCA was required to amend its Articles in line with those directions, which were in turn based on the recommendations of the Justice Lodha Committee. The Articles of Association were amended by DDCA and published on 05.04.2018. The Compliance Certificate, referred to in Resolution No.7 of the Board Meeting of 02.07.2018, was in respect of this.
14. From the above, it is evident that the authority given to Mr Vinod Tihara by the Board on 02.07.2018 was:
- (a) To inform the Government Departments etc., of the change in the Executive Committee of DDCA;
 - (b) To send the audited accounts of DDCA together with other resolutions passed in the AGM of DDCA to BCCI and



(c) To provide the Compliance Certificate in accordance with the recommendations of the Justice Lodha Committee.

15. It will be evident that the authority so granted to Mr Vinod Tihara did not extend to him issuing the directions contained in the Circular dated 12.08.2018, which virtually sought to annul the decisions of the Board taken either in the Board Meeting of 02.07.2018 or by circulation on 29.07.2018. What is even more striking is the fact that Mr Tihara was a party to both the decisions and he had not raised any objection at that point of time. In fact, he had sent an email dated 14.07.2018 (a copy of which is to be found at page 294 of the reply submitted by Mr Tihara), whereby he sought consent of the President, DDCA, for the next Executive Committee meeting and had also proposed an agenda, which was attached with the mail. The agenda is to be found at page 295 of the said reply and Item No.1 thereto reads as under:-

“1. Confirmation of the minutes of the last meeting of Executive Committee dated 2nd July 2018.”

16. On this point, it would be relevant to refer to the Circular dated 12.08.2018 in detail and as to what was the nature of the directions that Mr Tihara gave. A copy of the Office Circular dated 12.08.2018 is to be found at pages 317 and 318 of Mr Tihara's reply. The same is set out below:-



OFFICE CIRCULAR - DIRECTIONS

Vinod Tihara <secretary@ddca.co> Sun, Aug 12, 2018 at 7:18 PM
 To: neeraj@ddca.co, praddeepbanejee@ddca.co, vbajaj@vklbca.com, Sarvpreet Singh <sarvpreetsingh@ddca.co>, pritampanwar@ddca.co, chander2jha@gmail.com, vikrant.rawat@ddca.co
 Cc: Rajat Sharma <rajatsharma@indiatvnews.com>, DDCA FERROZ SHAH KOTLA <ddca@ddca.co>, Rakesh Bansal <rakeshbansal@gmail.com>, Vinod Tihara <vinodtihara@yahoo.com>, Sharmaop77@yahoo.com, Jt.secretary@ddca.co, renukhanna11260@gmail.com, renukhanna@ddca.co, nittin.rjay@gmail.com, kamlashiv@gmail.com, sns@ddca.co, suchiraga.wal@ddca.co, rajanmanchandaa@yahoo.co.in, ops <ops@ddca.co>, Sanjay Bhardwaj <bhardwajsanjay1962@gmail.com>

- (1) Sh. Neeraj Sharma (Manager)
 - (2) Sh. Pradeep Banerjee (Manager)
 - (3) Sh. V.K Bajaj (Accounts)
 - (4) Sh. Sarvpreet Singh,
 - (5) Sh. Pritam Panwar
 - (6) Sh. Chander Mohan
 - (7) Sh. Vikrant
- AND
 All Staff Members of DDCA.

Sub: Office circular

In view of the Hon'ble Supreme Court Judgement dt.09 August 2018 and earlier judgements and the approved draft Constitution of the BCCI, and by virtue of being a premier Affiliated State Association of the BCCI, the DDCA is bound to follow strict "transparency norms" in the appointment of its employees such as CEO and other employees to be appointed on contractual basis. Further, the DDCA cannot be burdened with additional financial cost in appointing employees for which there are no court directions. As good employers, we must make good use of our current employees and any talk of retrenchment, voluntary retirement etc for our employees who are like our family members, shall not be tolerated.

The appointment of CEO, CFO, COO, & GM has been without following transparent recruitment norms. The aberrations are as under

- (i) No information shared with the Secretary, DDCA Office or the fellow Directors regarding the list of total applicants for the posts invited.
- (ii) No panel disclosed or appointed to shortlist the applicants,
- (iii) No interview Board appointment or disclosed,
- (iv) No venue for Interview disclosed.
- (v) Eligibility criteria compromised.

Accordingly, as a Secretary of the Association, I deem it proper to issue the following directions:

DIRECTION No.1:

- (A) The Appointment of the CEO, COO, CFO & GM is kept on hold till further orders.
- (B) No contract, appointment letter, salary etc to be issued or released to such new appointees as the same shall amount to be a contempt of the SC directives.

In the event of any violation of the above orders, strict disciplinary orders shall be initiated against the employee concerned and may even be terminated for dereliction of orders.

DIRECTION No.2:

- (A) In view of the specific SC Judgement, all Cricket Committees, Selection Committees are rendered non-est and scrapped forthwith.
- (B) No DDCA employee, shall entertain or issue any contract, letter or correspondence with regard to the above. In case of any violation of the directions, strict disciplinary action including termination may be taken against such employee.

DIRECTION No.3:

- (A) Henceforth, no DDCA employee shall leave the DDCA premises or serve the Office bearers, Directors for their personal work or visit their personal offices or business locations. In the event of any violation of this order, strict

disciplinary action shall be initiated against such an employee.

(B) Henceforth, no DDCA employee shall take any orders on SMS, Email, verbal etc from the personal employees of the office bearers, Directors. Any dereliction, shall be a violation of service norms and hence shall invite strict action.

(C) Henceforth, all employees shall be bound to serve DDCA from the DDCA premises alone. All Board Meetings, Committee meetings shall be held at DDCA premises alone. No additional costs shall be incurred on TA, DA, Hotel costs etc by the DDCA. 3/8

Vinod Tihara
Secretary.

Copy to:

- (i) All Board Members.
- (ii) DDCA office Manager.
- (iii) Sh. Neeraj Sharma to put this office Circular on Notice Board immediately, without fail.

Sent from my iPhones

17. On going through the said circular, it is clear that Mr Tihara has stated that the appointment of CEO, CFO, COO and GM was done without following transparent recruitment norms. According to him, the apprehensions were that:-

- (i) No information was shared with the Secretary, DDCA Office or the fellow Directors regarding the list of total applicants for the posts invited.
- (ii) No panel disclosed or appointed to shortlist the applicants.
- (iii) No interview Board appointment or disclosed.
- (iv) No venue for Interview disclosed.
- (v) Eligibility criteria compromised.

These statements/allegations were made by Mr Vinod Tihara despite the fact that he had approved the appointments by signing the Resolution by Circulation dated 29.07.2018. Be that as it may, I am not going into the legality or validity of the said appointments. The issue here is whether Mr Tihara could on his own purport to take action contrary to the decision of the Board and, particularly, when he himself

was a party to the decisions. As per the learned counsel for the Complainant/DDCA, all the appointments were made in a transparent manner and in view of specific authorization contained in the Board Resolution of 02.07.2018.

18. Direction No.1 given in the Circular of 12.08.2018 was that appointment of CEO, COO, CFO and GM be kept on hold till further orders and that no contract, appointment letter, salary etc., be issued or released to any new appointees, as the same, according to Mr Tihara, would amount to contempt of Supreme Court directives. This was in clear contradiction to the Board Resolution by Circulation dated 29.07.2018, which was also signed by Mr Tihara. The Resolution Nos.2 and 7 of the Board Meeting of 02.07.2018 have already been referred to above and it is clear that those resolutions did not empower Mr Tihara to issue a direction of the nature of Direction No.1 referred to above. I agree with the submission of the learned counsel for the Complainant that the Secretary by himself did not have the power or authority to issue such a direction. Furthermore, even if a wrong decision has been taken by the majority, a lone Director cannot take law in his hands and override the said decision. Such a decision can only be undone either by the DDCA/its Board or before the court / Company Law Tribunal.
19. Insofar as Direction No.2 is concerned, it is evident that Mr Tihara sought to scrap all the Cricket Committees, Selection Committees and sought to direct DDCA employees not to entertain or issue any contract, letter or correspondence in respect of the Cricket Committees/ Selection Committees. Once again, I find that no such authority or power can be traced to any Articles of Association of DDCA or to the



Resolution Nos.2 and 7 of the Board Meeting of 02.07.2018. In fact, Article 47 of the Articles of Association of the DDCA specifically provides that the management and control of the Association shall be vested in the Executive Committee (which has also been referred to as the “Board of Directors”). Neither Article 47 nor Article 48, which also deals with certain specific powers of the Executive Committee (Board of Directors) confers any specific power on the Secretary, DDCA. All powers of the Secretary are therefore in terms of the Resolutions of the Executive Committee / Board of Directors. No powers to issue the directions of the nature contained in the Circular dated 12.08.2018 have been conferred by the Executive Committee / Board of Directors on the Secretary, DDCA.

20. On the other hand, it will be seen that Resolution No.3 of the Board Meeting held on 02.07.2018 specifically authorize / empower the President, DDCA, to form various Committees / sub-Committees for the proper functioning of the Association and also directed that he shall be ex-officio member of all the Committees so formed. According to the Complainant, the appointments reflected in the Resolution of 29.07.2018 were made pursuant to Committees constituted for the purpose by the President, DDCA and as such the appointment process cannot be faulted. However, as already pointed out above, I am not going into the issue of validity or legality of the said appointments, as that is not the nature of the complaint, which is essentially limited to the question of alleged indiscipline or misconduct on the part of Mr Tihara in issuing the Circular dated 12.08.2018.

21. With regard to the Direction No.3 contained in the said Circular dated 12.08.2018, it is evident that the direction is prohibitive in the sense



that all DDCA employees have been directed not to leave the DDCA premises. The employees have also been directed not to serve the office-bearers, Directors for their personal work or visit personal offices or business locations. A direction has also been given that no DDCA employee shall take any order on SMS, email, verbal etc., from the personal employees of the office-bearers or Directors. DDCA employees were also directed to serve DDCA from the DDCA premises alone and all Board Meetings and Committee Meetings were to be held in DDCA premises and that no additional costs shall be incurred on TA, DA, hotel costs etc., by the DDCA. According to the learned counsel for the Complainant, Direction No.3, which is addressed to the employees of the DDCA, is designed to disrupt the functioning of the DDCA and the employees have been encouraged to question the orders/directions of the superiors. This would be completely disruptive to the functioning of the DDCA itself. Mr Vinod Tihara has also directed that Board Meetings and Committee Meetings are to be held in the DDCA premises alone, when there is no such prescription in the Articles of Association.

22. It may also be pointed out that each of the directions are also coupled with a threat to the effect that if there was any violation of the directions given, strict disciplinary action would be initiated against the concerned person and the services of the concerned employee can even be terminated for dereliction of orders.
23. Considering the said direction, it is first of all found that no such power or authority vested in the Secretary, DDCA, to issue the directions. Such a power cannot be traced either to the Articles or to any Board Resolution. Secondly, the directions are contrary to the Board




Resolution and what is even more striking is the fact that he himself was a party to the very resolution, which he seeks to annul by virtue of the directions given in the Circular dated 12.08.2018. Thirdly, a lone member of the Board cannot take law in his own hands and try to bring the functioning of the company to a standstill. This would be completely against the principle of corporate democracy under which all companies function, where decisions are taken by majority, which cannot be annulled by a lone member or a minority of members. The only recourse would be by the Board itself altering its decision or the same being set aside or annulled by a court of law / Company Law Tribunal.

24. Fourthly, specific direction given by Mr Tihara scrapping the Cricket Committees / Selection Committees was designed to cause disruption in the cricketing affairs of the DDCA. This would clearly be detrimental to the game of cricket. The fact that the circular sought the annulment of all the appointments of CEO etc., amounted to disruption of the Administration of the DDCA. The direction given to the employees of the DDCA would tend to create indiscipline amongst the employees and result in a state of anarchy.
25. In view of the foregoing, even though there is no specific regulation defining “misconduct”, it is clear that the conduct of a person may yet amount to misconduct in the special facts of a case. In fact, in *M S Dhantwal (Supra)* it has been pointed out that even though a given conduct may not come within the specific terms of “misconduct” described in the standing order, it may still be misconduct in special facts of a case. This is so stated in para 23 of the said decision. In *W M Avnani (Supra)*, it is provided that even in the absence of standing



order, it would be open to the employer to consider reasonably as to what conduct can be treated as misconduct. Therefore, the ground taken by learned counsel for Mr Tihara that there was no definition of the terms - “indiscipline” or “misconduct” and, therefore, Mr Tihara’s action of issuing the Circular dated 12.08.2018 cannot fall within the said terms, is not tenable. The facts and circumstances are of such a nature, which indicate that the conduct of Mr Tihara in issuing the said circular, consequently, the directions contained therein, was in the nature of clear indiscipline and misconduct, which was not only detrimental to the interest of the DDCA, but also to the game of cricket.

26. In view of the foregoing, I hold that the Circular dated 12.08.2018 was not in consonance with the Articles of Association, the Companies Act and law in general and in issuing the same, Mr Tihara has exhibited indiscipline and misconduct, which is detrimental to the interest of the DDCA and the game of cricket.


Justice Badar Durrez Ahmed (Retd)
Ombudsman

New Delhi

05.12.2018