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IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

CP No. 71/2020

IN THE MATTER OF:
Union of India, MCA .... Petitioner
v.
Delhi Gymkhana Club Limited .... Respondent

ORDER UNDER SECTION 241 (2) OF THE COMPANIES ACT, 2013
ORDER DELIVERED ON 26.06.2020

CORAM:
SHRI B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

PRESENT:

For the Petitioner:	Mr. Vatsal Joshi, Mr. Natarajan, Addl. Solicitor General, Mr. Sanjay Shorey, Dir (L & P), Dr. Raj Singh, RD (NR), Ms. Seema Rath, Dy. Director, Mr. Parvez Naikwad, Asstt. Director, Ms. Kusum Yadav, Asstt. Director, Mr. Meghav Gupta, Company Prosecutor
For the Respondents:	Mr. Arun Kathpalia, Sr. Advocate, Mr. Vikas Singh, Mr. Gaurav M. Liberhan, Advocate

ORDER

HEARD AND RESERVED ON 26.05.2020

PER: SH. B.S.V. PRAKASH KUMAR, HON'BLE ACTG. PRESIDENT

Union of India has initiated this Company Petition u/s 241 (2) of Companies Act, 2013 against Delhi Gymkhana Club Limited (R1-the Club) and its General Committee members as R2-18, including Ministry of Urban Affairs as Proforma Respondent (R-19) stating that the affairs of the Club are being conducted in a manner prejudicial to public interest, therefore – to allow the

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Central Government to nominate 15 (fifteen) persons as Directors on the General Committee of the Club to manage the affairs of it and report to this Tribunal on such matters as it may direct, including restructuring of the Club to function as per the terms of its Memorandum and Articles of Association *inter alia* seeking interim reliefs – 1) to suspend the General Committee and to appoint Administrator nominated by the petitioner to manage the affairs of the Club and report to this Bench and 2) to ban, with immediate effect, acceptance of new membership or fees or any enhancement thereof till the time waitlist applications are disposed of as per the orders of this Tribunal.

2. At this stage I must say that at first hearing, the Respondents side was given time for filing reply despite Union of India sought for hearing on interim reliefs, when time came for filing reply, the Answering Respondents filed reply questioning the maintainability of this Company petition, instead of filing Reply to the main petition. The answering Respondents put up their challenge on two points, one – formation of opinion is not supported by grounds, and cognizance has not been taken into at the time of forming opinion, two – lack of public interest. I must make it clear that this Bench has not said anywhere separate

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hearing would be given on interim reliefs. It is open to this Bench to decide interim relief if this Bench is satisfied formation of opinion is valid and public interest is involved. Of course, the Respondents made their oral submissions on interim reliefs also saying that since interim relief and main relief are of the same, no interim relief shall be granted, and they argued on membership issues as well.

3. This petition was filed on 22.04.2020, notice was given to the Respondents on 22.04.2020, and in second hearing time was given to the Respondents to file reply. On filing reply, this matter was heard for long hours on 13.05.2020, 14.05.2020 and 18.05.2020 and then posted to 26.05.2020 for filing written submissions, then orders reserved.

4. Before getting into details, I must say in two lines what this petition is and what the defence is – the case of the State is this Club was registered as Section 8 Company and continuing for more than hundred years in 27acres of land leased out by the then Government. It is a Club hosting highly positioned Government Officers and nongovernment people limiting access to the privileged people, under the cover of it, Government says,

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many people, who applied for membership, could not get into even after decades of waiting period because permanent members children sneak into the club through various ways, for some time as dependents, then as green card holders and then as UCP Holders short-circuiting the waitlist order, whereas the money taken from the waitlist applicants is being used for the usage of the Club by the persons coming through various channels, which according to the Government is unfair and prejudicial to the interest of the Public.

5. Against which, the Club says that it can do whatever its Articles permit – who can be member and who cannot member, it is up to the Club to decide – Government cannot question the club holding it out as prejudice to the public interest, it further says since the premises housed the Club is leased out to it in perpetuity and since the Club has been regularly paying annual rent, it cannot be today said that the club is using the premises for the purposes other than the objects mentioned in its Articles. Because this land was allotted to the club for pastimes along with other objectives, those objectives have never been changed nor is any other objective practiced. With this defence, it says that this case shall be dismissed in limini because the opinion upon which

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this case filed is bereft of reasons showing prejudice to the public interest.

6. This Club was incorporated on 14.07.1913 as a company (limited by guarantee) u/s 26 of the Companies Act, 1913 (corresponding to Section 25 of Companies Act, 1956/Section 8 of Companies Act, 2013 (**"the Act"**)) with a name called **Imperial Delhi Gymkhana Club Limited**, with its Registered Office now situated at 2nd, Safdarjung, Road, New Delhi as a non-profit company with licence of the Central Government u/s 26 of the Act 1913 to carry its functions subject to the conditions and regulations binding on the Club. R2 to 17 are General Committee **('GC')** Members for the year 2019-20 and this Committee is akin to the Board of Directors. Out of these 17 members, R2 (Lt. Gen. D R Soni) is currently acting as President of the GC and R18 (Col. Ashish Khanna (Rtd)) is working as Secretary/CEO of the Club and is one of the Key Managerial of the Club u/s 2 (51) (v) of the Act and has been appointed on 12.04.2018 to the services of DGC. R19 is the Ministry of Housing and Urban Affairs, Government of India – lessor to the land of 27.03 acres situated at 2nd, Safdarjung Road, New Delhi given on perpetual lease in the year 1928. This lease deed was executed on 28.02.1928 between

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the Secretary of State for India in Council (British India) and the Club in its earlier name i.e. Imperial Delhi Gymkhana Club limited. This Club has been registered as non-profit company with a license from the Central Government (referred as **State** also) u/s 26 of the Act, 1913 on its earlier name Imperial Delhi Gymkhana Club Limited, from this name, the word **"Imperial"** was dropped in the year 1959. The main objective of the Club is to promote various sports and pastimes and other objectives, as per the Memorandum of Association.

7. It is a club with limited members as on date with 5600 permanent members, but the users of the Club today is two times to the permanent membership, therefore to know who they are, how the users of Club are double to its permanent members and how it has become prejudicial to the public interest, we must see the factual aspect Union of India drawn from the records of the Club, which is as follows:

8. On the complaints received against the Club, the Ministry of Corporate Affairs, Government of India issued an order No. 7/29/2016-CL II (NR) dated 16.03.2016, for inspection of the

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Club u/s 206 (5) of the companies Act, 2013. The complaints for initiation of inspection against this Club are as follows:

1. One Mr. Rajiv Jain (Membership No. P-6468) by a letter dated 14.08.2018 addressed to the President of the Club informing about the ineligibility of M/s S.N. Dhawan and Company, to be appointed as Statutory Auditors of the Club during the General Annual Meeting held on 27.03.2019 on the ground that Mr. Dhawan, Chartered Accountant and his partner Mr. Vijay Dhawan, Chartered Accountant are the permanent members of the Delhi Gymkhana Club by exercising their voting rights by paying an annual membership fees of ₹30,00. Since their interest in the company having exceeded ₹1,000 they are not eligible to be Statutory Auditors of the Club w.e.f. 01.04.2014 as per Section 141 (3) (d) (i) of the Companies Act, 2013.
2. One Ms. Niji Sapra, a permanent voting member of the Club wrote a letter on 19.03.2018 highlighting the irregularities in the management of the Club.
3. One Mr. Amar Sinha, Mr. Arjun Sawhny, Mr. Arjun Kapur, Mr. AJ Singh, Ms. Neelam Kapur, Mr. Krishna Varma and Mr. B S Brar gave a compliant on 12.09.2018 to the Ministry

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of Corporate Affairs, alleging that illegal adoption of the Accounts for the financial year ended as on 31.03.2018, has taken place in the Club.

4. During the course of inspection, it has come out that one Dr. Navrang Saini, Mr. Lakshay Kumar and Mr. S.K. Goswami complained regarding demand by the Club for revision of registration fees with retrospective effect.

5. The Inspectors held inspection from January 2019 to July 2019 for the financial years 2012-13 to 2017-18 and submitted their report to the Regional Director (Northern Region) of the Ministry of Corporate Affairs, on 31.07.2019 and the same was further submitted to the Petitioner on 05.08.2019.

9. The violations borne out from the inspection report are as follows:

(i) Violation of Section 58A of the Companies Act, 1956 read with Companies (Acceptance of Deposit) Rules, 1975 along with Section 74 and Section 76 of the Companies Act, 2013 read with Companies (Acceptance of Deposit) Rules, 2014;

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(ii) Violation of provisions of Section 5, 166 and 179 of the Companies Act, 2013 and mismanagement of funds received by way of registration fee from the applicants;

(iii) Violation of provisions of Section 129, 166 and 179 of the Companies Act, 2013 due to mismanagement of company's funds as per qualified opinion of Auditor's Report for the financial year 2017-18;

(iv) Violation of provisions of Section 209 and 211 of the Companies Act, 1956 along with violation of Section 128 and 129 of the Companies Act, 2013 and mismanagement of funds received by way of registration fee from the applicants;

(v) Violation of Section 141 of the Companies Act, 2013;

(vi) Misstatement in the e-forms-action under Section 628 of the Companies Act, 1956;

(vii) Violation of Section 129 read with Schedule-III and Section 448 of the Companies Act, 2013;

(viii) Anomaly in the number of members of the company, liable for action under section 628 of the Companies Act, 1956;

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(ix) False statement in the balance sheet as at 31.03.2013, liable for action under section 628 of the Companies Act, 1956;

(x) Violation of Section 5 of the Companies Act, 2013;

(xi) Violations of provisions of Sections 211 (1) and 211 (2) of the Companies Act, 1956;

(xii) Violation of provisions of Sections 209 and 211 of the Companies Act, 1956 and the provisions of Sections 128 and 129 of the Companies Act, 2013 along with mismanagement of funds received by way of registration fee from the applicants;

(xiii) Violation of provisions of Section 226 of the Companies Act, 1956;

(xiv) Violation of Section 129 of the Companies Act, 2013;

(xv) Financial irregularities, liable for violation of Section 134 (3) (i) of the Companies Act, 2013;

(xvi) Violation of provisions of Section 134 of the Companies Act, 2013;

(xvii) Violation of Sections 128, 129 read with AS-10 of the Companies Act, 2013;

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(xviii) Violation of provisions of Section 217(3) of the Companies Act, 1956;

(xix) Violation of provisions of Section 209 (1) of the Companies Act, 1956; and

(xx) Revocation of license under Section 8 (6) of the Companies Act, 2013.

10. On looking at the violations borne out from inspection report, the Ministry of Corporate Affairs directed to take penal action against the Club management for violations of Section 58A of the Companies Act, 1956 and Sections 74 and 76 of the Companies Act, 2013 read with respective Companies Rules; penal action against the auditors of the Club under Section 227 of the Companies Act, 1956 and Section 143 of the Companies Act, 2013; penal action for violation of Sections 5, 166 (1) & (3), 129, 179, 209, 211, 128 of the Companies Act, 2013; penal action for violation of Section 628 of the Companies Act, 2013 and Section 448 of the Companies Act, 2013; penal action against the auditors for violation of Section 141 (3) (d) (i) of the Companies Act, 2013 and matter to be forwarded to the Institute of Chartered Accountants of India (ICAI) for appropriate action for professional misconduct; for revocation of license of the Club, for action u/s

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241 read with 242 of the Companies Act, 2013 for removal of present management and for appointment of government directors; and for carrying out supplementary inspection to take up issues related to allotment of membership; over the money received from new applicants as registration fee for membership; accounting treatment of the amount received from new applicants for membership (membership fee received was treated as revenue before instead of showing it as long term liabilities as it is a refundable item); over the investments made by the Club from the amounts received from new applicants; and with regard to the processing charges received from new applicants.

11. The violations reported in the inspection report dated 31.07.2019 were referred to Ministry of Housing and Urban Affairs by the Regional Director for necessary action against the R-1, and on the direction given for preparing supplementary inspection report, the inspectors filed the supplementary inspection report dated 03.03.2020 to the Regional director which was forwarded to the Ministry of Corporate Affairs on 04.03.2020.

12. It is further submitted that the supplementary inspection report dated 03.03.2020 has detailed the numerous violations

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and the mismanagement of the affairs of the Club reflecting the committee acting ultra vires to the Articles of Association and the provisions of the Companies Act, 1956/2013 which is detrimental to the public interest because the violations are extreme in nature reflecting that the General Committee members acting autocratically to benefit chosen members of the club in a hereditary manner at the expense of general public.

13. The Petitioner has further pleaded by taking material from its Annexures, which is as follows:

"6. That with regard to irregularities in the membership of the DGC, it is reiterated

(a) That the minimum age to apply for membership is 21 years. The company can have maximum number of permanent members up to 5600 as per Article 2 of AoA. But, there is no restriction on number of memberships in case of members who are appointed other than permanent members like garrison, temporary, casual and special category members. Article 4 of AoA of the company prescribes the different classes of members which are as below:

S. No.	***Class***	***Particulars***
1	*Permanent Members (with*	*Members having voting right and maximum limit is up to 5600*

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	voting rights)	*permanent members.* *[Article 8(7) of AoA prescribes that the company has to maintain a distinction character for which the General Committee at the time of balloting shall regulate the candidates for membership in such a manner that the officers of the Armed Forces of India or Civil officers of the Government continues to be about half of the active membership]*
2	*Garrison Members (not specified as to voting rights)*	*Only officers in units in Delhi garrison may become Garrison Members (no limit).*
3	*Temporary Members (not specified as to voting rights)*	*Temporary residents of Delhi may become Temporary Members (no limit).*
4	*Casual Members (not specified as*	*Only persons ordinarily resident out of Delhi may become casual*

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	to voting rights)	*members (no limit).*
5	*Special Category Members (Corporate Members) (not specified as to voting rights)*	***Upto three persons*** *occupying top managerial positions in companies and corporate bodies with turnover more than Rs. 100 crores, (corporate to be member and membership is for a period of ten (10) years to the corporate subject to the condition that the corporate can have 3 designated users at one time and upto 3 request for change in designated users is allowed in the span of 10 years as mentioned in article 10(5) of AoA).*

(b) *As per Article 13(1) of the AoA, the company is only* ***entitled to charge entrance fee*** *for memberships on the following basis,* ***which is to be paid in lump sum:***

S.No.	***Particulars of members***	***Entrance Fee***

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		(Amt. in Rs.)
1	*Permanent (non-govt.)*	*25,000*
2	*Permanent (government officers)*	*10,000*
3	*Use of Club Premises pending election (UCPs)*	*10,000*
4	*Special category members (i.e. corporate members) (membership for a period of ten years to the corporate subject to the condition mentioned in AoA)*	*Rs. 15,00,000 (up to two designated users and additional Rs. 7,50,000 for third user)*

(c) Furthermore, the Articles of the company prescribe that the 'entrance fee' is one-time fees payable in lump sum and to be charged at the time of admitting members only. After a person becomes member of the Club, he/she has to pay yearly subscription fees as per Article 13(2) of AoA, in subsequent years to maintain his/her membership with the company.

(d) However, the Inspectors in the Supplementary Inspection Report dated 03/03/2020, have observed that the company, in addition to the classes of members as prescribed under Article 4 of the AoA, appoints other non-voting members in the name of Eminent,

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Green Card, NRI, Lady Subscriber and UCPs (UCPs holding non-voting membership specially for a period more than what is prescribed in AoA) by taking decision and passing resolution in their General Committees. The definition of the various memberships offered by the company is a mentioned below:

Category	***Remarks on supplementary inspection***
Eminent	*(i)* ***The company in its reply stated that the eminent category of members are appointed under special category. But there is no mention of eminent category in the AoA and neither the special category includes eminent members. Special category is only for corporate membership as per article 4(2).*** *(ii) However, Eminent category was introduced on 05/04/1976 with a view to lend status to the Club and use of good eminent members to resolve various administrative and functional hurdles of the Club. This membership was given to officers of Armed forces, judges of High Court and Supreme Court and Civil Officers under article 23 of the AoA. Its period and number of membership have been*

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	amended time to time as per the successive GC Committees after 1976. This has been clearly mentioned at point no. 18 of the White Paper on membership, issued in 2014 and who will be the eminent persons have been mentioned in the copy of minutes dated 05th April 1976.
Green Card Holders	*(i) The company stated in their replies dated 06.01.2020 & 03.02.2020 that they appoint Green Card Holders under article 13(3a) & (3b) which is actually for dependents i.e. children of the permanent members between the age of 13 to 21.* *(ii) A dependent card holder becomes eligible to apply for Green Card at the age of 21 to 22 years* *(iii)* ***However, article 13(3b) prescribes that on becoming 21 years of age, the son of a permanent member to apply for full membership i.e. they have to apply afresh and stand in the existing waiting list of members.***

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	(iv) ***GC has also issued Green Card apart from dependents of permanent member to children of Lady subscribers, UCPs and to dependents beyond the age of 21-22 years for reasons irrespective of their age on charging penalty amount from them at the discretion of the GC.*** *(v)* ***Green Card has been given to daughters of permanent member, Lady subscribers, UCPs etc. which is not allowed as per AoA.*** *(vi) These are those members who have simultaneously applied for permanent membership and are in queue but have been given the rights to use all the benefits and privileges of the Club at subsidized rates except voting rights.* *AoA 13(3c) prescribes that on reaching the age of 21, the unmarried daughter of a member may use the Club as a dependent till the time she stays with her parents i.e. unmarried daughters*

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	till they stay with parents can use the benefits of the Club.
NRI	*There were 5 NRI members during the financial years 2015, 2016 and 2017. There is no mention of NRI in the AoA.*
Lady Subscribers	*(i) Lady subscriber under article 11(2) has been defined as any lady not being the wife or unmarried dependent daughter of a permanent resident of Delhi, may on being duly proposed by one and seconded by another permanent member, be admitted by the General Committee as a Lady Subscriber.* *(ii) As per AoA, the lady subscribers should be included in the category of 'permanent membership' as there is no class of membership in articles as 'Lady Subscribers'.* *(iii) But, the company has been enhancing its membership counts by taking lady subscribers as a separate category without giving voting rights.* *(iv) The lady subscriber category as defined*

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	under article 11(2) had been discontinued by the GC in its meeting held on 17/02/2014. Only the widows of permanent members were allowed to become lady subscribers, which in itself is ultra vires to article 11(2) the AoA (as per point 17 at page 13 of the White Paper on membership issued by DGC).
Use of Club Premises Pending Elections (UCPs)	*(i) As stated by the company in its reply dated 03/02/2020, on completion of 20 years of Green Card, the Club invites the Green Card Holder to attend the At-home for up-gradation of their Green Card to UCP.* *(ii) But as per AoA, UCPs are those candidates whose name is up for election as a permanent, garrison or temporary member and is invited by the General Committee at the next monthly meeting to use the premises of the Club pending the result of the election.* *(iii) These are those members who have simultaneously applied for permanent membership and are in queue but have been*

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	given the rights to use all the benefits and privileges of the Club at subsidized rates except voting rights. ***Article 12 r/w article 8(1) of AoA, UCPs are those members whose names should appear for election for membership and as such the waiting period for UCPs to permanent members should be the difference of two successive General Committees only. The period of granting UCP should not be the difference between two successive General Committees.*** ***On examination of records and by record of statement of Col. Ashish Khanna, Club Secretary, it is found that the UCPs Holders are given non-voting membership culling out 25% of the proportion of the non govt. permanent members (having voting rights) which is 50% of total active members as per AoA. These UCPs are in queue for permanent membership through their UCP membership which may take 6 to 7 years to become a permanent member.***

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	The GC is well aware that there is a waiting list for the non-govt. category for a period of almost 37 years. Culling out the proportion from non-govt. category and giving it to a new category of waiting list i.e. UCPs, is an illegal way of inducting people for permanent membership. Further to say that UCPs include those members coming from another self-created category i.e. Green Card Holders who were dependents of the permanent members. ***To conclude, the company maintains different lists of Green Card holders, different waiting list for UCPs, Eminent, Govt. and Non-Govt. categories, for permanent membership.***

(e) *The Company has a prescribed form for inviting new applications for the membership of the Club and it is open all through the year.*

(f) *Article 13(1) states that on admission as a member, a person has to pay the following fees:*

S.No.	***Particulars***	***Entrance Fee***

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		(Amt. in Rs.)
1	*For permanent membership (non-govt.)*	*25,000*
2	*For permanent membership (government officers)*	*10,000*
3	*Use of Club Premises pending election (UCPs)*	*10,000*
4	*Special category members (i.e. corporate members) (membership for a period of ten years to the corporate subject to the condition mentioned in AoA)*	*Rs. 15,00,000 (up to two designated users and additional Rs. 7,50,000 for third user)*

(g) ***But, as per the information furnished by the Respondent No. 1 Company vide its reply dated 27/09/2019, the company is not adhering to Article 13(1) of its AoA and the following fee structure for different categories of membership has been prescribed by the Club pursuant to various General Committee Meetings over the years.***

S. No.	*Categories of Members*	*Total Memberships fees (*inclusive of registration fee, entrance fee, one-time contribution, additional registration fee,*

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		GST, security deposit and processing fee) (amt. in lacs)
1	*Permanent (Govt.)*	*5.34*
2	*Permanent (Non-Govt.)*	*22.22*
3	*Green Card Holders*	*1.79*
4	*UCP*	*2.37*
5	*UCP to Permanent*	*2.44*
6	*Lady Subscriber (widow)*	*Free of cost*
7	*Lady Subscriber (Govt.)*	*4.63*
8	*Lady Subscriber (Non-Govt.)*	*9.35*
9	*Divorcee*	*7.08*

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10	*Eminent*	*1.89*
11	*Foreign national*	*(in absolute terms)* *$12980*
12	*Diplomats*	*(in absolute terms)* *$2360*
13	*Special Category (Corporates)*	*(for one nominee) 39.90* *(for two nominees) 56.10* *(for three nominees) 84.15* *(for each change of nominee) 5.90* *Plus exorbitant amount of processing fee*

Table H

S. No.	*Class*	*Particulars*
1	*Permanent Members*	*Maximum limit up to 5600*
2	*Garrison Members*	*Only officers in units in Delhi garrison may become Garrison Members (no limit)*
3	*Temporary Members*	*Temporary residents of Delhi may become Temporary Members (no limit).*

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4	*Casual Members*	*Only persons ordinarily resident out of Delhi may become casual members (no limit).*
5	*Special Category Members (Corporate Membership)*	***Up to three persons** occupying top managerial positions in companies and corporate bodies with turnover more than Rs. 100 crores (membership for a period of 10 years.)*

d) The following are the details of class of members and with their counts as furnished by the company:

Table I

Member Count Report as on 31st March……						
		(Figures in nos.)				
S. No.	***Category***	***Financial Years***				
		2015	***2016***	***2017***	***2018***	***2019***
1	*Eminent (Tenure) (NV)*	*203*	*198*	*190*	*197*	*195*
2	*Permanent Government (V)*	*5560*	*5510*	*5470*	*5464*	*5505*

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3	*Permanent Non-Government (V)*					
4	*Temporary (NV)*	-	-	-	-	-
5	*Casual (NV)*	-	-	-	-	-
6	*General (NV)*	-	-	-	-	-
7	*Foreigner (NV)*	-	-	-	-	-
8	*Special category (Corporate) (NV)*	*194*	*190*	*171*	*158*	*154*
9	*Green Card (NV)*	*4962*	*5238*	*5200*	*5252*	*5333*
10	*NRI (NV)*	*5*	*5*	*5*		
11	*Diplomat (NV)*	*20*	*20*	*24*	*18*	*17*
12	*Lady Subscriber (NV)*					

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13	*Lady Subscriber Government Category (NV)*	*1525*	*1567*	*1606*	*1635*	*1663*
14	*Lady Subscriber Non-Government Category (NV)*					
15	*Life Member (V)*	*29*	*29*	*29*	*29*	*29*
16	*UCP (NV)*	*2332*	*2423*	*2616*	*2807*	*2878*
17	*UCP to Permanent*	-	-	-	-	-
18	*Divorcee*	-	-	-	-	-
19	*Foreign National*	-	-	-	-	-
	Total Number	***14830***	***15180***	***15311***	***15560***	***15774***

14. Out of the information above, some actions may be in violation of the Companies Act 2013, some may not. But systemic

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prejudice is imminent deep down in the DNA of this Club, may be it does not overtly apparent perhaps for the reason it has been being practiced over the years remaining selective and remain secluded from rest of the Public. Since attitude is layered over the years, it requires an exercise to show that the conduct of the Club or Club Members, of course both are inseparable; we must see the annals of history of this prestigious club to find out historical legacy of privilege descended from 100 years before.

15. Going through the submissions of either side and on seeing the web site of the Club, as I said above, Imperial Delhi Gymkhana Club was incorporated on July 3, 1913 and it was established at Coronation Grounds, Delhi, it was almost immediately after capital was shifted from Calcutta to Delhi for use of **the ruling elite comprising officers of the Indian Civil Service, Armed Forces and Civil Residents of the then Delhi.** That time present New Delhi was nowhere. When New Delhi was built, the Imperial Delhi Gymkhana Club was allotted 27.3 acres of land in the new city in 1928 on perpetual lease.

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16. On seeing the web site of the very club, I have come across through a looking-back put up in the website, which is as follows:

> *"As a sporting club, the Gymkhana lacked a swimming pool and squash courts until the 1930s. The Viceregal House under construction had no swimming pools either. The viceroy's wife Lady Willingdon was having a hard time finding a place to swim. She would have to use pools houses of wealthy Indians in New Delhi. She was not happy about it and was getting restless with constructors working in viceregal House. She finally found a way out and before her husband's term ended she gifted Rs 21,000 for the construction of the swimming pool. Her "munificent gifts" were not going to go unrecognized and the general committee soon ordered the suitably inscribed tablets be put up in recognition of her generosity. The gleaming tablets, "Lady Willingdon Swimming Bath" and "The Willingdon Squash Courts" would be quickly ordered and put up well in time before the Viceroy Lord Willingdon and Lady Willingdon would visit the Gymkhana Club for their farewell on 16 March 1936."*

17. On reading the above, anybody can infer the club has come into existence for the then ICS officers. That time it was mostly for English to chill out in the evenings. Obviously, it is their culture; therefore they cherished their culture wherever they ruled. That's why bar and ball rooms have come up, of course Indian kings had it in a different way. Of course, King is King, whichever country it

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is. After English left this country, this ruling elite culture has seeped into independent India through usage of this club, once get into, it is always relishing. It is hardly possible to come out of this kind of culture. It could be that this Club must have come into the hands of Indian Officers after English left this Country. After Independence, democracy governed by Constitution has set in. Since the democracy has become reality, this club should have left its doors azar for many if not all, because not only has it bar and ball room and swimming pool with roof, but has wonderful library and many other sports facilities.

18. The Club counsel has argued that right to form associations and clubs is a fundamental right under Article 19, therefore any interference with the affairs of the club is violation of fundamental right endowed upon this association, whether it is right or wrong we can see later, but there is another article, that is Article 14 speaks volumes about equality, when any organisation is basking in the past glory on the State largess, whether shade of Article 14 will fall upon the said organisation or not? I believe yes. It is no doubt if anybody comes in the way of forming clubs or associations, or continuation of those associations, such right shall not be truncated, but the right of forming association cannot

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be extendable to say that it has right to use acres of land of the state for lazing around barbing the club so that let-in to others is next to impossible. The club all through its submissions, through its counsel keeps on reminding me it is privileged club, and it is a privilege selectively given to high level officers, judges, eminent persons, business men. The shadow over the club is it is so obsessive of its privilege. May be it is because the club is of the view that its privilege will remain intact only if people of certain stature become members. Privilege and privileged are misconceived notions and they are all nothing but reminiscence of earlier legacy, which is a vanity in a democratic society. Nobody is concerned with its privilege or elite society, had the premises owned by it.

19. It is on record that soon after independence, the caption "Imperial" is wiped off from the name of the Club, but I doubt whether it has been wiped off from the mind-set of the club. It is not a barb against the club, but by seeing the legacy which has been continuing under various classifieds to have entry into this Club, no space to commoners unless they are positioned on the highest pedestal and qualified in balloting, and allowing or continuing permanent member children and their children to use

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the comforts of the club by changing tickets as they are aging, it appears that whiff of imperialism has not gone off, rather it has been ingrained in it. By this, knowingly or unknowingly, a class of people, in the name of privilege, have erected an unbuilt wall around the club not permitting the people to have that whiff which they have been having for about decades. Given the scenario, the reason for this undying urge to become members and remaining in wait list for decades, to my reason is, this unbuilt wall erected is multiplying the urge to become members. It is like *grass is always greener on the other side of the fence.* It is a psychological game making rounds and rounds around this Club.

20. There are many allegations and indeed statements of the Club, reflecting it has violated many provisions of the Companies Act 2013, primarily changing Articles for opening of new windows to the children of the permanent members and their children to using the benefits of the Club through green card, then UCP, and finally membership. The children of members, whether they are alive or late, their children will fit in one or other slot, but whereas persons deposited lacs and lacs of rupees dozing at the entry gate for decades hoping entry gate will open to them one day. For

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decades this money has been lying in the company, not as liability but as income and users enjoying. The state case is, it is a club built on the land of the State, it is a club registered under section-8 with an avowed object for promoting sports and other activities including pastimes, but no perceptible work or dedication towards promotion of sports. Mostly on pastimes such as drinking wine and whisky. No doubt it is for relaxing, but relaxing for a few selected people. May be some of them teetotallers, but the Club itself having stated that income and expenditure is mostly from drinks, and the petitioner having highlighted it, I cannot escape from mentioning it. The petitioner has categorically stated that in the garb of running it as a public club, the management have made it a hereditary club for its members by way of accelerated membership to relations, against the people standing in the queue for over 42 years.

21. To understand the involvement of public interest, we need to go back to the conducting affairs of the club since inception. This Club has taken the present premises on lease from British India on payment of consideration of ₹5460 in the year 1928 when population of this country was only 30Crores, now it has swelled up to 130Crores. No comparison. But land has remained the

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same, to my belief, it is coming down year by year, because raising sea eating away the land mass. From one side too much interference by raising constructions in green zones of the country is leading to temperature raise and many other problems such as threat to ecological cycle. So is it conscionable sitting over lands sprawling acres and acres just for recreation, when from one side people, citizens of our country, languishing in utter poverty without any basics – horrifying.

22. The then British Colony has today become a vibrant Democracy passing through various phases, like nationalisation of Private Banks and through land reforms by bringing in agriculture land ceiling enactments and especially Urban Land (Ceiling and Regulation) Act 1976 – the stated purpose of the law is "**bringing about <u>an equitable distribution of land</u> in urban agglomerations to sub-serve the common good”** knowing full well that housing is another basic essential, next to food, to the people migrating to the growing cities in search of formal or informal employment. Till date rush to the cities, increasing and increasing. Like above, many enactments have come in and they will keep coming as long as society has remained uneven. This quantum jump to the population has changed the priorities

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according to the needs of the people. So is the case with public interest also. State priorities are the needs of the people, what becomes public interest, when that becomes public interest, are decided by time and growing needs. Accordingly, State acts.

23. Another important aspect is, to understand grievance under section 241 of the Act, many a times the court deals with a case under this section has to necessarily run through the historical facts, and the reason is, it is the **conduct** that decides existence of prejudice. Not one action like in a civil case. The reason for travel-back is one episode of the club cannot be torn out of its robust life to decide a case u/s 241 to know whether actions of the club are equitable or inequitable. Because in chain of actions, every link is as important as every other link, nothing could be missed out. If any link is seemingly missing, then it is the duty of the judge to search for the misplaced link to link the chain. If it is a civil case – no links – it is limited to a point, whether a specified action is in violation of law or not, no matter whether it is equitable or not. Here converse situation, no matter whether actions are lawful or unlawful, if the actions lead to inequity causing prejudice, in this case, to the public, then, as a course correction, court (NCLT) can invalidate it, or arrest it or mandate

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structural changes to the company. Another point essential is company law is in stricto sensu not governed by CPC, it has its own procedure, of course guided by principles of natural justice such as Rule against bias and fair hearing. As to section 241 cases, reasoning is mixed bag of subjective and objective conclusions. With regard to subjective conclusions based on objective inferences, the view point to be seen is whether it is rationale in the contemporaneous period we are passing through. Sometimes pleadings before Tribunals may not be as formal as before Civil Court, which has strict Rule Book to follow.

24. In this case, it is the state fighting for larger cause and for public at large; normally malafides cannot be attributed to the state. With respect to companies, records are built up over years; therefore the historical facts deposited in the records will become repository for all purposes for the future. May be for this reason alone, it has been enacted in section 95 of the Act that the records falling u/s 88 & 94 of the Act shall be treated as prima facie evidence. Meaning thereby, unless the facts born out of the records are rebutted, it is open to be treated as proved facts. Long and short of this point is texture and landscape of section 241 is different from other civil cases, while dealing with cases under

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sections 241 and 242, we shall avoid superimposing the doctrines and concepts routinely applicable to dealing with other civil cases, For this reason alone, it has been said by constitutional courts that sections 241 and 242/397 & 398 under old regime is a Code unto itself. By now it has become trite law that if the conduct in a company is found in manner prejudicial to the public interest as stated u/s 241 (2) or (3) of the Act, then NCLT, provided grievance is fit in section 242 (1) of the Act, could grant relief to set right the actions by granting suitable relief.

25. By reading section 241 (2), it is evident that (1) the complainant shall be the Central Government, (2) the complaint shall be against a company incorporated under the Companies Act, and such complaint (3) shall be over the affairs of such company (4) conducted in a manner (5) prejudicial to the public interest.

26. There is no dispute over the legal status of the complainant, it is a case against the company, and it is also not in dispute that issues are in relation to the affairs of the company. Now the issues before this Bench are as to whether the Central

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Government formed an opinion that the conduct of the affairs of the company is prejudicial to the public interest.

27. If we see the dictionary meaning of the word ‘conduct’, if it is taken as a noun, it is defined as general behaviour in actions, reactions or inactions of an entity or the manner in which an organization or an activity is managed or directed, if it is taken as a verb, it is defined as to organize or carry out the duties. So actions over a period of time reveals what the conduct is, it says whether such conduct is for equity or against equity. Behavioural line can only be ascertained when we know the facts in totality. In Section 397, 398/241-242, it is not important who has done it, important is, whether affairs conducted are prejudicial or not, it could be by the erstwhile management or by the present management or by successive managements.

28. If prejudice is against Members of the company, for they are notified about the actions of the company on annual basis, complaining members cannot be called as aggrieved or having substantial case against the company over past actions if they keep on acquiescing the actions of the company in every annual general meeting that takes place in a company.

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29. But when it comes to Central Government, it is one way regulator of the Company Affairs and also custodian of the assets of the State. State is given a right to question the affairs of the company when it is found that the affairs of the company are being conducted in a manner prejudicial to the public interest. This defence of time lag cannot be taken against the State because State will not have personal interest or economic interest in relation to affairs of any company, it only keeps watching as to whether company paying taxes regularly or not and also making filings before ROC as per the procedure or not. For the State cannot be said that it is in know of the affairs of the company, the aspect of acquiescence cannot be attributed to the State because State will not get into internal affairs of the company unless it has come to its notice as an issue.

30. In the year 2014, when it came to the notice of the Ministry of Corporate Affairs that the affairs of the Club have not been properly conducted, it has initiated actions under the Companies Act. Later on, having noticed various violations under the Companies Act, the respective authorities filed report and thereafter supplementary report. By looking at the supplementary report, the Regulatory Authority has noticed various violations,

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some out of them, indicated the conduct of the affairs of the company is prejudicial to the public interest therefore this case is initiated.

31. It is an ongoing process in this club that Membership is purely on selective basis, the selection basis is changing from time to time, though permanent membership is limited, under the cover of dependents, green card holders, UCP holders; number of people using the facilities of the club is increasing without any cap. But the people who applied for membership remained waiting to get into because the dependents become members through fast tracking leaving behind the persons applied for membership. This behaviour is nowhere changed by change of managements. By seeing admission process, it appears only big people in essence those who are in top position in the government and outside the Government become members. As I said above, this club has been enjoying 27 acres of the land of the State which costs around thousands of crores. All this shows imperial behaviour and insensitiveness of the Club against the tenets of democracy. It may be said I am speaking of about fundamental rights in section 241 & 242 case, it is not so, the whole discussion is about inequity and prejudice.

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32. Prejudice under section 241 (2) may not be violation of something from law book, the relief under this rule has a little more, it is a section deals with something that is unfair, may be it is seemingly right, but at the bottom of it manifesting prejudice to the public at large or a member or company, in this case it is public. It could be said that how does it matter to the public when members of the Club makes rules to themselves notifying everything to the Regulating Agency and when no member complained about the affairs of the Club. It could be right from the perspective of the Club and its members to the extent to say that neither oppression nor prejudice to the members or to the company. But if you see the other side of the coin, the club is sitting on the monies of the public in the name of entrance fees or registration fees, on the contrary 24 x 7 opening to the family members of permanent members, generation to generation, besides all this, the club enjoying 27acres of land of the state in the prime area of Lutyen's Delhi, now after all this is seen, can it be still said that how does the club affairs matter to the public. But public, no matter whether poor or rich, paying tax on everything that is bought or sold. But resources of the country are unilaterally enjoyed by a few with different tags and captions. This

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is where public interest lies. It is coined by the petitioner as "parivar" club. Especially public which has no voice, always looking at the State hoping it would take a lead for their grievance. May be it is about membership, maybe it is about the largess the Club enjoying in the prime area of Delhi just for lazing around.

33. As to privileged and under privileged disparity, elite and low class and other myriad fault lines, it is the need of the hour to erase these fault lines. Professional achievements are mostly by people taking consideration for services rendered (including salary). So the achievements counted on for doling out membership cannot be held out as achievements, because everything done either for consideration or for fame.

Self-elevation of some people under the cover of positions, eminence, richness and inheritance as privilege or elite is anathema to the fundamental rights. And in turn prejudicial to the public interest, when somebody appropriates largess of the state for pastimes and whiling away time drinking wine and whisky in a sprawling land, I believe it is mockery of the system. As and when State is of the opinion certain acts are, subtly or

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overtly, multiplying the gap of above fault lines, especially where State largess is present with a corporate body, State can interfere and make things straight. Such action is more appropriate against Section 8 companies enjoying on State largess. The one window for such course correction is section 241 (2) (3) of the Companies Act 2013. State is the watchdog to peep into the affairs of a company through various provisions of the Companies Act through its regulating agency. It does not end there, it can even take into cognizance of the reflections of the inside affairs upon the public and ramifications causing prejudice to the public interest through section 241 (2) (3) of the Act. To take this into cognizance, State need not remain waiting for any compliant from public, for which the mandate is, facts shall be in existence and the state shall form an opinion to take action, nothing more nothing less. One more fact I shall say that use of the state land through lease for about hundred years will not make any difference, because lease will not make lessee owner of the leased land over efflux of time.

34. The Respondent Club has argued that it is a Malafide Petition. The club has taken a stand that this hearing through video conferencing is a closed hearing which is against the long

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established principle of open justice because justice should not only done but also seen to be done, therefore to maintain public confidence in the administration of justice, this hearing shall be taken up as soon as physical hearing has been reinstated. It has further been stated that since the club is shut due to lockdown owing to Corona Virus, especially when enormous issues at hand arising from pandemic, ***including the helpless migrants, the economic fallouts,*** the Club says, the State has no business in the Club, therefore the State ought not to have taken it as an exception to move the petition exparte to proceed u/s 241 (2) of the Act against this Club over the decisions taken in 1976, 1994, 2005 (qua membership and qua application fee in 2013 and 2016), to which the present committee is not connected because those decisions were taken before this committee has come into the seat of governance. This point already answered saying the person acting is not important because we cannot invoke penal action under section 241, it is only to curtail if prejudice is in existence. Section 241 is a garage for repairing companies and to make them run.

35. To buttress the argument of mandate for open hearing, the Club counsel has relied upon ***Swapnil Tripathi vs. Supreme***

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***Court of India (2018 (10) SCC 639)**, wherein the Honourable Supreme Court has issued a mandate "to update ourselves to ensure public gets access to the proceedings as it would unfold before the courts and in particular, opportunity to witness live proceedings in respect of matters having an impact on public at large, so that it would educate them about the issues which come up for consideration before the court on real time basis",* upon a writ filed by a final year law student to have access for public viewing with regard to the matters having an impact over public at large.

36. This case cannot be taken up as ratio, not to hear this case through video conferencing, as all of us know, hearing through video conferencing is only to support continuity of administration of justice; otherwise during COVID crisis administration of justice will be impaired. So far at least in the past I know, a situation like this never arose, to remain people at distance and lead their lives. By now we all have started and making adjustments to live with and in Corona, because it is not known how long it lasts, it is not negotiable to arrive to a compromise with Corona to know the departure of it. Therefore I believe this argument saying in COVID crisis, matters shall not be heard has no merit. What is urgent

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hearing and what is not urgent hearing is dependent upon various factors, merely because a matter is taken up for hearing despite objection is put forth, it does not mean merit of the matter will take back seat. As any other matter is being heard in the COVID crisis, this matter is also heard. Yes, NCLT, in the past issued a circular to hear only urgent matters hoping lockdown would end, but thereafter lockdown has become lockdown -1, 2, 3, 4 and so on. This was not known to NCLT or for that matter to anybody that lockdown would bring lifetime changes which we are now passing through. Moreover, this case was filed during the period of lockdown-2.0, by that time we have already started hearing matters as they come before us. This matter was heard during lockdowns- 3.0 & 4.0. But these lockdowns have not halted hearing of matters.

37. As to Mr Swapnil writ, it is only a suggestive writ for access to viewing, in the writ also, it was not for viewing physical hearing – only for public viewing, to which Apex Court held that it would make arrangements to provide access for public viewing by giving several directions to install infrastructural arrangements. In any event, about physical viewing to the court hearings is not the subject matter in the writ nor the mandate of honourable Apex

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Court, therefore this argument has no basis from the citation supra.

38. Another point intriguing is, the Club stated that during COVID time, when helpless migrants undergoing lifetime pain and some losing their lives in the journey of their destiny, the state, instead of attending to most impending migrant labour issue, has darted out at this Club with this petition, especially when the Club is shut.

39. At the outset, since the Club counsel himself has brought the issue of migrants to take adjournment, I say it is good that the Club has concern for the migrant labour walking hundreds of kilometres to reach their loved ones for whom migrant labour toiling throughout their life to ensure their families do not die out of hunger. In their life, they are not here nor there. Day and night they work in cities to see money transferred to fill their loved ones stomachs. Living in cities as strangers, at times message may not even go to their families, whether they are alive or not. They have no roof on their heads, no family. This is the reality. Owing to socioeconomic conditions in the villages, they are displaced. Everybody knows some gone back on foot, some carted their old

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ones all through, and some died in between. Despite the government has done its best, the people stuck in cities being massive, they set off their journey to reach their places where their families longing for the return of them. This time made us realise without them wheels of economy will not move, but what ultimately coming to them. Of course, this Corona has not left any country, but this heart wrenching migrant labour issue is not seen in any country. Who are they? They are all our fellow human beings; they have every right to share the wealth and happiness of this country as any of us experience it. They need certainty to their lives with roof on their heads; they should remain with their families as all of us living. If large parcels of land held back unto oneself as a privilege, then the concern to these migrants is a camouflage to avoid hearing of this case. If perceptions of legacies, privileges and elite are not taken care of, country will get forward movement with gross happiness.

40. In our country, there are places; one toilet is shared by in between 20 to 50 families. For all this, pleading is not required. If the labourers have shelter in cities to live with their family, would they go back? If cities are occupied with clubs and recreation centres side-lining carriers of the economy, where is the place for

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these people to live in? Land of the State is the land of the people of the country. Government is only an agent of its people. Wherever state has interest, public has interest over there. Whether club figures are intact or not is secondary, the point here is, having this club for the purpose above is whether essential for larger good of the public or not. May be it is there for a century, it does not matter because it does not have free hold right over that land. Now it is worth of thousands of crores. As time goes by, something that was not prejudicial to the public interest in the past would become prejudicial in the present. All that is said in these two paras may not have direct bearing over the merit of this case, it has been said because the Club itself has mentioned about migrant labour. What is public interest is lucidly explained in the judgement below:

41. In one case ***(N.R. Murty vs Industrial Development Bank of India and Others- (1977) Vol. 47 Comp Cas 389),*** Honourable High Court of Orissa has held as follows:

> *27. The words* ***"in a manner prejudicial to public interest"*** *were added to the statute by Central Act 53 of 1963 by way of amendment. The expression is an elusive*

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abstraction meaning general social welfare or regard for social good and predicating interest of the general public in matters where a regard for the social good is of the first moment. As was once pointed out by Frankfurter J. of the United States Supreme Court, the idea of public interest is a vague, impalpable, but all-controlling consideration. Common good or general welfare of the community is conducive to public interest. A thing is said to be in public interest where it is or can be made to appear to be contributive to the general welfare. Mahajan C.J., in the case of ***State of Bihar v. Kameshwar Singh AIR 1952 SC 252*** *indicated that the expression is not capable of a precise definition and has not a rigid meaning and is elastic and takes its colours from the statute in which it occurs, the concept varying with the time and state of society and its needs. Thus, what is public interest to-day may not be so considered a decade later. In any case, the expression cannot be considered in vacua, but must be decided on the facts and circumstances. In the case of a company intended to operate in a modern welfare State, the concept of public interest takes the company outside the*

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conventional sphere of being a concern in which the shareholders alone are interested. It emphasizes the idea of the company functioning for the public good or general welfare of the community, at any rate, not in a manner detrimental to the public good."

42. If we come to operation of law, especially Section 241 (2 & 3) of the Act, essentials are quite different from section 241 (1) of the Act. Under this sub section, it is not a mandate that conduct of the affairs of the company shall be prejudicial to the interest of the members of the company or to the interest of the company as in the case of section 241 (1) of the Act. There are several instances carved out in section 241 (3) for the State to proceed against the company and its management and seek any relief set out in section 242 (2) of the Act. In the recent amendment to Section 241, Sub Section 3 has been incorporated widening the scope of Section 241 (2) including various actions relating to the affairs of the Company over and above the clause ***"acting in a manner prejudicial to the public interest"***. Therefore, Central Government can proceed not only over the conduct prejudicial to the public interest but also over any issue that falls within the ambit of Sub section (3) of the Act. ***"Public interest" is an***

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expression which is wide and amorphous and takes colour from the context in which it is used. We cannot keep it within four walls either by giving a definition or by taking an illustration from a case law.

43. The Club has raised two preliminary issues, one saying that the Central Government of India (Regional Director) has not applied its mind in forming an opinion that the affairs of the Club conducted prejudicial to the public interest, the reason cited for raising this issue is, the Regional Director, upon receipt of inspection Report, prepared the report within 24 hours looking at 4000 pages report, which is humanly impossible within 24 hours to form an opinion and recommend MCA to proceed against the Club u/s 241 (2 & 3) of the Act. The Club and its Committee members submit that since the material not being specifically asserted as pleading and there being no answer to their reply flagging this issue, this Company Petition shall be dismissed without going into merit of the case for want of opinion as illustrated by the Constitutional Courts on forming opinion before initiating proceedings. The Club counsel relied upon ***N, Sampath Ganesh vs Union of India & Ors (Bombay High Court Paras 85, 204 and 205), Khudi Ram Das vs State of West Bengal***

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1975 (2) SCC 81, Bhikubhai Vithalbhai Patel vs State of Gujarat and 63Moons Technologies Ltd vs Union of India & Ors Para 59 to say unless opinion manifestly demonstrates the grounds indicating that the affairs conducted are prejudicial to the public interest, the petition shall be dismissed without going into merit of the case. Here I must say after RD gave his suggestions, the competent authority took sufficient time to form an opinion.

44. R1 Counsel has relied upon ***J. Daulat Singh v. Delhi Golf Club Ltd., (MANU/DE/1312/2002)*** to say that a non-member cannot interfere with the affairs of the company; this concept is not applicable to the present case because the case (supra) is related to rectification of share register.

45. He has relied upon ***Ratnesh H. Bagga v. Central Circuit Cine Association, (2004) SCC Online CLB 57*** to say that if Board of Directors are of the opinion that ancillary business is advantageous, the Board has power to continue with such business.

46. He has relied upon ***Bell Houses Ltd. v. City Wall Properties Ltd., (1966) 2 W.L.R. & In Re: Bilasrai Juharmal***

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& Ors., AIR 1962 Bom 133 to say that no distinction could be made between main and incidental objects mentioned in the Articles of Association and it can't be said that company should carry functioning on only one object, not on other objects mentioned in the Memorandum of Association. He further says problem may arise only when the company carries functions beyond the objects mentioned in the Article of Association. In support of the same, the club counsel says since the pastimes is one of the objects of the company, and since it has been there since incorporation for recreation, usage of the club for pastimes cannot be shown as the Club deviated from its objects in carrying its functions. It is right to the extent mentioned by the counsel, it is doubtful that this concept is applicable to the companies run on the State land leased out on nominal rent, which is not the case in the cases supra.

47. He has relied upon ***Needle Industries India Ltd. & Ors. v. Needle Industries Newey India Holding Ltd. & Ors., (1981) 3 SCC 333 & Sidharth Gupta & Ors. v. Getit Inforservices Pvt. Ltd. & Ors., MANU/CL/0010/2016*** to say that even if there is any violation of law, it would not be ipso-facto lead to attraction of section 241 of the Companies Act, 2013 much less under Section

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241 (2) of the Companies Act, 2013. Yes, he is right to the extent mentioned. But I must add that violation or no violation of any provision of law will not make any difference to a case filed u/s 241 of the Companies Act, 2013, the only point to be seen is as to whether the action is prejudicial against a Member or Company or to the public interest. Therefore if anywhere it is said that violation of law will not tantamount to making a case u/s 241 of the Companies Act, 2013, it does not mean that where violation of law comes in, there case u/s 241 of the Act is not made out. It all depends upon the factual situation existing in a case. There is a chance for unfairness or prejudice is laced in it, nobody knows, it will open out only when facts are examined.

48. He then relied upon ***Union of India & Ors. v. Modiluft Ltd., (2013) 6 SCC 65 & Raja Khan v. Uttar Pradesh Sunni Central Waqf Board & Anr., (2011) SCC 741*** to say that if interim relief is same as that of permanent relief, then it is not permissible because no case would be left for adjudication at the time of final hearing, in such a situation, the court shall not grant any interim relief unless case is fully heard. It is right that if final relief is granted as an interim order then definitely it is hit by the ratio set out in the aforesaid cases. If the relief sought becomes an

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order and if the order is such covering the main relief asked in the company petition, then it will be against the ratio decided above.

49. As long as final relief is not granted as interim **order,** this principle will not be applicable. If the party has rightly or wrongly asked a relief as mentioned above, if the Court takes care of it in not granting final relief as an interim order, then no prejudice will be caused to the respondent.

50. Nonetheless, in this case in the final relief, the State has asked for replacement of the Directors of the Club with Government nominees so as to run the affairs of the company, but whereas in the interim relief, it has only asked for suspension of General Committee and for appointment of an Administrator until final order is granted, therefore though the reliefs seemingly looking same, there is a sea difference between replacement and suspension – replacement is permanent arrangement and suspension is temporary arrangement – suspension and appointment of administrator is a stop gap arrangement until final relief is granted. In any event, since this Bench is not ordering suspension of GC and appointment of administrator

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order, where is the question of granting interim order covering final relief? This is a misplaced apprehension.

51. Out of the citations referred, since 63 Moons encompassed historical position over the issue of opinion and public interest, I believe it is suffice to refer this Judgement covering almost all cases relied upon by the Club. Indeed, the Respondent Club Counsel heavily relied upon the ratio decided in this case over opinion as well as public interest. Before going into this point, it is pertinent to mention that in a case under section 396 (power of central government to provide for amalgamation of companies in national interest) of the Act 1956, draft order will be prepared by the Central Government and then follow the procedure of notification, then assessment of compensation to the shareholders and creditors in the event of sustaining any loss to their interest, the same shall be assessed and shall be paid to the concerned by the company resulting from the amalgamation and then gazette publication, after expiry appeal period by the aggrieved members or the creditors as the case may be, copy of the order shall be laid before both Houses of Parliament.

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52. Under section 396, government will not apply to any court of law for an order, the Central Government itself will prepare scheme of amalgamation when it is of the opinion that it is essential in the public interest that two or more companies shall amalgamate. It is nowhere required to put it to the scrutiny of a court of law. If a procedure is carved out mandating the Government to seek relief through court of law, it will initiate a proceeding against wronging party to discharge its fiduciary duty on behalf of the public. And initiation of court action cannot be seen on par with an order of the Government, therefore incisive scrutiny of the opinion is not essential in the cases where it is only to initiate action like any other private person. This indeed will frustrate the State proceeding against wronging party.

53. The club counsel has relied upon ***The Joint Commissioner, Commercial Tax Officer, Harbour Division, II-Madras v. The Young Man Indian Association (Registered) (1970) 1 SCC 462, Madras and Ors., State of West Bengal v. Calcutta Club Ltd. (2019) SCC Online 1291, Bangalore Club v. Commissioner of Income Tax and Anr. (2013) 5 SCC 509, Income Tax Officer, Mumbai v. Venkatesh Premises Corporative Society Ltd. (2018) 15 SCC 37)*** to say that by virtue of doctrine of mutuality,

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the money coming to the company cannot be treated as profit therefore the club shall not be subjected to payment of tax upon the profits or income of the company. Since the issues involved in this case are not directly related to tax payments by the Club, I believe the concept of Doctrine of Mutuality will not have bearing over the outcome in this case.

54. The club counsel relied upon ***Saroj Goyanka v. Nariman Point Building Service and Trading Pvt. Ltd. (1993) SCC Online Mad 382*** to say that when preliminary issue such as maintainability is raised, it shall be first decided before passing any order. For this Bench has already given chance to the respondents to make their submissions on maintainability before granting interim relief and for no order has till date not passed on merit, this contention has paled into insignificance.

55. With regard to formation of opinion, the club counsel has relied upon ***Khudiram Das v. The State of West Bengal and Ors. (1975) 2 SCC 81,*** to state that in the event any action has been initiated without formation of an opinion or the opinion does not pass the muster of judicial scrutiny, the condition precedent

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could not be fulfilled and the exercise of power would be bad in law.

56. It is a case wherein writ of habeas corpus was filed under Article 32 of the Constitution challenging the validity of the preventive detention of the petitioner under an order of preventive detention covered by Maintenance of Internal Security Act, 1971, wherein the Hon'ble Supreme Court has held before taking any person under detention, the grounds of detention shall be communicated to the detenu, without which such order will become bad. This protection has been given under Article 22 of the Constitution, wherein it has been categorically mentioned that no person shall be arrested and detained without communicating grounds to him. As to preventive detention the authority making such an order shall communicate the grounds enabling the detenu to protest against such order. Like we all know, if any right is there more precious than any other right existing in the word, that is right to life covered by Article 21 of the Constitution of India. If such right is interfered with inflecting the procedure laid down, it is obvious that effect of the order shall be invalidated, but in the present case it is only about an opinion to file a case against a company like any other person, these two

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situations are not comparable, therefore the observations made in preventive detention cannot be applicable to a case like this.

57. On the same point of formation of opinion, the club counsel relied upon ***Bhikhubhai Vithlabhai Patel and Ors. v. State of Gujrat and Ors. (2008) 4 SCC 144*** to say that formation of opinion is a condition precedent and it shall be based on facts but not on imaginary grounds.

58. It's an issue decided on the action of State Government in making substantial modification falling under ***Gujrat Town Planning and Urban Development Act, 1967,*** as per this Act, the Development Authority designated a parcel of lands of the appellants as part of the residential zone in the draft development plan prepared by it and submitted the same to the State Government for sanction. The State Government by exercising its powers u/s 17(1)(A) (II) proviso of the Act sanctioning the plan in a modified form reserving the appellants' lands for "Education Complex of Gujrat University". Accordingly, development plan was brought into Court, but that land was not used for the designated purpose for more than ten years. As the land was not used for that purpose for 10 years, the land owners (appellants) after

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expiry of ten years gave a notice calling upon the authority to acquire the land but no steps were taken. Instead, the development authority by exercising powers under Section 21 of the Act, sought to revise the development plan by reserving the land in question once again for education complex for South Gujrat University, that plan was struck down by the Hon'ble Supreme Court in the year 2003, thereafter the State Government again proposed to modify the draft development plan under Section 17(1)(A) (II) proviso by designating the land in question for the educational use. This notification issued by the government was struck down on the ground that the opinion is bereft of relevant material disclosing the necessity to make the above modification. The source for passing such an order by Hon'ble the Supreme Court is, in Section 17, a proviso has been carved stating that where the State Government is of the opinion that the substantial modification in the draft development plan and regulations are necessary, the State Government may instead of rejecting it, it can modify the plan. For the modification failed to give any material support to such modification, the Hon'ble Supreme Court based on the particular factual scenario and examining the statutory provision under the aforesaid enactment,

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held that State Government shall form an opinion stating that it is necessary to modify the plan. The observations of Hon'ble are based on the facts that this land was earlier reserved for educational complex of South Gujrat University but it was not utilized for the said purpose for more than ten years then the owners gave a notice calling upon the Authorities to acquire the land initially development authority by exercising the powers under Section 21 of the Act sought to revise the plan by reserving the land for same purpose when it was struck down by Hon'ble Supreme Court, the State Government again modified draft development plan under proviso to section 17 (1)(a)(II) without explaining the necessity with requisite material, against which the Apex Court held that necessity shall be demonstrated by forming an opinion stating that modification is required for the said purpose.

59. In the present case no such stringent law has been set out to form an opinion, it has only been stated that if the Central Govt. is of the opinion actions of the company are prejudicial to the public interest, the Central Govt. at best can ask relief from a Court of law unlike in the case supra where State Government modified the draft plan in deprivation of the right of land owners.

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In the case above, the right of the people is directly affected by an order of the Government but in this case it is only an opinion to file a case therefore the ratio held in the case above is not applicable to the opinion falling under Section 241 (2) of the Act, 2013. However, in this case, a load of 5000 thousand pages material is there, out of which, two three points demonstrating prejudice to the public interest are highlighted, therefore the ratio decided in the case above is not applicable to this case.

60. At last icing on the cake with regard to formation of opinion and public interest, the Club counsel referred is the judgment in ***63 Moons Technologies Ltd. & Ors. v Union of India and Ors. (2019) SCC Online SC 624),*** to state that if the opinion does not disclose the facts essential to form an opinion, action taken based on such opinion will become invalid. Though this Judgement has elaborately discussed about formation of opinion, the Honourable Supreme Court ultimately held that opinion of the Government is not subject to objective test, the only requirement is there must be factual material for arriving to such opinion. It is not for the Court to sit in judgment on the sufficiency of those reasons. In 63 Moons, the Honourable Supreme Court held that the fulcrum on

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which the opinion formed is devoid of facts; it is evident in the para mentioned in the 63 Moons' case which is as below:

> *"Thus, the amalgamation order oversteps recognised separation of powers' limits, and is therefore, ultra vires both Section 396 of the Companies Act and the Constitution of India. It was then argued that there are three grounds in support of the order of amalgamation, which are to be found in the impugned judgment, namely:*
>
> *A. Restoring/safeguarding public confidence in forward contracts and exchanges which are an integral and essential part of the Indian economy and financial system, by consolidating the businesses of NSEL and FTIL;*
>
> *B. Giving effect to the business realities of the case by consolidating the businesses of FTIL and NSEL and preventing FTIL from distancing itself from NSEL, which is even otherwise its alter ego; and*
>
> *C. Facilitating NSEL in recovering dues from the defaulters by pooling human and financial resources of FTIL and NSEL.*
>
> *Admittedly, reasons A and B are not in the draft order. This being so, obviously, no objections or suggestions could be made qua reasons A and B, as a result of which the final order would, therefore, be ultra vires Section 396(3) of the Companies Act.*
>
> *…………………*
>
> *59.2. It is important to note that the first and second grounds mentioned by the High Court are not contained in the draft order of amalgamation. Had they been so contained, objections and suggestions would have been made by all stakeholders, which the Central Government would then have been bound to consider before passing the final order. However, it was argued on behalf of the respondents that the first and second grounds are, in reality, inferences drawn from facts which are already stated in the order and these inferences do not need to be stated in the draft order. We are afraid that this argument is incorrect inasmuch as grounds contained in reasons (a) and (b) are important grounds which have a vital bearing on the amalgamation in question. If these grounds were contained in the draft order, there is no doubt that the*

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shareholders and creditors of FTIL, and FTIL itself would have had an opportunity to comment on the same. For example, the "business realities" of the case are facts known to FTIL; and NSEL, being FTIL's alter ego, is the subject matter of dispute in various suits that have been filed and are pending adjudication. FTIL could have responded giving reasons as to why NSEL is not its alter ego. Also, whether the amalgamation is, in fact, to restore or safeguard public confidence in forward contracts and exchanges is a subject matter on which FTIL, its shareholders and creditors, could have commented. Equally, whether NSEL's exchange was an essential and integral part of the Indian economy and financial system, and whether this defunct business could be consolidated so as to impact the economy are all matters for comment by FTIL and its shareholders and creditors. For all these reasons, we cannot accede to the respondents' arguments on this score. On this ground alone, even assuming that these two grounds obtained and can be culled out from the final order, not being contained in the draft order, the said grounds would be in breach of Section 396(3) and (4), and therefore, cannot be looked at to support the order.

59.3. It is important to note that grounds (a) and (b) are both culled out in answer to objections raised by FTIL. The precise objection raised and the answer given are quoted herein below:

……………

59.4. It is important to note that under Section 396(4)(b), the Central Government may, after considering suggestions and objections from the stakeholders mentioned, make modifications in the draft order as may seem to it desirable in the light of such suggestions and objections. No modification has been made in the body of the Central Government order as finally made. If the Central Government had actually considered that each of these three reasons impact public interest, it would have explicitly said so after suggestions and objections were made by the various stakeholders. The fact that the Central Government has not amended the body of the final order is of great significance – it is only the original reasons given in the draft order that continue as such in the final order which, as we have seen, are not in furtherance of public interest at all. Reasons (a) and (b), part of which is culled out from answers to objections and suggestions given in the final order, is only given separately by the Central Government after the amalgamation order to show that the principles of natural justice as laid down by sub-section (4) of Section 396 have, in fact, been followed. This becomes clear

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from paragraphs 6.3 and 7 of the final order, which read as follows:

………

59.5. So far, we have gone by the Central Government order as it stands. The Bombay High Court, in stating reasons (a), (b), and (c) as grounds of public interest, has gone much further than even the answer given to the objections that are contained in the order itself. "Restoring/safeguarding public confidence in forward contracts and exchanges, which are an integral and essential part of the Indian economy and financial system, by consolidating the businesses of NSEL and FTIL," is not contained in the answer given to objections in the order. First and foremost, restoring public confidence is no part of the order. What is mentioned is only the fact that public confidence has been shattered, as is reflected by the FMC order dated 17.12.2013. Secondly, the entire expression, "which are an integral and essential part of Indian economy and financial system, by consolidating the businesses of NSEL and FTIL" is no part even of this answer given, but a gloss given by the High Court itself relatable to this answer. Similarly, when it comes to reason (b), "giving effect to business realities of the case" contained in the answer to objections does not contain "by consolidating the businesses of FTIL and NSEL", nor does it contain "and preventing FTIL from distancing itself from NSEL, which is, even otherwise, its alter ego". On the contrary, the High Court itself mentions, in paragraph 355, that "this is also not a case where the Central Government has, in fact, lifted the corporate veil, despite the alleged non-existence of the circumstances justifying lifting of such corporate veil", and further, "this is not a case where the Central Government has lifted the corporate veil and sought to apportion any liability upon either NSEL or FTIL". ***For all these reasons, we find that no reasonable body of persons properly instructed in law could possibly arrive at the conclusion that the impugned order has been made in public interest.***

Para 75 ………… (last lines of this para)

The order of "non-assessment" of compensation has thus been challenged by FTIL in proceedings under Article 226 of the Constitution of India. Even otherwise, this is a case where there is complete non-application of mind by the authority assessing compensation to the rights and interests which the shareholders and creditors of FTIL have and which are referred to in Section

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396(3) of the Act. This being the case, it is clear that Section 396(3) has not been followed either in letter or in spirit.

76. In conclusion, though other wide-ranging arguments were made with respect to the validity of the Central Government amalgamation order, we have not addressed the same as we have held that the order dated 12.02.2016 is ultra vires Section 396 of the Companies Act, and violative of Article 14 of the Constitution of India for the reasons stated by us hereinabove. The appeals are accordingly allowed, and the impugned judgment of the Bombay High Court is set aside. The writ petition is disposed of in light of this judgment.

61. By reading these paras, it is evident that since the points A and B are absent in the draft order, the premise on which amalgamation order provided is bereft of reasons, but it is nowhere mentioned that collection of ₹5600Crore from the investors is right or wrong, therefore the respondent club cannot latch on to the point saying when the Supreme Court has not held that public interest is involved in non-payment of ₹5600Crore to the investors, the issues involved in this case cannot be construed as prejudicial to public interest. If last para of the judgement is seen, it can be culled out that the Apex Court held that order dated 12.02.2016 is ultra vires of section 396 of the Companies Act 1956 and violative of Article 14 of the Constitution for lack of facts to arrive to a conclusion that the impugned order has been made in public interest. There are many other issues such as compensation to the shareholders, therefore as to satisfaction of

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central government, the ratio decided in the case supra cannot be applied to this case because here it is an opinion to file a case, and it is not like an order passed under 396 of the Act 1956. When order is passed by the Government, it will have direct effect upon the parties, but an opinion to file a case, it is a kind of right to bring forth inequities in the company to the notice of this Bench for appropriate orders so as to arrest the prejudice to the public interest. The respondent club shall not try to thwart the Central Government exercising its legal right given in the Act, it is something preposterous. In almost all cases relied upon by the Respondent Club, all of them are orders passed by the Government, but here it is an opinion to file a case against the Respondent club based on the inspection report and on the opinion based on facts, rather on the facts provided by the Club during inspection. Therefore, I hold that the ratio decided in the above case is not applicable to this case, indeed in a way it makes it clear that if opinion is based on facts, then it is a valid opinion. Demonstration of all facts in the opinion will not make any sense when annexures disclosing what all said in the opinion is present before the Court. Grounds in the order of Preventive detention,

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order affecting the rights of land owners, etc are not akin to the opinion in this case.

62. It is a case saying section-8 Company, running on Government owned land, is run by a coterie of people bringing in the children of permanent members and children's children for using facilities of the club despite several members remaining outside for decades together, when Government Officer retires taking him into private members quota, and using crores of rupees collected from waitlist members as its own money, and using public property of 27 acres of land in the Lutyen's Delhi adjacent to Prime Minister residence worth of thousands of crores on minimal annual rent of ₹1000 annual rent for lazing around in the evening for drinking amounts to prejudice to the public interest, all these are born out from the records, of course any interpretation could be given, but they cannot deny the fact that the club is basically for pastimes, in fact it is the case of the Respondent Club and its GC. To say public interest is involved, whole country public is not required to be effected; public interest is involved where actions of somebody will prejudice the public of that vicinity or a class of people. The members remain waiting years together for membership is nothing but causing prejudice to

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the public, when some are in waiting, some getting entry prior to others in waiting is prejudice to the public, some persons alone enjoying the state property is also prejudice to the public.

63. With regard to formation of opinion, in Governments, one person can't do everything right from inspection to formation of opinion, it goes from one table to another in step wise functioning, when it comes to the highest official, he will examine summation and supporting documents to ascertain whether prejudice is being caused to public interest, moreover Government has to discharge various functions, this formation of opinion is one among many works, of course for club, it is the only work. For this is not anybody's personal job, it is to be assumed Government will remain impersonal, unless it is shown that certain officer has personally done something against somebody to settle personal score. No such material before this Bench. To elaborate this logic, the State has relied upon ***Gullapalli Nageswara Rao v. APSRTC (AIR 1959 SC 308)***, to say that when facts are available to arrive to an opinion, it is sufficient to proceed further. In this case, no doubt supplementary report dated 03.03.2020 runs into 5000 pages, but whereas main report prepared basing on supplementary report is of only 100 pages,

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upon which the Central government along with the assistance of its team, formed an opinion, which cannot be denied. The bottom line is whether material is there or not. Here the material is very much present to the satisfaction of the authority, it is a subjective satisfaction based on the material available, if opinion is based on the material, as to sufficiency, it is not in the realm of the court. But in this case, material available is clearly indicating mess is created in the club affairs causing prejudice to the public interest, therefore there is no merit in saying that filing is not based an opinion demonstrating reasons.

64. The Petitioner Counsel relied upon ***Zenit Metaplast Private Limited v. State of Maharashtra, (2009) 10 SCC 388*** to say that at the stage of interim relief prima facie case, probabilities and irreparable loss and injury to the petitioner is to be seen, not other aspects.

65. He further relied upon ***Anns v. Merton London Borough Council, 1978 A.C. 728 & P.L. Lakhanpal v. Justice A.N. Ray, ILR (1974) I Delhi 725*** to say that the Court has to treat the facts as alleged in the petition at the stage of preliminary objections.

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66. He then relied upon ***Gullapalli Nageswara Rao v. APSRTC, AIR 1959 SC 308*** to say that in Governments, the process of examination of a case will follow the hierarchy and the participation of its functionaries, it is long recognized as a valid practice, the emphasis shall be on as to whether opinion has been formed on relevant material facts or not.

67. He then relied upon ***Saraswati Sugar Mills. Commissioner of Central Excise, (2014) 15 SCC 625 & Sarabhai M. Chemicals v. Commissioner of Central Excise, (2005) 2 SCC 168*** to say that company shall remain stick to its objectives, here though main object is promotion of sports, only around 3% of total expenditure is on sports activity, whereas 60% is spent on maintaining recreational activities.

68. He further relied upon ***J.S. Luthra Academy v. State of Jammu and Kashmir, (2018) 18 SCC 65*** to say that when State largesse is given to any organization on nominal basis, if the same is used to sub serve the interest or recreational purposes of a private group of individuals, instead of sub serving the common good, it would be lawful for the Central Government to put law

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into motion to regain control over such resources than doing patch work on piece meal basis.

69. He then relied upon ***Krishan Lal Gera v. State of Haryana, (2011) 10 SCC 519*** to say that if the land is allotted to a company (here in this case to a society) for a particular purpose, in this case for promotion of sports, and if it is used for recreational purpose solely for the pleasure of persons in command, necessary steps shall be taken to get back the state property. In the case supra, 31 acres of land was given to Faridabad District Sports Council for promotion of sports, when some difficulty came in maintaining it, it was given to the District Sports Club Association for better use but the club members started using it for their own gain and for their pleasure on the land given on minimal rent by the State. The relevant para is as follows:

> *"15. Whenever nepotism, favouritism and unwarranted government largesse to private interests, threaten to frustrate schemes for public benefit, it is the duty of High Courts to strike at such action. The stadium is meant for improving and developing sports and sports persons. But slowly and steadily these are ignored by stating that the funds are not available for maintenance or people are not coming to use the facilities. The standard refrain is that a part of the stadia or sports facility can be used for non-*

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sports activities generating funds for the upkeep of the stadium. In no time, an exclusive recreational club is established for those in power, those who have access to power and those who can afford to pay hefty sums to access the facilities by way of membership. Thus valuable state resources meant for the general public, for the poor and the needy who require the facilities to improve themselves, are denied access and the entire facility becomes the domain of a chosen few. What started as a multipurpose stadium for the benefit of citizens become partly a private recreational club and partly a neglected unused stadium. What started as a club then goes into private hands for commercial exploitation for a hotel or for conducting marriages and other functions. The only "sports" activity regularly held is in the card room. Unfortunately, all this is done under the nose of the District Administration, in a centrally located property belonging to the Municipal Corporation and controlled by District Sports Council. Creating a sports ground, encouraging sports is a part of human resource development which is the function of the State. No part of the stadia or sports grounds can be carved out for non-sport or commercial activities to be run by recreational club or by private entrepreneurs. Recreational clubs are not sports clubs."

70. He then relied upon ***Lok Prahari v. State of Uttar Pradesh, (2016) 8 SCC 389*** to say that usage of the club cannot be passed on from generation to generation through dubious routes because in the case (supra), allotment of government bungalows to the users who held office of Chief Minister for their

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lifetime was quashed and cancelled by Hon'ble the Supreme Court.

71. He then relied upon ***Official Liquidator, Supreme Bank Ltd. v. P.A. Tendolkar, (1973) 1 SCC 602*** to say that where the impugned actions are within the knowledge of the Board of Directors, then each and every Director of the Company is liable for action and shall be declared as not fit to continue on the Board.

72. He then relied upon ***Hind Overseas Private Limited v. Raghunath Prasad Jhunjhunwalia, AIR 1976 SC 565*** to say that prejudice to the public interest has a continuing effect when it has been moved on the strength of misrepresentation and false promises over a period of time.

73. He then relied upon ***M.S.D.C. Radharamanan v. M.S.D. Chandrasekara Raja, AIR 2008 SC 1738*** to say that the power u/s 241 and 242/397 & 398 is a discretionary power, therefore there can be no limitation on the Courts power to pass orders that may be required for bringing to an end the oppression and mismanagement complained of and to prevent further oppression

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in future or to ensure that the affairs of the company are not being conducted in a manner prejudicial to the public interest.

74. This Tribunal having already held that the affairs of the Club are prejudicial to the public interest, now on putting the facts available to the scrutiny under section 242 (1), it is perceived that if Government for any reason taken back the land leased out to the Club, then once the substratum is gone, the Club has to be wound up, or if action is taken under Section-8 then also it would become problem to the club, therefore to avoid such kind of situation, an interim arrangement is devised to resolve the issues afflicting the Club.

75. For the reasons aforementioned, I have found prima facie case demonstrating that the affairs of the Club are being conducted in a manner prejudicial to the public interest therefore I hereby direct Union of India to appoint two of its nominees of its choice as Members in the General Committee to monitor the affairs of the Club along with other GC Members and give suggestions to the GC, and direct the Union of India to constitute a Special Committee with five Members of its choice to enquire into the affairs of the Club, utility of the land leased out by the

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State, with regard to constructions in progress without requisite approvals or with approvals, suggestions for changes in Articles and Memorandum of Association, membership issues including waitlist and about accelerated membership, adherence of the Club to the Rules governed by Section 8 of the Companies Act 2013 and other miscellaneous issues if any and file report of recommendations suggesting for better use of the club premises for the larger good in a transparent manner on equity basis within two months hereof.

76. This Bench further directs the general committee that it shall not proceed with construction or further construction on the site, it shall not make any policy decisions and it shall not make any changes to the Memorandum of Association or Articles of Association and it shall not deal with the funds received for admission of Members and it shall not conduct balloting until further orders. The GC is given liberty to carry day to day functions of the Club by using funds of it other than fee collected from applicants. All these directions shall remain in force until further orders.

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77. In the meanwhile, the respondent shall file full-fledged reply within one month hereof and rejoinder by the petitioner, if any, within one month thereof.

78. List this application for hearing on company petition on 07.09.2020.

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

26.06.2020
Vineet