The NCLT observed that the board and majority of its members lost confidence in Mistry after he sent out certain crucial information about the company to the Income Tax department, leaked details to the media and came out openly in public against the company's shareholders and its board

• The NCLT further noted that although Mistry was appointed as the chairman to preside over the board, he "could not become a sovereign authority over the company because the superior body in any company at first level are the shareholders, thereafter, the board, elected by those shareholders.

• "As long as the board is not removed and as long as they work within the powers endowed upon them to manage the affairs of the company, there can't be any sovereign concept in corporate structure, it is a collective responsibility of the board and their actions are accountable to shareholders of the company".

• NCLT did not find any material to say that Mr Tata or Trusts Nominee Directors caused the removal of Cyrus as chairman as a retort to the purported legacy issues set out in this company petition.

[2018] 95 taxmann.com 121 (NCLT - Mum.)

NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

Cyrus Investments (P.) Ltd.

v.

Tata Sons Ltd.

B. S. V. PRAKASH KUMAR, JUDICIAL MEMBER
AND V. NALLASENAPATHY, TECHNICAL MEMBER
C.P. NO. 82 (MUM.) OF 2016
JULY 9, 2018

C. Aryama Sundaram, Sr. Adv. **Ms. Rohini Musa**, **Somasekhar Sundaresan**, **Apurva Diwanji**, **Ruzbeh Mitry**, **Ms. Sonali Jaitley**, **Manik Dogra**, **Rohan Jaitley**, **Gurjan Shah**, **Parag Sawant**, **Akshay Doctor**, **Abhishek Venkataramanan**, **Dhawal Kothari**, **Ravi Tyagi**, **Shubhanshu Gupta**, **Ms. Sorya Kapoor**, **Ms. Rini Badoni** and **Debashish Chouhan**, Advs. *for the Petitioner*. **Dr. Abhishek Manu Singhvi**, **S.N. Mookherjee**, **Ravi Kadam**, **Mohan Parasaran**, **Sandip Sarkar**, **Janak Dwarkadas**, Sr. Advs. **Zal Andhyarujna**, **Prateek Seksaria**, **Ms. Ruby Singh Ahuja**, **Dhruv Dewan**, **Nitesh Jain**, **Arjun Sharma**, **Rohan Batra**, **Ms. Reena Choudhary**, **Tahira Karanjawala**, **Arjun Pall**, **Avishkar Singhvi**, **Sahil Monga**, **Anupam Prakash**, **Jeet karia**, **Ms. Ayusmita Sinha**, **Ms. Shivangi Agarwal**, **Ms. Juhi Mathur**, **Shatish Paria**, **Ms. Sishika Rajadhyaksha**, **Chidananda**, **Ashwin Kumar**, **Ms. Shruti Sardesai**, **Jehangir Mistry**, **Ms. Namrata Parikh**, **Sharan Jagtiani**, **Jehangir Jeejeebhoy**, **Kaiwan Kalyaniwalla**, **Ms. Shireen Pochkhanawalla** and **Nirav Barot**, Advs. *for the Respondent.*

ORDER

B.S.V. Prakash Kumar, Judicial Member- It was Monday, 24.10,2016, like any other day, but to Bombay House - Tata Sons Ltd registered office, it is not the same. It is the day that caused inflection to the annals of the company. In more than 100 years' history of the company, change of guard happened

only six times.

2. On 24.10.2016, Tata Sons Ltd. (in short "the company/Tata Sons/TS") held Board Meeting with several agenda items including agenda of "any other item", where under, Chairman of the Company, Mr. Cyrus Pallonji Mistry (hereafter called "Mr. Cyrus") was removed from the position of Chairman of the company under the head of "any other item", without being given 15 days prescribed notice to Mr. Cyrus, which propelled the petitioners -Companies of Pallonji family having above 18% equity of the company - to file this Company Petition against the company, Mr. Ratan Tata (Chairman Emeritus of the Company-R2), Mr. Noshir, the Trustees of Tata Trusts and various other persons on 19.12.2016 alleging that the Respondents other than the company (R-l) and R-ll (Mr. Cyrus), conducted/conducting the affairs of the company in oppressive manner and prejudicial against the interest of the petitioners, the company and the public, hence sought various reliefs as mentioned in the company petition and affidavits subsequently filed by them under the head of oppression and mismanagement (sections 241-244) of the Companies Act 2013.

3. The petitioners have petitioned to this Tribunal asking to seasoning of Tata Sons functioning, which keeps seasoning our daily food with Tata Salt. Irony is salt also at times needs salt to be seasoned. One revelation out of it is, problem is problem, pain is pain, no matter how big it is, today the company, mother of many other group companies and champion of successfully surviving for a century, passing through troubled waters. Let us see, what could be the answer to its problem.

4. Companies come and go just as men come and go, but on Indian soil, a few companies have survived these many long years. Out of them, Tata is again unique for having its promoter shareholders (now Tata Trusts) been spending all its might solely for the benevolence of the society. I don't compare this empire with any other empire, because empires come and gone, but this company, despite problems like this, remains survived till date, I wish and hope it will further grow because growth of rt is also the growth of this nation.

5. Another uniqueness of this case is, perhaps no other Tribunal might have heard any case as many days as this fledgling Tribunal heard it - hearing went on for more than one month almost on daily basis from morning to evening, on the top of it, the petitioners' Senior Counsel Mr. Aryama Sundaram and Mr. Cyrus (R11) Senior Counsel Mr. Janak Dwaraka Das, the Respondents side Senior Counsel Dr. Abhishek Manu Singhvi, Mr. Sudeepto Sarkar, Mr. S N Mookerjee, Mr. Ravi Kadam, Mr. Mohan Parasaran, and the counsel Mr. Zal Andhyarjuna, put their heart and soul in enlightening this Bench on every shade of the law on oppression and mismanagement by navigating us through English and Indian law. The counsel Mr. Somashekhar Sundereshan appeared on behalf of the petitioners, finally pepped up with his tone and tenor argument in addition to the arguments of the Petitioners' senior counsel Mr. Aryama Sundaram. All have done excellently well giving a chance to have clarity on facts as well as law relating to oppression and mismanagement. Of course, lot of time has been consumed not only in hearing but also in writing this order, inasmuch as this Bench is bound to answer at least arguments either side placed.

6. Passing through this experience, we wish to place, without making any comment, opening lines of the judgment of Honorable ***Justice Chinnappa Reddy in Life Insurance Corporation of India* v. *Escorts Ltd.* and Ors. (SCC) 1 1986 264**, are as follows:

> "1. *Problems of high finance and broad fiscal policy which truly are not and cannot be the province of the court for the very simple reason that we lack the necessary expertise andwhich, in any case, are none of our business are sought to be transformed into questions involving broad legal principles in order to make them the concern of the court. Similarly, what may be called the 'political' processes of 'corporate democracy' are sought to be subject to Investigation by us by invoking the principle of the Rule of Law, with emphasis on the rule against arbitrary State action. An expose of the facts of the present case will reveal how much legal ingenuity may achieve by way of persuading courts,*

ingenuously, to treat the variegated problems of the world of finance, as litigable public-right-questions. Courts of justice are well-tuned to distress signals against arbitrary action, So corporate giants do not hesitate to rush to us with cries for justice. The court mom becomes their battle ground and corporate battles are fought under the attractive banners of justice, fair-play and the public interest. We do not deny the right of corporate giants to seek our aid as well as any Lilliputian farm laborer or pavement dweller though we certainty would prefer to devote more of our time and attention to the latter, We recognize that out of the dust of the battles of giants occasionally emerge some new principles, worth the while. That is how the law has been progressing until recently. But not so now. Public interest litigation and public assisted litigation are today taking over many unexplored fields and the dumb are finding their voice.

2. In the case before us, as if to befit the might of the financial giants involved, innumerable documents were filed in the High Court, a truly mountainous record was built up running to several thousand pages and more have been added in this Court, Indeed, and there was no way out, we also had the advantage of listening to learned and long drawn-out, intelligent and often ingenious arguments, advanced and dutifully heard by us. In the name of justice, we paid due homage to the causes of the high and mighty by devoting precious time to them, reduced, as we were at times to the position of helpless spectators. Such is the nature of our judicial process that we do this with the knowledge that more worthy causes of lesser men who have been long waiting in the queue have blocked thereby and the queue has consequently lengthened. Perhaps the time is ripe for imposing a time-limit on the length of submissions and page-limit on the length of judgments. The time is probably ripe for insistence on brief written submissions backed by short and time-bound oral submissions. The time is certainty ripe for brief and modest arguments and concise and chaste judgments. In this very case we heard arguments for 28 days and our judgment runs to 181 pages and both could have been much shortened. We hope that we are not hoping in vain that the vicious circle will soon break and that this will be the last of such mammoth cases. We are doing our best to disentangle the system from a situation into which it has been forced over the years by the existing procedures. There is now a public realization of the growing weight of the judicial burden. The cooperation of the bar too is forthcoming though in stow measure. Drastic solutions are necessary, We will find them and we do hope to achieve results sooner than expected. So much for sanctimonious sermonizing and now back to our case."

7. With this introduction, before going into details of the petition, we believe it is empirical to know who the petitioners are and who the respondents are, and also about the directors of the company and other non-respondents intermittently appear, so that while reading the pleadings and discussion, there would not be any need to the reader to go back and forth has and when new character comes in. One out of order in chronology of introduction is the company is explained first, then the petitioners, because the ground and background on which warring groups played out is, the company,

8. One stop gap before coming to characters appear in this case is about Tata Family, which for the first time introduced indigenous industries in our country as early as in late 17th Century, not only that, thereafter they have become so selfless by dedicating the industries and organizations to the cause of the society. It is not my writing that reflecting the greatness of this family -the statues appearing in various places of Murnbai say what they are, with one click, you will also come to know lot of inspiring philanthropic history about this family, When the history is not disputed, consistency is there in that history for more than 30 years, I believe it could be treated, not exactly as document falling under section 90 of Indian Evidence Act, but can be taken as document of like nature to get correct perspective of the dispute. It goes without saying that totality of the facts and their background gives firm footing to arrive to an objective conclusion with right reasoning. For this reason alone, we have started this journey right from the beginning to understand what Tatas are, and what their objectives are. I must be frank enough to say

that this info is taken from Britannica and Wikipedia, of course this history is given in bits and pieces in the replies and arguments advanced by the Respondents side, to my remembrance, this history has not been all through disputed by the petitioners, yet I have taken utmost responsibility in giving these details, because it is, as it is, not born out of pleadings, The situation necessitated us giving the background of Tatas to get a flavor of the values with which this family cherished and to see whether Tatas do something to have personal gain for enrichment?

9. We all knew that oppression and mismanagement issues are not to weigh up the validity and invalidity of the actions complained of, it is more about the unfairness and prejudice intended to cause harm to theinterest of the members of the company, as to companies are concerned, their sole objective being to earn profits, interest can be understood as economic interest of the members. So to understand the applicability of this doctrine of prejudice, we have to go step by step through the elements of this doctrine within the ambit given u/s 241 of the Companies Act 2013.

10. Tata family,industrialists and philanthropists who founded ironworks and steelworks, cotton mills, and hydroelectric power plants that proved crucial to India's industrial development. It is important to know about this family, because as I said earlier, the case of oppression and mismanagement is largely dependent on the doctrine of fairness, regardless of legalities. Since fairness or unfairness comes from the mind of a person, it is relevant to note who they are, what they are and how they are throughout the history of the company to test the impugned actions on the anvil of this background.

11. Tatas are a Parsi priestly family originally came from the former Baroda state (now Gujarat). The founder of the family fortune was Jamsetji Nusserwanji Tata (1839-1904). He joined his father's export trading firm in 1858 and helped in establishing its units in Japan, China, Europe, and the United States. In 1872, he concentrated on cotton manufacturing, founding mills at Nagpur in 1877 and, later, at Bombay and Coorla. His enterprises were noted for efficiency, for improved labor-protection policies, and for the introduction of finer grades of fiber. He also introduced the production of raw silk to India and planned for the Bombay-area hydroelectric power plants that became the Tata Power companies after his death. In the journey of his life, Sir Jamsetji established Empress Mills in the year 1874, it is for the first time this company has set very high standards for worker benefits and welfare with the facilities such as sanitary hutments and filtered water for workers, which was that time unheard of even in the west. By seeing such a humanitarian concern, a famous English poet namely William Blake, wrote "Jamsetji was a century ahead of his times ensuring the welfare of his work force." In 1886 itself, Jamsetji launched various schemes such as Free Medical help, creches and primary classes for children of mill workers, he introduced gratuitous pension fund, provident fund, maternity benefit allowance and a compensation funds for accidents for all employees. This man in his journey in the year 1889 being stirred by speech of Lord Reay donated half of his fortune to build University, in the year 1891, he started endowment scheme to support promising students From all over India for going abroad for studies. The first J M Tata scholar was Freny KR, sent to Edinburgh for advance studies thereafter, former president K.R. Narayan, renowned Scientist Raja Ramanna, Jayant Narlikar and Raghunath Mushalkar, like many. If we keep saying, there won't be end for it.

12. To cut it short, after the death of Jamsetji, his younger son Sir Ratan Tata became the Chairman of the company and made his father's dream of building Iron and Steel Company reality and that is the company where Tata family owned 11% of the total shares of the Tata Iron and Steel Company. He contributed to aid Mahatma Gandhi's struggle of giving Indian a life of dignity in South Africa, he is the person set up illustrious Indian Institute of Science as a Joint venture with Government of India and Government of Mysore which has become launching pad and hub of scientific research in India and Asia. Tata Steel has become the first company to introduce pioneering labour welfare policy such as medical aid, formation of works committee, leave with pay, workers' provident fund and workmen's accident scheme and ex-gratia payment for road accidents while attending to duty and these policies over a period of time has become

law in India, He passed away in the year 1890 writing a will *"if I have no children, I give rest of the residue of my property... for the advancement of education, teaming and industry in ail branches including education in economic, sanitary sciences and ail works of public utility."* basing on which, Ratan Tata Trust is set up in the year 1919which is today holding 23.55% shareholding in the company and doing yeoman service to provide livelihood and employment to women from lower income groups and various prestigious institutions such as Tata Institute of Social Science, Indian Institute of Science, Delhi School of Economics. Soon after demise of his younger brother, elder brother Sir Dorabji Tata became the Chairman of the company. This person in his lifetime itself set up Tata Memorial Trust in memory of his deceased wife to aid research on international scale in the field of blood diseases especially leukemia.

13. We must mention a few lines about a man, who makes this institution as funding machine to the cause of society that is Sir Dorabji Jamsetji Tata. Like his father, Sir Dorabji believed that **one must make use of the wealth one had acquired for constructive purposes.** So, in less than a year after his wife Meherbai's death, he donated all his wealth to the Trust, insisting that it must be used ***"without any distinction of place, nationality or creed",*** for the advancement of learning and research, the relief of distress and other charitable purposes. He died three months later.

14. The wealth that he turned over to the Trust ***comprised his substantial share holdings in the company, Indian Hotels and a Hied companies, his landed properties and 21 pieces of jewellery left by his wife, including the famous Jubilee Diamond, estimated then to be of the value of Rs. 10 million.*** Today, these would be worth more than Rs. 500 million.

15. As the Trust got formed and the trustees deliberated on the policy aspects and finalized them, it decided to adopt a broad framework—that it should undertake such projects, which are too large for individuals to handfe and that each of these projects should have a genuine relevance to the welfare of the country. The Trust is mandated to:

- Maintain and support schools, educational institutions and hospitals
- Provide relief in distress caused by the elements of nature such as famine, pestilence, fire, tempest, flood, earthquake or any other calamity
- Help advancement of learning in all its branches especially research work in medical and industrial problems
- Offer financial aid to the Indian Institute of Science, Bangalore, by instituting professorships or lectureships or giving scholarships
- Award fellowships in any branch of science or assist students to study abroad either by payment of lump sums grants or by payment of periodical sums
- Give aid to any other charitable institutions or objects endowed by the settler in his lifetime, or by the grandfather, father or both of the settlers.

16. Mow this Trust has 27.99% shareholding in the company doing various philanthropic works as mentioned above. The greatness of this family is they have not limited themselves to simple charity but for the sake of larger wellbeing of human society; they have reached out to philanthropic service.

17. Upon the death of Sir Dorabji in 1932, Sir Naoroji Saklatvala, one of the founder's nephews, became chairman of the Tata Group, On his death in 1938, Jehangir Ratanji Dadabhoy Tata (1904-93), whose father, R.D. Tata, had been a cousin and partner of the founder, became chairman. J.R.D. Tata founded Tata Airlines (1932), which was in 1953 nationalized and split up to form India's chief domestic and international air carriers: Airlines Corporation and Air-India, respectively. By late 1950s, Tata Group controlled the largest single aggregation of Indian industry. J.R.D. Tata was succeeded as chairman by his nephew, Mr. Tata in 1991.

18. Mr. Tata (R2) aggressively sought to expand Tata Group, acquiring such companies as London-based Tetley Tea (2000) and Anglo-Dutch steel manufacturer Corus Group (2007). In 2006, he oversaw Tata Motors' purchase of the elite British car brands Jaguar and Land Rover from the Ford Motor Company, In 2012, Mr. Tata retired as chairman and was succeeded by Mr. Cyrus (R11).On October 26, 2016, Mr. Cyrus was dismissed before completion of his term, and then Mr. Tata took over as interim chairman. In the process of handing over the reins of the company to new chairman, in January 2017 Natarajan Chandrasekaran was appointed as the new chairman of the Tata Group.

19. The company is the investment company of the Tata Group and holds the bulk of shareholding in group companies. It was established as a trading enterprise in 1368 founded by Jamshetji Tata with its headquarters at Mumbai. About 66% of the equity capital of the company is held by philanthropic trusts endowed by members of the Tata family, The big two are Sir Dorabji Tata Trust and Sir Ratan Tata Trust. The company is the owner of the Tata name and the Tata trademarks, which are registered in India and several other countries. In the fang history of this company, from 1868 till 2016, it has seen six Chairman who are as follows:

Jamsetji Tata (1S68-1904): The founder of the Tata group began with a textile mill in central India in the 1870s. His powerful vision inspired the steel and power industries in India, set the foundation for technical education, and helped the country leapfrog from backwardness to the ranks of industrialised nations,

Sir Dorab Tata (1904-1932): Through his endeavours in setting up Tata Steel and Tata Power, this elder son of Jamsetji Tata was instrumental in transforming his father's grand vision into reality, rt was also under his leadership that the Sir DorabJF Tata Trust, the premier charitable endowment of the Tatas, was created, propelling the Tata tradition of philanthropy.

Nowroji Saklatwala (1932-1938): Sir Dorab was succeeded as chairman of the Group by Sir Nowroji Saklatwala. In 1938, following Sir Nowroji's demise, 34-year-old JRD Tata was appointed as the new chairman.

JRD Tata (1938-1991): The late chairman of the Tata Group pioneered civil aviation on the subcontinent in 1932 by launching the airline now known as Air India. That was the first of many path-breaking achievements that JRD, who guided the destiny of the Group for more than half a century, came to be remembered for.

Ratan Tata (1991-2012): Ratan M Tata was the Chairman of Tata Sons, the promoter holding company of the Tata group, since 1991. He was also the Chairman of the major Tata companies, including Tata Motors, Tata Steel, Tata Consultancy Services, Tata Power, Tata Global Beverages, Tata Chemicals, Indian Hotels and Tata Teleservices, During his tenure, the group's revenues grew manifold, to tailing over $83 billion in 2010-11. Tata also serves on the board of directors of Fiat SpA and Alcoa. He is also on the international advisory boards of Mitsubishi Corporation, the American International Group, JP Morgan Chase, Rolls Royce, Temasek Holdings and the Monetary Authority of Singapore.

Cyrus Mistry (2012-2016): The selection of Cyrus Mistry, a non-executive director on the Tata Sons board as well as Managing Director of the Shapoorji Palionji Group - which has an 18.37 per cent stake in Tata Sons - instead of the others whose names were being bandied had surprised many four years ago. Some had attributed it to Ratan Tata's push to lower the average age of senior management in the group. Most of the other candidates were felt to be either too old or too low in the hierarchy. Mistry seemed just the right age.

20. Major operating companies under the company are Tata Consultancy Services, Tata Motors, Tata

Steel, Titan, Tata Power, Tata Global Beverages, Tata Chemicals, Tata Communications, Taj Hotels Resorts and Palaces and many other companies.

21. Tata Group presently operates in more than hundred countries, across 6 continents, collectively employing over 6,60,000 people, with a mission to *'improve the Quality of life of the communities we serve globally, through long-term stakeholder value creation based on Leadership with Trust.* In 2015-16, the revenue of Tata Group, taken together, was $103,51 billion. There are 29 public-listed companies in the Tata Group, with a combined market capitalization of about $116.41 billion (as on 31 March 2016). The company is the principal investment company and the promoter to almost all Tata Group companies. Above 66% of the issued ordinary share capital of the company is held by philanthropic trusts, which support education, health, livelihood generation and art and culture (collectively, the **"Tata Trusts").**

22. The company has come into existence as Private Limited company with all characteristics of a private company, ever since it continued as private limited company until a change came in statute directing all the companies having more than Rupees one crore rupees paid-up capital to be public limited companies with characteristics of private limited company, ever since, this company has continued as public company governed by section 43 (1A) of Companies Act 1956 because section 43 (1A) says that though private limited company has more than one crore rupees, it could continue as public limited company with all characteristics of private limited company, therefore without any change to the characteristics of private limited company, the company continued as public limited company holding the characteristics of a private limited company. After which, when Companies Act 2013 has come into force in the year 2014, since there is no provision analogous to section 43 (1A) of Companies Act, 1956, time has come to it to choose either to become private or public limited company. For turn-over of one crore rupees envisaged in 1956 Act has not been reiterated under Companies Act 2013, now it has become evident under new regime, if company remains with characteristics of private company despite paid up capital is more than one crore rupees, such company under new regime will can become private company. As this company by virtue of its articles is private limited company, the company, by saying so, has filed a Petition u/s 14(1) of Companies Act, 2013 for conversion of Public limited company into private Limited company and the same is pending before this Bench, Since section 465 of Companies Act 2013 not yet been notified, further previous provisions have not been declared as repealed, the company says since it is in all respect private limited company under new regime, it has stated that it wants to retain its original status as private limited company. This is where this company stands today.

23. Shareholding pattern of the company as follows:

Total equity shares 404,142 (Rs. 1,000 each)

Shareholder	**No. of shares**	**Shareholding percentage**
Shapoorji Pallonji	108	0.026723
Sterling Investment Corp (Shapoorji Pallonji Group)	37120	9.18489
Cyrus Investments (Shapoorji Pallonji Group)	37120	9.18489
Ratan Tata	3368	0.83337
Sir Dorabji Tata Trust	113067	27.97705
Sir Ratan Tata Trust	95211	23.5588
Tata Investment Corp	326	0.080665
Sarvajanik Seva Trust	396	0.097985
RD Tata Trust	8838	2.186855
Tata Social Welfare Trust	15075	3.730125
Tata Education Trust	15075	3.730125
JRD Tata Trust	16200	4.008492
Tata Power	6673	1.651152
Tata Global Beverages	1755	0.434253
Indian Hotels (Taj Hotels Resorts and Palaces)	4500	1.11347
Tata Industries	2295	0.56787

Tata Chemicals	10237	2.533021
Kafimati Investment Co (Now Tata Steel)	12375	3.062043
Tata International Ltd	1477	0.365466
Tata Motors	12375	3.062043
Piloo Tata	487	0.120502
Jimmy Naval Tata	3262	0.807142
Vera Farhad Choksey	157	0.038848
Jimmy Tata	157	0.038848
Simone Tata	2011	0.497597
Noel Tata	2055	0.508485
HH Maharawal Virendra Singh Chauhan	1	0.000247
Raja of Chhota Udepur	2	
MK Tata Trust	2421	0.599047

24. As to the Petitioners 1 & 2 are concerned, these companies holding above 18% equity share capital of the company, They are indeed belonging to a reputed construction group called Shapoorji Pallonji group. This is also one of the oldest business families in India entered into construction; one of the testimonies of their construction is Bombay House itself wherein the company is housed since long, It is also one of the business groups in India held to construction business for about a century, over a period, this group developed into several companies holding various businesses. These Petitioners have become shareholders in the company in the year 1965 buying shares from Dinshaw group, though Shapoorji Pallonji group is not known to the Public like Tatas, they have been consistently sailing aiong with the company for more than half a century without any hitch. Despite no position in the Board has been provided to these petitioners in the Articles, they continued on Board since 1980 to 2004, then 2006 - 2016 without any provision in the Articles. All was well to this group until before Mr. Cyrus was removed as Executive Chairman of the company. We have not even come across single Board Meeting or shareholders'1 meeting where the Petitioners differing with Trusts in any respect.

25. But today, it has come to such a pass that the Petitioners have filed this Company Petition against Mr. Tata, doyen of the company and the Trusts. So, these Petitioners today stand against the Trusts saying they have caused prejudice to the interest of them. In the Company Petition these Petitioners have been stated as single largest individual group next to the Tata Trusts, partner of the company but projected as minority shareholders, having a stake of Rs. 1,00,000 crores in a more than one hundred billion-dollar Company. There can be many ways to project the personality, all may be right, but the position relevant to this case is, the Petitioners holding above 18% shares in the company is a minority without any special rights in the Articles of Association. These Petitioners are not the founder members of the company, they have only come in the year 1965 by acquiring equity of 18.37% from erstwhile shareholders, who also had no rights in the Articles of Association, therefore, the Petitioners can be called as investors come into the company and has been continuing as equity shareholders earning more than Rs. 800crores dividend from this company till date.

26. With this background, the Petitioners have filed this Company Petition striking the Respondents on the premise that the Respondents have conducted the affairs of the company oppressive against the petitioners and prejudicial to the interest of the Petitioners.

27. Mr. Tata is the Chairman of the Tata Trusts (comprising Sir Ratan Tata Trust and Allied Trusts, and the Sir Dorabji Tata Trust and Allied Trusts). Under his guidance and leadership, the Trusts have metamorphosed from being reactive charities to India's premier philanthropic foundations, striving to transform lives of millions of individuals, through meaningful partnerships with like-minded non-profit organizations, communities, governments (state and central), corporate and foreign funding organizations.

28. Mr. Tata was the Chairman of the company from 1991 till his retirement on December 28, 2012. During his tenure, the group's revenues grew manifold, totaling over 5100 billion in 2011-12. After retirement, Mr. Tata has been conferred the honorary title of Chairman Emeritus of the company, Tata

Industries, Tata Motors, Tata Steel and Tata Chemicals.

29. Mr. Tata was the chairman of major Tata companies, including Tata Motors, Tata Steel, Tata Consultancy Services, Tata Power, Tata Global Beverages, Tata Chemicals, Indian Hotels and Tata Tele servic.es. He is also associated with various organizations in India and overseas. Mr. Tata serves on the board of directors of Alcoa and is also on the international advisory boards of Mitsubishi Corporation, JP Morgan Chase, Rolls-Royce and the Monetary Authority of Singapore. He is the Chairman of the Council of Management of the Tata Institute of Fundamental Research. He also serves on the board of trustees of Cornell University and the University of Southern California.

30. Mr. Tata joined Tata group in the year 1962, after serving in various companies of this group, he was appointed as Director-in-Charge of the National Radio and Electronics Company In 1971. In 1981, he was named as Chairman of Tata Industries; the group's other holding company, where he was responsible for transforming it into a group strategy think tank and a promoter of new ventures in high-technology businesses, The Government of India honored Mr. Tata with its second-highest civilian award, the Padma Vibhjshan, in 2008. He has also received honorary doctorates from several universities in India and overseas.

31. 3rd Respondent namely Mr. Amit Ranbir Chandra has been appointed to the Board of the company on 26.3.2016 as **a** nominee of Tata Trusts under Article 104B of the Articles of Association of the company before joining as Director in this Company. He worked in Bain Capital Equity until before 2008, *as* head of Global Market and Investment Banking and Managing Director at DSP Merrill Lynch Ltd. one of the India's leading investment Bank. He also worked in social sectors for nearly 15 years and he has the privilege of serving many NGOs, now divided his time between corporate world and social sector. When he was appointed, his nomination was heartily accepted by Mr. Cyrus.

32. 4th Respondent namely Mr. Ishaat Hussain, Director of Tata Sons,is one of the few Tata veterans who worked closely with four chairmen during his 36-year tenure at the group — JRD Tata, Ratan Tata, Cyrus Mistry and M Chandrasekaran. He said "Every operating system has hardware and software. In Tata group, software is ethics and values and hardware is the people. So whatever be the change, Tata principles cannot change." He retired after attaining 70 years by 2nd September 2017.

33. 5th Respondent namely Mr. Ajay Gopikisan Pirarnal joined the Board of the company as a Non-Executive Director **in** August, 2016. He leads Pirarnal Group, a conglomerate with a diversified business interest across pharmaceuticals, financial institution, information services, real estate and glass. He is also the Chairman of Shriram Capital, the holding company for financial services and insurance entities of Shriram Group. He has been associated with various organizations, namely as Chairman of Board of Governors of Indian Institute of Technology, Indore, Board Member of Pratam (largest NGO in primary education), a member of the Board of Deans Advisors at the Howard School in Business at Boston, Member of Central Board of State Bank of India and member of Alternative Investment Policy Advisory Committee constituted by SEBI, member of the National Council of Confederation of Indian Industry and the member of the Hon'ble Prime Minister Council for Trade and Industry and Board of Trade constituted by ministry and the member of Hon'ble Prime Minister task force on pharmaceuticals and knowledge based industry.

34. 6th Respondent namely Mr. Venu Srinivasan is a director on the board of Tata Sons. He is the chairman of Sundaram-Clayton and TVS Motor Company, one of the largest two-wheeler manufacturers in India. Mr. Srinivasan has an Engineering Degree from the College of Engineering, Chennai, and a Master's Degree in Management from Purdue University, USA. In recognition of his contribution to management, he was conferred with a Doctor of Management degree by his alma mater, Purdue University, in 2014. He has held various important positions in the Indian industry

35. 7th Respondent namely, Dr. Nitin Nohria is a non¬ executive director of Tata Sons. He is the George F Baker Professor of Administration and the Dean of the faculty at Harvard Business School (HBS). He became the tenth Dean of Harvard Business School on July 1, 2010. He previously served as Co-chair of the Leadership Initiative, the Senior Associate Dean of Faculty Development and the Head of the Organisational Behaviour unit. He has taught courses across Harvard Business School's MBA, PhD, and executive education programmes. His intellectual interests centre on human motivation, leadership, corporate transformation and accountability, and sustainable economic and human performance. He is the co-author or co-editor of 16 books. He was a visiting faculty member at the London Business School in 1996.

36. 8th Respondent namely, Mr. Ranendra Sen, also known as Ronen, is an Independent director on the board of Tata Sons. He has also served on the board of Tata Motors as a non-executive independent director from 2010 to 2012. Mr. Sen was India's Ambassador to the United States from 2004 to 2009. He was also India's Ambassador to Mexico (1991-92), to Russia (1992-98), and Germany (1998-2002), and served as High Commissioner to the United Kingdom (2002-04). From 1986 to 1991, he was Foreign and Defence Policy Advisor to successive Prime Ministers and had several assignments as special envoy of the Prime Minister for meetings with Heads of State or Government.

37. 9th Respondent namely, Mr. Vijay Singh, a retired IAS officer of Madhya Pradesh cadre (1970 batch), is a nonexecutive director of Tata Sons. He has handled several important assignments both in Madhya Pradesh and at the Centre during his 37-year career, At the Centre, the positions he held included Director, Department of Culture; Joint Secretary and Financial Adviser in the Ministry of Health; Additional Secretary and Financial Adviser in the Ministry of Chemicals and Fertilisers; and Additional Secretary in the Ministry of Information and Broadcasting. He became Chief Secretary of the Madhya Pradesh government in October 2004 and served there until January 2006. Thereafter, he served as Secretary to the Government of India in the Department of AYUSH and later in the Department of Road Transport and Highways, before becoming Defence Secretary in August 2007, He served as a Member of the Union Public Service Commission until April 2013.

38. 10th Respondent namely, Ms. Farida Dara Khambata is a director on the board of Tata Sons.

39. 11th Respondent namely, Mr. Cyrus Pallonjl Mistry, aged 48, was made the Chairman of the company in December 2012 after its previous Chairman, Ratan Tata, formally retired, He was the sixth chairman of the group and the only the second chairman who did not carry the Tata name, after Nowroji Saklatwala. Before this, he was the Managing Director of the Shapoorji Pallonji Group. He was also on the board of Tata Sons. He is the youngest son of construction tycoon Pallonji Mistry, who also owns a significant stake in the group. He is a graduate of civil engineering from Imperial College of London, and has a Master of Science in Management from the London Business School, He was removed as the Chairman of Tata Sons in October, 2016.

40. 12th Respondent namely, Mr. Ralf Speth joined the board of Tata Sons as an Additional Director on October 25, 2016. He is also the Chief Executive Officer of Jaguar Land Rover, which has seen a remarkable turnaround since he took charge on February 18, 2010. Following a Degree in Economics Engineering from Rosenheim University, Germany, he earned 3 Doctorate in Engineering. He is also an Industrial Professor at the University of Warwick. In the course of his career, he worked as a business consultant for a number of years before joining BMW in 1930. He moved to Ford's Premier Automotive Group when BMW sold Land Rover to Ford in 2000. After a stint as Head of Global Operations at the German International Industrial Gases and Engineering Company Linde Group, he returned to Jaguar Land Rover when the Tata group acquired the company.

41. 13th Respondent Mr. N. Chandrasekaran, aged 53, is Chairman of the board of Tata Sons, the holding company and promoter of more than 100 Tata operating companies with aggregate annual

revenues of more than US S100 billion. He joined the board of Tata Sons in October 2016 and was appointed Chairman in January 2017.

42. 14th Respondent namely, Mr. Noshir. A. Soonawala (at some places referred as **"Noshir"** and at some places as **"Soonawala",** a Commerce Graduate from the University of Bombay and a Chartered Accountant from the Institute of Chartered Accountants of India, serves as Member of Group Corporate Centre at The Tata Group, Deputy Chairman of Tata Tea Ltd. and Vice Chairman of Tata Sons Limited. He served as Finance Director of Tata Sons Limited from 1968 to June 2000. Having worked with the ICICI, the World Bank and the International Finance Corporation, Washington, Mr. Soonawala has wide exposure in the field of Finance, He has 40 years' experience of financial management and business management. He started his career as a Senior Project Officer (finance) with ICICI and was deputed to the Development Banks in Ghana and Nigeria to assist and advise them on their organization and methods of project appraisal and project financing and in 1965 through the World Bank, to assist development banks in Africa. He also serves as a Member and Trustee of several trusts such as the Sir Ratan Tata Trust, Bai Hirabai J, N, Tata Navsari Charitable Institution, Mavajbai Ratan Tata Trust, J. R. D. Tata Trust, R. D. Tata Trust, Sir Dorabji Tata Trust and the Sarvajanik Seva Trust.

43. 15th Respondent namely, J.N. Tata: Trustee of Sir Ratan Tata Trust.

44. 16th Respondent namely, Mr. K.B. Dadiseth, aged 73, Mr. Dadiseth serves as a Trustee of the Ratan Tata Trust and also serves as an independent director on the boards of Britannia Industries Limited, Piramal Healthcare Limited, Siemens Limited, The Indian Hotels Company Limited and Godrej Properties Limited. He is also on the boards of ICICI Prudential Life Insurance, ICICI Prudential Asset Management Trust and Prudential Pic, UK.

45. 17th Respondent namely, Mr. R.K. Krishnakumar, also known as KK, serves as a Senior Member of Tata Administrative Service where he joined in 1963 having received a Master's degree from the Presidency College, University of Madras. His graduate studies were at Loyola College, Chennai. He is associated with the tea industry and the Tata Group for over 40 years. He served as the Member of Group Corporate Centre at Tata Sons Limited. He joined as an MD in Indian Hotels Co. Ltd. in 1997 and continued till 2002. Thereafter, he was appointed as a member of the Board of Directors to Tata Sons, A year later, he retired from the Board and went back to Indian Hotels Company and acquired the position of vice chairman and the managing director, and stayed on the job till 2007. Mr. Kumar served as Vice Chairman of Taj Hotels Resorts and Palaces of the Tata Group. Mr. Kumar served as a Non-Executive Non Independent Director of Tata Global Beverages Limited. He Joined the Sir Ratan Tata Trust and Sir Dorabji tata Trust in 2007 but continued to sit in Board of Directors of Tata Sons, till he retired from the board on 18 July 2013, on reaching the age of 75.

46. 18th Respondent namely, Mr. S, K. Bharucha, is a Trustee of Sir Ratan Tata Trust and served as Director of the Associated Building Co. Ltd.

47. 19th **Respondent namely,** Mr. N.M, **Munjee** Trustee of Sir Ratan Tata Trust.

48. 20th Respondent namely, Mr. R, Venkataramanan is the Managing Trustee of the Sir Dorabji Tata Trust and responsible for management and oversight of ail the Tata Trusts, He is a Science Graduate and did MBA from Satya Sai University, He is also a Law Graduate of Mumbai University. Furthermore, he has done Advanced management Programme from Harvard Business School. For several years, he was Executive Assistant tc Mr. Ratan Tata, the former Chairman of the Tata group, Prior to his association with Mr. Tata, Venkat was Head of Business Support at the Qatar Foundation, a non-profit based in Doha. He had also worked in Videsh Sanchar Nigam Limited, Mumbai (VSNL), now known as Tata Communications and the Gujarat State Finance Corporation based in Ahmedabad. He has also been a Member of the Board of Air Asia India Private Limited.

49. 21st Respondent namely, Dr. Amrita Patel, Trustee of Sir Dorabji Tata Trust,

50. 22nd Respondent namely, Mr. V. R. Mehta, Trustee of Sir Dorabji Tata Trust, an Honors degree holder in Engineering, aged 30 years, was an Independent Director on the board of Tata Sons for five consecutive years for a term up to 31st March, 2019, presently he is a Trustee of Sir Dorabji Tata Trust.

51. 23rd Respondent namely, Mr. F.N. Subedar, Chief Operating Officer & Company Secretary of Tata Sons Ltd.

52. Mr. Bharat Vasani was Generaf Counsel of Tata Group; he worked as one of the directors of AirAsia India Ltd. (Tata Group Company) as well. His name crops up many a times in relation to Air Asia issue.

53. Mr. Mehli Mistry: Mehlirs and Cyrus' mothers are sisters and Mehii's and Cyrus' fathers were first cousins. M. Pallonji Co Pvt Ltd. (MPCPL) and other companies are run by Mr. Mehli Mistry.

54. Lord Sushanta Kumar Bhattacharyya is a British-Indian Engineer, educator and government advisor. In 1980, he became Professor of Manufacturing Systems at the University of Warwick and founded the Warwick Manufacturing Group. In 2004, he was made a life peer and became a member of the House of Lords.

55. Mr. Sivasankaran is the owner of Sterling Infotech Limited and other group companies of Siva Group.

56. The Petitioners' main grievance is Articles of Association, bleeding of Corus acquisition and overpriced take over, Doomed Mano car project, R2's relationship with Siva, DoCoMo Arbitration, unjust investment of Mr. Tata at the cost of the company, aviation industry misadventures, removal of Mr. Cyrus as Chairman of the company, loss to the company in purchase of shares of Tata Motors which are as follows:

Company Petition averments

57. The Petitioners' submit that in the year 2010, while selection committee of the company scouting for a person for holding the post of Chairman as replacement to Mr. Tata, Mr. Bhattacharya, close friend of Mr. Tata requested Mr. Cyrus to chair the Board of the company, initially according to the petitioners, Mr. Cyrus refused the offer, finally when selection committee, despite interviewing several global leaders, was unable to locate a suitable candidate, Mr. Cyrus was again asked to reconsider the offer made by the Selection Committee, Of course Mr. Cyrus was also one of the members of that Selection Committee. On being asked once again to take up the assignment, Mr. Cyrus being assured by Mr. Tata, the petitioners say, he would be given freehand; he had accepted the offer to become Chairman in the interest of Tata Group, Finally, he resumed office as Chairman of the company in December, 2012, By the time resumed office, Articles of Association contained a right in favor of the Trustees of Tata Trust to nominate l/3rd of directors on the Board of the company. Soon thereafter, another change happened in the Articles of Association to ensure that certain decisions relating to operating companies of Tata Group were mandatorily to be placed before the Board of the company,, by these changes, the Articles of Association became a device for superintendence and control of the company by Mr. Tata and Mr. Soonawala, such kind of superintendence ultimately reduced nominee directors of the Trust on the Board of the company as agents to these two, and by virtue of this interference, they failed discharging their fiduciary duties as directors of the company. Under the Article 104, the trustees of the Trust are entitled to nominate three Trustee Nominated Directors; under Article 121, all decisions of the Board of Directors of the company would need affirmative consent of majority of the Trusts Nominated Directors, Under Article 121-A, such decisions have to be mandatorily brought to the Board of Directors of the company, once it comes to the company board, the Trusts Nominated Directors being majority, by using Article 121, they could call shots. By this arrangement, Trusts Nominated Directors started overruling the entire Board of Directors.

The Petitioners submit there has been another restriction under Article 86 saying so long as the Tata trusts collectively hold at least 40% of the paid up capital of the company, no quorum shall be constituted in the General meeting of the company unless one authorized representative jointly nominated by Tata Trusts present in such meeting. The petitioners say, as if it is not enough, another restriction has been imposed with a clause saying, so long as Tata Trusts hold aggregate of 40% of paid up capital, Tata Trusts shall have the right to nominate *l/3rd* of the prevailing member of directors on the Board. In Article 118, it has been provided that so long as Tata Trusts collectively hold at least 40% of the paid up equity, the selection committee shall be constituted to recommend a person as Chairman of the Board of the company and such person would be appointed as Chairman by the Board. The process that is followed for the selection shall be repeated when removal of such chairman is contemplated by the board. Article 121 provides that unless affirmative vote of majority of directors appointed by Tata Trusts under Article 104-B voted in favor of such person, he cannot become Chairman of the company.

58. Main grievance of the petitioners is, over a period of time, Tata Trusts Directors have become handmaiden of Mr. Tata and his lieutenant Mr. Soonawala, making them so, they have become "Super Board". The petitioners submit that the Articles of Association has become a device for superintendence and control of the company by Mr. Tata and Mr. Soonawala. They submit that under Article 104, the Trustees of the Trust are entitled to nominate three Trusts Nominee Directors, under Article 121, all decisions would need the affirmative vote of the majority of directors appointed pursuant to Article 104-B (i.e. Trust Nominee Directors), on the top of it, under Article 121-A, that every decision that has been proposed in Tata Companies shall be resolved upon by the Board of Directors wherever the company holds 20% or more of the paid up share capital in the respective company.

59. The Petitioners submit that arranging such a mechanism that the Trustee Nominee Directors could overrule the entire Board of Directors with their affirmative vote and by which, Mr. Tata and Mr. Soonawala could control the Trustee Nominee Directors in getting everything done as per their wish suppressing the minority shareholders, i.e. the Petitioners.

60. In Article 86, it has been set out that so long as Tata Trusts collectively hold 40% of the paid up capital of the company, no quorum shall be constituted in General Meeting of the company, unless at least one authorized representative jointly nominated by Tata Trust is present in such meeting. Likewise, under Article 104-B also, it has been set out that as long as the Trusts collectively hold 40% of the paid up capital of the company, the Sir Dorabji Tata Trust and Sir Ratan Tata Trust, acting jointly shall have right to nominate l/3rd of the Directors on the board as also to remove any person so appointed and in his place to appoint another person as Director, in furtherance of it, under Article 118, it is set out that so long as Tata trust collectively hold at feast 40% of the paid up equity capital, for selecting Executive Chairman, shall be constituted to recommend the appointment of Chairman on the Board and the Board may appoint such recommended person as Chairman to the Board, The said Article also sets out the constitution of the Selection Committee and the quorum for meetings for the selection. According to the Petitioners, the same Article 118 reiterates that the procedure folfowed for section and appointment of chairman shall be followed even for removal of the incumbent Chairman as well.

61. Though these Articles of Association are meant for to exercise judicially and in the interest of all the shareholders, by seeing the recent conduct of especially Mr. Tata, Trustees of Tata Trusts or its nominee directors, of late, the petitioners submit, they realized that the answering respondents started acting as per Mr. Tata's bidding, the example they say is, in one board meeting of the company dated 30.06.2016, the two nominee directors of the company i.e. Mr. Vijay Singh (R9) and Mr. Nitin Nohria (R7) left the meeting for approximately one hour, keeping other members waiting, to seek instructions from Mr. Tata on the issues being in discussion at the meeting. The Trustees by using right under Article 121-A, started dictating terms in respect to other individual Tata companies such as Air Asia India because Mr. Tata has special interest and keenness for the aviation sector, these two Mr. Tata and Mr. Soonawala indeed

penetrated into seeking details of day-to-day business of listed Tata group companies. The Petitioners submit that these Trustee nominee directors are beholder to the trustees of the Tata Trusts and not to the company, not in the interests of the company or the Petitioners or lacs of public shareholders of various other Tata companies, whose actions continue to be effected by the actions and inactions of the trustees of the Tata Trusts and the nominee directors of the Tata Trusts. The petitioners submit that the unbridled power in the hands of these nominee directors has become a big concern to every stakeholder of the company.

62. In view of the reasons mentioned above, they say,, it is imperative that Articles 86, 104(B), 118, 121 and 121(A) be struck off in entirety, as to Article 124 is concerned, they say the following portion of the said Articte to be deleted *"Any committee empowered to decide on matters which otherwise the Board is authorized to decide shall have as its member at feast one director appointed pursuant to Article 104(B). The provision relating to quorum and the manner in which matter will he decided contained Articles 115 and 121 respectively shall apply mutatis mutandis to the proceedings of the committee"*.

63. Apart from assailing vires of the Articles mentioned above, these petitioners assail some other issues holding out as legacy hotspots. As the Petitioners pleaded the issues item-wise, the same are hereby paraphrased as below;

64. Overpriced and bleeding Corus acquisition; The Company is the promoter of Tata Steel Ltd, (TSL) holding 31.35% of its paid up equity capital, with that right, in the year 2007, Mr. Tata led the purchase by TSL of Corus Group PLC (Corus) for a sum in excess of USD 12 billion at a substantial premium, the value of it was more than *33%* of its original offer price, by which, the shares of Tata Steel Ltd, on Indian Exchanges came crashing down, because the transaction was not in the best interest of Tata group. Mr. Tata abused the power vested with him as Chairman of Tata group in acquiring Corus at heavily inflated price leading to blockage of funds of the TSL. By doing so, TSL required to infuse substantial funds in the Corus which has plants in UK and Netherlands. Post to the aforesaid investment, the plants in Netherlands were fairly successful, however, UK plant continued to do badly. When bleeding in Tata Steel UK increasing, in the beginning of 2016, Mr. Cyrus being the Chairman of The company initiated discussion with UK government, the Pension Trustees, the Pension Regulators and the Labor Unions to restructure the operations of the Tata Steel UK by holding discussion with ThyssenKrupp (Thyssen) to merge the whole of Tata Steel Europe into Thyssen, Mr. Tata was against this decision of restructuring, because Mr. Cyrus trying to merge this Tata Steel Europe into Thyssen did not go well to Mr. Tata, it has become one of the additional reasons for the unceremonious removal of Mr. Cyrus as Chairman of The company.

65. Doomed Nano Car Project: In the year 2007-08, Mr. Tata as chairman of The company made a public promise that Tata motors would produce a car costing Rs. 1 Lakh or less, in pursuance thereof, land was acquired in the state of West Bengal, when it failed to set up project there, it was moved to state of Gujarat with a capacity to manufacture 2,50,000 cars per year, but there also having Tata Motors failed to penetrate Nano into the market, now the demand for Nano cars have come down to 3,000 cars per year, but the car cost has gone above Rs. 2 Lakh, whereas sale price of the car remained less than two lakh rupees, causing loss of Rs. 1,000crores in this project. Because of this project, once profitable Tata Motors has slipped into losses hitting the dividend pay-out that comes to the Petitioners from the company which gets from Tata Motors. For Nano project has become a liability, the petitioners submit, it should be shut down but emotional reasons involving Mr. Tata in respect to this project, the decision to shut down this project has not yet been taken.

66. The Petitioners have learnt from e-mail of Mr. Cyrus that Nano Gliders were planned to be supplied to an entity namely Jayem Auto that makes electric cars in which Mr. Tata in his personal capacity holds financial stake, which is in conflict of interest.

67. Mr. Tata's Relationship with Siva: After Mr. Cyrus became the Executive Chairman of the

company, he gradually learnt that Siva owning Sterling Infotech Ltd. (Sterling) entered into various dealings with the company because of the patronage he had from the erstwhile Chairman Mr. Tata, causing huge losses not only to the company but also to some of its group companies. On 23.12.2005, a term sheet was entered into between Tata Teleservices Ltd, (TTSL) and Sterling offering 60 million equity shares of TTSL having a face value of Rs. 10 each at a discounted rate of Rs. 17 per share and 460 million share warrants carrying a right to subscribe one equity share face value of Rs. 10 for the price of only Rs. 17, this term sheet was subsequently followed by share subscription agreement dated 24.02.2006 between TTSL and Sterling, by which, Sterling received preferential allotment of 520 million equity shares at a through away price of only Rs. 834crores as against the shares issued to a Singapore owned company called Temasek Holdings @ Rs. 26 per share. Pursuant to the share subscription agreement, Sterling paid a sum of Rs. 782crores and converted warrants to get a total of 520 million equity shares at the price of Rs. 17 per equity share. By this price difference in between the shares issued to Siva through Sterling and the shares issued to Temasek @ Rs. 26 per share, the difference of windfall that came to Siva was around Rs. 468crores. When Siva himself was on record stating that he was given special treatment owing to the relationship with Tata, it is self-evident to say that Mr. Tata provided special treatment to Mr. Siva.

68. Sometime in November, 2008, NTT DoCoMo, a Japanese telecom company invested 26% in the equity of TTSL comprising primary equity to the extent of 20% and secondary purchase of 6% by way of an offer, taking it as an advantage, Siva caused Sterling (Siva company) to sell 20.74 million shares to DoCoMo at the rate of Rs. 117.81 per share (i.e. a profit of more than Rs. 100 per share) thereby amassing a huge profit to the tune of almost Rs. 209crores in less than three years. Indeed, this fact has been admitted by Siva in the *aide memoire* to his letter dated *3rC* October, 2013 addressed to Mr. Cyrus. This sale by Sterling of 20.74 million shares under the secondary purchase was pursuant to an Agreement with the company that Sterling would, *inter alia*, proportionately participate in making good any indemnities being provided by the company and/or TTSL to DoCoMo or any losses arising out of the put option granted to DoCoMo. This understanding was recorded in the letter dated 2rd December, 2008 addressed by the company to Sterling as also by way of an Inter-se Agreement dated 13th December, 2008 entered into between Sterling, Siva, the company and TTSL. Another startling fact is that TTSL, under the influence of Mr. Tata not only offered Sterling preferential allotment of shares at throw away price but also the company financed the entire consideration paid by Sterling towards the shares by taking a loan of ?650crores from Standard Chartered Bank under the guarantee given by the company on 24.02.2006,as to remaining Rs. 132crores out of Rs. 782crores shown as paid by Sterling provided by a company known as Kalimathi Investment Pvt Ltd (in short "Kalimathi") a subsidiary of Tata Steel Ltd. by way of temporary inter corporate bridge loan to Sterling to facilitate it with funds for allotment of shares until the monies due to Sterling under a loan from IDBI Bank were disbursed in March 2006. To prove it further, the Petitioners stated that in the letter dated 3.10.2013 Mr. Tata written to Mr. Cyrus reflecting that Mr. Tata pushed it further to accommodate Siva even after his retirement as Chairman of The company,

69. DoCoMo Arbitration: On DoCoMo initiated arbitral proceedings against TTSL by exercising put option, an award was passed for an amount of Rs. 8,450crores against TTSL, when this award was taken to Hon'ble High Court of Delhi, the company was directed to deposit entire award sum on behalf of all the parties including Siva whose proportionate share is around Rs.694crores, such being the situation, in the Board Meeting dated 15.9.2016 Mr. Cyrus apprised the Board that Sterling was unwilling to contribute its proportionate share in the award amount, and obtained approval of the Board to initiate legal proceedings against Siva and Sterling for recovery of the said amount, it happened on 15,9.2016, to the surprise of Mr. Cyrus, on 19.9.2016, the company, TTSL and DoCoMo received a legal notice from Siva as a counter blast to the decision taken in the Board Meeting dated 15.9.2016. The point the Petitioners highlighted here is Siva would not have come to know of Board decision in the meeting held on 15.9.2016, had it not been informed by somebody from inside to Siva incidentally making him to put the company on notice about the proportionate payment to be made to the award amount.

70. In addition to the above benefit, the Petitioners verily beiieve that an amount of approx. Rs. 600crores have been paid to Siva's companies by TTSL and its subsidiaries under various contracts purportedly for procuring services and vendor management for TTSL and its subsidiaries.

71. Unjust Enrichment at the cost of the company: Colaba Tenancy Flat - The allegation is that though Mr. Tata, who resided in the flat since 1968, had no ownership rights over the said fiat, he sold away tenancy rights of the residential apartment in a building called Baktawar at Colaba for Rs. 3crores in the year 2000 to a company called M. Pallonji & Co. Pvt. Ltd. (MPCPL), owned by Mr. Mehli, a close friend and confidante of Mr. Tata and a distant relative of Mr. Cyrus, because this property was initially belonging to erstwhile Tata company namely Forbes & Forbes Campbell & Co. {FFC). As to this property, there was a letter from FFC providing occupancy rights to Mr. Tata with an understanding between FFC and Father of Mr. Tata i.e. Naval Tata that should Mr. Tata decides to vacate the said flat, the same would revert to FFC so that it could be given to another employee of FFC. Of course, this company is not in existence today but Mr. Tata has no right to create thirty party rights in favor of Mr. Mehli. Because of the closeness between Mr. Mehli and Mr. Tata, Mr. Mehli in the year 1993, helped Mr. Tata to buy an agriculture land at Alibaugh, Maharashtra. In view of these relationship in between them, Tata Power Company Ltd. (Tata Power/TPC) from the year 1993 onwards awarded long term contracts spanning across over 20 years to Mr. Mehli's companies ranged from painting works to dredging, barging and international shipment of coal from TPC and most of them without tenders. Because of getting all these contracts Mr. Mehli's companies' reserve grows from Rs. 3.29crores in the FY 1994-95 to Rs. 917crores by FY 2014-15. Likewise, the Petitioner stated, Mr. Mehli has made so much gain by having several contracts form Tata group companies solely because of the closeness he has with Mr. Tata.

72. Aviation Industry Misadventures: The Petitioners submit that partnership with Air Asia and Telstra Tradep face Pvt. **Ltd.** had already been concluded even before Mr. Cyrus became Executive Chairman, since he incidentally became chairman of the company, for it was thrust upon Mr. Cyrus as fait accompli, the deal was signed by Mr. Cyrus, the petitioners submit that when forensic investigation was carried out by Deloitte, it was revealed that fraudulent transactions up to Rs. 22crores were carried out involving non-existent parties in India and Singapore, Mr. Venkataraman being an Executive Trustee, on the Board of Air Asia, he was involved at every juncture of Air Asia deal, therefore he attempted to brush this transaction under the carpet as being non-material. The petitioners have further alleged that the aforementioned Rs. 22crores fraudulent transaction was routed through hawala transaction to avoid coming under regulatory scanner. The Petitioners submit that *these dealings by the company at the behest of Mr. Ratan Tata involved transactions with one Mr. Ha mid Reza Maiakotipour who has been classified as "Suspected and UN - Sanctioned Alleged Global Terrorist" by the Government of the United States of America. The Petitioners believe that details of the dealings of Air Asia Ltd with such third parties is contained in the Forensic Report issued by Deloitte. Hence, acting upon the instructions of Mr. Tata, Tata Croup in its dealings with Air Asia have indirectly been financers of terrorism and Mr. Tata$_f$ by his acts, has caused irreparable harm to the age-old image of the Tata Group in addition to breaching the trust of not only the Shareholders of the Tata Group but also its employees. The Petitioners crave leave to refer to and rely upon the forensic report of Deioitte when produced.* The Petitioners allege that Mr. Venkatararnan has been trying to scuttle the probe in respect to these transactions for him being the potential beneficiary of the pay-out of Rs. 22crores. The Petitioners further submit that the summary of the forensic report of Deioitte was indeed scheduled to be placed before the Board of the company in its meeting held on 24.10.2016, however it was placed before the board only in the meeting held in November 2016, Despite there is a report concluding that Air Asia had financed the global terrorist Mr. Hamid Raza Malakotipour, the board of the company further funding Air Asia evidencing that current board of the company, under the influence of Mr. Tata, is incapable of taking right decisions. It has also been said that Mr. Cyrus was also forced to accept another fait accompli in the form of joint venture between the company and Singapore Airlines Ltd. for setting up another airline. Because it would not be

viable to enter into two separate ventures in the aviation industry specially when aviation industry as a whole running in huge losses. They say it is a fact that both the aforesaid airlines venture already incurred expenditure far in excess of what was originally budgeted; therefore, these ventures are not in the interest of the company and its stakeholders.

73. Removal of Mr. Cyrus as Executive Chairman of the company; The Petitioners submit that Mr. Cyrus was removed as Executive Chairman of the company in the board meeting held on 24.10.2016 without putting him to prior notice despite his tenure would allow him to continue as Executive Chairman until 31.03.2017. As it was mentioned above, whenever executive chairman is to be removed, as per Article 118, selection committee shall be constituted as is done for appointment of executive chairman and then to recommend the board for removal of executive chairman, but for his removal, no selection committee was constituted for recommending the removal of Mr. Cyrus and not even proposal for removal was shown as one of the agenda items in the notice given for board meeting to be held on 24.10.2016 except Mr. Tats and Mr. Nitin Nohria, some minutes before the board meeting, asking him to step down as executive chairman, however when he refused to resign as the executive chairman, Mr. Nitin Nohria informed him that he would be sacked by the Board of Directors of the company, in pursuit of it, the board of directors without even asking any explanation from him, removed him as executive chairman, which is a clear act of oppression coupled with mismanagement of the affairs of the company. The purported reason for such removal was, the board of directors had 'lost the confidence" in the leadership of Mr. Cyrus, which is in sharp contrast to the applauding the performance of Mr. Cyrus as recently as 28.6.2016 by the Nomination and Remuneration Committee. In fact, on 28.6.2016, the said committee not only lauded the performance of the executive chairman but also recommended for hike to his remuneration. As to Mr. Cyrus' performance that was so good up to 28,6.2016, has all of sudden become bad leading the directors to remove Mr. Cyrus as Executive Chairman on the footing they lost confidence in him. On hearing such proposal from nominee directors, Mr. Ishaat Hussain and Mrs. Farida Dara Khambata abstained from voting for the removal of Mr. Cyrus, regarding other directors, Mr. Amit Ranbir Chandra, Mr. Ajay Gopal Piramal and Mr. Venu Srinivasan have recently been inducted at the instance of Mr. Tata. These respondents had attended just one board meeting prior to 24.10.2016, while the other three directors are trustee nominee directors doing the bidding of Tata Trustees, who nominated them as nominee directors on the Trust behalf. These nominee directors on the board, instead of discharging their fiduciary duty towards the company and its stakeholders, every time keep projecting the interest of the Trusts and carrying the commands of its Trustee Chairman Mr. Tata and Mr. Soonawala despite knowing that by doing so, they have been flouting the provisions of the Companies Act 2013, In the said meeting, when Mr. Cyrus asked on what basis he was removed, he was informed that he was removed basing on a legal opinion, but no such opinion was placed before the Board, which clearly establishes the nexus between the Trustees of Tata Trusts and the board of directors. In addition to illegal removal of Mr. Cyrus as the executive chairman, so as to facilitate Mr. Tata to come as executive chairman, in the same meeting, age restriction for director was removed. As to the three newly appointed independent directors in the month of August 2016, Amit Ranbir Chandra, Ajay Gopal Kishan Piramal and Venu Srinivasan, they have not undergone any orientation programme to get themselves familiarized with functioning of the company and its group companies. But they were as tools to ensure Mr. Cyrus removed as Executive Chairman. Had they not been impartial, they would have abstained from taking a decision on the performance of Mr. Cyrus. Mr. Amit is the brother-in-law of Mr. Nitin Nohria and they are also on the board of Piramal reality. As to Venu Srinivasan was concerned he was recently inducted to the board of Tata Coffee, whereas his wife Ms, Mallika Srinivasan is an independent director on Tata Global Ltd. and of Tata Steel Ltd,, Ms. Srinivasan also owns multiple dealerships of Tata Motors in South India under the name "Tafereach". On passing through 24.10.2016 episode, it is revealed that in view of Mr. Tata's close relationship with Mr. Siva, Mr. Tata was determined enough to go to any extent including removing of Mr. Cyrus as chairman so as to ensure that no legal action come against Mr. Siva. In addition to it, Sr.

Advocate and spokesperson of the company, Mr. Mohan Parasaran said to the press that a legal opinion was sought qua removal of Mr. Cyrus as executive chairman one month before, around the same time when the board of directors to initiate legal action against Siva, therefore it is evident that decision to initiate legal proceedings against Siva was one of the trigger points for removal of Mr. Cyrus. To save his old friend from litigation, Mr. Tata exerted his influence over the trust directors to ensure the removal of Mr. Cyrus as Executive Chairman.

74. Endorsement by Independent Directors: Initially after removal of Mr. Cyrus, he was supported by many independent directors of Tata Group companies refusing to agree with the unexplained and inexplicable removal of Mr. Cyrus and they stood behind him on his continuing as non-executive Chairman of seven listed Tata Group companies i.e. Indian Hotels Co, Ltd.(IHCL), Tata Chemicals Ltd. (TCL), Tata Steel Ltd. (TSL), Tata Motors Ltd. (Tata Motors/TML), Tata Global Beverage Ltd.(TGBL), Tata Consultancy Services Ltd. (TCS), and Tata Power Co. Ltd. (TPCL), but subsequently, all of them turned their loyalty to Mr. Tata succumbing to the pressure of Mr. Tata.

75. Continued Break-down; In the pressure tactics, the independent director, Mr. Nusli Wadia did not budge to Mr. Tata, therefore he was removed as director of Tata Steel Ltd,, Tata Chemicals Ltd. and Tata Motors Ltd. Being Mr. Tata mind obliterated with the idea of decimating Mr. Cyrus to zero in group companies as well, he had gone to an extent of saying that if Mr. Cyrus was permitted to continue as chairman of any of the group companies, then the company would withdraw the corporate guarantees issued to the group companies.

76. Breach of Insider Trading Regulations: In spite of stringent SEBI (Prohibition of Insider Trading) Regulations 2015 in respect to unpublished price sensitive information, the trustees used to call for unpublished price sensitive information from listed Tata operative companies ignoring the regulations aforementioned. This concern was in fact raised by Mr. Nusli Wadia when Mr. Kumar Bhattacharya made statement before the Parliament in U.K. without having any role or responsibility in Tata Steel Ltd. When Mr. Cyrus tried to eradicate all this kind of mess by proposing Tata operating companies to independently take decisions without looking over their shoulder either at the company or at the trustees of the Tata Trust, for this had not gone well to Mr. Tata, he engineered this palace/board coup. Having seen all these, Mr. Cyrus finally on 19.12.2016 resigned from the boards of TCL, IHCL, TSL and TML. The Petitioners apprehend that Mr. Cyrus would also be removed as director of the company.

77. The directors of the company have not exercised their fiduciary responsibilities for and *or* behalf of the shareholders; the directors have become mere puppets in the hands of Mr. Tata and other trustees of Tata Trusts. The power contained in the Articles of Association of the company is being exercised in malafide manner prejudicial to the interest of the petitioner and public interest considering that several lakhs of shareholders of various Tata operating companies owned and controlled by the company. Various operating decisions have been taken by the company just to pamper the ego of Mr. Tata, attempts are being made to shield the persons responsible for authorizing fraudulent transactions at Air Asia, and attempts are being made to ensure that no legal action is initiated against Siva, who is obliged to pay Rs. 694crores to Tatas. Not only Mr. Tata helped to Siva doling out largess from the company, he has also enabled his another associate, Mr. Mehli to unjustly enrich himself at the cost of the company. Despite all this, the present directors are incapable of protecting the interest of the company and the public shareholders of various Tata group companies. To submit that there is lack of probity and fair conduct from the respondents' side, the petitioners relied upon ***Rajahmundry Electric Supply Corporation Ltd.*** **v.** ***A. Nageshwar Rao,*** **AIR 1956 SC 213** and para 19 from ***S.P. Jain*** **v.** ***Kaiinga Tubes Ltd.,*** **AIR 1965 SCI 535.** By referring those cases and facts of this case, for there being lack of probity from the majority, and the petitioners having lost confidence in seeing Mr. Tata and Mr. Soonawala conducting the affairs of the company prejudicial to the petitioners, it would become a foundation for winding up on just and equitable rule.

78. On the premise of these facts, the petitioners sought for appointment of an administrator to look after day-to-day affairs of the company with such powers as may be necessary to take such decisions and actions in supersession of the existing Board of Directors until new Board is constituted; in the alternative, appointment of a retired Supreme Court Judge as the non¬executive Chairman of the Board of Directors and such number of new independent directors of professional competence, reputation and standing to the Board of Directors of the company, such that these newly appointed directors constitute majority on the Board; restraining Mr. Tata to continue as "Interim Chairman" dealing with affairs of the company, restraining Mr. N.A. Soonawala from interfering in the affairs of the company, directing the company not to issue any securities which results in dilution of the present paid-up equity capital held by the Petitioners, directing the company and other Respondents [except Rll) not to remove Mr. Cyrus as director of the company, not to make any changes to the Articles of the company without leave of this Tribunal, direction to investigate the role of the Trustees of the Tata Trusts in the operations of the company and Tata Group companies as also the functioning of the Board of Directors of the company and Tata Group companies, and prohibiting the Trustees from interfering in the affairs of the company and its Group companies; appointment of an independent auditor to conduct forensic audit and independent investigation into the transactions and dealings of the company with particular regard to all transactions between Mr. C. Sivasankaran and his business entities on one hand, and the company and its Group companies on the other hand, and all transactions involving Mr. Mehli and his associated entities with the company and its Group companies whereby any unjust enrichment generated in favor of any these parties could be recovered from concerned persons, and the loss that has been caused inter alia to the Petitioners and the findings of the audit and investigation should be referred by the Hon'ble Tribunal to the Serious Fraud Investigation Office of the Ministry of Corporate Affairs, Government of India, appointment of an inspector (under applicable law} to Investigate into the breach of the SEBI (Prohibition of Insider Trading) Regulations, 2015, with particular regard to the breach by Mr. Tata and Mr. Soonawala of the obligation not to procure, demand or acquire unpublished price sensitive information and submit a report to this Tribunal such that this Tribunal can pass such further orders as may be necessary to refer it to SFIO, directing Mr. Tata to pay the company the amount of unjust enrichment that has accrued to him on account of surrender of the sub-tenancy of the Bakhtawar flat, along with interest at such rate as this Tribunal may deem fit, from the date on which Mr. Tata was unjustly enriched; for appointment of a forensic auditor to re-investigate the transactions executed by AirAsia India with entities in India and Singapore to ascertain whether any proceeds have been diverted to any secret bank account of Mr. Venkatraman and to submit a report to this Hon'ble Tribunal; such that this Hon'ble Tribunal can pass such further orders as may be necessary so as to recover from Mr. Venkatraman, the loss that has been caused inter alia to the Petitioners; and such findings of the audit should be referred by the Hon'ble Tribunal to the Serious Fraud Investigation Office of the Ministry of Corporate Affairs, Government of India; for striking of Articles numbered 86, 104(B), 118, 121 and 121A in their entirety and in so far as Article 124 of the Articles of Association of the company is concerned, the following portion of the said article, which is offending and/or repugnant, should be deleted: *"...Any committee empowered to decide on matters which otherwise the Board is authorized to decide shall have as its member at least one director appointed pursuant to Article 104B. The Provisions relating to quorum and the manner in which matters will be decided contained in Articles 115 and 121 respectively shall apply mutatis mutandis to the proceedings of the committee."* from the Articles of Association of the company and substitute these articles with such articles as the nature and circumstances of this case may require; for a direction to the Respondents (excluding Respondent Nos. 4, 10 & 11) to bring back into the company, the funds used for acquiring shares of Tata Motors; for restraining the company from initiating any new line of business or acquiring any new business in existing lines without leave of this Tribunal and that too only after the matter is discussed and decided upon by the Board of Directors of the company without applying Article 121 of the Articles of Association; restraining the trustees of the Trusts from interfering in the affairs of the company and in the various companies that form part of the Tata Group; restraining the existing Selection

Committee from acting any further and/or discharging any functions and a new Selection Committee be appointed, directing that no candidate selected by Selection Committee constituted pursuant to Article 118 of the Articles of Association of the company to be appointed without leave of this Tribunal; directing the company not to demand and/or procure any unpublished price sensitive information from any listed operating companies within the Tata Group; for granting interim and ad-interim reliefs in terms of Prayers (A) to (S) above; and for passing such further orders that this Tribunal may, in the interest of justice, deem necessary for bringing an end to the acts of oppression and mismanagement in the running of the company.

79. The Petitioners' Counsel, while submitting his arguments, fifed a memo on behalf of the Petitioners with regard to the prayers in the Company Petition to restrict prayer (M) the relief as sought under;

(*a*) The necessity of an affirmative vote of the majority of directors nominated by the Trusts, which *are* majority shareholders, be deleted;

(*b*) The Petitioners be entitled to proportionate representation on the Board of Directors of Respondent No.1;

(*c*) The Petitioners be entitled to representation on all committees formed by the Board of Directors of Respondent No.1; and

(*d*) The Articles of Association be amended accordingly.

80. The relief (M) sought in the Company Petition is as follows:

> (M) strike out Articles numbered 86, 104(B), 118, 121 and 121A in their entirety and in so far as Article 124 of the Articles of Association of Respondent No, 1 is concerned, the following portion of the said article, which is offending and/or repugnant, should be deleted: *"..Any committee empowered to decide on matters which otherwise the Board is authorized to decide shall have as its member at least one director appointment pursuant to Article 104B. The Provisions relating to quorum and the manner in which matters will be decided contained in Articles 115 and 121 respectively shall apply mutatis mutandis to the proceedings of the committee."* from the Articles of Association of Respondent No. 1; and substitute these articles with such articles as the nature and circumstances of this case may require;

81. The reliefs not pressed in the memo are (A) supersession of the Board of Directors, appointment of an Administrator, (B) appointment of a Retired Supreme Court Judge as the Non-Executive Chairman of the Board of Directors, (C) For restraining the interim Chairman (Mr. Tata) from attending any of the Board Meetings of the company or sub-committee thereof and/or interfering in the affairs of the company.

82. The reliefs not pressed for being infructuous are (F) for direction to the company and other answering Respondents not to remove Mr. Cyrus as Director from the Board of the company, (Q) for restraining the existing Selection Committee from acting any further and/or discharging any functions and a new Selection Committee be appointed, (R) for direction that no candidate selected by the Selection Committee constituted pursuant to Article 118 of the Articles of Association of the company to be appointed without leave of this Tribunal.

83. The reliefs in this case have been decided in pursuant to the memo filed on behalf of the Petitioners by the Counsel appearing on behalf of the Petitioners.

84. Mr. Cyrus, who is sailing along with the Petitioners, since having filed reply to the petition, I believe it is contextual to place his pleadings along with company petition; by paraphrasing them. Though most of the pleadings in his reply are overlapping with the pleadings of the petitioners, overall picture of the reply is placed here giving in detail wherever it has not been mentioned in the CP.

85. Mr. Cyrus at the outset, tried to disown the actions prior to 2012 stating that ever since he was appointed as non-executive member of the board of directors in the year 2006, he was simply led by Mr. Tata, therefore, he did not have full knowledge or depth of the oppressive conduct and widespread mismanagement of the affairs of the company and its group companies. He says that the oppression and mismanagement, the petitioners complained of is current and real. As long as he continued as executive chairman, according to him, he diligently discharged his duties addressing intuitive and unscientific management, imprudent decision making and oppressive conduct that he learnt of in his capacity as executive chairman. He says his efforts at remedying the situation met with resistance, initially in polite terms and over time, the rising degree of resentment, eventually leading to events of October 24, 2016 i.e. removal of Mr. Cyrus as Executive Chairman. It Is being said that till date no explanation has been given as to why he was removed, it has become such that the operations of the company are being conducted to sub-serve the whims and fancies of Mr. Tata and Mr. Soonawala using Articles of Association as tools to exert oppression against petitioners and others, he further says, his removal in fact has become a cause of action to interdict oppression and mismanagement in respect to the affairs of the company. He says that soon after his removal many of the remedies initiated by Mr. Cyrus have been stalled and some actions been triggered such as releasing more funds to Air Asia Ltd, without ascertaining the depth of the fraud discovered pursuant to forensic audit, preempting negotiations in respect to restructuring in relation to Tata Steel investment in the UK and Europe, no action for recovery of Rs. 694crores due from Mr. Siva on account of put option exercised by NTT DoCoMo, whereas Tata group companies have been made to cough up their shares, non-implementation of decision of the board of directors of the company to cut losses in respect to Mano project, jettisoning the corporate governance guidelines Mr. Cyrus proposed in respect to communication between listed Tata group companies, the company, the Trusts in particular, Mr. Tata and Mr. Soonawala.

86. He submits that essence of this proceeding is not about seeking retribution to his being illegally removed from the position of executive chairman but to ensure that the company does the right things for the right reasons with a conscious awareness that every step the company takes has serious consequences for a wide range section of the society within and outside the country.

87. He says, he joined as executive chairman believing that interference from Mr. Tata would be with a large heart, to fulfill the same he says he tried his level best to accommodate the requests of Mr. Tata considering his longstanding past tenure as chairman of the company. Initially it went well but over a period of time; Mr. Tata started getting offended if at all any information mistakenly missed out from his sight. To which, he has given an example saying Mr. Tata was keen that Tata Motors entered into discussion with a party engaged in water injection technology with whom Mr. Tata felt Tata Motors must have a tie-up. When the terms and conditions of the draft proposed by the potential counter party were objected by the Company Secretary and Chief Compliance Officer of the Tata Motors, Mr. Tata was offended by this development, Mr. Tata said that if such was the case, he would not come up with any suggestions in future.

88. Mr. Cyrus has submitted that he had to take extra care to treat Mr. Tata and his efforts with utmost respect and seeks to resolve the issues immediately, for which the example given is, on 20.08.2014 Mr. Tata through a letter pointed out that when Tata Trusts started occupying 26th floor of World Trade Centre at Cuffe Parade on signing an agreement with Tata Motors for buying out that premises to the Trusts on deferred payment of over five years, the audit committee of Tata Motors had intervened and wanted interest to be paid on the amount of differed consideration or full payment on signing, Mr. Tata, being offended of this, stated in his letter that if that being the case, Tata Trusts would claim Rs. 1.90crores from Tata Motors for changing their view on a transaction after the Trust had incurred this amount on outfitting the premises, then Mr. Cyrus said, he promptly intervened and resolved the conflict through a letter dated 21.08.2014, since this was not a materia! that should cause disrespect to Mr. Tata, for which, Mr. Tata also

thanked him through his letter dated 22.08.2014.

89. On proposal for a right issue in TML (Tata Motors) in the year 2014, Mr. Cyrus says that he was shocked to receive from Mr. Tata a nasty handwritten letter dated 30.1.2015alleging that there had been no discussion of the issue and the Articles of Association had been breached, according to Mr. Tata, before such an issue was cleared by the underlying operating company (TML) approval of Board of Directors of the company would have to be taken. He says, Mr. Tata threatened that he would *"revert with more precise assessment of the potential breaches, but it may be worthwhile to discuss this when you meet with Noshir (R14- referred as "Soonawala") and me next week",* to which he replied to Mr. Tata through a letter dated 04,02,2015 reminding him that these facts had already been explained to him, along with, he already conveyed to Mr. Tata that there had been no business plan or projection of cash-flow for the company towards such causes, the outflow required for this purpose had in fact being minuted and recorded at a meeting of the company held on 30,09,2013, where in, Mr. Cyrus further apprised him of the need to handle the various issues in the Tata Group and also the need to prepare strategic framework for the entire group.

90. Mr. Cyrus says that Mr. Tata without even being a director on the Board of Directors of the company, he wanted information to be shared with him and Mr. Soonawala, on other hand Mr. Soonawala had the habit of writing letters to him, meticulously taking care to suggest almost every time that he was doing so in his personal capacity and almost always discouraging a reply, he says, both of them used to allege breach of Articles every time they wished to have their way.

91. Against this backdrop, Mr. Cyrus has again repeated that Article 1046 and Article 121 have given unfettered right to the Trustee nominee director to veto any decision that the entire Board of Directors of the company may want to take, because these Articles, every time whenever the company to take some actions, they need to placate the ego of Mr. Tata and Mr. Soonawala by exchange of letters. So to avoid this misunderstanding, there ought to be a clear framework designed between the trustees on the one hand and the management of Tata Trusts on the other hand. He says, with effect from 09-04,2014 (the date of amendment of Article 121), a veto decision could be taken by majority of directors nominated by the Trusts, by this, an affirmative approval of the majority is necessary and it is also necessary that in respect to the matters mentioned under Article 121A shall be brought to the notice of Board of Directors of the company before taking any decision in Tata Group companies, by virtue of these amendments, the interventions from Mr. Tata and Mr. Soonawala became deeper, more incisive, more demanding and seeking to control the affairs of the group companies as well. He says at times it was happening that the Trustee nominee directors, in the board meetings would even communicate the views of Mr. Tata on the contents of the Minutes of Meetings, and blatantly step out of Board Meeting to get instructions from Mr. Tata as to how to act and conduct themselves and communicate decisions. He says that Mr. Tata always wanted matters first be brought to him or the Board of Directors of the company (which would enable the Trustee nominee director to get to know and thereby inform him) before they were taken up by the Boards of Directors of Tata Group operating companies, therefore he says that it would be wholly untenable to state that affairs of the company were conducted without the omnipresent control of Mr. Tata over its operations and thereby over the affairs of the entire Tata Group. He says that the breakdown in governance of the company at the hands of Mr. Tata and Mr. Soonawala came to a flashpoint this year without giving any chance to give way to new thinking and new blood, forgetting they have retired from the company pursuant to retirement policies they themselves had put in place to let in new thought process in the Tata Group; they dug their heels in and create an environment of ambiguity, refusal to let go and tyrannical breakdown of rule of law and its replacement with the rule of men.

92. Mr. Cyrus has alleged Welspun to impress upon this Bench as to how the interference of Mr. Tata and Mr. Soonawala in respect to Welspun transaction has become an impediment in going ahead with Welspun transaction, saying that despite presentation was made to the Board of Directors of the company

in the year 2016 itself on how renewable energy would be a new focus area for the company and thereafter a note was circulated on 31.05.2016 to the Board of Directors of the company sending a copy to Mr. Tata about the proposal to acquire renewable energy of the Welspun group, Mr. Tata and Mr. Soonawala suggested that the transaction must be structured differently, he says that it is also pertinent to mention that Mr. Vijay Singh (R9), Trustee nominee director already appreciated the move initiated by Mr. Cyrus, in respect to this issue, while BM dated 30.6,2016 was in progress, Mr. Nitin Nohria (R7) and Mr. Vijay Singh (R9J repeatedly left the BM in the midcourse to take instructions from Mr. Tata on what stand to take in the transaction, this, Mr. Cyrus feels, is abundantly clear that Mr. Tata was omnipresent and controlling the conduct of the Trusts nominee directors, who in turn had a veto on *every* single decision of the company - it is nothing but abusing the Articles of Association. It is evident even in the minutes of meeting held on 30.6.20l6that they accorded their support after discussing the proposal with Mr. Tata and Mr. Soonawala and those minutes were approved by all the directors including the aforesaid two Trusts nomine directors of the next BM held on 08.08,2016,

93. The point highlighted by Mr. Cyrus is the nominee directors are indeed dependent on the pleasure of Mr. Tata, with this advantage Mr. Tata has been running entire Tata business as he liked without active reference to the Board of Directors of the company.

94. He says that he has to keep working in resolving these allegations and placating the ego of Mr. Tata and Mr. Soonawala, since he has beer illegally removed, Tata companies are exposed to the threat of serious oppressive conduct by these people without any resistance or check on their unbridled intervention into day to day business of them, Mr. Cyrus says that Mr. Tata involved and interfered in the decision taking of the company in the following cases:

(*a*) Potential application for a banking license in the year 2013;

(*b*) Investing in Air Asia India Ltd. in the year 2013;

(*c*) Setting up of Vistara, an airline joint venture with Singapore Airlines in the year 2013;

(*d*) Potential rights issue of shares by Tata Motors in the year 2015;

(*e*) Sale of fertilizers business of Tata Chemicals Ltd. in the year 2016;

(*f*) The purchase of stake of Mr. Arun Bhatia one of the original promoters of Air Asia India Ltd, at a premium in the year 2015;

(*g*) All subsequent hike in financial exposure and ownership in Air Asia India Ltd, in the years 2015 and 2016; including arranging for personal ownership of equity stake by Mr. R. Venkataraman (Respondent No. 20), the Managing Trustee of Tata Trusts;

(*h*) Various decisions relating to Tata Teleservices Ltd. ranging from the dealings with Mr. C. Sivasankaran; put option exercised by NTT DoCoMo in the year 2014; entertaining entreaties from Mr. Sivasankaran and justifying his expectations pressuring Respondent No. 1 on how to handle litigation involving NTT DoCoMo in the year 2016;

(*i*) Refusing to actually litigate against Mr. Sivasankaran's companies etc.;

(*j*) Scenarios under which bidding for spectrum must be done by Tata Teleservices Ltd.;

(*k*) Strategic decisions of Tata Motors Ltd, including demand of specific cost data and other commercially sensitive and unpublished price-sensitive information by Respondent No. 20 directly from officials of Tata Motors Ltd.;

(*l*) Communications with Augusta Westland on the future of the joint venture in the defence industry;

(*m*) Decisions relation to the Piaggio Aero joint venture;

(*n*) Restructuring of Tata Steel's interests in the United Kingdom; and

(*o*) Decisions relating to the Tata Group's investment in Tata Sky Ltd,, a direct-to-home broadcasting company and potential exit including a listing,

95. Mr. Cyrus says that he annexed relevant documents as Exhibit-F(Colly), demonstrating the scale and depth of the involvement and interference of Mr. Tata in the operations of the company. He also says that Mr. Tata, even after retirement, directly engaged with employees and executives of various Tata companies writing to the project team involved in the negotiation to set up Vistara, the airline company i.e. letter dated 04.10.2013. He accuses that Mr. Ranendra Singh, independent director (R8) and Mr. Vijay Singh, Trust nominee director, would regularly demand to meet CEO and Sr. management of various Tata group companies so as to report back on their interactions to Mr. Tata. On which, Mr. Cyrus had detailed various averments saying that Mr. Tata and Mr. Soonawala demanding unpublished price sensitive information of the group companies to them is in violation of Securities Regulations, for which he relied upon Exhibits-H to L. As to Tata Steel in UK and Europe, Mr. Cyrus supports the version of the Petitioners that this business has been unable to be turned around despite all efforts of the inputs to make it viable, at that stage also, he had negotiations with U.K. Government for getting support for this ailing business. When all this in progress, he was illegally removed from the post of Executive Chairman. While Mr. Cyrus was making efforts to revive the business prospects, simultaneously Lord Kumar Bhattacharya in the media of United Kingdom, made a public statement promising that Tata Steel would stay invested in the United Kingdom and creates more jobs in the U.K. This statement of Mr. Lord Bhattacharya under the authority of Mr. Tata and their consequent action indeed demonstrate that the decisions are taken by Mr. Tata and implemented outside the corporate constitutional framework through his aides, which do not serve the best interest of the operating company. He says despite adverse market conditions, substantial support was extended to UK business; still Tata Steel suffered impairment of more than GBP 2 billion (over Rs. 16,500 crores) in last five years alone. Likewise, he repeated the same about Nano project, Jayam Auto, Tata Teleservices (Siva's interest), Mr. Mehli Mistry issue, Aviation Misadventures, and about his removal as Executive Chairman.

96. To prove his performance was good in his tenure, he stated that the company portfolio investment over performed BSE sensitive index by over 5% for the last three years, the profit after tax of Tata group companies grow by 34,6% annually over the past three years, the Tata Brand value has increased by USD 5 billion, without increasing net debt, the Tata Group in the last three years, undertook capital expenditure by approx, USD 25 billion, thereby building product asset to prepare for the future and filing 2000 Tata group patents in the last year alone, which is an increase of nearly 100% from the position three years ago.

97. With this, Mr. Cyrus submits that it is a clear case of oppression and mismanagement against not only the petitioners but also against the company, therefore grant the reliefs as sought by the petitioners.

Reply to the petition on behalf of Tata Sons:

98. The company says that this petition is primarily filed to espouse the cause of Mr. Cyrus to the petitioners to raise the issues of alleged oppression against the petitioners and alleged mismanagement in the company, but in reality, it is nothing but a ruse by Mr. Cyrus to publicly express his displeasure at the loss of his office as executive chairman of the company and also to besmirch the reputation of the Tata group. The business decisions of the operating companies of the Tata group which are now sought to be challenged by the petitioners represent past and concluded transactions, which in any event cannot constitute oppression against the shareholders of the company.

99. This company was founded by Jamsetji N. Tata in the year 1868, now Tata group operates in more than 100 countries, across 6 continents, collectively employing over 6,60,000 people with a mission *'to improve the quality of life of the communities we serve globally, through long term stakeholder value creation based on leadership with the task'* with the revenue of USD 103.51billion. In this company, 65.3% of the issued ordinary share capital is held by Tata trusts, which supports education, health, livelihood generation, art and culture. The Petitioners for the first time acquired shares of the company in the year 1965 holding 18.40% of the paid-up ordinary share capital of the company; and 2.17% of the issued share capital of the company, thereafter in the year 1980, the father of Mr. Cyrus was appointed as a director of the company and continued in such position until his retirement in December 2004.

100. Mr. Tata was appointed as chairman of the company In the year 1991 and continued for about 21 years until his retirement in the year 2012 upon attaining the retirement age of 75 years, and that in his leadership, Tata group witnessed best significant growth and the valuation of the company increased more than 500 times.

101. On 7 August 2006, Mr. Cyrus was appointed as a non¬executive director of the company, in the year 2011 as selection committee constituted in accordance with the articles of association of the company, recommended Mr. Cyrus as the successor of Mr. Tata as chairman of the company. In view of such recommendation, in April 2012, Mr. Cyrus was appointed as executive deputy chairman of the company, then on 18th December 2012, the board of the company decided to re-designate Mr. Cyrus as executive chairman of the company with effect from 29th of December 2012, in the same board meeting, the board decided that Mr. Tata should, as a special and a permanent invitee to the board meetings, continue to receive notices, agenda papers and the minutes of the board meetings, so that Mr. Tata could attend at his choice, any meeting which he would feel appropriate but whereas Mr. Tata clarified that he would no longer be on the board, he would always be available if the directors needed his guidance clarifying that he would like to make a dean break and have no carryover of his role.

102. As to articles are concerned, shareholders of the company passed an unanimous resolution on 13th September 2000 introducing a right to Tata Trusts to jointly nominate *"one-third of the prevailing number of directors on the Board"* so long as the Trusts own and hold in aggregate at least 40% of the paid-up ordinary share capital of the company (Article 1048) and that all *"matters before any meeting of the board which are required to be decided by a majority of the directors shall require the affirmative vote of all the directors appointed pursuant to article 1048 present at the meeting"* (Article 121). This article was subsequently amended by unanimous resolution of the shareholders of the company on April 9, 2014, pursuant to which, the affirmative vote could be exercised by *"majority of directors appointed pursuant to Article 104B present at the meeting"*.

103. It is pertinent to note that Mr. Pallonji Shapoorji Mistry was present at the AGM held in September 2000 and voted in favor of the adoption of the new version of the Articles of Association which included the Articles 104B and 121, along with Articles 36 and 118 that the petitioners asking to be *"struck off in their entirety"*.It is also important to note so far these affirmative voting rights have never been exercised by Tata trusts. Until Mr. Tata retirement as director and chairman of the company, the Trusts and the company had common chairman. For having new chairman on 18th December 2012, Mr. Tata mentioned that *"in future with the chairman of the Trust and the company not likely to be the same individual, it would be desirable to enter into an agreement between the major Trusts and the company to clarify the involvement of Tata Trusts envisaged under Article 121 of the Articles of Association of the company"*. He further referred to *"an illustrative list of items like strategic plan, annual plan and divestments of shareholdings"* and mentioned that *"the trust would be approaching the company in the matter"*. In furtherance of it, there were several rounds of discussions between Mr. Tata and Mr. Cyrus in respect to implementation of the arrangement proposed by Mr. Tata on 18.12.2012 and finally Articles of Association were amended by unanimous resolution passed by the shareholders on 9th April 2014,

pursuant to which Articles 121 and 121B were introduced. Article 121A specified certain items which were required to be resolved upon by the board of directors of the company and such items included the items envisaged by Mr. Tata on 18 December 2012 (i.e., the 5-year strategic plan, annual business plan divestments of shareholdings by the company in other Tata group companies) along with other items. Mr. Cyrus was present in the extraordinary general meeting not only in the capacity of director of the company but also as an authorized representative of several Tata group companies who are shareholders of the company, when article 121A was unanimously resolved to be included in the articles of association in the EGM held on 09.04.2014, the petitioners raised no objection in spite of having due notice of the same.

104. During the tenure of Mr. Cyrus, several disturbing facts emerged in relation to his leadership in respect to capital allocation decisions, slow execution on problems that were identified, which are called as "hot spots", strategic plan and business plan lacked specificity and no meaningful steps to enter new growth businesses, reluctance to embrace the articles of association, growing trust deficit between the Board of Directors and Mr. Cyrus.

105. As to mistrust is concerned, the company says, Mr. Cyrus failed to put into effect the strategy for managing large and complex group such as Tata group, as committed by him in the detailed note of October 2010 tendered by him to the selection committee, it was on that strength, Mr. Cyrus was selected. He was in dearth of proper interface for communication between the trusts, the board of the company and the operating companies, which led to breakdown of communication between three constituents, proving to be detrimental to the interest of the Tata group as a whole. It took at least two years' time to Mr. Cyrus to avoid conflict of interest in between their companies and Tata Group companies.

106. In addition to the above issues, there was an increasing diversion in the functioning of the company and the operating companies, the reason is, Mr. Cyrus in a systematic manner reduced the representation of the company on the Boards of other major Tata Companies. Over a period of time, several directors of the company on the Board of Tata group Companies retired, Exercising the executive power, Mr. Cyrus did not appoint any directors of the company on the Boards of other Tata Companies, *as* was practice in the past. This systemic dilution weakened the bind through which Tata values, ethos, governance principles, group strategies were to be implemented across the Tata Group Companies, In most of the cases, Mr. Cyrus ensured that he was the only director who was common to the company and Tata group companies, effectively making himself the only "channel" between the company and Tata Group Company. Mr. Cyrus' actions deliberately weakening the Tata group structure which was inimical to the company interest, therefore, the mismanagement, if any, it has been perpetrated by Mr. Cyrus not by the Respondents. Despite all these, Mr. Tata personally advised and counselled Mr. Cyrus on several matters when Mr. Cyrus reached out to Mr. Tata for guidance on business related matters in which Mr. Cyrus felt Mr. Tata could provide guidance by virtue of his vast experience and contacts, Mr. Tata in fact stressed Mr. Cyrus that he on his own ought to take decisions, he could only provide advice to him.

107. In respect to the positive comment of Nominations and Remunerations Committee of the company on Mr. Cyrus' performance, the company says, along the fines, the same committee also commented over the relations in between the company and the trusts *"the need for greater clarity on the functioning of the Board of the company in relation to the Tata Trusts, as well as its role vis-a-vis its group companies...."* Therefore, it says that the positive comments of the committee could not be seen in isolation from the remaining text. It further says Mr. Cyrus's leadership was not aligned to the long term goals and targets of the company as a company and under the Tata group as a whole. Mr. Cyrus presented a flawed and incomplete annual business plan, which is being amply described by Mr. Amit Chandra, as *"more of a cash flow statement and needed to include a summary of key business strategy as well as high level micro assumptions that the plan is most sensitive to"*.

108. It is a serious note to see how Mr. Cyrus acted in acquiring Welspun Renewables Energy Ltd. by Tata

Power Renewable Energy Ltd,, a subsidiary of Tata Power company, to which purchase consideration for the transaction was estimated to be approximately in excess of USD 1 billion, because Tata Power has already Rs. 40,000crores debt apart from non-resolution of tariff issue of its Mundra Project. In addition to this problem, Mr. Cyrus, without placing it before the Directors of the company, agreed for such an execution, this was only brought to the notice of Directors of the company on 31.5.2016 informing that Tata Power was in advanced stages of finalization of this acquisition and the definitive agreements were to be signed imminently- He claimed that the note circulated to the Directors of the company is enough requirement under the Articles, despite being aware that the financing structure of this acquisition would necessitate Tata Power to raise debt, approval for which would be required from the Board of directors of the company. In this background, in the Board meeting held on 29th and 30th June, 2016, Dr. Nohria and Mr. Vijay Singh being Trusts Nominee Directors, repeatedly reiterated the view that Welspun Acquisition should have been deliberated at the Board of Directors the company at a much earlier stage (even the funding and rating implications) as opposed to being presented as fait accompli, nonetheless, the Trust Mominee Directors finally approved the financing structure of Welspun Acquisition given that definitive agreements had already been executed and deal had been announced in the public domain.

109. The company submits that having seen many issues like Welspun Acquisition, finally on 24,10.2016 Board of Directors of the company in their collective judgment, replaced Mr. Cyrus as Executive Chairman of the company and Mr. Tata was appointed as Interim Executive Chairman of the company, before this step, Mr. Tata and Dr. Nohria personally spoke to Mr. Cyrus offering him to resign voluntarily but having Mr. Cyrus refused to do so he was removed as Executive Chairman of the company. Immediately on the next day, Mr. Cyrus addressed a vitriolic email to the directors of the company making unsubstantiated and false allegations in relation to the affairs of the company and its group companies leaking to the media despite the email sent by him is marked as 'confidential'. Leaking such mail to the media is nothing but prejudicial action against the company, after some bickering, Mr. Cyrus himself resigned as Chairman from various group companies of Tata. The Petitioners relied upon various internal documentation of the company to which they were not privy, perhaps, Mr. Cyrus would have provided ail these documents forgetting his fiduciary duty to protect the confidentiality of such documents, all that discloses that Mr. Cyrus is nothing but alter ego and directing mind of the Petitioners. While this onslaught going against the company, it received a special notice on 03.01.2017 u/s 169 r/w 100 of the Act from the shareholders of the company seeking removal of Mr. Cyrus as Director of the company.

110. The company submits this Petition speaks nothing about espousing the cause of corporate governance or seeking remedies of oppression and mismanagement of the company, in fact, the Articles of Association against which these Petitioners making hue and cry were unanimously approved either by the father of Mr. Cyrus or by Mr. Cyrus, though amendments have come to these Articles long before, they did never become a problem to these Petitioners until before Mr. Cyrus's removal, now all those past acts have all of sudden become oppressive against the Petitioners from the day he was removed as Executive Chairman.

111. As to historical business decision and investment by the Tata Group, the company says, Tata Steel acquisition of Corus Group plc. for an aggregate consideration of USD 12 billion, is the largest overseas acquisition by Indian corporate, making Tata Steel the world's sixth largest steel producer. The launch of Mano Car by Tata Motors, is a revolutionary aimed at changing the landscape of Indian Passenger car market. Siva group is a Consultant to TTSL as an equity investor. The company re-entered into an aviation business through joint ventures with two of Asia's leading airline carriers in the low cost segment and premium full service business. As to Mr. Mehli is concerned, it has nowhere been said in the Company Petition that Mr. Cyrus was a director on the board of Tata Power from the year 2002 approving many of the transactions, Tata Power entered into with Mr. Mehli. The company submits that all the above issues raked up by the Petitioners were all hit by delay and laches for many of them or almost all of them were

issues in between 1993 and 2008, therefore those issues cannot be issues before this Bench solely because Mr. Cyrus was removed as Executive Chairman. The company submits that this Petition is sponsored by Mr. Cyrus to pursue personal vendetta against Mr. Tata and Mr. Soonawala to adopt a "scorched earth policy" so as to tarnish the reputation of Tata Group on being removed as Chairman of the board of directors of the company and as non¬executive chairman of several Tata group companies.

112. The company submits that the allegations in the petition do not constitute the affairs of the company, which in fact is *a* petition sought to impugn the affairs of public charitable trusts which is not permissible under law, of course, the allegation of violation of Insider Trading Regulation and FEMA Regulations is not triable by this Bench.

113. The company submits that it is weird to hear that Tata Trusts acting detrimental to the interest of the company, if such is the case, Trusts are the first persons to suffer because such action would directly hurt the investments held by the Trusts in the company. These Trusts have been shareholders for the company for almost 80 years, there was not even a single occasion until before filing this petition that the Trusts acted detrimental to the interest of the company. Mr. Tata was the Chairman from the year 1991 to December 2012, in his long innings as Chairman, the revenue of Tata Group increased 46 times reaching to Rs. 4.75 lakh crores in 2011-12 and the rise in net profit claimed 51 times to over Rs. 33,500 crores, the Tata Group market capitalization grew 33 times this period. When he stepped down as Chairman of the company, he was paid glowing tributes by the very same Cyrus and other independent directors because his visionary leadership led the company through many challenges (Exhibit R1/11), Tata Motors transformed from domestic company to complete Tata mobile company with path breaking product such as Tata Indica and Mano (Exhibit R 1/12) taking over of Jaguar Land Rover of UK ultimately becoming profitable and successful company, likewise many achievements were achieved by Mr. Tata taking the company to great heights. When Mr. Pallonji Shapoorji Mistry retired as Director in the year 2004, it is Mr. Tata who made Mr. Cyrus as Director of the company in the year 2006, ever since he came into the company, he was privy to each and every decision taken by the company, which are now called as hotspots and legacy issues, after having acquiesced to alt these deals, now the Petitioners are estopped from assailing those decisions to which Cyrus group was privy either in the position of director or in the position of shareholder, The company submits that these petitioners have received dividend of Rs. 872crores from the year 1991-20l6from the company, but now these petitioners conveniently ignored the historical facts as if they were not aware of all those things.

114. The company submits that the petitioners have cherry picked certain business decisions predicating Mr. Tata has taken certain decisions during his tenure which the petitioners consider imprudent and non-judicious which have allegedly caused loss to the company. When they say Corus and Nano are instances of bad business deal, why they have not referred Tetley acquisition and immensely successful Jaguar Land Grover acquisition and phenomenal rise and success of TCS.

115. As to the allegation of interference by Mr. Soonawala, it has been said that he held various positions on financial side in the company including that of Finance Director from 1988-89 to 2000, thereafter for 11 years as Vice Chairman and Finance Advisor of the company, which he dutifully discharged till 2010, this was appreciated on 15,06,2010 stating that he relentlessly served the institution for about 44 years, therefore it was unanimously resolved that Mr. Soonawala would be available as an advisor to the company as such Mr. Cyrus himself and other persons from the company approached Mr. Soonawala on various occasions seeking his guidance and advice, therefore, the company says, it is wondering to hear Mr. Soonawala interfering with the affairs of the company. It says that the directors of the company except Mr. Cyrus have discharged their duties with absolute virtuosity and utmost integrity and it is beyond doubt to say that they have adhered to the highest standard of professionalism.

116. It says it is a matter of record that Trust nominee directors have been appointed as per Articles of

Association of the company, as to Mr. Tata, in the capacity as Chairman Emeritus, was asked to remain as special and permanent invitee to the board meetings, and he would continue to receive notices, agenda papers and minutes of the board meetings so that Mr. Tata could attend at his choice, any meeting which he would feel appropriate. It denied that Mr. Ishaat Hussain and Ms. Farida Darius Khambata abstained from participating in the illegal acts that were allegedly purported on 24.10.2016. It Is submitted that Mr. Hussain voted favorably in all the matters as evident from the minutes of the meeting held on 24.10.2016.It is also pertinent to mention that Mr. Ralf Speth (CEO of Jaguar Land Rover) and Mr. N. Chandrasekaran were appointed as additional directors only on 25.10,2016 after following the due process, there could be really no cause of action qua those respondents. It is denied that over time, the Trust nominee directors have become postmen who enable the other Trustees including persons like Mr. Tata and Mr. Soonawala to play the role of shadow directors and super controllers of the company, These Trust nominee directors Mr. Vijay Singh and Dr. Nitin Nohria and Mr. Amit Chandra are persons of eminence and great repute and were indeed welcomed on the board by Mr. Cyrus himself. Mr. Vijay Singh is a Rtd. Officer of Indian Administrative Service, after serving as the Defense Secretary of India, Mr. Amit is the Managing Director of Bain Capital, the Global Alternative investment firm based in Boston, Massachusetts and is part of the leadership team in Asia. Dr, Nitin Nohria is George F Baker Professor of Administration and the Dean of the Faculty at Harvard Business School, and he became the 10th Dean of Harvard Business School on 01.07.2010, Their expertise has already been explained in the introductory paras, therefore for the sake of brevity, it has not been discussed again.

117. It is denied that the removal of Cyrus as chairman of the company is wholly illegal, ultra-vires and constitutes suppression of the petitioners and it is against the interest of the company, It is submitted that the removal process does not suffer from any impropriety and it is in complete conformity with the provisions of the Act and moreover, it has never been challenged by Mr. Cyrus, not sought any relief either for declaring removal of Mr. Cyrus as invalid or for reinstatement of Mr. Cyrus, since the Petitioners could not have sought such relief from this Bench in the first place and secondly, Mr. Cyrus himself has not filed any proceeding challenging the alleged illegal removal. It is also settled proposition of law that directorial dispute cannot form the subject matter of oppression/mismanagement action u/s 241 of the Act. For the Petitioners have strategically not pressed for such reliefs, the Petitioners can disguise this petition *as* an action in public interest and prevent the public at large from realizing that this action is nothing more than an attempt to settle Mr. Cyrus's personal score with Tata Group for his removal as Chairman.

118. The company submits that the Petitioners are attempting to draw false conclusions based on the movement of the share price of Tata Steel. It has filed a graph **(Exhibit R-l/22)** depicting the movement of the share price of Tata Steel and some of its listed peers in the steel industry to show the correlation in the movement of the share prices of these companies, the share prices of companies in the steel industry tend to move together in a similar manner and the movement of share prices is influenced by many variables and it is misleading for the Petitioners to allege the fall in the price of the shares was on account of the Corus acquisition. It says that it should be noted that the closing price of the shares of Tata Steel on 1st February 2007 when Tata Steel announced the decision that it had won the bid to acquire Corus, its share price was approximately Rs. 350, whereas the closing share price of Tata Steel as on 20th December 2016 was approximately Rs. 400, An immediate fall in the share price after announcement of a major event, involving significant financial outlay, cannot be the basis to question the prudence of a commercial decision to acquire a business. The Corus acquisition involved a highly competitive bidding process, in which Tata Steel participated along with Brazilian steel company Companhia Siderurgica Nacional **("CSN"**). It is a matter of public record that Tata Steel's winning bid was GBP 608 pence per share, while CSN's final bid was GBP 603 pence per share. Therefore, there is no basis to state that the acquisition of Corus was *"done at a substantial premium".* Admittedly, the final bid price was higher than the initial offer price quoted by Tata Steel to Corus. However, as mentioned above, this was merely a function of

value discovery through a competitive bidding process-Extracts from the annual report of Tata Steel for the financial years 2007-03 and 2008-09 showing the benefits accruing to Tata Steel from the Corus acquisition are attached as **Exhibit R-1/23(Colly).** It says it is also a matter of public record that part of the acquisition cost of Corus was funded by a rights issue by Tata Steel to existing shareholders of Tata Steel (including the company). The rights issue was fully underwritten by the company. Mr. Cyrus was on the board of directors of the company at the time when the company agreed to subscribe to shares in the rights issue and was a party to the decision. Neither were there any deliberations at the board meetings of the company, nor do the board minutes of Tata Steel indicate that Mr. Cyrus had objections to the decision by the company to provide funds to Tata Steel for the Corus acquisition. The Petitioners and Mr. Cyrus were aware of this transaction and did not object to it, at the time when the decision was taken. The company even filed the relevant minutes of the meeting of the Board of Directors of the company in relation to funding of Corus Acquisition as **Exhibit R-1/24 (Colly)** It is also relevant to mention that when Mr. Cyrus took over as Chairman of Tata Steel, he did not raise any concerns to the Board of Tata Steel regarding the decision to acquire Corus, in fact, in the 'Chairman's Statement' attached to the annual report for the financial year 2012-13, Mr. Cyrus stated: *"Finally, J would like to thank our Chairman Emeritus Mr. Ratan Tata for his visionary leadership and extraordinary stewardship with which he led the Company through many challenges during his tenure as Chairman of Tata Steel"*, Further, in the same statement, Mr. Cyrus recognized that the challenge in Tata Steel's European *and* UK operations had been on account of 2008 financial crisis. He stated that *"In our key overseas markets of Europe and UK where the Company has significant manufacturing presence, the economic downturn has significantly affected steel demand, which is now almost 30% lower than pre-2008 financial crisis level."* **(Exhibit R-1/25).** It has even filed the statement of former Managing Director of Tata Steel Mr. B. Muthuraman dated 23 November, 2016 that Corus acquisition is well thought out after lot of deliberation to grow the company through capacity expansion in India and internationally through inorganic growth. The Corus acquisition decision was taken unanimously by the board of Tata Steel, the acquisition of Corus Group Plc was based on the long term strategy of Tata Steel to pursue growth through international expansion and enhance the portfolio of value added products. The performance of Corus Plc post acquisition validated the strategy till the black swan event of the global financial crisis structurally impacted the underlying demand conditions in Europe causing financial hardship to the steel industry in Europe. In this context, it is incorrect for the Petitioners to conclude that Corus was acquired at an *'inflated price'*. It is of course easy for the Petitioners to adopt a myopic view and question the commercial wisdom of the alleged *'inflated price'* paid by Tata Steel with the benefit of hindsight or to allege that the acquisition led to a strain on Tata Steel without looking at the larger context. It is submitted that Mr. Cyrus has himself acknowledged in successive 'Chairman's Statements/Messages' and signed off on directors' reports which are in the public domain where he has attributed the reason for the lackluster performance of Tata Steel Europe to external conditions and the financial crisis. Copy of the relevant annual reports/chairman's statements is annexed as **Exhibit R-1/28** to this reply. In respect of statement that *"however, the UK plants continued to do* badly", it is to be noted that Tata Steel UK Holdings Limited (formerly known as Tata Steel UK Limited, the SPV which acquired Corus) performed well in fiscal 2008 (the first year after the acquisition). The consolidated EBITDA of Tata Steel UK Holdings Limited for the period ended 31 March 2008 was USD2, 190mn (as against USD1, 553mn in Fiscal 2009), It is submitted that every operating business has its positive and negative aspects and the Petitioners campaign to present a one-sided story is evident from the fact that they have chosen to ignore statements made by Mr. Cyrus in the course of his tenure regarding the improvement in the operations of Tata Steel. It says it should be noted that in the "Chairman's Statement" to the Annual Report of Tata Steel for the Financial Year 2012-13, Mr. Cyrus himself stated that:

> *"the operational capabilities in Europe have also been strengthened on the back of investments made in the last year... There actions should improve the competitiveness of the European operations even*

though the market is expected to remain challenging."

119. Some instances of positive developments in the Tata Steel Europe business which the Petitioners are glossing over are recorded in Annual Reports of Tata Steel for the last five financial years. To support their defense, the company highlighted below to demonstrate the lopsided view of Tata Steel's European operations that the Petitioners are presenting to mislead this Hon'ble Tribunal:

a. The Chairman's Statement for the Financial Year 2013-14 states that record production performances achieved by various plants of Tata Steel Europe (including plants in the UK which the Petitioners have alleged did not perform as expected) in that financial year. Attention is drawn to pages 52 and 53 of Tata Steel's Annual Report for the Financial Year 2013-14 which is annexed hereto and marked as **Exhibit R-1/29.**

b. Tata Steel Europe comprises both the UK operations as well as the operations in the Netherlands. The Petitioners have acknowledged the fact that the plants in the Netherlands have been fairly successful. This fact was also recorded in the Chairman's Message in the Annual Report of Tata Steel for the financial year 2014- 15. The Directors' Report for the financial year 2014-15 states that *"Since early 2014, our facility at Ijmuiden has enhanced Its performance and achieved the best EBITDA margin amongst its European peers,"*

120. In fact, a review of the Chairman's Statements made by Mr. Cyrus in the Annual Reports of Tata Steel from the financial years 2012-13 to 2015-16 onwards would clearly show that, according to the company, Mr. Cyrus recognized that the global steel industry was operating in a difficult environment on account of the oversupply from the Chinese market and increased raw material prices. It is unfortunate that the Petitioners, who are the alter-egos of Mr. Cyrus, are now attempting to pin the entire blame for the difficulties being faced by Tata Steel on decisions allegedly taken by Mr. Tata. The company says that there is no basis for this allegation having been made by the Petitioners against Mr. Tata. It is denied that Tata Steel is "bleeding" or has undergone irreversible financial loss. As mentioned above, and as acknowledged by Mr. Cyrus in multiple public statements, the entire steel industry has been facing stress in the last few years on account of macroeconomic factors and that there is no basis for the allegation that Mr. Tata jeopardized the merger talks with ThyssenKrupp and/or undermined Tata Steel management's ability to negotiate with ThyssenKrupp and/or the Pension Trustees/Pension Regulators in UK or anybody else. In any event, this pertains to matters and decisions which are under the control of the board of directors of Tata Steel and the company is not in a position to comment on the same. As is evident from the extracts from the Annual Reports of Tata Steel for the financial years 2012-13 to 2015-16, the company says, the adverse macroeconomic conditions faced by the global steel industry were beginning to reverse and the operations of Tata Steel Europe were showing uptrend.

121. As to Corus issue, the company says, it is evident that the Petitioners' attempt to impugn the Corus acquisition as a non-judicious corporate action is misconceived. The acquisition of Corus was a decision taken by the board of directors of Tata Steel, acting in the best interests of Tata Steel. The price paid for the Corus acquisition was discovered through a highly competitive bidding process, and thus represented a fair value. In any event the allegations made by the Petitioners relating to the Corus acquisition pertain to past and concluded transactions by Tata Steel, These do not constitute affairs of the company and cannot constitute acts of oppression or mismanagement.

122. As to allegations in respect to Mano car project, the company says, launch of Nano project was the decision of the entire board, whereby it could not be imputed that it was the decision of a particular individual i.e. Mr. Tata. It was approved by the board of directors of Tata Motors after carefully analyzing the commercial prospect of the project, of course, Mr. Tata may very well have conceived the idea and

perhaps promoted its launch, that by itself cannot mean the decision to launch Nano was the sole decision of Mr. Tata. On the allegation that serious investment in land and machinery are being tied down on account of Nano project, by looking at the filing made by Tata Motors with BSE on 4.11.2016, it is evident that major part of the investment in the factory is presently being used for the production of Tata Tiago car, In respect to dividends, it is incorrect to say that declaring dividend after the launch of Nano is incorrect because Tata Motors continue to pay healthy dividend even post-launch of the Nano project, it was only skipped in the FY ended 31.3.2015 under the chairmanship of Mr. Cyrus. It is also being said that the commercial vehicle division of Tata Motors contributes for greater percentage of its revenue than the passenger vehicle division, consequently, the ability of Tata Motors to pay dividend is depending much more on the performance of its commercial vehicle division as compared to its passenger vehicle division, it is also relevant here to mention that under the leadership of Mr. Cyrus Tata Motors has lost significant market share in the commercial vehicle segment. The statement of Mr. Cyrus as a Chairman of Tata Motors in the year 2015 is very much contrasting to the present statement in this company petition because in the annual report of Tata Motors for the financial year ended 31.03.2015, Tata Motors, under the stewardship of Mr. Cyrus, noted that the Nana brand was highly regarded and Tata Motors intended to nurture and promote it further. It Further says that how such decision of continuing Nano motorcars yielded any undue benefits to the answering Respondents because consequence of such decision either positive or negative would affect the Trusts i.e. majority shareholders just as much as it affected the Petitioners, if not more. Moreover, it was a decision taken in the year 2007 almost after a decade; this has become an issue to the petitioners because Mr. Cyrus was removed as Executive Chairman of the company. As to attribution of Mr. Tata's emotional attachment for continuation of Nano project, the company says Mr. Tata has never raised any objection for closure of this project and he could not have even prevented also if any such decision taken because he was not the director on the board of The company. It is a fact that soon after demise of Mr. Karl Slym, M.D. of Tata Motors in January 2014, Mr. Cyrus continued for about two years as the head of Tata Motors, in that tenure also Tata Motors invested further in the Tata Nano so as to develop newer variants of the Nano such as GenX Nano, therefore the history says that Mr Cyrus cannot attribute that the project is not being shut on account of emotional reasons involving Mr. Tata. As to the allegation that Mr. Tata has some shares in 'Jayem Auto' and supply of Nano Gliders, the company said it is totally baseless for the reason that as soon as Mr. Tata acquired some shares in Jeyem Auto, he immediately wrote letters on 02.02.2016 and 09,02.2016 to Mr. Cyrus disclosing its interest moreover, Tata Motors has not concluded any arrangement or contract with Jayem for supply of Nano gliders, not even an MoU was executed, no monetary consideration was exchanged except for certain testing and trial expenses. In view of the same, the company submits that commercial decisions taken by distinguished board of directors cannot be subjected to judicial scrutiny under the cover of oppression and mismanagement, moreover, it is a past and concluded transaction, which will not constitute the affairs of the company much less under the head of oppression and mismanagement.

123. In regard to an imputation that Mr. Tata made undue favors to Mr. Siva, the company says, the allegation that the price of shares issued to Sterling was *"highly discounted"* or at a *"throwaway price"* is without merit, because TTSL approved the decision to raise funds within the share price band of Rs. 17 to Rs. 40.The decision for allotment to both Sterling and Aranda (an affiliate of Temasek) within the price range mentioned above almost six months before the shares were allotted to Temasek. The allegation by the Petitioners is basically that shares were allotted to Sterling @ Rs. 17 whereas to Temasek @ Rs. 27, to which the answer is, the company says Temasek was willing to pay higher premium as compared to Sterling is a matter of commercial negotiation depending on the expectations of each of the investors, in the agreement entered into with Temasek, it has been provided the right to nominate director to the board of TTSL and to participate in the decision making regarding some critical matters and fundamental issues, on the other hand, Sterling entered into an agreement without any such right, this difference is demonstrative of the fact that Temasek and Sterling viewed their respective investments in TTSL

differently, therefore they paid share price also at different rates, at the same time Shapoorji Pallonji Group entities also subscribed to TTSL shares (pursuant to renunciation of rights by the company -for which no renunciation fees or compensation fees were paid to the company) and acquired TTSL shares from Tata Industrial Ltd. (a subsidiary of the company) at a price of Rs. 15 per share, which was completed approximately three months before the term sheet with Siva was agreed by TTSL. In 2008, the company had entered into an agreement with DoCoMo to sell 6% of TTSL @ Rs. 116.09 per share, whilst not obliged to do so, the company offered all shareholders of TTSL the opportunity to participate in the secondary sale of TTSL shares to DoCoMo to enable them to monetize as part of their investment at huge profit, While the company obligated the Siva group to taken various obligations with respect to put option liability and other indemnity qua DoCoMo, Shapoorji Group was not asked to undertake any such similar obligations. Apart from Sterling, Shapoorji Pailonji family also sold shares to DoCoMo. The Company submits that the Petitioners projected as if Sterling alone got the advantage of this without mentioning the fact the same advantage was also availed by the very same petitioners. As to undertaking provided by the company in favor of Standard Chartered Bank, the company submits, it is a matter of record that the company provided the undertaking on 24,02.2006, but this was provided to protect against Standard Chartered Bank selling TTSL shares pledged by Siva group to an undesirable third party, this undertaking required the security trustee to mandatorily serve notice on the company before invoking the pledge on TTSL shares and selling them to a third party, upon receipt of such notice the company was obligated to acquire TTSL shares for the initial subscription price (Rs. 17) plus an additional amount of 6% p.a. on non-compounded basis, in fact this undertaking is to ensure that TTSL shares not be sold to a third party without the company being able to purchase them, This arrangement is clear that the company did not undertake to buy TTSL shares for a price which would settle Sterling's entire liability to Standard Chartered Bank; therefore, no guarantee has been given by the company for the loan taken from Standard Chartered Bank, Given the historical growth in the value of the shares of TTSL at a relevant time, it is evident that the price of Rs. 17 with a growth of 6% p.a. would have permitted the company to acquire TTSL shares at steep discount to the actual value of the shares, this commercial undertaking is similar to the terms of mandatory call option under the term sheet executed between TTSL and Sterling, the call option under the term sheet with Siva further discloses that it triggers if Siva group shareholding in Sterling falls below 75% to ensure that an undesirable party could not obtain control of TTSL shares held by Siva group without consent from the company. This undertaking in fact given to Standard Chartered Bank is virtually a mandatory call option to ensure that TTSL shares held by Sterling should not be sold out to a third party.

124. There being another allegation from the Petitioners stating that Kalimathi provided inter corporate deposits to Sterling on 27.02.2006 at an interest rate of 8.5%, the company submits, this deposit was provided as Bridge financing to Sterling on account of delay in the drawdown of funds by Sterling from IDBI Bank, in fact the said deposit was repaid in full by 08.03.2006 with interest i.e. within a period of nine (9) days but whereas this whole scenario has been painted as the company through its group companies provided undertaking loans to Siva's company so as to buy TTSL shares and thereafter to sell them with huge profits.

125. On the allegation of Mr. Siva writing a letter dated 3.10.2013 to Mr. Cyrus, the company says, it should be seen in the proper light as an attempt by Mr. Siva to obtain concession from Tata Group based on unsubstantiated assertions that some "off the record" considerations motivated Siva group to invest in TTSL, it says that it is a matter of public record that Siva group was (and continues to be) under financial distress on account of such payment to be made by to Batelco (Bahrain Telecommunications Co.), perhaps, in this context, Mr. Siva was attempting to obtain an exit from TTSL by selling its shares to Tata group, out of which, the Petitioners now try to spin a conspiracy theory to falsely manifest that the transactions between TTSL and Siva group were done "solely at the behest of and under the dictate of Mr. Tata", to which, the company says that the e-mail dated 08.10,2013 written by Mr. Tata to Mr. Cyrus has

been used as a trump card to show that Mr. Tata was instrumental in facilitating Mr. Siva to invest in TTSL, but the fact of the matter according to the company is, the petitioners have glossed over the fact that Mr. Tata did not himself deal with Siva, it was only projected on selective basis to impute mala fides to Mr. Tata.

126. In respect to DoCoMo arbitration, the company says that the petitioners have no basis to allege that the legal notice from Siva was backdated, this bald assertion has been made in order to paint a picture Siva having some access to the decision taken at the board of directors of the company, it is a matter of record that on 15.09.2016 board meeting, indeed Dr. Nohria (Trust nominee director) proposed to initiate legal action against Siva Industries and Holding Ltd, making it further clear that the company so far has not waived any of its rights and remedies under law to proceed against Siva group, likewise even to the legal notice dated 15.9.2016 issued by Siva group making baseless claim on the company, it instructed its lawyer to send a strong rebuttal to the said legal notice on the 16.11.2016.

127. As to the allegation stating that the company paid Rs. 600crores to Siva group in various contracts, the company submits that for Siva group, part of promoters of Aircel Ltd. a leading telecommunications had the expertise in program management and vendor negotiations, which are crucial for rapid roll out of telecom infrastructure, TTSL has confirmed that to have Pan India operations, availed services from Siva group, but it does not mean that any undue advantages was given to Siva group putting the petitioners to strict proof if any undue benefit given to Siva group with respect to those contracts. Inducting a service provider like Siva group as a significant shareholder is a commercial strategy to ensure that the vendor's interests are aligned with the company and its shareholders to keep the cost of acquisition of assets/services low, which is beneficial not only to TTSL but also to the company, it is a fact that TTSL repeatedly recorded that the significant benefits and cost saving accrued to TTSL pursuant to the services provided by the Siva group. As to the contracts given to Siva, they were awarded in between 2003 and 2007, whereas Mr. Tata joined the board of TTSL only in the year 2005. With this explanation, the company submits that the petitioners are attempting to distort facts to suit their own ulterior agenda and imputing him impropriety where none exists.

128. In respect to allegation of Colaba Tenancy Flat, the company is not in a position to respond to such allegation because it is not a privy to the same, therefore the same are denied for want of knowledge, henceforth, it does not constitute affairs of the company and cannot constitute oppression of the petitioners,

129. As to allegations of making favors to Mr. Mehli and its associates, the company denies them as purely speculative; moreover, since those allegations are pertaining to the affairs of Tata Power, the company is not in a position to address the same. But by seeing response from Tata Power on 4.1.2017, the company says that all contracts awarded to Mr. Mehli are pursuant to following requisite process in awarding of the contracts and necessary approval from the board/committee/management was taken as required as per the schedule of authority prevailing at various times detailing how painting contracts to Mr. Mehli's company were awarded by following competitive biddings, as to reserves of Mr. Mehli's companies are concerned, it cannot be attributed that profits of Mr. Mehli's Company has gone high is only because of getting contracts from Tata Power. As per the petitioners' averment itself, this increase of reserves of him in manifold is in long tenure of about 20 years, therefore the growth of Mr. Mehli through his companies could not have been attributed as an undue advantage given to Mr. Mehli either by the company or by Mr. Tata, It has been vividly described in the Company Petition as to how 1993 Dredging contract, 2004 Barging contract and 2006 Sea Freight contract were given to Mehli. It is fact of the matter that Mr. Cyrus was Chairman when Mr. Mehli Group Company having contracts with the Tata Power, therefore Mr. Mehli doing works of Tata Power could not be attributed as a favor done by Mr. Tata to Mr. Mehli that apart, Tata Power is not a party to this proceeding.

130. Aviation Industry "Misadventures": The attribution made by the petitioners in respect to Air Asia issue, the company submits that the petitioners submitted that joint venture agreement with Air Asia was thrown as fait accompli on Mr. Cyrus initially when he took the reins of the company as its Chairman. The fact is initially the company agreed to invest in Air Asia limited to 30% of USD 30 million, but this limit was subsequently enhanced by the board of directors of the company during Mr. Cyrus's tenure as executive Chairman. Now it has been shown as R2 has passion for airways that's why the company entered into joint venture with AirAsia, As to allegation of Fraudulent transaction worth of Rs. 22crores, no doubt, it has come out in the forensic investigation conducted by Deloitte revealing the ex-CEO of Air Asia India indulged in that fraud, with which none of the directors of Air Asia India have been connected, whereby a fraud committed by a CEO cannot be attributed as fraud committed by the directors of that company. With regard to this issue, the petitioners attempted to show that Mr. Venkataraman was involved at every juncture of the Air Asia deal and tried to scuttle the probe purported to be conducted into this fraudulent transaction because Mr. Venkataraman is potential beneficiary of the payout of this Rs. 22crores. The company submits that this is scurrilous to say that Mr. Venkataraman tried to brush aside this fraudulent transaction for he has Illicit benefit in it. In fact, this issue on 26.09.2016 came before the board of directors of AirAsia, on appraisal, the said board unanimously decided to take the investigation to its logical conclusion, in pursuance thereof, on 09.11.2016 AirAsia India has lodged a complaint against ex-CEO and other private individuals seeking registration of FIR with regard to the alleged fraudulent transaction. According to the forensic report, this transaction is an act of embezzlement of fund, Air Asia India by its ex CEO, in conspiracy with one HMR Trading PTE Ltd. (Singapore entity) and M/s. Link (Chennai based company) which was not within the knowledge of the board of directors of Air Asia. As to the allegation that Mr. Tata involved transactions with one Hamid Reza Malakoutipoor, who has been classified as "suspected and UN sanctioned alleged global terrorist" by the United States of America, the company denies the allegation of the Tata group acting on the instruction of Mr. Tata to indirectly finance terrorism to cause harm to the age-old image of the Tata group. These petitioners went to an extent to attribute linking Mr. Tata to a terrorist entity without having any material with them. The company says, when this allegation is put against the forensic report given by Deloitte, it has nowhere been mentioned any of these allegations hurled at the most reputed person like Mr. Tata, except saying this embezzlement indicted the ex-CEO along with aforesaid two companies- Therefore, no fault can be found against either the directors of Air Asia or Mr. Venkataraman, much less against Mr. Tata. As far as the argument on losses in Airways business, the company says, it is a well-known fact that aviation business is a long gestation business wherein losses have to be born in the initial years until certain level of market penetration is achieved, thereby, merely the industry reeling under losses cannot always be the decisive factor for the fate of a business venture.

131. As to the pleading of the Petitioners that the Chairman of the company should not have been removed without being selection committee constituted as envisaged under Article 118 for it has been stated in the very same Article that the process for removal of incumbent chairman must be as that of the process applied for appointment of the chairman, the company submits, this pleading is fallacious because selection committee means for selection of chairman, it would be absurd to interpret that clause of constitution of the selection committee In the Article is equally applicable for the removal of the Chairman, The company says that this applicability of process for removal is indicative of the fact that removal of a Chairman is subject to Article 121, which requires that affirmative vote of all the directors appointed pursuant to Article 104B, not about constituting another selection committee for removal of the incumbent chairman. When Mr. Cyrus was removed as Chairman 24.10.2016, only one director i.e. Mr. Hussain abstained from voting on the resolution to replace Mr. Cyrus, The company denied the fact that Mr. Amit, Mr. Ajay and Mr. Venu Srinivasan have been inducted on to the board only at the instance of Mr. Tata. It is denied that the agenda item for the removal of Mr. Cyrus as executive chairman from the board of directors was improperly introduced at the meeting of board of directors. Mr. Tata says that it was

conducted on 24,10,2016 in accordance with the mandatory S5-T prescribed by the Institute of Company Secretaries of India and approved by the Central Government. In that standard, it has been mentioned that *"any item not included in the Agenda of a Board Meeting may be taken up for consideration with the permission of the Chairman and with the consent of majority of the directors present in the meeting, which shall include at least one independent director, if any".* Since the then Chairman Mr. Cyrus was interested in this resolution, he was therefore required to refuse himself from deliberations In this regard when Mr. Cyrus did not recuse himself, the directors selected Mr. Vijay Singh as Chairman for the Board meeting, therefore majority of the directors being present in the board including more than one independent director, the chairman of the board Mr. Vijay Singh presided over the meeting and approved the resolution permitting the board to consider the matter which was not specifically included in the agenda of the board meeting, thereafter the board of directors passed the resolution to remove Mr. Cyrus as chairman. The company therefore submits that it is not a requisite that unless an agenda item is not included it could not be taken up for passing resolution. The company submits that actions of Mr. Cyrus after his replacement as Chairman clearly exposed his "scorched earth strategy" to leak sensitive information to outsiders. It is submitted that Article 121B provides right to any director to request the board of directors to consider particular matter at a board meeting by providing 15 days' notice, but it does not mean that conferring a right to a director would become an impediment to the Board in including an item in the agenda, such right made available to a director cannot be interpreted to preclude majority of the board of directors from deciding to take up additional matters during a board meeting in accordance with SS-I. It is submitted that there was no legal requirement for the board of directors to provide reasons for the removal of Mr. Cyrus as Chairman, the reasons for the removal of Mr. Cyrus as chairman is Trust deficit was growing between the Trusts of the largest shareholders of the company and Mr. Cyrus, and also loss of confidence of the board of directors of the company in Mr. Cyrus continuing as Chairman. By Mr. Cyrus being removed as chairman, since Mr. Cyrus and the petitioners are unable to come to terms with the fact that he failed to meet the expectations and win the trust of the board of directors, they filed this Company Petition as if it is a ground covered u/s 241 of Companies Act, 2013. The relaxation of the retirement policy at the board level cannot be considered to be a ground for filing this petition stating relaxing retirement age is oppressive against the petitioners, because there is no vested right in favor of any shareholder that retirement policy shall be kept in place, It is said that directorial complaint or a complaint for loss of office does not constitute oppression of minority shareholder. Moreover, the petitioners have also not made any grievance regarding Mr. Cyrus' removal as chairman; therefore, the alleged illegality in the process of his removal from office is wholly irrelevant.

132. In respect to removal of directors invoking section 169 of the Act 2013, the company denies the averment of the Petitioners that special notices were given en-masse to remove the directors not toeing the line of Mr. Tata, because special notice u/s 169 was given only in respect to removal of Mr. Cyrus and Mr. Nusli Wadia. There is no requirement in law to provide reasons for seeking removal of directors; the respective companies are under no obligations to give explanation for removal of Mr. Nusli Wadia.

133. As to the allegation of the company purchasing the shares of Tata Motors to increase its voting power to outvote Mr. Cyrus, it says that it is incorrect, because the price of Tata Motors share at that time was at the average of Rs. 560 per share, but whereas the company purchased shares at Rs. 486.13 per share, moreover, even after increase of 1.73% shares by virtue of this purchase, the company shares are still below the mark of 50% therefore, the company purchasing shares aggregating to 1.73% cannot become a ground to say that increase has been made so as to remove Mr. Cyrus from as Chairman from Tata Motors. On the allegation of petitioners that the company veiled a threat to withdraw its guarantee against its group companies, the company submits, it is a vague allegation without support of any material; therefore, such allegation is not only unfounded but also highly deprecated.

134. In respect to the allegation of breach of insider trading regulations, the company at the outset submits

that this allegation cannot form the subject matter of this petition u/s 241 of the Companies Act, 2013, apart from it, the company denied the trustees directly calling for "unpublished price sensitive information" from the listed Tata operating companies. The petitioners, who are alter ego of Mr. Cyrus, have now been saying that Mr. Tata and Mr. Soonawala interfering not only with the affairs of the company but also with the affairs of the group companies turning their blind eye to the fact that Mr. Cyrus himself on numerous occasions sought the advice of Mr. Tata and Mr. Soonawala for various business and strategic decisions. It has been rightly done so, inasmuch as Mr. Tata has been continuing as Chairman Emeritus to the company, and Mr. Soonawala being Financial Advisor, despite having hung their boots, as per the Articles of the company, in fact for every strategic decision in group companies, the company has to take a call over the same. Most of the times when presentations are made to Mr. Tata, it has been done right in the presence of Mr. Cyrus, therefore, now it is not open to these petitioners to complain about breach of insider trading regulations. Indeed, Mr. Cyrus himself encouraged information being shared by operating companies with the board of directors of the company. The company and the Trustees have always interacted with and dealt with information in relation to the listed Tata operative companies strictly in compliance with SEBI Regulations. The contribution of Mr. Tata and Mr. Soonawala for decades together has led the Tata group to the height it has reached today, and they are the best repository advice and guidance with respect to its affairs. It has been further said, the petitioners have wrongly alleged that the purported practice of various Tata operative companies making presentations before the board of the company of their proposed business plan, needs to be revisited, to ensure that there is no violation of the insider trading regulations, what these petitioners failed to understand is that the object of such communications or presentations by Tata operating companies is for bonafide corporate reasons and for legitimate business purposes. The company being the promoter of all these Tata operating companies, they remain looking to the company to get financial support, fund, comfort letter, corporate guarantee. The decision of the company on such issues is critical to meet the needs and plans of the operating companies; therefore, it would be for the legitimate purpose and to protect the interest of the concerned Tata operating companies. For that purpose, the relevant information is appropriately and legitimately shared with the company by the operating companies.

135. Thus, in summary, while putting the Petitioners to strict proof of their allegation that any price sensitive information was shared and without admitting the same in any manner, it is submitted that (a) these allegations are beyond the purview and jurisdiction of the present proceedings; and (b) the advice and counsel of Mr. Ratan N, Tata and Mr. M.A. Soonawala was taken for legitimate business purposes and in the larger interests of Tata Sons and the operating companies.

136. For having the Petitioners had a veiled allegation against Prof. Lord Kumar Bhattacharya, the company says, it is pertinent to mention that Prof. Lord Kumar Bhattacharya is an academician, who has made life peer and member of the House of Lord in 2004, in fact it was Mr. Cyrus who approached Lord Bhattacharya to deliberate and discuss matter concerning the Tata group in Europe including the discussions for closing the company operations in UK, in such circumstances, the petitioners or Mr. Cyrus cannot point any finger at Lord Bhattacharya as has been attempted, Lord Bhattacharya has not derived any pecuniary gain or taken advantage of any information provided to them, which information was provided to him by Mr. Cyrus or at his behest to seek advice and direction. Denying the averments of para 108 of the petition, the company says that Mr. Cyrus did not take any steps to introduce any reforms as alleged, but the contents of letter dated 03.10,2016 are being misconstrued for the petitioners' convenience suppressing the letter dated 23.09.2016 which is written by Mr. Cyrus to Mr. Tata indicating the role for the Trusts and the nominee directors of the Trusts in the management of the affairs of the company and the proposed governance plan for the same.

137. In respect to allegation about Mr. Cyrus' resignation from Tata operating companies, the company has vividly explained as to what happened before his resignation from those respective companies but that

those issues not being points at the time of hearing, those explanations have not been depicted as averments of this reply. The company has point by point assailed the reliefs sought by the petitioners saying as to how those reliefs could not be granted by this Bench. The company has concluded its reply saying that the allegations of the petitioners are bereft of any merit, henceforth sought for the dismissal of this Company Petition.

Reply of R2 (Mr. Tata) to the Petitioners

138. In reply of Mr. Tata to the Company Petition, he submits that his association with Tata Group started in the year 1962 in Jamshedpur from TELCO (now known as Tata Motors) and then working at shop floor of Tata Steel factory, while doing so in the year 1991, he had become the chairman of the company, there he put his abilities to realize his vision of making the Tata group one of the world's largest conglomerates with its presence over 100 countries supporting over six lakh employees by establishing industries of national importance as also emerging as the hallmark of good governance and corporate practices, today contributing nearly 4% of the nation's GDP.

139. Mr. Tata explained as to how much efforts they have put in between 2010-12 for selecting a man as Chairman who would be in sync with the ethos, governance structure and financial imperative of the company, but little they did realize at the point that their search would culminate not very far from where they started, Mr. Cyrus who was himself was member of this selection committee, presented himself as promising candidate, on the selection committee being of the view that Mr. Cyrus s candidature would be befitting to the position of Chairman, he was made as Chairman to carry forward the enviable task of carrying forward the legacy of Tata Group, however things having started revealing that the confidence that the company reposed on Mr. Cyrus became otherwise, therefore he was replaced as Chairman on 24.10.2016. On 18.12,2012 itself, Mr. Cyrus proposed Mr. Tata as a special prominent invitee to the Board Meetings of the company, to which Mr. Tata reluctantly accepted to remain available for guidance when necessary with a clarification that he did not wish for his shadow to loom over the group without carrying over his previous role as Chairman, of course, he said that he decided to take clean break from the company. Ever since he retired, he redirected his focus and energies on his other pursuits, passions and interests devoting more time to the Trusts activities focusing on nutrition and prosperity immersing himself in identifying young entrepreneurial talent, in the pursuit of it, till date he made investments in over 50 startups since December 2012, earlier in the year 2016, he founded in association with Dr. Vijay Kelkar and Mr. Nandan Nilekani, a technology enabled financial inclusion vehicle Avanti Finance, for providing credit to the underserved and unserved wherein founders are committed to plough the gains from this venture into philanthropy. This is not to say that he has not offered his advice whenever sought either by Mr. Cyrus or others on the board, he always used his good relations and offices with various people to help the new management forge new ties both nationally and internationally. While he was willing to offer any and all assistance he was asked to, he sensed that there was a growing disconnect between Mr. Cyrus, other members of the Board of the company and Tata group and that Mr. Cyrus was not doing enough to steer the company and Tata group forward in line with strategy plan he had presented during the selection process. He says he was informed that there was little or no intention on the part of Mr. Cyrus to encourage active discussion on the board on important business decision and a strategy to steer the company forward. In fact, the financial performance of the company and the operating companies constituting Tata Group witnessed a decline during Mr. Cyrus' tenure, the dividend received by the company from operating companies other than TCS had fallen significantly, one side income is falling and other side expense was mounting. He says that the borrowing of Tata Group has increased many fold, excessive reliance still remains on TCS and JLR to provide cash-flows and revenues to the group. Little has been done to resurrect companies such as Tata Motors, which has consistently ceded market share over years despite holding immense potential.

140. Mr. Tata says what subsequently emerged was that Mr. Cyrus had suddenly developed deep seated

resentment with the governance structure of the company as reflected in the Articles of the company, there were instances where details of significant business items to be transacted in the business of a board meeting would be shared with the Trust nominee directors just shortly before the scheduled board meeting, thereby depriving the Trust nominated directors the opportunity to adequately prepare and present their views to the board, apart therefrom, he had refused to engage constructively with the trusts, the primary shareholders of the company. In the answering respondent's efforts to address these and several other issues that had emerged during the course of Mr. Cyrus' tenure, Mr. Tata made several endeavors to impress upon Mr. Cyrus that there was brewing discontentment in the board, however such efforts did not yield result and it became increasingly clear that the selection committee, as well as Mr. Tata in his personal capacity, had failed in their duty to identify and nurture a suitable candidate for chairmanship of the company.

141. In his reply Mr. Tata has categorically mentioned that the dividends received from all other 40 companies, apart from TCS, continuously declined from approximately Rs. 1000crores in 2012-13 to approximately Rs. 780crores in 2015-16 but the later included additional interim dividend of Rs. 100cores which would have normally received in 2016-17 reflecting clear decline in the total profits of those operating companies, likewise, he has given other figures how expenses have increased in the tenure of Mr. Cyrus .

142. Shortly after his replacement as chairman, Mr. Cyrus embarked upon a motivated campaign to publicly disparage, malign and ridicule the company and Mr. Tata in particular by leading confidential and sensitive information of the company to outsiders including his family members which is very much unbecoming from a person who was entrusted with duty for leading Tata Group. It is regrettable that it is only on his removal that allegations are being made about business decisions that Mr. Cyrus himself was party to for over a decade in different capacities.

143. Mr. Tata says that the petition says that Mr. Cyrus became aware of the issues confronting Tata Group, a so called "inheritance" from Mr. Tata, little was done on Mr. Cyrus' part to alleviate the group from such circumstances despite having completed for more than five years i.e. almost the entire tenure, to hold his inheritance liable for the group performance during his time. It is the fact that Tata Group companies were historically supported by the company in multiple ways by providing funds, strategic advice, simultaneously exercising control over the operating companies through its shareholding and commonality of the board and senior management, this cohesion seamlessly continued for many decades by which this operating companies have individually grown and prospered but whereas after the advent of Mr. Cyrus as Chairman, he has gradually over the course of his tenure concentrated power and authority in his own hands as Chairman in all the major Tata operating companies where there are no longer any representatives from the Board of Tata Sons, as had always been the case in the past and which had ensured cohesion in the group. As a result, many of the operating companies are drifting apart from the group and Tata Sons, through a systematic reduction of control and influence by Tata Sons over them. Mr. Tata says that it is not true that Mr. Cyrus was removed as Chairman in a surreptitious manner without assigning reasons and that he was asked to step down as things were not working well in between Mr. Cyrus and Mr. Tata. For Mr. Cyrus lost confidence of the board, a collective decision was taken for the removal of him.

144. As to Bakhtavar Apartment, Mr. Tata said since the allegations against him unjustly enriching himself at the expense of the company is very personal to him, thereby he said that he must deal with this unequivocally saying that Forbes Forbes Campbell and Co. ("FFC") was the tenant of Pallonjl Mr. Mistry and four others (together the "original owners") having leasehold rights over the land with building known as Bakhtavar, including apartment 202 situated on the second floor of "A" wing of the said building where Mr. Tata resided from 1968 until 2000. In respect to this property, Mr. Tata's father entered into an agreement with Mr. F.H. Kemple of FFC permitting him to occupy this apartment with the understanding

that the tenancy rights would remain in the name of FFC, by which, Mr. Tata became sub-tenant of FFC as per letters dated 08,10.1968 and 10.10,1968 (Exhibit R-2/l Colly), as it stood thus, this apartment came to be sold by the original owners to FFC in June 1975, by which, he became tenant for lawful consideration by which he was acknowledged as tenant of Bakhtavar apartment and continued there as tenant up to 2000. In the year 2001, by way of tripartite deed of transfer, FFC (then known as Forbes Gokak Ltd,) sold this apartment to M. Pallonji & Co. Ltd, for a consideration of Rs. 2crores, for he had tenancy rights over the said property, in the same transfer deed, he surrendered his tenancy rights in that apartment in favor of the Pallonji company for a lawful consideration of Rs. 3crores, which is annexed as Exhibit-R2/2 of the reply of Mr. Tata. It is a tripartite agreement with necessary permission with due disclosure and after having fair market valuation by a registered valuer and these transactions have passed scrutiny of provisions of section 269UL of Income Tax Act and an Income certificate u/s 230(a), but unfortunately, despite everything was done lawfully on fair market valuation with permissions from various authorities after due disclosure, these petitioners and Mr. Cyrus dug out this as an issue holding out Mr. Tata made out illicit gain out of it.

145. Mr. Tata says that these petitioners have smeared accusations against Mr. Tata stating that Mr. Mehli received undue benefit at the cost of Tata Group companies only on account of his close association with Mr. Tata. The main allegation is Tata Power awarded several contracts to Mr. Mehli. Since it has been vividly denied in the reply of the company, instead of repeating the issues already covered revealing how much truth in this allegation is, it is necessary to mention that Mr. Cyrus was director on the board of directors of Tata Power from the year 1996 to 2006 and director again from 2011 and thereafter Chairman from 2012. So all these transactions should be within the knowledge of Mr. Cyrus, in fact they were, as to some transactions Mr. Cyrus himself approved but that fact was conveniently kept under the carpet so as to show that as if Mr. Tata made some undue favor to Mr. Mehli. The fact he says is, Mr. Cyrus was in know of everything from 1996 until before his removal i.e. 24,10,2016, but now it has become an allegation against Mr. Tata,

146. As to accusations in respect to Siva and his company Sterling, he strongly objects to the petitioners that *"in all probability"*, Mr. Tata disclosed to Siva that decision of board of the company in its meeting dated 15.09.2016 to take appropriate legal action against Siva for recovery of approximately Rs. 694crores as to which he says he was neither part of the board meeting dated 15,09,2016, nor was in any manner privy to discussions of the meeting. He says, of course, the record available and presented in the reply of the company would belie the long story spun against Mr. Tata. Mr. Siva, in his letter dated 02.10,2013 described his difficulty in exiting from his investment from TTSL in view of call option present in it. Mr. Tata wrote only an email on 08.10.2013 to Mr. Cyrus saying that he was not directly involved with the transaction but anyhow Mr. Cyrus might consider agreeing to Mr. Siva's request for a meeting on the subject.

147. Tata Nano; Notwithstanding the fact these petitioners or Mr. Cyrus, before removal of him, never wrote either to the company or to Mr. Tata that Nano is an issue of concern to the petitioners, but having the petitioners as well as Mr. Cyrus made it an issue after Mr. Cyrus' removal on 24.10,2016, Mr. Tata says when this idea was conceived and taken Nano proposal to Tata Motors Board, it was unanimously approved after examining the commercial viability of this project. When this project was launched, there was a demand for approximately 300,000 potential owners who made payment almost full for the cars. But Tata Motors could not fulfill this demand due to the challenge to the land acquisition faced at Singur, West Bengal. He says it is a known fact that these development in respect to land acquisition was beyond the control of Tata Motors and also Mr. Tata, however finally the project was relocated to Gujarat on timely intervention of the then Gujarat Chief Minister, by which already one year was lost resultantly Tata Motors could not fully capitalize on the initial market enthusiasm for the Nano and this inordinate delay in production led to loss of market demand, which ultimately depreciated in the brand value of the product

and further fall in demand for Nano. By the time production was commenced from Sanand, the market dynamic has changed in the year 2010 by advent of new alternatives emerging in the market. Mr. Tata specifically submits in respect to allegation implying that "emotional reasons" prevented Nano project from being shut down is incorrect, immature and strikingly naive. He says that although the manufacturing facility at Sanand was originally intended for production for Nano, nothing prevented the management and board of Tata Motors (at least from December 12 onwards) from utilizing these manufacturing capabilities for augmenting production of other cars by Tata Motors, such as the Bolt, Zest, Tiago, etc. This would also have ensured better utilization of investment made by Tata Motors in the land and machinery at the Sanand facility. Mr. Tata is neither on the board of the company nor is on Tata Motors, the decision in relation to Tata Nano entirely rest with Mr. Cyrus at least from December 2012, i.e., for four years. It is a long time for a company such as Tata Motors to take a decisive view of the thing, one way or other on Tata Nano. Instead of doing so, the petitioners now charged him with an accusation that Mr. Tata alone prevented Mr. Cyrus from taking crucial decision to shut down the project. He says, on the contrast, Tata Motors, recently launched newer variance of Tata Nano under the chairmanship of Mr. Cyrus. Though Mr. Tata was not in the management, the present state of affairs viz. of idling capacity and underutilization of facilities at Sanand is still being imputed to him. After demise of Karl Slym in January 2014, Mr. Cyrus despite being the person leading Tata Motors, little was done by him on his own initiative to remedy what has now come to be viewed as a failed and loss making project. In the recent past, after induction of Nano, the only year in which Tata Motors has not declared dividend is the FY 2014-15, of course, declaration of dividend is also being imputed to him much after his departure. Mr. Tata says to draw such causation between dividend declaration and the commercial succession of Tata Nano is an overly simplistic approach to a matter such as this, to say all these, no documentation has been filed. Mr. Tata says he voiced his concern to Mr. Cyrus about TM losing market shares to others; he did little to arrest this trend, to prove that he wrote letter, he annexed those letters as exhibit R2/5.

148. Insofar as Jayem Auto is concerned, Mr. Tata says, whilst it is true that he presently holds a small minority stake in Jayem Auto, it is equally true that the shares were purchased by him only after learning that Tata Motors had no electrical vehicle plans, and that apart, from an initial set of prototypes/samples of gliders that were supplied, there was no further engagement of Tata Motors with Jayem Auto towards development of an electrical concept, therefore, the allegation of any alleged conflict of interest on Mr. Tata's part is entirely bereft of truth. In fact, the disclosure in respect Mr. Tata having shareholding has been made on his own to Mr. Cyrus much before this Petition was filed, this was informed not only to Mr. Cyrus but also to the Board of the company in order to avoid any misgivings, Copies of these letters are marked as Exhibit R- 2/6 (Colly).

149. As to allegations in respect to Corus Acquisition, he submits that the board minutes of Tata Steel board meetings reveals that the decision to acquire Corus was the collective decision of Directors of Tata Steel Ltd. after having duly debated upon the structure for the investment, the revision of the bid price, the cause and benefits of the acquisition, there were eminent personalities on the board at the time this decision was taken, therefore, he says that it is not really understood as to why he would deliberately want his company to enter into or to continue with loss making projects and he further says that it is not even the case of the Petitioners that he has made some persona! gains at the cost of such decisions, As to the contention of the Petitioners saying that the Trusts have major stake in the company but whereas the Petitioners are direct and real stakeholders, therefore, they are suffering more on account of this deal, as against this allegation, Mr. Tata says since the Trusts are the majority shareholders of the company far exceeding that of the Petitioners, how could these people make such inconsiderate allegations degrading his lifelong contribution to the success story of Tata Group companies, moreover it is commercial decision taken at the behest of the unanimous Board of Tata Steel, since it did not yield desired profits, could it be they are free to use it as weapon to malign his reputation in public and to allege that he had lost sight of the best interest of the company. He asks at the end of the day what Mr. Cyrus has done to remedy the

operational losses of Tata Steel.

150. In respect to aviation industry, Mr. Tata, denying the averments made against him in respect to entering into Joint Venture with Singapore Airlines and Air Asia Airlines, stated that it is a fact that the company was engaged in aviation industry as far back as 1932 in the name of Tata Airlines now known as Air India, it is a history, but can it become sole reason for Tata Son investing In the Aviation Industry without any rationale analysis of the feasibility of the business, the fact of the matter is, that all the business pians pertaining to such investments were actively debated and deliberated upon by the entire board of the company before and after his tenure as the Chairman in fact Mr. Cyrus not only presided at several meetings as the Executive Chairman but also actively participated in the meetings of the Board of Directors of the company where it was unanimously resolved to set up Vistara, the Joint Venture with Singapore Airlines,

151. As to interference allegation against Mr. Tata, every time whenever information was provided to him, including by Mr. Cyrus, for legitimate purposes to get his advice on matters of strategic importance, it was done in his capacity as Chairman of Emeritus -this designation was reserved upon him for his counseling and advice. Indeed Mr. Cyrus repeatedly sought his advice on numerous matters, such as the proposal to launch a new model of Nano, composition of proposed interim steering committee with Tata Motors, plans to diversify portfolios of Tata Companies issues, dealing with DoCoMo, the challenges faced by Tata Steel Europe, appointment at key managerial persons such as Managing Director of Tata Motors, Chairman of Tata International, Omen Directors on the Board of Tata Motors. He says Mr. Cyrus on his volition also shared confidential information such as Tata shares preliminary proposition for proposing interest in Silver Stone as he was *"keen"* that Mr. Cyrus team should *"make a presentation"*"to him to seek" his guidance on which way to proceed. He says he was even personally asked by Mr. Cyrus to join Board Meetings so as to provide valuable assistance on any new business plans. Saying so, he elaborated in many paras as to how inputs were taken from him in dealing with various business transactions. He says it is unfortunate and ironical that calling him as *"sole proprietor", "shadow director, "super- board"* reigning over the company, apart from all these things, he says he being the Chairman of the Trust, it is his bounder duty to safeguard and protect the trust property i.e., shareholding in the company, in a situation like this, not only as a Chairman of Emeritus but also as Trustee of Trust having major shareholding in the company expressed his opinion to safeguard the interest of Tata Trusts and the interest of the company.

152. He has further clarified in respect to Welspun Energy issue, that issue was brought before the Board in June, 2016 by Tata Power Co. Ltd with a decision to acquire renewable energy assets of Welspun Energy Pvt. Ltd for around Rs. 9000crores, at that point of time, when two of the Nominee Directors of Tata Trust present at that meeting expressed their reservations regarding the manner in which a significant decision, having a bearing on Tata Power, the company and consequently on the Trusts, was being plated before the Board at the last moment contrary to the letter and spirit of Articles of the company, which require to present such issue before the Board of Directors before any of the Tata Companies about to take a decision in respect to raising of capital, incurring of debt and divesting or acquisition of any undertaking or business of Tata Company. This Welspun acquisition being of huge investment amounting to Rs. 9000crores, that decision ought to have been taken by the company before Tata Power decided such issue. When the Nominee Directors asked their objection be formally recorded in the minutes, he was told that Mr. Cyrus vehemently objected to the proposed language, therefore, Mr. Vijay Singh and Mr. Nitin Nohria stepped out of the meeting during the recess of the Board Meeting to consult him to arrive at the language that would be agreeable to all. He says finally this resolution was passed, though the company did not take any prior decision in respect to this acquisition before Tata Power had taken a decision of acquisition without approval of the company. He submits that the Petitioners have exhibited no restraint or reluctance while making remarks of such personal nature accusing him of constant interference and causing incalculable loss to the company caricaturing Mr. Tata's presence as grave. Mr. Tata submits he

conducted himself within the parameters of relevant SEBI regulations which apply to listed companies, and denying the breach of SEBI regulations by putting the Petitioners to strict proof of the same. Mr. Tata finally submits that no cause of action is being made in this petition; the same therefore is liable to be dismissed with costs.

153. R3 Reply; It is Amit Ranbirchandra (Mr. Amit), appointed as Nominee Director in the Board of the company on 26.8.2016 on behalf of the Trust under Article 104B of the Articles of Association filed this reply for he has been shown as R3in the Petition, Since it is important to say who he is, he has stated that he has been the Managing Director of Bain Capital Equity since 2008, before that as the Head of Global Markets and Investment Banking and Managing Director at DSP Merrill Lynch Limited one of the leading investment Bank, while doing so, for having believed in giving back to the society that nurtures the people, he has been actively involved in social sector for 15 years contributing both his time and money. He says he has the privilege of serving on the board of NGOs and now divides his time equally between the corporate world and the social sector. For he proudly considers Jamshedji Tata is one of the role models and follows his approach to giving nearly all his wealth he has been fortunate to create for the benefit of the less privilege in the society. He says he had long standing association with the Tata Group and was invited to join as the Trustee of Tata Trust starting in 2015 in addition to serving as one of the Trustees of Shri Ratan Tata Trust, his philanthropic endeavors also include active participation in India not for profit including his service as the trustee and board member of Akansha Foundation, IFRE (Ashoka University) and Give India. He says his Board commission and sitting fees, net of taxes received from the company are pledged to charity.

154. He was formally appointed on the Board of Directors of the company on 26.8.2016, which was proudly accepted by Mr. Cyrus saying his *"vastexperience could be of immense value to the company and will enrich the deliberations at the meetings of the Board".* For this Respondent along with others being painted as "postmen" and "agents" of Mr. Tata, Mr. Soonawalla enabling them to play as "Shadow Directors" and "super controllers of the company", denying this version, he says, that he has acted independently uninfluenced by external factors in discharge of his duties as Director of the company. Specifically, qua him, he says that the petitioners seem to be inexplicably aggrieved for he cast his vote on the resolution for removal of Mr. Cyrus as Executive Chairman of the company in the Board meeting held on 24.10.2016 on the contention that since he became the Director on the Board only in August, 2016, as such "ideally" he should have abstained voting in the resolution and since he did not abstain, they say that he breached his fiduciary duty towards the company.

155. To dispel this argument of idealism, Mr. Amit submits that he has been provided with exhaustive compilation of documents related to the activities of the company upon his appointment to the Board of the company which made him fully conversed with the activities of the company under the leadership of Mr. Cyrus, to say whether he is conversant with the affairs of the company or not, the contribution and discussion and deliberations happened in the Board Meeting held on 15.9.2016about *S* year business plan presented by Mr. Cyrus is itself a testimony especially about Tata Communication Services (TCS) because Mr. Cyrus himself appreciated his "insight inputs" during the Board Meeting and wanted to get him exposed to other parts of the Group, to prove the same, Mr. Amit placed a letter sent by Mr. Cyrus on 20.9.2016 as an Exhibit-R-III/2 and also Board minutes dated 15.9.2016 reflecting his suggestions on the business plan mentioned above. As to allegation of collusion between Mr. Mitin Nohria, he has stated they have independently held their business reputation in different walks of life, sometimes both of them disagree with each other perspective because they have, he says, always conducted themselves with utmost professionalism, dignity towards their opinions, therefore, he has taken strong exception to the Petitioners suggestions that he was in cahoots with Mr. Nohria. He submits that Mr. Cyrus as well as the Petitioners have downplayed that the decision to replace Mr. Cyrus was taken by majority of the board with 7 out of 8 Directors (not including Mr. Cyrus) voting in favor of his replacement, one abstaining and

Mr. Cyrus not voting which itself makes it clear that Board arrived at a conclusive decision to reintegrate leadership of the company, Finally, he says that the decision taken on 24.10.2016 by the Board of Directors is in paramount interest of the company therefore there is no merit in the argument of the petitioners and Mr. Cyrus. He voted in the resolution and acted in the interest of the company at board meeting whereby this Petition against him is liable to be dismissed.

156. It is Mr. Ajay Gopaikishan Piramal, Leader of Piramal Group, a Conglomerate with diversified business interest across pharmaceuticals, financial services, information services, real estate and glass packaging apart from this, also the Chairman of Shriram Capital, associated with various esteemed organizations as a Chairman of Board of Government, the Indian Institute of Technology, Indore, the Board Member of Pratham, largest MGO in the space of primary education, a member of Board of Deans Advisors at the Haward Public School, in Boston, Member of Central Board of State Bank of India and member of (i) the alternative investment policy Advisory Committee constituted by SEBI, (ii) the National Council Federation of Indian Industry, (iii) the Hon'ble Prime Minister's Council for Trade and Industry and the Board of Trade Constituted by Ministry of Commerce and (iv) the Hon'ble Prime Minister's Task Force on Pharmaceuticals and Knowledge based industries. With this background, on 25.8,2016 he has come on the board of the company as Non-Executive Independent Director. As to the allegations the Petitioners and Mr. Cyrus made saying lack of independence to Independent Directors, Independent Directors related to each other, denying all the allegations in toto, he submits that it can't be said either by the petitioners or by Mr. Cyrus that since he has come on Board on 25.8.2016 as an Independent Director, he should not have participated in the decision taken on 24.10.2016, which has neither been said in the Articles of Association nor in law that a Director should attend such and such number of meetings before voting. He is seasoned business with several years of experience, and he noticed that since there was breakdown with trust between the largest shareholder and the Chairman of the company, i.e. Mr. Cyrus, it was required to be expeditiously addressed, he was even present in the meeting dated 15.9.2016 therefore, he says that the Petitioners stating that Independent Directors are controlled by Mr. Tata or Trustees of the Tata Trust are devoid of any merit and it is a brazen allegation against him without even producing a shred of evidence to substantiate the same. As to the allegation of connections, Mr. Amit and Mr. Nohria are not on the board of Piramal Realty, he says, he shared number of boards either as a Chairman or the Director, in fact, Mrs. Rohika C. Mistry until recently also on the Board of Pratham NGO which he chairs therefore he says none of these associations have in any manner affected his objectivity or independence on any board he has served, so this allegation of collusion is based on some factually incorrect assumptions on commonality of boards. Accordingly, he has sought for dismissal of this Company Petition against him.

157. It is Mr. Nitin Nohria, the George F. Baker Professor of Administration and became the Dean of Faculty at Harvard Business School (HBS) on 1.7.2010. He says that he has been on the Board of the company since 6.9.2013. As to the allegation of conflict due to the gift given to HBS by Mr. Tata, he submits that Tata became a member of HBS Board of Deans Advisors in 2000, during his service on the Board of Deans Advisors, he was approached by Dean Jay Light to consider a gift to HBS to build a new executive building, he had no involvement whatsoever in the discussions. His predecessor Dean finalized this gift in March, 2010, before he even knew he was going to be appointed Dean. His appointment was announced on April, 2010 and his term began in July, 2010 whereas he only joined on the Board of the company on 6.9.2013 after Mr. Tata had retired from the Board. Mr. Nohria says that the Petitioners and Mr. Cyrus twisted this background as if he was involved in soliciting the aforesaid gift from Mr. Tata and thereby compromised in his role as Director of the company. This was denied by Mr. Nohria saying that there is no truth in this allegation. He says that he joined the Board of the company to give something back to his country by serving on the board of one of the important institution-Tata Group, He was proud of being nominee of Tata Trust, he says, because he always argued that a good business must create a value for the society and the majority ownership of the company by Tata Trusts was an example of business

group that was fully devoted to the ideal. As to the allegation of acting as "postman", he says, that he spent more time in conversation and discussion with Mr. Cyrus and other directors of the company than Mr. Tata and he was always free to exercise his best and independent judgment as a member of the Board of Directors of the company. He says earlier board minutes would reveal that he actively and independently engaged in discussing the merits of the matters, he never hesitated in saying to Mr. Cyrus to take prudent actions, including those that would overturn decisions taken during Mr. Tata's tenure. As to allegation of condoning questionable practices at Air Asia, that all those issues were fully examined and addressed, in respect to the allegations about Mr. Siva and Mr. Mehli, when concerns were first raised about loan to Mr. Siva in Board Meeting dated 8.8.2015, all the board members, including himself voted unanimously to pursue any and all actions necessary, even in the board meeting held on 15.9,2016 as well, all agreed unanimously to serve legal notice to Siva Industries and Holdings Ltd and if necessary to file suit for legal recovery. Accordingly, legal notice was issued to Mr. Siva, therefore, the allegation saying that these answering Respondents tried to help Siva is belied in the minutes of the Board meeting held on 15.9.2016.

158. In respect to Welspun transaction, he says, that this issue was never brought before the board of the company for full discussion before approval was sought through written circular, it ordinarily should not have happened because a thorough discussion was required in respect to group company issue before having formal approval. In the board meeting, having Mr. Cyrus vehemently objected to the language Mr. Vijay proposed to enter into the minutes regarding Wellspun issue when Mr. Vijay communicated that seeking approval for Welspun transaction from the company was in breach of the terms of Articles of Association, to get over the situation, Mr. Vijay and Mr. Nohria requested an opportunity to talk to Mr. Tata to see if they could find the language that would be acceptable to Mr. Cyrus. After having spoken to Mr. Tata, they were able to come up with a language that Mr. Cyrus could accept, and finally on the suggestion of Mr. Tata, consensus was arrived at in the said meeting to approve Welspun acquisition despite no formal approval was taken from the board of the company before the decision came from Tata Power to the Company Board. He says that it is one of the glaring examples to say that there was irreparable trust deficit between Mr. Cyrus and Tata Trust - the majority shareholders of the company, in spite of it, minutes came out with consensus.

159. As to allegation in acting with concert with Mr. Amit and Mr. Piramal, he says it is true that Mr. Amit is his brother-in-law and Mr. Piramal is friend and long term business associate, despite all of it, they have their business reputations and have attained their independence and integrity maintaining track record. Therefore, he takes strong exception to any insinuation that he acted in concert with any other board member maligning his integrity or their integrity. He says that he faithfully discharged his fiduciary duty and stand by the board decision to remove Mr. Cyrus as Executive Chairman therefore he says he exercised his vote for good and cogent reasons without any favor, in fact out of his experience he says, he became increasingly concerned during his time on board about Mr. Cyrus ability to meet long time interest of the company. Finally, he says that the majority decision taken by the board on 24.10.2016 to replace Mr. Cyrus was the decision taken on paramount decision of the company whereby this petition is liable to be dismissed.

160. It is Mr. Moshir A, Soonawala (R14), Commerce Graduate from University of Bombay and qualified Chartered Accountant worked with ICICI for 10 years, during which he interacted with International Finance Organizations, *viz*, the World Bank and the International Finance Corporation Washington thereafter joined in the company in the year 1968 ever since he continued up to 2010 i.e. period of 42 years holding various positions as Finance Director thereafter Voice Chairman and Financial Advisor of the company by dutifully discharging his duties for a period of 42 years. He also continued as Directors in Tata Group Companies, when he retired in the year 2010 in the Board Meeting dated 15.6,2010, the company board noted with appreciation of his career of 42 years with Tata Group including 21 years as member of the company board wherein it was unanimously resolved that he would be available as an

Advisor to the company. Now he is aged above 80 years. He had been Trustee of several Tata Trusts for many years after his formal disassociation with the company, he moved to the office of Tata Trusts doing only part time work limiting his time to 2-3 afternoons hours a week to help the trusts in financial matter on charitable grounds. He says by virtue of this background and having known pin to pin about the affairs of the company and its Group Companies, his advice has been sought by Mr. Cyrus as well as the company and its Group Companies whenever any financial issue has cropped up. Now it has been shown as interference with the affairs of the company and its Group Companies.

161. He said while perusing the petition he noted some uncharitable allegations against himself and Mr. Tata, though he does not wish to draw the proverbial sword at such misconceived and entirely baseless allegations, it does pain him to see how no stone is being left unturned to sully the name of this grand institution at the instance of those who were sworn to honor the same. He says that there is ample material to show that how Mr. Cyrus made requests asking him to accompany Mr. Tata to some meetings to discuss some specific financial matters relating to the company and the operating companies just to show one example, Mr. Cyrus had asked the Company representatives of Tata Chemicals Ltd. to seek the views of Mr. Tata and himself, regarding divestment of divisions of Tata Chemicals, he filed a mail sent by Mr. Tata on 28.7,2016 greatly appreciating the clarifications he had given. He further clarifies it was Mr. Cyrus who would send him the copy of presentations on the matters to be discussed though he had never asked for those documents to be sent to him. For Mr. Cyrus being the Chairman of the company, he could not have declined the request come from Mr. Cyrus to attend meetings or to accept the presentation papers sent for this purpose without which he would unable to express any views.

162. He has given another example of the year 2016, when Mr. Cyrus wanted to seek Mr. Tata's views on strategic matters pertaining to Tata Tele Services Ltd (TTSL) and Tata Power, documents were sent for having meeting with Mr. Cyrus as well as Mr. Tata to express his personal views on the relevant topic, to establish the same, Mr. Soonawala placed relevant correspondence exchanged between 1.5.2016 and 22.7.2016 which is clearly demonstrating his nature of involvement which according to him cannot be called as interference. He says at no point of time, he asked for any information which could be considered confidential or price sensitive information. In the context of Welspun acquisition by Tata Power, he was consulted on the financial structure for the acquisition, when he required further information to formulate his views, when he put it to Mr. Cyrus for the material, he arranged for the relevant information to be provided by the company and Tata power for his review, to show its relevance he placed the correspondence exchanged between 26th and 27th July, 2016. As to his meeting with Merchant Bankers, at Mr. Cyrus's suggestion only, he had discussion with merchant bankers by putting this information to the Managing Director of Tata Power before meeting with Merchant Bankers and also kept Mr. Cyrus informed of his meeting with the merchant bankers. This was in fact appreciated by Mr. Cyrus stating that he would ask the Company Secretary Mr. Farooq to co-ordinate with Mr. Soonawala.

163. In December, 2014, he says, when Tata Motors was considering alternative for raising long term finance, the CFO and CS of Tata motors met him at Mr. Cyrus instance to seek his views on a very limited aspect of the proposal namely the treatment of DVR shares. He has categorically mentioned that only on two occasions, he sent notice to Mr. Cyrus and Mr. Tata on his own initiative i.e. on 4.12.2015 analyzing the company's financial results pointing out some areas of concern, second one is on 9.7,2015 in respect to TTSL financial problems. These notes were in the context of his role of a Trustee, whose duty is to protect its major investment in the company which is a valuable asset of the Tata Trusts. He says that bare perusal of these notes will clearly indicate these were advisory in nature and such advisory could not be construed as "directions" or "instructions" from him as alleged. He says that to the best of his knowledge he has not sought information, on his own from the listed operating companies during last four years of Mr. Cyrus' tenure, if any information was provided regarding listed operating companies, it was only to seek his guidance and advise at the behest of senior officials of such companies given his long association with the

Tata Group and presumably his experience in the relevant field.

164. He says he has held equity shares of only two listed companies, out of them; one is Tata Investment Corporation Ltd where he holds only 3000 shares therefore no question of his personal aggrandizement by use of such information. He says he has never attended a single Board Meeting of the company since his retirement in 2010. He met the Trust nominee directors on the Board of the company only on two occasions, that to at the request of Mr. Tata to answer some specific questions.

165. As to Welspun acquisition, he came to know of it only through a press release by the company that the acquisition has been agreed upon, when Mr. Tata queried Mr. Cyrus as to whether this large and important acquisition had been placed before the company who has 30% stake in Tata Power, upon which, Mr. Cyrus requested Mr. Tata and himself to attend a presentation by the Tata Power management to explain this acquisition, the Financials involved, as to this aspect the correspondence exchanged with Mr. Cyrus is between 24,6.2016 and 25.7.2016 which is annexed as Exhibit R-XIV/11(Colly), When the management, in respect of this acquisition presented the proposed financing structure, he did say an alternative structure should also be examined because the acquisition was proposed to be made through subsidiary of Tata Power wherein the outsider investors might also be brought in, possibly at higher valuation resulting upfront dilution of Tata Power stake in its subsidiary which was undertaking more profitable business than its present business. He was also of the view that proposed structuring was not in the interest of shareholders of Tata Power, on this suggestion Mr. Cyrus with the concurrence of the COO of Tata Power Mr. Soonawala was requested to discuss a feasible alternative under more beneficial structure with the Investment Bankers. In these circumstances he had a meeting with JM Financial. In the back drop of it, he says, it could not be seen that he had dictated something relating to Welspun acquisition, he only suggested that the idea which would be more advantageous to large (including the company) and small shareholders of Tata Power.

166. As to Mr. Soonawaia and Mr. Tata being caricatured as "Shadow Directors", "Super Board", "Director", he says they are all baseless and just to vilifying the distinguished persons occupying the seat on the Board of Directors of the company. Finally denying all the allegations made by the Petitioners and Mr. Cyrus, he has stated that he has worked towards discharging his obligations for the Trusts, In view of the same, he has sought for dismissal of this Company Petition against Mr. Soonawaia.

167. It is Mr. Ramachandran Venkata Ramanan (Venkat-R20), presently working as Managing Trustee of Sir Dorabji Tata Trust and Allied Trust, he is a Science Graduate thereafter did his Law from Mumbai University, MBA from Sri Sathya Sai University, later completed his Advanced Management Program (AMP) from prestigious Harvard Business School, he says he had the honor of knowing Tata since 2002 during his association with Videsh Sanchar Nigam Ltd, a company that was bought over by Tata Group in early 2002, initially he started his life with Tatas as Executive Assistant to Mr. Tata, his association started with Air Asia India Ltd. (AAIL) in the year 2012 and continuing as Nominee of the company on the Board of AAIL. He denies all the allegations made by the Petitioners as well as Mr. Cyrus against him, specifically mentioning that the alleged fraudulent transaction that was taken place in AAIL, that is finally made clear in the forensic audit report of M/s. Deloitte Touche Tohamatsu India LLP (Deloitte) regarding the transactions aggregating to Rs. 22crores, attributable to Ex-CEO of AAIL, but whereas in this Petition, he says he was alleged as beneficiary of this fraudulent transaction attributing involvement with a "suspected and UN sanctioned global terrorist" which is downright defamatory and scandalous. In fact, Deloitte itself, which was appointed by the unanimous decision of AAIL never made any such observation in their forensic audit report. And having AAIL Board already initiated concrete action against the Ex-CEO by fifing a complaint before the Commissioner of Police, Bangalore on 9.11.2016, how could he be blamed for something done by another. In this entire audit, it is nowhere ever whispered that Venkat have been indulged in this fraudulent transaction except by these petitioners, moreover Director of Enforcement and Local Police of Bangalore, has been pursuing the issue pursuant to the complaint lodged

by AAIL, in view of the same, Mr. Venkat has sought for dismissal of this Company Petition against the Respondents including Mr. Venkat.

168. Apart from the reply filed by Mr. Venkat on behalf of himself, he has also filed reply on behalf of R16, R17, R18, R19 and R20 in their capacity as the Trustees of Sir Ratan Tata Trust (SRTT) and R16, R17, R20, R21 and R22 in their capacity as the Trustees of Sir Dorabji Tata Trust (SDTT) stating that this Petition is hopelessly lacking material particulars to sustain any cause of action against these Trustees because they are not separate legal entities and moreover no specific allegations have been made against the said Trustees by the Petitioners, therefore, the relief sought against these Trusts cannot be countenanced in the facts of the present case.

169. Mr. Venkat submits that the Trusts are registered as Public Charitable Trusts governed by Maharashtra Public Trust Act, 1950 (MPT Act), therefore, prior to instituting any suit against or relating to Public Trust or Trustees, seeking inter-alia declaration or injunction in favor or against the Public Trust, consent in writing of the Charity Commissioner must be obtained, in this case, the petitioner has neither obtained prior written consent from Charity Commissioner, nor they have impleaded the Charity Commissioner as a party to the Petition, thereby this infirmity goes to the route of maintainability petition vis-a-vis the Trustees of Trust hence the Petition liable to be dismissed.

170. As to legacy of the Tata Trust, Mr. Venkat says that SRTT was established on 10.9.1919 by a will executed by Sir Ratan Tata on 20.3.1913 settling his property including the shares held by him in the company setting out the objects of SRTT as well as the manner in which his bequest should be applied, since it has already been said in detailed about the objectives of the Trust, I don't think I need to repeat the averments in this regard. Sir Dorabji Tata in the year 1932 settled the Trust bearing his name and beneath his stake in the company to the Trust, this has also been dealt with in detail for the sake of brevity, it has not been discussed again as to how much work this Trust doing to the Society,

171. He says, the basic allegations against the Trusts are the Articles of Association of the company, which have been duly approved by the Petitioners and Mr. Cyrus, are being used as tools of oppression for appointment of Nominee Directors to act on the instructions of the Trustees and for interference by the Trust and calling for information by the Trustees specifically Mr. Tata and Mr. Soonawala directly from the company and operating Tata Group Companies, he says these are all unfounded allegations without any supporting evidence. While explaining historical evolution of the rights of the Trusts in the company, he says that Trusts have been majority shareholders of the company since their inception in 1919 and 1932, the Petitioners have become shareholders of the company in the year 1965, by the time Trusts were majority shareholders of the company, over the years also, the situation has remained same having all through majority in the company having all these Trusts collectively holding 65.30% of the equity/ordinary share capital of the company. He says former Articles of the company were substituted by a new set of Articles by way of a unanimous special resolution passed at the Annual General Meeting of the shareholders of the company on 13.9.2000 wherein the Petitioners were duty represented at the said General Meeting by Mr. Pallonji Shapoorji Mistry [Mr. Cyrus's father) and voted in favor of substitution of Articles agreeing for these two Trusts shall have the right to jointly nominate *"1/3rd of the prevailing number ofdirectors"* so long as the Tata Trusts own and hold in aggregate at least 40% of the Paid Up Ordinary Share Capital of the company (Article 104B) and the *"matters"* before any meeting of the Board which are required to be decided by the majority of the Directors shall *"require the affirmative vote of all the Directors appointed pursuant to Article 104B present at the meeting"*.

172. Another significant alteration to the Articles of Association is on 9.4.2014, a General Meeting chaired by Mr. Cyrus was held amending Articles 104B, 113 of the Articles of Association along with addition of Article 121A and 121B setting out certain matters mandatorily required to be placed before the Board of Directors of the company, such as bringing the major issues of operating companies to the Board

of the company before making any approval in respect to those issues by the operating companies, so that the functioning of operating companies will remain in tandem with the guidance of the company. Mr. Venkat says that for the last several decades there was no objection either to Mr. Cyrus or to his family members or to the Petitioners to any of these Articles, now they have become an impediment to the corporate governance of the company only when Mr. Cyrus was removed on 24.10.2016 as Chairman. He submits that the Trustees have not only to implement philanthropic objectives but also to protect its shareholding in the company, therefore these two duties lying on the shoulders of Trustees cannot be separately looked into because they are inter connected with each other, He says it need not be said again that Mr. Tata has been made as Chairman Emeritus of the company on the recommendation made by Mr. Cyrus likewise even Mr. Soonawala was asked to continue as Financial Advisor and to aid his expertise to the company as well as its operating companies, which have now become interference to the petitioners and Mr. Cyrus.

173. Mr. Venkat recounts that these amendments admitted by the Petitioners and Mr. Cyrus at the time of amendments or addition are *"good intentioned"* and for *"securing the interest of the Trusts"* but now they have been seen as being *"converted into a regime forenabling in control"*, He says that the rights of the Trusts are valid and law puts no limitation on their rights therefore, he says that the petitioners modulated their case saying that the *"manner"* in which the rights majority exercising is oppressive against the Petitioners, but no material to support this allegation. He says that there is no legal restriction on inclusion of protective covenants in the Articles of the company and the Articles stand to the scrutiny of time and no objection regarding these provisions had ever been raised by either the Petitioners or Mr. Cyrus before filing this petition. He says that these are the reactionary allegations surfaced for the sake of making allegations only after Mr. Cyrus has been removed as Executive Chairman. He says that there is not even a single instance saying that have these Trustees or Trusts or its Nominee Directors ever exercised the affirmative rights against the Petitioners or even in any of the meetings so far held therefore, this per se argument made by the petitioners is not tenable. The Petitioners nowhere stated in their Company Petition, he says, what benefit the Trusts availed by the so called interference in the matters concerning the company. If at all their interference caused any loss to the company, the Trusts would hurt most rather than the Petitioners, whereby he says that these allegations are nonsensical in nature, As to the Nominee Directors Mr. Nitin Nohria, Mr. Vijay Singh, Mr. Amit Chandra, he has reiterated what all they stated in their replies is that their diverse and rich experience has been agreed to render to the company and its Group Companies, but whereas now their expertise and eminence has been reduced, Mr. Venkat says, to puppets, handmaiden and postmen. These Trustee Directors brought about synergy between the Trusts, the company and Tata group operating Companies, there has never been any allegation that they have breached their fiduciary duties towards the companies, and they have always discharged their fiduciary duties independently. He submits that the interest of the Trusts is aligned with the interest of the company, the interest of the Tata Trusts is to ensure that the company Is the flagship of Tata group continues to function optimally so that, in turn investments of the Tata Trusts stands well protected and delivers optimal yield which car be utilized for the charitable activities of the Trusts.

174. As to unpublished price sensitive information allegation, he says that Trustees have never been directly calling for such information from operating companies, besides this, if at all any such issue is there and that issue is hit by SEBI (Prohibition of Insider Trading) Regulation, 2015, SEBI has to take action, not this Tribunal.

175. In respect to the relief sought against the Trustees, Mr. Venkat says each Trustee has a fiduciary duty under Section 36A of MPT Act that the Trustee shall be entitled to exercise all power incidentals to the prudent and beneficial manner of the Trust and to do all things necessary for the due performance of duties put on the Trustees.

176. Finally, Mr. Venkat says that the Petitioners as well as Mr. Cyrus tried to impress upon this Bench as

If Mr. Cyrus accepted the offer to become the Chairman of Tata Trust on being assured by Mr. Tata that he would be given a free hand, but to fortify this allegation, he says, no evidence has been placed to that effect, inasmuch as the two documents, i.e. the resolutions passed at the board and shareholders meeting of the company at which Mr. Cyrus was appointed as Chairman and the letter of appointment issued by the company to Mr. Cyrus, they do not reflect that either Board or the Shareholders agreeing to provide free hand to Mr. Cyrus, in fact as per the provisions of the Companies Act, there is no concept like *"providing free-band"* to Executive Chairman except to work within the boundaries of the applicable law and its chartered documents, in fact, this *"concept of free hand"* will militates against the collective authority of the Board which the Petitioners themselves purportedly claims to espouse. He says this espousal of free-hand concept by the Petitioners and Mr. Cyrus will clearly indicate that Mr. Cyrus wants an unbridled control over the company and its operating companies by virtue of having Executive Chairman position in the company and the majority shareholders in thecompany to remain decimated to mere formalism. He says that the board of the company expressed loss of confidence in Mr. Cyrus leadership and his ability to provide visionary leadership to Tata group and therefore he was replaced as Executive Chairman. He says, their personal grouse against his removal has been falsely manifested as cause of action to file this Company Petition stitching it with various other non-issues, henceforth, Mr. Venkat submits that this Petition shall be dismissed as misconceived.

177. Under Article 121(B), all directors on the board are on equal footing and are entitled to give notice to the company or its board regarding any matters/resolution which they would like to place before the board of directors. Under this Article, it is mandatory for the directors to take up such resolution for consideration at the board meeting next held, after such notice is received, therefore it is denied that the provision of the Articles have been used to oppress the Petitioners or that Mr. Tata and Mr. Soonawala are the purported "real Board" of the company, In the year 2000 itself, Article 121 has been included to permit Trust nominee directors to exercise an affirmative right with respect to all matters required to be approved by the board, Article 121(A) is nothing but an extension to 121 listing out specific items which are required to be placed before the board to ensure that the management of the company below the board level does not misuse the executive authority vested in them and take decisions on such key matters without the board of directors of the company being involved in such decision making, It is said this arrangement is an arrangement to maintain that checks and balances are rest with the board of directors to ensure the management and overall supervision of the company is smoothly run. As to constitution of selection committee for removal of executive chairman, it is submitted that Articles of Association do not require constitution of selection committee for the purpose of the removal of the Executive Chairman.

178. It is a rejoinder filed by the Petitioners on 23.01.2017 to the reply of the company. In this rejoinder, the petitioners denied the answering Respondents saying that this petition is nothing but a ruse by Mr. Cyrus to publicly express displeasure at being treated in the course of loss of his office. Mr. Cyrus along with his family owns entire equity share capital of the petitioners as set out in the Company Petition. Denying that the Petitioners herein are alter ego of Mr. Cyrus, in truth, the Petitioners say, the company is the alter ego of the Tata Trust, it is evident that the company acting in collusion with the Trust issued notice for holding EoGM on 6.02.2017 for the removal of Mr. Cyrus from the Board of the company. The petitioners again reiterated that Mr. Tata would micro manage every decision of Board of Directors of the company and implementation of those decisions. Mr. Tata being the Chairman of the Trust, he would instruct the Trust nominated Directors before Board Meetings of the company in the manner in which such meetings are to be functioned. With the constant interference by Mr. Tata in the affairs of the company, it only goes to show that the Board of Directors were acting in the interest of the Trust ignoring the interest of all other stakeholders of the company. Mr. Tata as Chairman of Tata Trust, holding sway over the affairs of the company which constitutes an act of oppression against the minority shareholders like the Petitioners.

179. The Petitioners have questioned the removal of Mr. Cyrus as Executive Chairman of the company on 24.10.2016 stating that his removal from Chairmanship of the Board of Directors was not on the agenda of the Board Meeting though Articles of Association require Selection Committee to be formed for the removal of the Executive Chairman as enunciated under Article 118 of the Articles of Association. On being removed without even following the rules laid down in the Articles of Association, the petitioners submit that it discloses the high handedness of the Respondents who attempted to justify the reason for the removal of Mr. Cyrus as Executive Chairman with a reason of loss of confidence is a lame excuse to exclude Mr. Cyrus from the post of Executive Chairman.

180. As to the reply given by the company stating that Mr. Tata did not attend any of the Board meetings post his retirement as Chairman Emeritus is farcical in as much as he did not need to attend the meetings considering the manner in which he had converted the Articles of Association into tools of oppression. Whenever he wanted, he attended the meetings, one example to it is, Mr. Tata attended the general meeting held on 25.8.2016, when he nominated and brought on the Board of Directors new additional Directors, Mr. Ajay Piramal and Mr. Venu Srinivasan in his capacity as a Shareholder.

181. The Petitioners further submit that it would become necessary to reiterate how the Articles of Association have become tools of oppression. With the power to veto, the decisions were sought to be brought to the Trustees before being brought to the Board of Directors, this approach further being degenerated with Trust Nominee Directors taking instructions on how to deliberate and what to say about decisions tabled at the Board Meetings. Likewise, after approving decisions, the Trust Nominee Directors would go back on the earlier decisions under instructions from Mr. Tata, when this was resisted, they would step out to take instructions from Mr. Tata, Evidence has been brought to bear on Mr. Tata dictating what has to come in the minutes of meeting, which renders the need to physically attend the Board Meetings redundant. On the plain reading of the communication exchanged between Mr. Tata and Mr. Cyrus, it is clear that Mr. Tata was at all times attempting to compel Mr. Cyrus to toe his line.

182. As to the Petitioners or Mr. Cyrus acquiescing to the decisions taken by the Board until before the removal of Mr. Cyrus, they submit that Mr. Cyrus was battling constant interference and coping politely with the onslaught of interference by Mr. Tata and Mr. Soonawala. They submit that merely by consenting to the decisions taken by the Board does not follow that the majority shareholders get perpetual immunity from the oppressive conduct. The majority of the shareholders i.e. Tata Trusts has abused the Articles of Association and by doing so, they have oppressed the minority shareholders, The recent instance of such oppression is that the notice dated 05.01.2017 issued by the company for holding an EOGM for decision on the special agenda of removing Mr. Cyrus from its Board of Directors. After Mr. Cyrus having been appointed as Executive Chairman, he identified some contentious issues troubling the company and therefore, documented the same in the strategic plan of June, 2014. Thereafter, he not only identified them but also pleaded to take necessary action into those hotspots such as requirement of closure of Tata Nano project, restructuring of Tata Steel UK, working on TTSL-Siva transactions which have been causing losses to the company. About Mr. Cyrus along with his brother being 100% shareholders of the Petitioners, raising all these hotspots so as to avoid tosses to the company, it is nothing but raising concern over the losses the company incurring, that being so, it could not be said that the Petitioners have not raised any grievance in respect to the losses the company incurred before removal of Mr. Cyrus as Executive Chairman of the company.

183. The Deponent herein submits that he has been duly authorized by requisite Board Resolutions to act on behalf of the Petitioners including but not limited to affirming the above Petition and Affidavits as advised to do so.

184. As to the reply stating that this petition is hit by delay and latches, the petitioners submit that the oppression and management against the petitioners is still continuing- recently the company suffered an

award of nearly Rs. 8500crores as a result of put option granted by the company to MTT - DoCoMo under the watch of Mr. Tata. This award has meant serious financial restraint on the company with the entire amount having to be deposited with the court. The petitioners submit that it is not worthy that when the put option was contracted, the existence of put option has been suppressed from the Foreign Investment Promotion Board. As a result of this transaction, the company have been forced to pay a sum in excess of the fair value for the Shares of TTSL If it is held that such payment was itself contrary to the law of land, it would follow the agreement promising to do so would also be contrary to law. That Mr. Tata, in the case of Indian Hotels Co. Ltd, dissented sale of assets in United States, thereby laying bare his inability to act in the best interest of the company and its stakeholders and demonstrating he was more focused on protecting his legacy.

185. As to denial by the company stating that impugned transaction does not constitute the affairs of the company, the Petitioners submit that such insinuations are entirely baseless and contrary to the records before this Bench.

186. The Petitioners submit that the decisions of continuing to fund and throwing good money to bad in such transactions and refusing to deal with them professionally with a view to protecting the legacy, has become blatant mismanagement and oppressive conduct, The petitioners deny that the grievance of the petitioners is against the wisdom of management of the company to enter into transactions, because the grievance is not against entering into transactions but it is against the current proclivity to persist with carrying on loss making business, which amounts oppression as set out in the Petition.

187. As against the reply of the company saying that the veto power lying with Tata Trusts was never physically used, the Petitioners submit that not using veto power is of no relevance, because the petitioners had agreed to the amendments of the Articles on the premise that it would enable the Trustees to bring on Board, individuals of standing and capacity to take decisions for enabling the governance of the company, but on the contrary, the Trust Nominee Directors started acting as postman and communicators of views and decisions of Mr. Tata and Mr. Soonawala without applying their wisdom, since such a framework is de-facto reality, the petitioners therefore submit, it is appropriate to have the provisions of Articles of Association cited in the Company Petition struck down.

188. It is true that till the retirement of Mr. Tata from the Board of Directors, the Chairman of the company and Tata Trusts were common therefore there was no scope for any difference of opinion, but on appointment of Mr. Cyrus as the Chairman of the company, the Chairman of Tata Trust has become different, in that new scenario, to provide a degree of protection to Tata Trusts from any future potential adverse managerial decisions taken by the company, to protect the dividend distribution flows to the Trusts and to ensure businesses were not entered into that were in variance with a group ethos, of course Mr. Cyrus was very much present at the EoGM dated 9.9.2014, whereat, Articles 121A and 121B were introduced in the Articles of the company but it was not intended that the same articles would allow for abuse by Mr. Tata and Tata Trusts to make the Board of the company redundant and act as tools of oppression against the Petitioners. The petitioners deny that Mr. Cyrus in systematic and planned manner reduced the representation of the company director on the Boards of other major Tata companies.

189. As to the reply of the Respondents saying that Mr. Cyrus did seek advice and Counsel from Mr. Tata on several matters, the Petitioners submit, the issue is not about seeking advice, counsel or guidance in keeping with the norms of politeness, decency and respect for age, but whereas Mr. Tata converted this respect for age into a license to such an extent that he even throw out Mr. Cyrus without complying with basic legal requirements by continuously interfering with the decision making process of the company. The manner in which Mr. Tata would thrust his business contract into the company would show the level of interference by Mr. Tata. It is denied that Mr. Cyrus was lacking or did not match up to the expectation from him or that his leadership was not aligned with the long term goal and targets of the company or Tata

Group, In fact, it is noteworthy that most of the Directors on the Board of the company by October 24, 2016 had no long term experience with being directors of a holding company Board, For most of them, it was the first time they had served on the Board of Directors of such a company.

190. As to allegations raised against Mr. Cyrus, the Petitioners deny that Mr. Cyrus showed a little or no progress on strategic plan presented in 2014 or to implement the action on the hotspotsidentified therein,, in fact Mr. Tata was offended by the term hotspots, saying so they deny the strategy provided by Mr. Cyrus should not have been construed as more of cash flow statements and needed to include summary of e-business strategy as well as high level micro assumption that the plan is more sensitive to as alleged.

191. In respect to Mr. Amit Chandra, who has been shown as worked in Bain Capital, that company has gone into losses for want of even basic due diligence which is very much available on public domain. The Petitioners submit that showing business strategy as cash flow statement is an afterthought process, because Mr. Tata wrote a letter dated 2,9-2016 asking for more information to be included in business plan and draft business plan covering the information asked for was also part of the agenda for the meeting scheduled on 24,10.2016. The petitioners submit that when Mr. Tata was the Chairman, there was no annual business plan presented to the Board, in the four years of tenure of Mr. Cyrus, no fault was found and no change in the format was sought. Only in the months preceding the illegal ouster of Mr. Cyrus, changes were sought - evidently pointing to the stratagem to pull some ground however tenuous to find fault with Mr. Cyrus. As to Welspun transaction, the petitioners deny that there was lapse of governance in the context of the Welspun acquisition.

192. As to board room storm, the petitioners submit that Mr. Tata and Mr. Nohria personally spoke with Mr. Cyrus just minutes before commencement of the meeting of Board of Directors on 24.10.2016, no reasons were given by them for requesting Mr. Cyrus to resign. Mr. Tata and Mr. Nohria insisted that the Board of Directors of the company has lost confidence in Mr. Cyrus, which in itself weigh arbitrariness, Mr. Cyrus was removed from the Chairmanship of the company in the meeting held on 24.10.2016 when that was not on the agenda of the said meeting. The Respondents not having prepared for resistance in principle are now drumming up inherent purported reasons and claiming to supply reasons for their inexplicable, illegal and violative conduct, Thepetitioners submit that the Respondents seeking to show that "giving an option to reason" minutes before an illegal ouster can be passed off as a reasonable fair notice and opportunity to engage on the purported grounds of removal- This reason of holding up of trust deficit is nothing but a cooked up afterthought.

193. As to removal of Mr. Cyrus as the Director on the Board of Directors, the company issued notice on 5.1.2017 for an EoGM on 6.1.2017 for the removal of Mr. Cyrus from the Board of Directors with an explanatory statement alleging leakage of "internal communications including those which were marked as confidential". The petitioners submit that the email dated 25.10,2016 was marked to multiple addressees - namely the Trustees of the company and the Directors of the company. According to the company, anything detrimental to the interest of the company would be detrimental to Tata Trusts, however, if the Income Tax Authorities would deny exemptions to Public Charitable Trust carrying on business masquerading as Charities it would have no bearing at all on the company, therefore, by conduct, the Respondents have demonstrated that they are conducting the affairs of The company solely addressing the interest of the Trustees of Tata Trusts and not in the interest of all shareholders and stakeholders.

194. As to resignation of Mr. Cyrus as director of Tata Group Companies, the Petitioner denies that the issue has brought to a close it does not hurt the group operating companies because he resigned from the group companies out of embarrassment. The Petitioners submit that of course this petition does not seek to enforce insider trading regulation but to articulate the disregard the Respondents have towards the law. Likewise, the attempt to characterize old decisions as being the one assailed when it is abundantly clear that it is the failure to deal with the old decisions that have been incontrovertibly proven wrong despite

best efforts of over a decade to make them right, is what is oppressive in character. The petitioners submit that the content therein are irrelevant in view of the fact that the challenge is not against the transaction but against the decision to continue with the same despite they having been proven to be mismanagement. They deny that they have failed to explain how the petition is within limitation period as prescribed under the Act and the Limitation Act, 1963 and the real cause of action for the petition is the replacement of Mr. Cyrus as Executive Chairman, likewise, even denied that the receipt of dividend and the petitioners by reasoning of accepting dividend would render the Petition not maintainable, if that is so, no member who has received dividend can ever invoke the provisions of law that confer statutory protection against oppression and mismanagement. They deny that this petition has been sponsored by Mr. Cyrus so as to pursue an agenda of personal vendetta against Mr. Tata and Mr. Soonawala adopting a "scorched earth policy" of tarnishing the reputation of the Tata Group on being removed as chairman, in fact the intent of the petitioners is to save the company from the whims and fancies of Mr. Tata and those willing to lend themselves to aiding and abating his manner of continuing to control the company even after retirement. The Petitioners deny that the instant proceedings are proxy and/or *benam's* litigation. For having Mr. Tata and Soonawala conducted themselves in compelling the Board of Directors to continue with loss making businesses is just another instance of interference of the Trustees in the affairs of the company because some of the businesses the petitioners have raised their grievance against are emotionally important to Mr. Tata, which makes it impossible for the company to close such businesses. They further deny there is no conflict of interest, nor as such any conflict of interest being demonstrated between Tata Trusts on one hand and the Board of Directors on the other hand. The Petitioners submit that the affirmative vote given to the Trusts is only a negative right to say NO to any of the Board Resolution comes before the Trustees but such negative right cannot become a positive right to bring to the Board of Directors of the company only such subject and in such form and in such manner as Mr. Tata would be satisfied with, Whenever the Trustees felt that they were not consulted even before the Board was sounded out, Mr. Tata would allege a breach of Articles of Association. In the backdrop of it, the protective covenant, if misused by the majority shareholders against the minority, then the right of affirmative vote becomes the tool of oppression, therefore the same are liable to be struck off. In respect to the milestone Mr. Tata achieved, the petitioners submit, such achievement does not mean the oppressive conduct thereafter, in particular, after retirement would become immune therefore, past achievements are wholly irrelevant to the determination of issues in the instant case. The Petitioners submit that their grievance is that Mr. Tata as the Chairman of the Trusts, sought to interfere in the affairs of the company by instructing the Trusts nominated directors to steal the decisions of the company to suit the objectives of Tata Trusts, which constitute oppression on the minority shareholders, Mr. Tata being an invitee in the position of Chairman Emeritus to Board Meeting is quite different from demanding the conduct of pre-board meeting discussion to stage manage and floor manage the conduct of board meeting of the company is nothing but reducing the board meeting to mere ritualistic formality. The petitioners submit that the removal of Mr. Cyrus as Executive Chairman is an act of oppression and mismanagement of the company and also say that the Company Petition is to protect the company from the oppressive conduct by the other Respondents. The petitioners submit, as to the allegation of Mr. Cyrus leaking information to the petitioners, that the respondents deserved to be hoisted on their own petard considering they are seeking to level serious allegations of confidentiality breaches against Mr. Cyrus even while themselves indulging in full flow of all information received by Mr. Tata in his fiduciary capacity to create a super board and shadow directorship and controlling the strings from the background. The petitioners submit that Mr. Cyrus approving the resolutions for alteration of Articles in the past is of no consequence because Mr. Cyrus voted in favor of the decisions believing those decisions were legitimate business decisions, now it appears to him that they were in fact decisions taken to give impetus to the objectives of Mr. Tata and Tata Trusts. The Petitioners have explained that during the tenure of Mr. Cyrus as executive chairman, the cash flow to the Trusts significantly improved on account of special dividend that Mr. Cyrus authorized from TCS and purchase of Tata Capital shares from the Tata Trusts. These shares were earlier gifted to the Trusts. This additional windfall was in excess of Rs.

4.6crores, the petitioners submit that this simple analysis would spade to the company's attempts to falsely suggest that receipt of dividend is payment of license fee to oppress the shareholders who receive the dividend and mismanage the company that paid the dividend. As to the allegation that the company is not allowed to take decisions in respect to the affairs of its group operating companies, the petitioners submit that the company directors take policy and strategic decisions in respect of the functioning of the other Tata group companies- On the allegation the company raised that these petitioners as well as Mr. Cyrus remained silent over Corus acquisition, Mano project, the contracts awarded by Tata Power Ltd. to Mr. Mehli and the investment by Mr. Siva into TTSL, have only surfaced after the replacement of Mr. Cyrus as Executive Chairman, it has been said that Mr. Cyrus said that his knowledge is limited to the information and documents shared during the meeting of the Board of Directors of the company in respect to the aforesaid issues.

195. With regard to Mr. Soonawala, the petitioners indeed stated that he was intervening in respect to the affairs of the company under the garb of expressing his views on behalf of the Trusts. It is being said that a retired man being available as an adviser is quite different from a retired man seeking to impose his rules as if he never retired. The petitioners allege that it would be open to Mr. Soonawala to provide advice or refrain from doing so, but without advise being sought, if Soonawala is to demand that his advice to be taken, that would constitute control.

196. The company has failed to provide a plausible reason as to why Mr. Cyrus was removed without following the due process including constitution of selection committee as has been mandated by the Articles. The petitioners denied this petition as directorial dispute in the disguise of "an action in public interest". To prove that Mr. Tata has dictated minutes, the petitioners have referred some correspondence, which is as follows:

a. Email dated February 05, 2013 addressed by respondent No. 20 to Respondent No. 23 with a copy marked to Respondent No. 11 (page 68 of the Cyrus Reply) whereby Respondent No. 20 communicates the suggestions of Respondent No. 2 to the board minutes of Respondent No.1;

b. Email dated May 08, 2016 addressed by respondent No, 23 to Mr. Vijay Singh (page 70- of the Cyrus Reply);

c. Email dated September 28, 2016 addressed by respondent No. 23 to Respondent No. 11 (page 67 of the Cyrus Reply) which clearly shows that Mr. Vijay Singh would "clear" the draft board minutes with Respondent No. 2.

197. On the reply given by the company stating that the process of selection is not applicable for removal of Chairman, the petitioners deny that the Articles of Association do not require the constitution of selection of committee for the purpose of removal of the chairman and state that the interpretation of the articles sought to be propounded by the company is in clear contradiction to the letter and spirit of the Articles, they further submit that the nominee directors of the Trustees of the company have not been exercising the powers granted to them in judicious manner, indeed they have become handmaid of Mr. Tata. The Petitioners submit that R5 and R6 and R3 had barely attended one board meeting and yet have been humble enough to claim that it is more than adequate for them to form judgment over how a complex group of company was being run. The petitioners have explained the extent of control wielded by the company over Tata Motors is evident from the fact that the Company Secretary and the Compliance Officer of the Tata Motors circulated an email dated November 14, 2016 to Independent director enclosing and advice from the company general counsel Bharat Vasani stating that independent director has no power to take independent decision and report their view to stock exchanges, in fact, Mr. Tata has caused the company to threaten withdrawal of Tata Brand from companies that do not toe its line. In respect to Siva issue, the petitioners submit that the company is now attempting to distant itself from Siva, when Siva had in the past acquired shares at discount in TTSL owing to his close relationship with Mr.

Tata and considering that Siva has sent dossiers to demonstrate his proximity to Mr. Tata including demonstration that Siva would set up personal email id for the use of Mr. Tata. The petitioners repeated how the company ensured that Siva was provided loan by Standard Chartered Bank against the shares issued to Siva Company.

198. The petitioners repeated how Bakhtawar flat was sold to Mr. Mehli and about transaction with PNB Metlife, in the same vein, about AirAsia, India Hotels Company issue, the petitioners ascribe that Mr. Tata and Mr. Soonawala have deep rooted nexus with the board of directors of the company, by taking it as an advantage, Mr. Tata and Mr. Soonawala have got access with insider information in violation of SEBI norms.

199. The petitioners annexed EOGM notice dated 05.01.2015 along with explanatory statement for removal of Mr. Cyrus as the director of the company and a letter written by Mr. Tata to Mr. Cyrus on 02.09.2016 along with email correspondence in between Vasani and Compliance Officer of Tata Motors, the company and its group companies, the effect of all these documents would be discussed when the issues involved in this case are discussed.

200. It is a rejoinder filed by the Petitioners to the reply filed byMr. Tata, wherein they submit the same what they have said in the CP reiterating that Mr. Tata stepped down as Chairman of the company with a view to take a clean break from the company citing company policy of retiring at the age of 75 but as soon as Mr. Cyrus was removed as Chairman on 24.10.2016, he came back as Interim Chairman disregarding the company policy. The petitioners submit that Mr. Tata announcing his renunciation from the post ofExecutive Chairman of the company to the world at large as anexample of Tata values was nothing more than a mere facade and he expected Mr. Cyrus to do his bidding and allow Mr. Tata to function as shadow director without any accountability, which Mr. Cyrus realized over a period of time. Soon after Mr. Cyrus became chairman, Mr. Tata started Interfering in the day-to-day affairs of the company undermining the board of the company and directing Mr. Cyrus to meet some of his business associates and also from time to time kept on instructing the Trust nominee directors even about the language of the resolution to be passed at the board meeting of the company making it clear that Mr. Tata had not made clean break from the company. Indeed, they submit, Mr. Tata abused the position as Chairman Emeritus by demanding prior consultation on most matters and seeking information including unpublished price sensitive information in violation of law and corporate governance norms even before these issues were considered by the board of the company. They submit that Mr. Tata and Soonawala are reluctant to let go control they hitherto enjoyed, Instead of letting the Articles of Association work themselves out with the picking of good nominee directors, these two continued to exercise control through these nominees rendering the board of directors redundant. The petitioners further allege, Trusts nominee directors expressly acknowledged the need for governance document demarcating the role of TT and the role of the Board of the company. The petitioners again submit that Mr. Tata even met Mr. Cyrus before the meeting of Board of Directors on 24.10,2016 asking him to step down from the post of executive chairman which clearly indicates that Mr. Tata was very much behind the removal of Mr. Cyrus as executive chairman of the company. The petitioners again reiterated the same issues in respect to Bhaktawar Apartment, dealing with Mr. Mehli and Sivasankaran, about Nano project, AirAsia issue, about Bharat Vasvani writing letters.

201. On reading this entire rejoinder, we understand that the petitioner tried to focus that though Mr. Tata retired from the Executive Chairman in the year 2012, he tried all along to impose his decisions upon in the board of the company either directly or through its nominee directors, which according to them, has curtailed the freedom of board of the company and more especially erstwhile Executive Chairman Mr. Cyrus from discharging from their duties as per their positions.

202. The petitioners rejoined to the reply given by Mr. Amit (R3) stating the same that Mr. Amit was

appointed as director on the board of the company without any orientation programme in August 2016 and became a competent man to outvote Mr. Cyrus from the position of Chairman in the second meeting he attended, The Petitioners submit that he does not know anything about the business Mr. Tata was doing because he failed to state independent reason for voting in favor the removal of Mr. Cyrus from the position of Chairman.

203. As to reply given by Mr. Ajay Gopalkrishna Piramal (R5), thepetitioners submit that he has been brought to the company as an independent director, against whom Rs. 6,00,000penaltyhas been imposed by SEBI for violation of unauthorized and illegitimate sharing of unpublished price information outside the need to know framework. He was also inducted as director in the month of August 2016, in the second meeting he voted in favor of the removal of Mr. Cyrus from the position of chairman, He also has not given any detailed reasoning for voting in favor of the proposal for removal of Mr. Cyrus as Chairman of the company.

204. As to the reply filed by Mr. Nitin Nohria (R7), the petitioners submit that it is Mr. Nohria volunteered to draft governance document clarifying the role of the Tata Trusts in the affairs of the company, in his email dated 31.01.2015 and 04.02.2015 he has stated as follows:

> 31.01.2015
>
> *"I can certainly empathize with your frustration about what items can be dealt with by the company board and what require prior approval of the trusts. These are the questions that my note also seeks to get clarity on. I will send it to you in the next week. I hope we can find some way to get clarity on these issues because it is otherwise a source for tension and confusion for all involved."*
>
> 04.02.2015
>
> *"All of these issues raise concerns that I think we need to surface and address.*
>
> *separation of leadership of the Tata Trust and the company is more significant than anyone has fully comprehended or internalized. Even though the Memorandum and Articles of Association provide some guidelines, they have not been translated into operating practices that have everyone's buy-in. I will send you the document I have been working on by this weekend."*

205. In relation to this corporate governance policy, between March 2016 and May 2016, Mr. Cyrus sent various mails to Mr. Mohria and were ultimately shared with Mr. Tata in August 2016. Finally, the note on corporate governance was circulated by Mr. Cyrus to the board of directors in September 2016 and was placed in the agenda for the meeting of the board on 24.10.2016. The petitioners submit that the record placed by the petitioners as well as Mr. Cyrus clearly indicate that Mr. Tata constantly interfered in day to day functioning of the board of the company, Mr. Nohria was fully aware of the issues relating to the interference by Tata Trust, the efforts Mr. Cyrus made to initiate framework for governance, They submit it that despite Mr. Nohria was aware of the efforts made by Mr. Cyrus for bringing in corporate governance to separate the functions of Tata Trusts from the company, because Mr. Tata made a single biggest donation to Harvard Business School where Mr. Nohria was working as Dean of the school, because of which he compromised the capacity of Mr. Nohria to think objectively and independently in the best interest of all the stakeholders of the company, Besides this, Mr. Amit and Mr. Nohria are related and they have been consultants to the companies which were under the control of Mr. Piramal. For they are being related, they have all concerted into a group to work against Mr. Cyrus, therefore their voting against Mr. Cyrus in the board meeting dated 24.10.2016 could not be termed as independent of the influence from Mr. Tata.

206. On the reply given by Mr. N.A. Soonawala (R14)$_r$ the Petitioners submit, the averments in his reply are false, Mr. Cyrus only sought strategic advice and guidance out of difference and respect for their

experience and knowledge of the Tata Group. Exploiting such decency, the petitioners submit, it is evident that Mr. Soonawala as did Mr. Tata, dictated terms to how the company must conduct business, they took Mr. Cyrus asking guidance from them as a license for them to interfere in the day to day affairs of the company. The continuous hold that Mr. Soonawala enjoyed is upfront from the email dated 8.11.2013 (Exhibit F, page 87 of Mr. Cyrus reply) when a draft letter was circulated which has changes suggested by Mr. Soonawala. They further submit that from plain reading from Mr. Cyrus reply (Exhibit A & B) when Mr. Cyrus's officials had briefed Mr. Soonawala in relation to a proposed issuance by Tata Motors Ltd., Mr. Soonawala sought postal ballot notice for the director's remuneration, copy of the working on the impact of the Right Issue on EPS and promoter voting rights due to dilution, on such asking, the officers of Mr. Cyrus briefed Mr. Soonawala on 22.12.2014, they were given an impression that Mr. Soonawala preferred Right Issue, with that impression when Tata Motors proceeded with the proposed issuance, Mr. Cyrus received rude handwritten letter dated 30.1.2015 alleging that there had been no discussion of the issue and that the Articles of Association had been breached. The petitioners submit that the above stated series of events make it amply clear that confidential and price sensitive information had been sought by Mr. Soonawala. The petitioners submit that Mr. Soonawala instead of offering guidance he imposed his guidance as his direction upon Mr. Cyrus. Mr. Soonawala not only sought interfering formulation of the legal strategy involving the company and NTT DoCoMo but effectively overruled the legal counsel of Tata Group. The petitioner inserted some of the portion of the email written by legal counsel Mr. Bharat Vasani on 26.07.2016 which is as follows:

> *"I had carefully thought through our DoCoMo legal strategy as soon as the award was pronounced against us on 22nd June [redacted]….. Unfortunately, with the Trustees directly taking charge of the matter and giving direct instructions to Darius and showing extreme anxiety... my view became irrelevant (Darius told me last night over (the) dinner that he Is completely fed up with the multiple instructions coming to him in this matter and would like to have a joint meeting with all of us plus RNT and NA5 for the next steps after today's hearing. He asked me as to how do I work in this kind of environment!!)"*

207. With respect to Welspun acquisition by Tata Power Co. Ltd., the petitioners submit that a note on the proposed acquisition of Welspun by Tata Power was circulated to the Board of Directors of the company along with Mr. Tata, which received appreciation from Mr. Vijay Singh (R9) a trust nominee director, and subsequently the transaction was executed on 12.06.2016. However, out of nowhere Mr. Soonawala and Mr. Tata suggested that the transaction must be structured differently; indeed Mr. Soonawala went ahead in having discussion with the Merchant Bankers to the transactions on what the ideal structures should be. After having all these being done, on 30.06.2016, Mr. Nohria and Mr. Vijay Singh stepped out of an ongoing board meeting of the company to get a nod from Mr. Tata and Mr. Soonawala for the said transaction. This has even been recorded in the minutes that Mr. Nohria and Mr. Vijay Singh accorded their support only after discussing the proposal with Mr. Tata and Mr. Soonawala, which indicates that these nominee directors were not imparting independent judgment except following the diktat of Mr. Tata and Mr. Soonawala. The petitioners submit, nothing is further required to state these two were/have been acting as shadow directors and superboard super imposing their decisions upon the board of the company, With this submission, the petitioners submit that Mr. Soonawala always imposed his direction upon the company even if he was not being asked to advise upon the issues pending for decision by the board of the company.

208. As to the reply affidavit filed by Mr. Venkataramanan (R20) on behalf of R6, R16-21, the petitioners rejoined stating that the independence of the board of directors was compromised, the decision making process has taken backseat. The petitioners submit that the Exhibit E, page 17 of Mr. Cyrus reply reveals Mr. Tata giving his inputs regarding the minutes and agendas of the company board meetings, likewise other email dated 24.06.2013 and 26,06.2013 disclose that Mr. Venkat simply acted as an assistant to Mr.

Tata instead of acting as director of the company. The petitioners submit that Venkat has been acting as a director of AirAsia India Ltd. as well as Trustee of Sir Dorabjee Tata Trust which are in conffict of interest to each other because Mr. Venkat has access to commercially sensitive information in relation to the joint venture on account of his close proximity to Mr. Tata. Mr. Venkat has not said anything in respect to email dated 24.02.2013 come from Mr. Vasani.

209. Mr. Cyrus rejoined to the reply given by the company which is as follows:

He denies Tata Sons allegations in relation to his conduct are vague nothing more than ipse dixit of Tata Sons stating that Tata Sons has wrongfully accused him of acting in breach of his legal and fiduciary duties by allegedly leaking and parting with confidential and commercially sensitive documents to the outsiders. Mr. Cyrus says he was forced to provide information to Dy. Commissioner of Income Tax (Exemptions) (DCIT) only when Tata Sons failed to act promptly in providing information sought by DCIT, he says that no confidential and sensitive information was shared with DC1T. As to the allegation that Mr. Cyrus leaked out confidential information, he submitted that the reference to the dealing with PNB Metlife were unnecessary under the contents of the minutes of the board meeting held on 24.10.2016 ought to have blanked out the differences to PMB Metlife. In respect to this issue, he submits PNB Metlife is a company in which none other than Mr. Mehli holds substantial commercial interest, in fact this issue was brought before the board on 24,10,2016 itself, Mr. Cyrus again reiterated Siva's issue saying that Siva in his letter dated 5.11.2013 refers to the Tata Group decision to finance Siva group acquisition of shares of TTSL, wherein Siva says, *"in no other case the TG assisted any third party investment into their group, it is obvious that such system was given only to enable the Siva groupto make the investment……I do feel that since the investmentwas personally handled by others and therefore you do not have full knowledge of what happened them, it is necessary to brief you on how the entire investment was conceived and made"*. The time when he was non-executive member of board of directors, he was not fully aware of the complexities, it was only during his tenure as Chairman, he realized the extent to which the policy and decision making of the company was given by extraneous factors, such as Mr. Tata showing favoritism towards his friends, his personal affinity for flying and the airline industry, and his obstinate refusal to back down from his unworkable public promise to deliver a car under Rs. 1,00,000.

210. Mr. Cyrus submits that the acts of oppression and mismanagement complained of are continuing in nature, in the case of NTT DoCoMo transaction where the company has very recently suffered an award in the amount of nearly Rs. 8,500crores because the transaction in between TTSL and DoCoMo led the company to pay aforesaid amount as fair market value for the shares of TTSL, which is contrary to the law of the land. Likewise, in the case of IHCL where the company has significant stakes, Mr. Tata dissuaded sale of assets in the United States thereby demonstrating his inability to think of the best interest of the company and its stakeholders which is explicit in the email dated 03.04.2015 addressed by Mr. Tata to Mr. Cyrus. Mr. Cyrus has categorically stated that for he was continuing as executive chairman, instead of filing any case against Mr. Tata and others, was taking immediate action from within the company to put an end to the past oppressive conduct and mismanagement orchestrated at the hands of Mr. Tata, before Mr. Cyrus being removed, considering his 50% shareholding in the petitioners, they thought it would not have been prudent or logical to approach judicial forum to complain of such oppression and mismanagement. It was only upon the illegal removal of Mr. Cyrus as Executive Chairman on 24.10.2116 that the petitioners were left with no option but to approach this tribunal, Mr. Cyrus denies the allegation that he did not do anything when he was as Executive Chairman because he put all his efforts to undo the past actions by taking several steps such as securing approval of the board to litigate against Siva group to recover the dues (amounting to Rs. 694crores) from Siva companies under the *inter-se* arrangement, encouraging fair and transparent bidding for awarding large contracts of all Tata Group companies resulting in a saving of nearly Rs. 200crores annually only in respect of contracts awarded by Tata Power Co. to Mr. Mehli's companies, calling upon Mr. Bharat Vasani to take steps to ensure an investigation into

the questionable transactions involving Air Asia India Ltd. Mr. Cyrus contends that Mr. Tata, despite not being on the board, would insist upon that he should be consulted or be provided the information to be discussed by the board of the company and Tata operating companies, it is matter of record that the Trust nominee directors take instructions from Mr. Tata prior to attending board meeting at times in between also they consulted Mr. Tata.

211. Mr. Cyrus submits Mr. Nohria was aware of the issues posed by the interference of the Trusts in day-to-day functions of the company, to illustrate it, Mr. Cyrus relied upon an email dated 31.01.2015 sent by Mr. Nohria to Mr. Cyrus stating as follows;

> *"I can certainty emphasize with your frustration about what items can be dealt with by Tata Sons Board and what require prior approval of the Trusts. These are the questions that my note also seeks to get clarity on, I will send to you in the next week, I hope, we can find some way to get clarity on these issues because it is otherwise a source for tension and confusion for all involved."*

212. Another email dated 04.02,2015 sent by Mr. Nohria to Mr. Cyrus on the manner in which Mr. Tata would react to a proposed business decision in one of the operating companies is hereby mentioned which as below;

> *"All these issues raise concern that I think we need to surface and address.*
>
> *The separation of leadership of the TT and Tata Sons is more significant than anyone has fully comprehended on internalized. Even though, the memorandum and Articles of Association provided some guidelines, they have not been translated into operating practices that have everyone's buy-in. I will send you the document I have been working on by this week end."*

213. Though Mr. Nohria said all these things, no such note ever saw the light of day, then Mr. Cyrus decided to himself prepare governance framework, in furtherance of it, several drafts were sent between March 2016 and May 2016 to Mr. Nohria and they were ultimately shared with Mr. Tata in August 2016. Finally, the note prepared by Mr. Cyrus in September 2016 was placed on the Agenda for the board meeting dated 24.10.2016. He submits that even Mr. Bharat Vasani was also frustrated with the level of interference by the Trustees of the Trusts in respect to DoCoMo issue, this was illustrated by Mr. Cyrus saying that Mr. Vasani in his mail dated 26.07.2016 put it to Mr. Cyrus saying that *"unfortunately, with the Trustees directly taking charge of the matter and giving direct instruction to Darius and showing extreme anxietymy view became irrelevant"*.

214. As to Tata Steel in UK and Europe, Mr. Cyrus submits that all his efforts to improve the viability of Tata Steel Europe operationswere belied by a public statement made by Mr. Lord KumarBhattacharya (close friend of Mr. Tata) in UK media stating that Tata Steel Ltd. would stay invested in the United Kingdom, it is a fact that this Bhattacharya, Mr. Cyrus says, has no role in the company. This statement came at a time when Tata Steel was examining its options either for restructuring or for complete exit from the business of United Kingdom. The grievance in relation to Tata Steel, as set out in the petition and has confirmed by his earlier affidavit, is that despite the Corus deal having proved to be an unviable acquisition, and its best efforts to turn it around, even as late as 2016, Mr. Tata remained adamantly opposed to restructure Tata Steel UK operation with ThyssenKrupp. He says that his intention for restructuring Tata Steel Europe was to curtail huge losses Tata Steel India incurring but whereas, Mr. Cyrus says, it has become one of the causes for his removal as chairman of the Company.

215. Mr. Cyrus submits, Mr. Tata in his letter dated 07.09.2016 has made it clear that the company at the behest of Mr. Tata, was against any disinvestment of Tata Steel UK operations as against Tata Steel on board of directors' statement made eight months prior stating that Tata Steel Board of Europe should explore all options for portfolio restructuring including the potential disinvestment of Tata Steel UK in

whole or in parts.

216. As to Tata Tele Services, Mr. Cyrus submits that the company merely saying that it has not waived any of its **legal** rights to proceed against Siva group would not become a demonstrative action to proceed against Mr. Siva. It is a fact that Tata Capital has loaned Rs. 200crores to the Siva group against security of Tata Tele Services shares given to him at a sizable discount. Likewise, Mr. Cyrus pleaded various issues that have already been pleaded in the previous pleadings except to the extent additions that have come in this rejoinder.

217. As to the rejoinders filed to the replies filed by other Respondents by the Petitioners as well as Cyrus Mistry, the same being almost repetition of the issues already dealt with in in thepleadings already dealt with, for the sake of brevity, they have not been reproduced. If and when any of the point out of thesepleadings are necessary for deciding any issue before this Bench, they will be taken into consideration in the ensuing discussion.

218. *Whether Siva Group company (Sterling) non-paying its share amount payable proportionate to its shareholding out of the total award amount paid by the company through TTSL towards the award passed against TTSL on the Arbitration proceedings initiated by Nil- DoCoMo; Mr. Siva coincidentally sending legal notice to the company assailing the proposal to take legal action against Sterling about nonpayment of its share of payment towards Arbitration Award as per the tripartite agreement, just about the time resolution passed by the company and the Tata group companies having had some business deals with Siva and his companies in the past, relate back to Sterling acquiring TTSL shares in the tenure of former Chairman, Mr. Tata so as to attribute Mr. Tata conducted or conducting the affairs of the company in a manner prejudicial to the interest of the company or oppressive/prejudicial to the interest of the petitioners or not?*

219. On perusal of the pleadings and written submissions filed by either side, the points that could be derived from the facts admitted by either side are as follows:

220. Tata Teleservices Limited (TTSL) is an Indian broadband and telecommunications service provider based in Mumbai,Maharashtra, India, belonging to Tata Group. Mr. Tata was the Executive Chairman of the company when Siva Group made investment in TTSL, at that point of time; Mr. Cyrus was one of the directors of the company. In February 2006, Sterling Infotech Ltd. (Siva Group company - hereinafter referred as 'Sterling') acquired 520 million shares of TTSL at Rs. 17 per share aggregating to Rs. 884crores through share purchase agreement, out of which, Siva group paid Rs. l02crores, as to balance Rs. 782crores, Rs. 650crores wasloaned by Standard Chartered Bank, as to balance Rs. 132crores, it came from Kalimati Investments (in short "Kalimati), a subsidiary of Tata Steel. Sterling had taken the loan of Rs. 650crores from Standard Chartered Bank for financing the share purchase and had in return pledged TTSL shares as security, that time, the company provided an undertaking to Standard Chartered Bank to acquire the shares pledged by Siva group in favor of Standard Chartered Bank at Rs. 17 per share (plus 6% interest) in order to ensure that the pledged shares were not sold to an undesirable third party in the event the pledge was invoked on Siva's default. The company had only undertaken to purchase the pledged shares at a pre¬determined fixed price; it did not guarantee to make good Sterling principal loan liability of Rs. 650crores. The said undertaking given by the company was expired in March 2009. It is a fact that this undertaking was later withdrawn by the company and it has been substituted by collateral from the Siva group as security. Kalimati provided short term bridge loan to Sterling, which was repaid in March 2006 itself with full interest @8.45% within 10 days. In the following month i.e. in March 2006, Temasek Holdings (Japan Company) was issued TTSL shares at Rs. 26 per share. The acquisition price of TTSL shares for both Siva and Temasek was within the price band of Rs. 17 to Rs. 40 per share as approved by the board of TTSL and unanimously by the shareholders at the EGM of TTSL. The petitioners also acquired TTSL shares at Rs. 15 per share three months before Siva's acquisition.

221. When NTT - DoCoMo, in the month of November 2008, came into TTSL as a strategic investor investing 26% investment in the company, Sterling as well as, Mr. Cyrus's brother and father sold part of their shareholding at Rs. 117 per share to NTT-DoCoMo, for DoCoMo investment having eventually turned sour, and with no initial public offering in sight, as there is a clause of put option in favor of DoCoMo, on initiation of arbitration proceeding by DoCoMo, an award was passed directing TTSL to pay Rs. 8450crores to DoCoMo for the shares held by DoCoMo, by virtue of this award, since there is an inter-se agreement binding Sterling to the put option provided to the DoCoMo, the Siva group has come under obligation to pay the share price of its shares of TTSL out of Rs. 3450crores payable to DoCoMo. Since Sterling has not turned up to pay its share out of award amount paid to NTT-DoCoMo, Mr. Nitin Nohria, Trust Nominee Director on the Board of Directors of the company proposed to initiate legal action against Siva for his Group failed to contribute its part in making payment to NTT DoCoMo- No sooner the resolution was passed on 15.9.2016 to initiate legal action against Siva Group Company; it is either by coincidence or by leakage of information, on 19,9.2016, Siva issued legal notice to TTSL alleging mismanagement of TTSL reserving its right to seek damages to recover Sterling's losses, Thereafter, on 15.6.2017, the company sent arbitration notice to Siva Group for recovery of its part of Rs6S4,34crores recoverable from Siva Group Company.

222. It is true that Siva wrote a letter on 3.10.2013 to Mr. Cyrus seeking an exit from TTSL so as to reduce its group companies' burden as Siva Group was reeling under financial strain, for which he had sought resolution of his grievance, As to the letter written by Mr. Tata to Mr. Cyrus on 8.10.2013, it reflects that one Mr. Arun Gandhi and Ishaat Husaain were in direct contact with Mr. Siva by saying that some of the events which mentioned in the letter written by Mr. Siva to Mr. Cyrus are somewhat different from the reality for which Mr. Tata has clarified as follows:

> *"-his investment in TTSL* was *not made by him because TTSL was in dire need of funds, He wanted to invest in TTSL because he believed the telecom sector was fast growing and he could sell his stake at a sizeable profit Investments by Temasek was being considered at that time.*
>
> *- While Siva was offered shares at par, to the best of my knowledge he did not purchase them and when Temasek transaction was imminent it was awkward that he would be allotted shares at par at the same time Temasek was paying 24, I believe that was the reason why Ishaat suggested that we reprice the shares offered to him at Rs. 18 (to which he agreed).*
>
> *-I am unaware of any desire on our side to fund his acquisition, The only thing I can remember is that the transaction needed to be completed before Temasek paid their money and presumably, if he asked for accommodation, this may have been temporarily given.*
>
> *-I understand that he is under considerable pressure as he had to refund approx. USD800 million to Batelco when the Supreme Court cancelled his Tel-operating licenses. I understand he has also been seeking rescheduling of his loan from Tata Capital. He has asked for a meeting with you and in view of the help he gave us in bringing down acquisition prices in TTSL's history, I hope you will consider agreeing to his request for a meeting."*

223. It is a fact that TTSL contracted with Siva Group since 2003, as a proof to it, minutes of the Board Meeting of TTSL dated 21,1.2003 discloses that benefits and cost savings have accrued to TTSL by way of such engagement with Siva Group.

224. As to Tata Capital's loan of Rs. 200crores to Siva, it has not been raised in the Petition, but it has been raised by Mr. Cyrus in his reply to the Petition, the fact of the matter is, this loan was given on pledge over the shares of TTSL on arm's length basis, when Siva group defaulted on its loan, Tata Capital pledged over the TTSL shares and acquired the TTSL shares pledged to it. After acquiring shares in TTSL, Tata Capital has entered into Shareholder's Agreement with Siva Group which interalia gives TTSL the right to sell

TTSL shares held by it back to Siva Group at a minimum threshold price in order to protect its interest. For which Mr. Siva himself has provided personal guarantee to secure the amounts due to TTSL. Thereafter, TTSL has exercised the put option and also invoked the personal guarantee granted by Mr. Siva, following which, Tata Capital has already taken steps to recover these amounts from Siva Group and also initiated legal proceedings against the Siva Group.

225. As to acquisition of Disnnet DSL (DDSL) from Siva Group, it is a fact that this transaction took place in the year 2004, that time DDSL in fact had the highest revenue from among its peers. This transaction took place in the year 2004, Mr. Cyrus was aware of this fact since 2013.

226. In respect to the letter dated 27.11.2005, it has been heavily relied upon by the petitioners as well as Mr. Cyrus to attribute close contacts in between Mr. Tata and Mr. Siva and Siva suggesting Mr. Tata to conceal arranger fee, discloses that this context of arranger fee is in respect of sale of business of Maxus to TTSL and that arranger fee was payable by Maxus to Sterling. In fact, TTSL was not going to pay arranger fee to Siva; however, this deal in between TTSL and Maxus never went through. Moreover, it is a letter written by Mr. Siva to Mr. Tata but there is no any reciprocating reply from Mr. Tata either agreeing for arranger fee or making any statement in respect to the averments of that mail.

227. On perusal of these facts, it is undeniable that TTSL shares were acquired in the year 2006 with the approval of the Board and the shareholders of TTSL, almost after 10 years, now it can't be said as the grievance of the petitioners to attribute malafides against Mr. Tata in respect to acquisition of shares by Sterling, As to the argument of the Petitioners, that they have no issue with respect to the transaction but having the same being continued as legacy, the company is suffering therefore, it is to be treated as conduct causing prejudice to the company and in turn to the petitioners. It has been said umpteen times that Mr. Cyrus was continuing at the helm of the affairs of the company ever since he had become Executive Chairman of the company therefore, it is the fact that he remained in that position for four years until before he was removed as Chairman, It is not the case that Mr. Tata entered into the transaction thereafter he did not put his efforts to make it good while continuing as Executive Chairman. He was relieved from the Executive Chairman position in the year 2012; therefore, it could not be treated as past action of the persons presently dealing with the affairs of the company. Had it been the case that Mr. Tata did not permit Mr. Cyrus to recover dues from Siva, it is understandable that Mr. Tata trying to put his weight in favor of Siva in not paying share value paid to NTT DoCoMo.

228. No material has been placed either by the petitioners or by Mr. Cyrus saying that the petitioners moved some action against Mr. Siva for recovery of the monies to which Mr. Tata raised an objection. The Petitioners chiefly raised two aspects saying that one of the group companies of Tatas, i.e. Kalamati provided a loan of Rs. 132crores to Siva Company for buying shares from TTSL and another argument is the company provided guarantee for taking loan of Rs. 684crores from Standard Chartered Bank for paying towards the shares acquired from TTSL. There is no merit in this argument because the loan taken from Kalamati was already paid back by Siva Group Company, the undertaking given by the company was expired in 2009 itself and the company was relieved from such undertaking for Siva himself provided personal guarantee for the loan taken from Standard Chartered Bank. For no money has been paid by any of the Tata group companies for the acquisition of TTSL shares by Siva Group, it cannot be attributed that the company incurred loss by acquisition of shareholding of TTSL by Sterling (Siva Group Company).

229. As to another argument of the Petitioners that TTSL, at the behest of Mr. Tata, allotted shares at discount when compared to the allotment made to Tamasek immediately one month after shares were allotted to Siva group companies @ Rs. 17.

230. To which, the Respondents gave two answers, (j) the acquisition price of TTSL shares for both Siva and Temasek waswithin the price band of ?17 to ?40 per share approved by the Board of TTSL and unanimously approved by the shareholders at EOGM of TTSL. Besides this, it is also a fact that these very

petitioners had acquired same TTSL shares two months before forRs. 15 per share. By this explanation, it is clear that it is not atransaction that happened behind the back of the petitioners, it is not a transaction that is lower than the rate at which the TTSLshares were allotted to the petitioners. The answering Respondent further submitted that the reason for the difference in the respective acquisition prices between Ternasek (Rs. 26 per share) and Siva Group (Rs. 17 per share) was because Temasek had more rights such as right to nominate a director on the board of TTSL and affirmative rights on certain matters. As to allegation that Siva made a big profit by selling shares to NTT DoCoMo @ Rs. 117 per share, it is evident from the record, these shares were subsequently in the year 2008 sold to NTT DoCoMo while NTT DoCoMo acquiring shares in bulk from TTSL as well as from some of the shareholders of TTSL who are none other than brother of Mr. Cyrus and father of Mr. Cyrus and also from Siva. They also equally gained benefit just as Siva group gained from selling shares of TTSL to NTT DoCoMo. These things have not been said by the petitioner either in the petition or in their rejoinder. The petitioners as well as Mr. Cyrus tried to impress upon this Bench as if the company incurred heavy loss by the acquisition made by Siva in TTSL. The rate at which the petitioners acquired shares of TTSL is less than the rate at which Siva Group acquired, the gain the petitioners made by selling shares to NTT DoCoMo is more than the gain Siva group got from selling shares to NTT DoCoMo. For all these transactions that happened in the year 2006 have become oppressive and prejudicial to the interest of the petitioners' u/s 241, we have not seen any action that could be called as unfair warranting invocation of jurisdiction u/s 241. Moreover, Mr. Tata retired as an Executive Chairman in the year 2012 ever since Mr. Cyrus continued until before his removal.

231. Another allegation the petitioners made is that when Mr. Cyrus caused a resolution passed to initiate action against Siva group, Siva Group Company issued notice within 3-4 days since resolution was passed by the company on 15.9.2016. Their allegation is this information would not have gone out causing Siva to give notice to the company unless that information was leaked by somebody from the side of Tata Trusts, First of all, no material has been placed either by the petitioner or Mr. Cyrus showing that such information has been leaked to Siva Group either by Mr. Tata or from the answering Respondents except a guess work spun off by the Petitioners and Mr. Cyrus. Such leakage if any there, what proof the petitioners placed before us? Nothing is placed. Such allegation, shorn of any material proof, cannot be attributed to the Trust or its Nominee Directors, on the top of it, Mr. Cyrus did not propose the resolution to proceed against Siva, it is Mr. Nitin Nona, trust Nominee Director proposed to initiate legal action against Siva. The petitioners as well as Mr. Cyrus have kept on and on shifting their stands from the petition to rejoinder then to written arguments, no proof nothing to any of these ever changing allegations - grasping at straws.

232. Moreover, if that payment has not been made by Siva Group, who will get more affected? Is it the petitioners or the Tata Trust? It is obvious the Trusts would get more affected. It could be understood that Mr. Tata had leaked this information to Mr. Siva by getting some monetary benefit personally to him. But that is not the case of the petitioners. It is not the case of the petitioner in respect to any of the allegations raised by them that either Mr. Tata or Mr. Soonawala did something so as to get monetary benefit out of such transaction.

233. Another allegation that is against Mr. Tata is that Siva is very close to Mr. Tata, therefore Siva not paying money to the company has to be construed as conduct prejudicial to the interest of the Petitioners. The question of Siva coming under obligation to pay to the company has come into picture only after an award was passed against TTSL until such time, Siva was continuing as any other shareholder in TTSL. Indeed Mr. Siva himself wrote a letter to Mr. Cyrus on 3.10.2013 that he may be provided exit from TTSL because he was in financial trouble, in case his shareholding was taken back by TTSL, he would be in a position to come out of the financial difficulties. When the same issue was brought to the notice of Mr. Tata on 8.10.2013, he clarified his stand in respect to the issues raised by Mr. Siva and the only request he

made to Mr. Cyrus was to allow Mr. Siva to speak to him giving the background picture of Siva acquiring shares of TTSL. It happened long before DoCoMo issue. This DoCoMo issue has cropped up in 2016, when the award was passed for payment of Rs. 8450crores. Mr. Tata wrote a letter in the year 2013. That letter cannot be by anyway linked to DoCoMo issue to say as if Mr. Tata encouraging Mr. Siva not to pay money to the company.

234. As to Tata Capital giving loan of Rs. 200crores to Mr. Siva, it is evident from the correspondence in between Mr. Cyrus and the officer of Tata Capital, that Siva group pledged TTSL shares with Tata Capital to get a loan of Rs. 200crores, due diligence has been done for providing such loan to the Siva Group. When Siva group failed to make payment, Tata Capital invoked the pledge over TTSL shares and acquired the same @ Rs. 23. In the correspondence in between Mr. Pravin Khadle and Mr. Cyrus, it is evident that Tata Capital converted Siva's loan exposure into TTSL shares and taken the value of TTSL shares in their book in line with the arbitration award. While converting this loan, Tata Capital said they took overall valuation hit of Rs. 53crores if any further impediment in TTSL shares value, it is said that they will have to take further hit, it is being said that technically they have no further exposure on Siva account. In this correspondence in between Mr. Pravin Khadle and Mr. Cyrus, it has not been said anywhere that Mr. Tata involved in ensuring loan was granted to Siva Group Company over the TTSL shares. Merely by giving loan by one of the group companies on due diligence, can never become an issue to be tainted as a transaction giving undue advantage to somebody else. Had it been said that Mr. Tata influenced Tata Capital to provide loan to Siva Group Company, there is chance at least to believe that at some point of time, Mr. Tata tried to help Mr. Siva. Therefore on this allegation one of the group companies on due diligence providing loan to Siva Company, Mr. Tata's involvement has not been seen anywhere in the loan given to Siva Group, everything has been properly audited and accounted from time to time, moreover, it cannot become an allegation falling u/s 241, much less against Mr. Tata, therefore, we don't find any merit to say that Tata Capital giving loan of Rs. 200crores on the pledge of TTSL shares acquired by Siva Group as an affair conducted by Mr. Tata prejudicial to the interest of the petitioners or prejudicial to the interest of the company.

235. The petitioners tried to make an allegation that acquisition of Dishnet DSL (DDSL) from the Siva Group is an act of Mr. Tata causing prejudice to the company as well as the petitioners. It need not be said again and again that Mr. Tata has not been conducting the affairs of the company ever since he retired from the position of Executive Chairman. Moreover, this acquisition happened in the year 2004 that is more than one decade before filing this Company petition. It is not the case of Petitioner or Mr. Cyrus that they were not aware of this acquisition. It is not the case of the petitioners that they opposed to this acquisition. It is not the case of the petitioners or Mr. Cyrus that Mr. Tata made illicit gain out of it. It's a commercial decision taken by TTSL when DDSL had the highest revenue from amongst its peers at that point of time. Even according to the petitioners as well as Mr. Cyrus, this issue was brought to the notice of Mr. Cyrus in the month of October, 2013 itself, had it been really prejudicial to the petitioners, why did they not raise this issue immediately after it was brought to their notice. It is a transaction completed in the year 2004. In a company like this and its group companies, various decisions involving crores of rupees are being taken on daily basis. Some may fetch benefit to the company; some may not.

236. In any business, there will be minimum two parties. If both of them remain on ad idem and as long as other external factors, like market trends and timings go well, business go well, at times even if both the parties are on ad idem, by virtue of market conditions, social conditions, time, natural calamities, business failures, every such failure cannot be measured up on judicial scale. Dealing with equity itself is risk.

237. When any case is filed u/s 241, the basic element that is requisite to be shown in the case of oppression and mismanagement is, unfairness of the management against the members who are not in a position to take a call in respect to the management of the company. It is not that whenever profit comes, quietly enjoying, when loss comes, filing case u/s 241. As to TTSL acquisition is concerned, it's a decision

taken long before basing on the valuation of that company and it being the fact that TTSL getting highest revenue from amongst its peers at that point of time, it could not be said as a careless decision taken by management at that point of time. It appears that the petitioners and Mr. Cyrus, because of the heart burn they had for Cyrus being removed as Executive Chairman of the company, they tried to steamroller all these business decisions upon Mr. Tata as mismanagement of the affairs causing prejudice to the company, so as to bully the answering Respondents by using Section 241 as a device.

238. In view of the reasons aforementioned, we are of the view that these allegations on demur do not constitute any case u/s 241, assuming all are correct they fall u/s 241, then also, no case is made out to invoke 241 & 242 of Companies Act 2013, besides the above, the petitioners have not made TTSL or Kalamathy or Tata Capital or their management as parties to these proceedings, knowing well section 241 speaks of the affairs of h,a Company", the petitioners making allegations against Mr. Tata in respect to the companies aforesaid shall fail on the basic principle of non-joinder of parties, henceforth, this issue is decided against the petitioners herein.

239. ***Whether occurrence of some acts in Air Asia India Pvt Ltd. amounts to R2,R14 and R2Q conducting the affairs of the company causing prejudice to the interest of the Company/Petitioners or pub tic interest?***

240. In this issue also, AirAsia India Pvt. Ltd. has not been madeas a party to the proceedings nor its management, which is fatal tothe maintainability of the petition on the ground of non-joinder of parties, moreover, it is a joint venture with Malaysian company, AirAsia Ltd., and the management is run by AirAsia Ltd., therefore, the directors of AirAsia India Ltd. appointed on behalf of the company cannot be blamed for something happened in that company. This kind of judicial dispensation which the petitioners expecting without even making the parties who allegedly done something will not happen even in village panchayats.

241. As to this issue is concerned, the observations of this Bench are as follows:

1. Air Asia India Pvt. Ltd- is a joint venture company incorporated on 28.03.2013 in between Air Asia Berhad (Malaysian Company) and the company with 49% each, remaining 2% has been acquired by others. Over a period of time, the shareholding of the company has come down to 30%, the remaining shareholding has been acquired by Taesl Pvt. Ltd, owned by one Mr. Bhatia, Neither Air Asia India Pvt. Ltd., nor are its directors made as parties to this proceeding. It is not a subsidiary of the company, It is the company managed by Air Asia Berhad. The allegations leveled against the Respondents are mostly based on the emails sent Mr. Bharat Vasani, who is not a party to this proceeding and these alterations have never been put to test to find out the veracity of the correspondence relied upon by the petitioners and Mr. Cyrus. On the contrary, Mr. Vasani filed an affidavit disputing the e-mail correspondence of him filed by Mr. Cyrus.
2. A Board meeting of the company was held on 06.12.2012 presided over by Mr. Tata as Chairman and wherein Mr. Cyrus participated as Dy. Chairman in passing a resolution to incorporate this joint venture for entering into aviation business. In the said meeting, it has been informed that the company had received a proposal from Air Asia to start a new domestic airline operation in India. For which, Mr. Tony Fernandez, Group CEO, AirAsia (Malaysian Co.) made a representation to the Board regarding airline's history and proposed business plan for India, After Mr. Fernandez' departure from the meeting, the board discussed the proposal in some detail and finally felt that airline

business would be viable and provide investors appreciation on their investment. Accordingly, the board decided to give its approval to participate in the business with the condition that the company capital infusion would be capped at US $9million and that there would be no recourse to guarantees by the Tata Group and that the company would get appropriate representation on the board of Air Asia India. In the said meeting, Mr. Cyrus did not raise any objection for such approval and subsequently also was there never any objection either in continuing in the joint venture or in infusing funds in Air Asia India until before Mr. Cyrus was removed as Chairman of the company.

3. Now the issue raised by the petitioners as well as Mr. Cyrus is that Mr. Venkat at the behest of Mr. Tata indulged in the diversion of funds from Air Asia India and when Mr. Cyrus raised this issue, surprisingly Mr. Cyrus was removed as Executive Chairman of the company. The petitioners pleaded that the deal with Air Asia was thrust upon Mr. Cyrus as fait accompli in the Board Meeting held on 06.12.2012. Mr. Cyrus says that after having noticed that Mr. Venkat indulged in fraud in dealing with Air Asia, a forensic investigation was carried out, since by the time this CP was filed, no report came out, the petitioners believed that the forensic report would reveal the fraudulent transaction of up to Rs. 22crores were carried out with the involvement of non¬existent parties in India and Singapore, The petitioners pleaded that they believe that the aforementioned fraudulent transaction of an amount of Rs. 22crores were routed through hawala transactions to avoid coming under the Regulatory Scanner, The petitioners submit that this deal was struck with one Mr. Hamid Reza Malakotipour, who has been classified as "suspected and UN-sanctioned alleged global terrorist" by the Govt, of United States of America. The petitioners believe that details of the dealings of AirAsia India Ltd. with such third parties are contained in the forensic report issued by the Deloitte. Under this belief, the petitioners nailed Mr. Tata, saying that Mr. Tata indirectly financed terrorism and by doing so, he has caused irreparable harm to the age old image of Tata group in addition to the breach of trust of not only the shareholders of Tata Group but also its employees. It is a serious and demeaning allegation against Mr. Tata. They made another allegation that Mr. Venkat would be one of the beneficiaries of Rs. 22crores fraudulently taken from Air Asia India. For which, the petitioners heavily relied upon the email correspondence from the end of Mr. Vasani to say that Air Asia India completely left the corporate governance to winds and it is full of regulatory infractions and it has become like a department of Air Asia Berhad and not as a joint venture.

242. Over the allegations made by the petitioners and Mr. Cyrus, the respondents side has placed the board meeting of the company held on 6.12.2012 to deny that the decision for starting this joint venture was thrown upon Mr. Cyrus as fait accompli, on perusal of the minutes of the said board meeting, it is evident that Mr. Cyrus was present in the said meeting as Dy. Chairman of the company, indeed that minutes was signed by Mr. Cyrus himself. On reading of the minutes, no iota of material was present disclosing Mr. Cyrus raising objection over the decision to enter into joint venture with Air Asia Berhad. Today, Mr. Cyrus had no sooner been removed as Executive Chairman of the company, the decision of Air Asia became fait accompli upon Mr. Cyrus and the petitioners. On which, the respondents submitted that the petitioners in their desperate attempt to make a case out of nothing, on one hand they submit that Mr. Cyrus had no say in the Air Asia transaction and he was given a fait accompli situation, on the other hand, they state that Mr. Cyrus protected the interest of the company by limiting its exposure to 30% equity of

USD30million and by ensuring no fall back liability came on the company.

243. If at all this decision was fait accompli on him, he would not have been conscious of the discussion happened in the meeting, on the contrary, if his second statement stating that he was the person instrumental in ensuring the company exposure is limited to 30%, then it ought to be construed that Mr. Cyrus was very much active in the discussions where a proposal was approved to incorporate joint venture company with Air Asia Berhad. Since both the statements are contrary to each other, no relevance could be placed on either of these statements.

244. Mr. Cyrus was subsequently also instrumental in all Board meetings including the meeting where it was unanimously resolved to set up Vistara, the joint venture with Singapore Airlines, he has further stated in his drafted framework for communications and decisions making between Tata Trusts and the Board of Tata Trusts that he would take Mr. Tata's advice in relation to Defence and Aviation before placing them to the board of the company owing to Mr. Tata's domain knowledge in the said field. Throughout his term as Executive Chairman, Mr. Tats had been kept apprised of governance and compliance of issues of Air Asia, As to further capital infusion into Air Asia, on 21.12,2015 in the Board Meeting of the company, Mr. Cyrus as Executive Chairman agreed to enhance investment in Air Asia by purchasing the shares of Telstra Trade place, a shareholder of Air Asia, which was desirous of selling its stake in Air Asia, similarly, in another meeting dated 15.09.2016, just before his removal in the following month, the Board of Directors of the company, presided by Mr. Cyrus approved the release of funds to Air Asia India to meet its most urgent external requirements. In the same minutes, Mr. Cyrus himself suggested that he did not understand that the airline industry and therefore, he would refer to the judgment of Mr. Tata.

245. As against this story present on record, could it be conceivable to say that AirAsia decision is fait accompli upon him; all investment to AirAsia has been done by the company in his tenure without being known to Mr. Cyrus. It is fundamental in law that the person privy to a transaction estopped from denying it, but unfortunately today the petitioners and Mr. Cyrus have made all kinds of allegations with impunity flouting all legal principles. They stated as if they did not take active part in AirAsia incorporation, as if Mr. Cyrus did not preside over meeting on 15,09.2016 in further funding it, they went ahead to make a scurrilous statement, without a shred of paper, that Mr. Tata Funded one Terrorist through hawala with diversion of AirAsia India funds.

246. Without going any further, I can say that the petitioners miserably failed to atleast set up a case basing on this allegation, all are abominably baseless allegations thrown at a reputed person, and not knowing what consequences follow when such scurrilous allegations are not supported by any material paper. In view of the same, we heresy dismiss this allegation against the answering respondents holding no case is made out against Mr Tata, Mr Venkat.

247. *Whether the business transactions between Mr. Mehli Mistry and Tata Power Co Ltd taken place when Mr. Tata was Chairman of the Company amount continuation of conducting the affairs of the company in a manner prejudicial to the interest of the company or in a manner oppressive/prejudicial to the interest of the Petitioners as stated by the Petitioners and Mr. Cyrus or not? Will other issues like selling Bhakthawar flat and buying Alibaugh land have any bearing to link them as issues relating to the interest of the company?*

248. The issue for discussion is in relation to the allegations made by the Petitioners and Mr. Cyrus are in relation to awarding of dredging and shipping contracts to Mehli's companies by Tata Power for long periods of time making renewals several timeswithout any competitive bidding, Mr. Tata buying an agricultural land at Alibaug, Maharashtra in the year 1993 wherein Mr. Mehli stood as conforming party to the said Sale Deed between Mr. Tata and the original seller and Sale of Bakhtawar Apartment (Apartment No.202 in a Building called "Bakhtawar" at Coiaba) to MPCPL alleged to have been

belonging to Forbes Gokak Ltd (successors to FFC) through Mr. Tata.

249. As to Colaba Flat tenancy is concerned, the Petitioners submit Mr. Tata used to reside in Bakhtawar Apartment since the year 1968 which belonged to Forbes Forbes Campbell & Co. (FFC) the then Tata Company, the terms under which Mr. Tata was permitted to occupy the flat specifically prohibited any transfer of tenancy rights in favor of Mr. Tata which was captured in FFC's letter dated 8.10.1968 to Naval H. Tata (father of Mr. Tata). In the said letter there was an express understanding between FFC and Naval Tata that should Mr. Tata decide to vacate the said flat, the same would revert to FFC such that flat could be given for occupation to another employee of FFC, This is how Mr. Tata occupied the said flat and stayed there for several decades.

250. Now the allegation is, in the year 2000, when Mr. Tata was the chairman of the company, FFC (Tata Group company) sold the said flat to MPCPL, owned by Mr. Mehli for he happened to be close confident of Mr. Tata but whereas Mr. Tata received compensation of Rs. 3crores from Mehli's company though no tenancy rights in favor of Mr. Tata in respect of this flat were ever envisaged, therefore, the Petitioners submit the compensation taken by Mr. Tata in all fair means should have gone to FFC, by doing so Mr. Tata enriched himself at the cost of FFC, which being then a subsidiary of the company ultimately causing loss to the petitioners as well.

251. As to this allegation, on reading the reply and documents filed by the answering Respondents, it appears that it is true that Mr. Kemple of FFC wrote letter to Mr. Maval Tata on 8.10.1968 that Mr. Tata would occupy Bhaktawar until further notice on the understanding that should he decide to vacate Bhaktawar the flat would revert to Forbes for occupation of the member of the FFC staff with an agreement that Mr. Tata would be responsible for all outgoings in connection with that flat, In the same letter, it was mentioned that Mr. Kemple who was at that time heading FFC stated that Mr. Mehli Kersasp Mistry (father of Mr. Mehli) had already intimated his approval to Mr. Tata occupying Bhaktawar and as soon as various arrangements had been confirmed saying that he would put this on record with Kersasp. On such letter of arrangement came from Mr. Kemple, on 10.10.1968 Mr. Naval Tata wrote a letter to Mr. Kemple for letting Mr. Tata have Bhaktawar flat for his use, in a reciprocal arrangement, Mr. Naval stated with regard to the flat in "Everest", he mentioned that it was originally occupied by Mr. Stew Nelson of Tata Hydro Electric Company and subsequently occupied by late Mr. Fale Pentochi for it was under repairs by the owners of the trustees of R.D. Shetana, Mr. Naval Tata has agreed to bear their share of repairs. On 11.10.1968, another letter was written by Kemple that should Mr. Tata vacate Bhaktawar, the occupancy rights would revert to FFC. In the same letter, Mr. Kemple mentioned that Mr. Naval indicated that Forbes would be given a flat in Everest which was at that time under repairs. So it is one kind of reciprocal arrangement happened between FFC and Mr. Naval Tata. To say that as to this transaction, whatever that happened in between Forbes FFC, Mr. Tata and MPCPL, the answering Respondents relied upon a Sale Deed dated 28.8.2000 executed in favor of MPCPL to show that prior to March 1975, one Pallonji Meherji Bhoy Mistry and four others were the joint owners and landlords of this Building known as "Bhaktawar", at that time FFC was the monthly tenant of the said Pallonji Meherji Bhoy Mistry and 4 others in respect of the impugned Bhaktawar apartment, that time, Mr. Tata was shown as the sub-tenant of FFC in respect to the said premises, while things standing as stated, a Deed of Declaration dated 11.3.1975 was registered as Mr. Pallonji Meherji Bhoy Mistry and 4 others sold the said premises to FFC, subsequently, by virtue of a Deed of Agreement dated 19.6.1975, Mr. Tata became monthly tenant to FFC and continued to be in use, occupation and possession of the said premises as the monthly tenant thereof. Thereafter, in the year 1992 FFC was amalgamated with Golak Patel Volkart Limited with a new name called Forbes Golak Limited. So by reading this document, the points emerging out of this document are that this property originally belonged to Mehli's father and others, by that time, that is in the year 1968, FFC was only a tenant of the said property subsequent thereto, it was purchased by FFC by virtue of that purchase Mr. Tata, being a sub-tenant became a tenant in the year 1975, as to FFC became Forbes Golak

Limited again on 28.8.2000 an Agreement for Sale was executed Forbes Golak Limited selling this apartment to MPCL by showing Mr. Tata as confirming party, In the said Sale Deed, it has been clearly mentioned that the sale consideration was Rs. 5crores, out of which, Rs. 2crores should be paid by MPCPL to Forbes Golak Limited, Rs. 3crores to the confirming party, i.e. Mr. Tata for surrendering of his monthly tenancy in respect of the premises and for handing over the possession of the premises to the purchaser, When this property was sold to MPCL, the valuation report dated 12.5.2000 issued by Dr. Roshan H Nanavati undertaken prior to the sate valuing the Bhaktawar apartment providing a ratio of 30:70 for splitting the sale consideration between the landlord and the tenant, but the actual consideration of Rs. 5crores was split in the ratio of 40:60 payable to landlord and the tenant Mr. Tata. This was put to registration, tax liabilities were cleared simultaneously despite this transaction is clear and transparent. Mr. Cyrus and the Petitioners simply throw this allegation against Mr. Tata as if he was unjustly enriched by surrendering his tenancy rights to MPCL.

252. On seeing the historical facts, we have not seen anything indicating Mr. Tata getting enriched at the cost of the company. Moreover, as I said earlier, again these Petitioners have not made Forbes Golak as a Party, not disclosed all these details given by answering Respondents disclosing as to how this transaction happened. It happened somewhere in the year 2002, now this allegation was raised in the year 2016, for all these 16 years there was no whisper over it. These Petitioners did not ever say how much shareholding the company has in Forbes Golak. On the top of it, Mr. Tata retired from the company in the year 2012, therefore, firstly it could not be an affair related to the company, secondly, Mr. Tata has not been in the management since 2012, in any event even the facts are assumed as happened, this cannot become an allegation falling under Section 241 to say that the conduct of Mr. Tata is related to the affairs of the company or such conduct caused prejudice either to the Petitioners or to the company. Therefore, we have not seen any merit in the allegation raised by the Petitioners.

253. As to other allegation of Mr. Tata getting a favor from Mr. Mehli in respect to Alibaug land, it is evident that this Sale Deed was executed in the year 1993 to which Mr. Mehli was Conforming Party. This was a regular transfer, no relevance to this Petition. Inspite of it, for the sake of completeness, the answering Respondents mentioned that Aqua Farms - a firm in which Mr. Mehli was a partner, was the Conforming Party for the Sale Deed under which Alibaug land was purchased by Mr. Tata, why Aqua Farms became confirming party to this sale deed was that Aqua Farms had previously made certain payments to the original land owner to purchase the Afibaug Land but the sale never fructified, When Mr. Tata purchased Alibaug land, payment had to be made by Mr. Tata to Aqua Farms reimbursing further payments it had made to the original land owners, therefore Aqua Farms was made as Conforming Party to the Sale Deed with a recital in the Sale Deed saying that the vendors executed Sale Deed directly to the purchaser for the consideration, at which they agreed to sell and transfer to the conforming party and the conforming party upon reimbursement of consideration paid by the conforming party to the vendor from the purchaser, confirmed the said sale and transfer from the vendor and then to the purchaser, This is a sale on consideration, moreover it is a transaction in between individuals, but these Petitioners went to an extent to hold out this transaction as a precursor for providing contracts to Mr. Mehli in Tata Power. This transaction happened in the way back in the year 1993. Merely, selling and buying something on consideration cannot be said as a ground for bestowing contracts to Mr. Mehli. It is not the case of the Petitioners that Tata Power gave contracts to Mr. Mehli without making any due diligence and without the approval of the Board.

254. The Petitioners and Mr. Cyrus submit that for having Mehli developed close intimacy with Mr. Tata for Mr. Tata and Mr. Mehli happened to be residents of Bhaktawar Building since long, and Mehli having helped Mr. Tata in buying agricultural land at Alibaug, Tata Power from the year 1993 onwards awarded long term contracts spanning across 20 years to various Mehli companies namely, MPCL, M. Pallonji Shipping Pvt. Ltd. (KPSPL) and M. Pallonji Shipping Singapore Pte. Ltd. (MPSSPL) ranging contracts

from painting works to dredging and international shipment of coal for TPC without having any tenders for most of them. By doing such business, Mr. Mehli companies reserves grow from Rs. 3.29crores in the F.Y. 1994-95 to Reserves of Rs. 114crores by FY, 2003-03, i.e. within 10 years thereafter, in the following 10 years those reserves have gone upto Rs. 917crores. All these happened only because Mr. Mehli was considered for getting all these contracts without having any proper bidding. They say that these contracts were awarded despite Mehli not having any prior experience in the contracted job scope, many of them given for abnormally long period, which were then extended without any fresh competitive bids. But whereas under the Executive Chairmanship of Mr. Cyrus, all Tata Group companies including TPC adopted a policy of awarding such contracts only through competitive bidding so that Tata group companies receive maximum benefits possible from their contracts with third parties. When the price of Mehli's contracts got re-negotiated, the scale of benefits to Mr. Mehli fell by more than 50%, resulting in a cost saving of more than Rs. 200crores per year for TPC. The Petitioners and Mr. Cyrus submit that if it is one, two deals, they could be termed as business decisions, but when such decisions making favor to Mr. Mehli time and again over the course of two decades considering windfall profits over the party, mismanagement would stand established. They further submit that Mr. Mehli had initiated arbitration over the measures taken to save the company from such windfall profits to Mr. Mehli by enforcing existing contractual provisions.

255. As to these allegations are concerned, the only document the Petitioners and Mr. Cyrus filed and relied is an email Mr. Mehli addressed to Mr. Padmanabhan of TPC among others, pressurize the company to persists with old policy of dealing with Mehli's companies highlighting a portion of Mehli email that is *"Tata Power should understand that they are in the business of producing and distributing power and should leave all barging logistical I ssues to the contractors who have been awarded the job. We know what to do and what is best for the company. Tata Power inputs are of course always welcome"*. By showing this email, the Petitioners submit that it reflects the audaciousness of Mr. Mehli's email to an Executive Director of TPC (Mr. Padmanabhan) shows the extent of power that Mr. Mehli enjoyed at TPC prior to the appointment of Mr. Cyrus as Executive Chairman.

256. As against these allegations, the answering Respondents gave elaborate explanation by annexing various papers to disclose that all these transactions have been happened in compliance with the provisions of Companies Act and these transactions have never caused any loss either to Tata Power or to the company.

257. At threshold they have submitted Tata Power has not been made as party, all these transactions are passed and concluded several years ago therefore they are time barred and hit by delay and latches.

258. The answering Respondents, basing on the information given by Tata Power on 4.1.2017, submit that in respect to 1993 dredging contract for dredging at cooling water jetting for Trombay, it was awarded by Tata Power to MPCL for 8 years choosing MPCL from amongst three vendors who quoted namely S.K. Dhonde, Sunder Underwater and MPCL. Thereafter it was extended 5 times for various tenures from October 2002 to September, 2014 after obtaining requisite approvals. While these approvals were being given, Mr. Cyrus who was continuing as Director of Tata Power from 1996 to 2006 and again from 2011 to 2016 never raised any objection, indeed approved every extension that was given in his tenure therefore, this could not become grievance either to the Petitioners or to Mr. Cyrus after he was removed as Executive Chairman, When this extension was given on 1.7.2013, the Executive Committee of the Board was chaired by Mr. Cyrus.

259. As to 2004 barging-cum-dredging contract, it is being said that Tata Power awarded this contract to MPCL for construction of jetting and transportation of coal to the Jetty in 2004. This was awarded to MPCL under the single party process approval after bench marking prices, when it was terminated on 4.1.2017; Mr. Mehli initiated arbitration in respect to the dispute between Tata Power and MPCL. This

was subsequently resolved through resolution in October, 2017, Since there is no material to say whether it has been rightly done or wrongly done, it couldn't be taken as allegation to come to a conclusion that it has caused loss to TPC, in any event, this contract has been terminated, nothing has been left to take it as an action to be complained of u/s. 241 of Companies Act. It has also not been shown as to whether any loss has been incurred to TPC by virtue of this contract.

260. In respect to 2006 shipping contract the answering Respondents submit that TPC awarded the consortium of MPSPL and Mercator Lines Limited for the sea freight for Trombay for a period of two years on bidding where five bidders participated namely, Torvald Klaveness, NYK Bulkship, Daichi Chou Shipping, Noble Pacific and MPSPL/Mercator Lines Limited. For which internal approvals were taken for showing bids to the shortlisted parties. It was again re-priced on commercial considerations, amending the contract in June, 2008 from 1.9 million metric ton per annum to a total of 3.2 million tons per annum and extended up to May, 2012. Since Tata Power was unable to fully utilize the quantity of coal shipped from December, 2008 to 2012, it was extended up to March, 2013 to cover the left over coal. Tata Power in its letter written to the company has made it clear that all these extensions and biddings took place in accordance with law therefore, today for Mr. Cyrus being removed on 25.10.2016; these transactions could not be seen as something that has caused loss either to the company or prejudice to the Petitioners.

261. As to painting contracts given to MPCL, it has also been said that they were given to Mr. Mehli's company after obtaining requisite management consents, approvals and necessary price discovery processes.

262. Of course, though the Petitioners and Mr. Cyrus made allegations not supported by any kind of document, the answering Respondents have dealt with each issue saying all those contracts were granted to Mr. Mehli companies stating that no contract has been given to Mr. Mehli companies without having requisite approvals and compliances.

263. As to letter dated 4.5.2013 written by Mr. Mehli, relied upon by the Petitioners and Mr. Cyrus to state that Mr. Mehli pressurized Tata Power to persists with dealing his own company, as we have gone through this letter, we have noticed that when Tata Power made MBPT completely stopped the storage of coal within their premises, Mr. Mehli wrote this email airing his grievance regarding the issue of storage of coal raising his objection to Tata Power changing the terms of a particular contract. By seeing this letter, we don't find anything to conclude that Mr. Mehli either expropriated something from Tata Power or bullied Tata Power to do something which it is not supposed to do. For his company being the contractor, according to him, that permission to storage in MBPT area came to this contractor, he said it would be difficult to them to do the business in case place of storage is not opened for them to keep the coal. He only asked Tata Power to ensure proper coordination and joint decision taken to ensure that coal supply chain to Trombay Power House should not be affected. But the Petitioners instead of reading those lines put in italics in the context of the remaining text, taken out from the text so as to give an impression that Mr. Mehli was audacious towards Tata power. Is it that if anybody says that something is objectionable, it will become a ground u/s. 241 to make an allegation against Mr. Tata? It is not a letter from Mr. Tata, it's only a letter come from a contractor to Tata Power, This is the only document that has been placed by the Petitioners and Mr. Cyrus to say that Mr. Tata did favors to Mr. Mehli at the cost of the company, at the cost of Tata Power in turn causing dent to the dividend that is to come to the Petitioners. All these arguments are for fetching without any point or material, we can with all humility can say it is futile exercise made by the petitioners as well as Mr. Cyrus putting this Bench through all these voluminous documentation, inspite of it, not even a mole is present after digging the mountain. Therefore, we hereby hold that the Petitioners as well as Mr. Cyrus utterly failed to say that these allegations are maintainable under Section 241 and also failed at least to prove these allegations that they have caused loss to Tata Power in turn causing loss to the company which is likely to cause difference to the dividend that comes to

the Petitioners. Though it is repetition, I must say that whenever any allegation saying that the action of somebody else causes loss to the members of the company, it has to be shown that the actions of the persons are unfair and solely aimed at the members complaining. Here, in this case, let alone unfairness to the Petitioners, the allegations made against Second Respondent are not supported by any material or even falling under Section 241, Accordingly, these allegations in respect to Mr. Mehli and Tata Power are hereby dismissed against the Petitioners.

Tata Motors - Nano Project

264. ***Whether or not, the loss, if any, stilt incurring by Tata Motors (including Nano project) can be related back to the affairs of the company conducted by Mr. Tata as Executive Chairman in the past relating to Tata Motors and if so, incurring such loss by Tata Motors can be attributed to Mr. Tata, stilt discharging his duties as chairman of Tata Trusts holding majority shareholding in the company; continuing as Chairman Emeritus to the company on being asked, and giving advices to the company and group companies' well-being could be said as proclivity to interfering with the affairs of the company resulting to causing prejudice to the interest of the company or oppression/prejudice to the interest of the petitioners?***

265. Before going Into nitty-gritty of the factualities relating to these issues, I must place that Tata Motors Ltd., the company manufacturing various cars and other motor vehicles of Tata, is not made as respondent in this case, nor even directors of Tata Motors are made as respondents to this case, so the people who really dealt with these business transactions are not before this Bench, no board meetings minutes of Tata Motors have been placed before this Bench by the petitioners. If any member of the holding company or associate company wants to make his grievance or their grievance in the subsidiary company as grievance of the holding company, it is fundamental to make such subsidiary company and its directors as parties to the case but that has not been done.

266. Mr. Tata has not been the director of Tata Motors at any point of time during which that actions complained of happened. Mr. Tata remained as an advisor as and when the officials of either the respective companies or the company came to him seeking his advice. It so happened at some point of time Mr. Tata volunteered his suggestions for the betterment in the interest of the company, but one thing to remember is, if his unsolicited advice is accomplished through board approval, the persons privy to that approval cannot complain over the same, if his unsolicited advice is not considered, then there cannot be any grievance over such advice for it has not been considered. Of course, almost all suggestions have come from Mr. Tata and Mr. Soonawala on being solicited. The petitioners so disgustingly tried to drag in the concept of shadow directors to tag Mr. Tata and Mr. Soonawala advices as work of shadow directors, that is a concept in fact put in to bring underlying actors promoting defaults or unlawful actions, which is alien to the concept of oppression and mismanagement, As I say, this relief is double edged weapon, it can make or mar the company, for this reason, while employing this concept, we shall be conscious of the fact that our order shall not militate against the basic tenet of governance, that is majority rule based on the doctrine of corporate democracy, relief shall seamlessly fit into the corporate governance, so that it could become prevention as envisaged in the section. The petitioners' counsel tried to hypothesize a concept as if corporate governance has brought in to end corporate democracy, it is not so, because corporate democracy is genesis, corporate governance is species, so even in a fit of imagination also it will never contemplate corporate governance is set against corporate democracy, indeed it has come for strengthening corporate democracy - to streamline rule of democracy, not to stamp out rule of democracy. I fear that it can be said that rule of democracy goes when lift of corporate veil set in, it is true, but question of lifting corporate veil is a last resort, when it is found that management itself which has come in for with a fiduciary duty to protect the aggregate interest of shareholders started devouring the company, then it will come, because the management comes into power saying they discharge their fiduciary duties for the cause of the company. That concept cannot be mixed up with every situation. One must be remindful of

the fact that Mr. Tata and Mr. Soonawala were not heading the management; their directors were only limited not to approve the agenda not for the cause of the company and majority. 1 must be candid that the deliberations in this order are overlapping on one another, indeed they are sporadically dealt with wherever need arose.

267. It need not be said separately that Mr. Tata has not been in the management of either Tata Motors or the company ever since he retired from the company. If we read section 241 to raise a grievance under the said section, it is imperative that the actions complained of must be relating to conducting the affairs of the company. First it is not directly in relation to the affairs of the company; secondly since he advises in relation to affairs of any other company cannot be construed as conducting the affairs of the company because conducting the affairs of the company always remain in the hands of board of directors- Whether advice is good or bad, unless such advice is put into action, it cannot be called as conducting the affairs of the company; merely for having the advice of Mr. Tata taken into consideration by the board cannot be said as action taken by Mr. Tata. Is there any one instance in the history of the company or in Tata Group Company, at least in the regime of Mr. Cyrus that Mr. Tata's advice has been directly put into action without placing before the respective board? At least I have not found any such action which has not been approved by the Board of respective companies in relation to the issues raised by the petitioners or by Mr. Cyrus. Of course, Mr. Tata is heading the Trusts holding more than 66% shareholding i.e. 2/3rd of the shareholding, by virtue of this majority as per rule of democracy, these companies have to be run at the wish of majority i.e. the Trusts headed by Mr. Tata. Whether it is by getting majority directors appointed in the board by the majority shareholder or by virtue of affirmative vote to have the majority say in the board. It makes no difference whether they opt for affirmative vote or electing majority directors in the company, the result is one and the same.

268. For Mr. Tata advises or suggestions either solicited or unsolicited cannot be called as actions falling within the ambit of section 241, these allegations in respect to Tata Motors are not maintainable against Mr. Tata, however, to give completeness to the allegations made against Mr. Tata, the allegations made by the petitioners and Mr. Cyrus have been discussed in the paras below:

269. The whole argument of the petitioners as well as Mr. Cyrus is that Mr. Tata consistently obstructing Mr. Cyrus from taking any decision for closure of Nano project which has been causing consistent loss to the company which ultimately having bearing on the dividend supposed to come to the petitioners. They further submit that Mr. Tata, through Mr. Venkat, sought and obtained commercially sensitive information of Tata Motors which had the potential benefit to Jayem Auto in which Mr. Tata made a significant investment which is in conflict of interest with Tata Motors.

270. To establish this allegation, the petitioners and Mr. Cyrus relied upon a record note of Mr. Tata and Mr. Cyrus visiting Jayem Automotive, Coimbatore on 06-08.2012 unfolding that the purpose of the visit was to evaluate test vehicle prepared by Jayem reflecting the recent development project regarding engine and handling upgrades for Nano and also to determine the direction of future cooperation between Jayem Automotive and Tata Motors.

271. It has been answered by the answering respondents that Jayem Auto is one of the leading Indian companies involved in the design, development, testing and manufacturing of wide range of automotive components, systems and prototype since 1969 and Tata Motors has been engaged in doing business with Jayem Auto since 2004 for carrying out engine performance improvements by other OEMs and suppliers for local and global market. The aforesaid note was of 6.8.2012, when Mr. Tata was Executive Chairman of the company. Besides him, Mr. Cyrus was also present when the visit was made to Jayem Auto to discuss about various issues relating to engine and handling upgrades.

272. Had there been any issue over the visit that was made by Mr. Tata and Cyrus to Jayem Auto, what prevented Mr. Cyrus to raise an objection over that visit immediately after the said incident, but there is no

whisper about such visit made by both of them nor any allegation over such visit at any point of time until Mr. Cyrus was removed as executive chairman, therefore the petitioners now making it as an issue as if Mr. Tata did some business behind the back of the company is bereft of any merit.

273. The petitioners and Mr. Cyrus relied upon two letters dated 23,6.2013 and 15.09,2013 written by Mr. KarlSlym, MD of Tata Motors to Mr. Cyrus stating that Mr. Tata had called upon him to rely more upon J. Anand of Jayem and also to ensure faster payment to Jayem, side by side indicating a proposal for special vehicle centre outside Tata Motors Ltd. expressing his will to spend Rs. 60crores personally to set up the special vehicle.

274. These letters were written by Mr. Karl in the year 2013 directly addressing to Mr. Cyrus by the time he was Executive Chairman, he did not revert to the said letter saying that Tata Motors Ltd, should not have any connection with Jayem Auto. This allegation for the first time has corne up only after he was removed as Executive Chairman. The Petitioners as well as Mr. Cyrus tried to relate back Mr. Tata investing Rs. 10crores in Jayem Auto in February 2016 to the visit Mr. Tata and Cyrus made in the year 2012 and thereafter Mr. Karl writing letters in the year 2013 so as to impress upon that Mr. Tata is interested in Jayem Auto with an idea to invest money in Jayem Auto.

275. To this, the answering respondents replied that Tata Motors has not started doing business with Jayem in the year 2012 onwards, it has been doing business with Jayem since 2004, for Mr. Tata was executive chairman in the year 2012, by virtue of that position he made a visit to Jayem Auto Coimbatore along with Mr. Cyrus in the year 2012, thereafter, when Mr. Karl, it appears, went to make some presentation to Mr. Tata, there it so happened that Mr. Tata spoke about fast-tracking the process for bringing in special vehicle for new product introduction (NP1), there it was mentioned that Mr. Tata willing to spend Rs. 60 cores personally to set up this vehicle. In the letter dated 15.09.2013 written by Mr. Karl to Mr. Cyrus, it has not been said anywhere that Mr. Tata resisting for closure of Nano project, as to the new product introduction, Mr. Tata's suggestion was slightly different saying that they must move fast as in China's model. It is not something expressed in the board meeting, as to Nano project, Mr. Karl has made it clear that he would talk to Mr. Tata in a week as a follow up to the meeting dated 15.09.2013. If you read these letters closely, we can ascertain that not only the people of the company but also the other group company have kept meeting Mr. Tata to get advices and suggestions from time to time. It is also not the case of Mr. Cyrus that meeting of various officials of Tata Group companies with Mr. Tata is rot in the knowledge of Mr. Cyrus. If payment is to be made to some business partner is delayed, it is quite natural asking the respective company to make it fast. As to Mr. Tata's indication of investing Rs. 60crores in a special vehicle, it cannot be touted as an indication of Mr. Tata investing money in Jayem Auto. In fact, in respect to the special vehicle which was discussed in the letter dated 15.09.2013, it has become a reality in July 2016 - Tata Motors and Jayem in July 2016 incorporated a joint venture company named J.T, Special Vehicle Pvt. Ltd. with 50:50 shareholdings in that joint venture. This joint venture was incorporated under the stewardship of Mr. Cyrus himself, It is therefore entirely incorrect to say that Jayem has benefited unduly from any patronage extended by Mr. Tata. Accordingly, we are of the view that nothing is present in the letter written by Mr. Karl to say that Mr. Tata did something so as to have any gain to himself or to cause loss to the company. Since the special vehicle has come into existence under the stewardship of Mr. Cyrus, in the year 2016, it could not be said that Mr. Tata did or advised something against the cause of the company or Tata Group companies.

276. The petitioners and Mr. Cyrus relied upon an e-mail dated 29.01.2014 written by Mr. Tata to Mr. Cyrus to say that Mr. Tata, despite Tata Motors incurring losses on each Mano car that was being sold, continued to suggest ways in which the sales of Nano car could be bolstered and did not once entertain the idea that Nano, a commercial project with no profitability in sight ought to be shut down.

277. As against this allegation, the answering respondents counsel replied that Mr. Tata expressed his

helplessness in seeing Hundai Santro taxis sprang up in Bombay instead of Tata Cars, he felt unhappy of seeing Hundai managed to get a large contract to replace all the older taxis, for this reason, he sent a letter on 08.01.2014 to Mr. Karl querying whether Tata Motors marketing team had tried to make similar offer for a bulk sale of the first Indica or the current Nano to the taxi fleet owners in Mumbai and other cities. What all he said in the letter dated 29.1.2014 is that Tatas have failed to catch up the opportunity that has come to roll out their cars into the market. What is the benefit Mr. Tata gets if cars of Tata Motors are sold as taxis? He would not get anything into his pocket. Indeed, it would become profit to the company. He principally spoke about Indica and he also tossed out an idea that offering Nano as a taxi would also become an attractive proposition, what is wrong in it? Is it the idea of Mr. Cyrus that the majority shareholders should not say anything about the business of the company wherein Trusts have majority shareholder? There is fleet of letters from Mr. Cyrus asking advice on various issues, when such is the case, can it be held out that Mr. Tata suggesting business idea for the cause of the company is wrong? Could it be the case that Nano should not be put out for sale? If giving such a suggestion is oppression, majority shareholders should remain keep quiet leaving everything to an employee appointed as Executive Chairman. If this is the oppression and prejudice to the minority shareholder, every minority shareholder will come in line with a company petition u/s. 241 saying that the decision of the majority shareholder is oppressive against the minority, Another wondering feature in this case is there is not even a single board meeting or shareholder meeting these petitioners differing to any decision that has been passed till the date of filing Company Petition except the minutes of the meeting dated 25.10.2016. Can it be said that a shareholder voted in favor of a resolution could subsequently make a dispute over the said resolution except in the circumstances mentioned under Contract Act?

278. Mr. Cyrus made an allegation that Tata Motors had to take nearly Rs. 4,000crores write-down arising from easy financing scheme and large discounts given to artificially boost the sales of Mano cars.

279. As to this point, it is being shown as TM Finance which has financed TM vehicles incurred NPAs of Rs. 4000crores, this entire NPAs are being held out as loss incurred in lieu of financing Nanos, but the fact of the matter *is* the losses suffered by TM Finance was primarily due to financing for commercial vehicles, the loss caused by financing Nanos is only a part of the total losses suffered. It is a note sent to Mr. Tata disclosing historical liabilities, this is a document annexed to the reply filed by Mr. Cyrus under the head of *"financing liabilities on TML/TMF on account of 100°/o loss cover scheme"*.

> *Financing by TMF Limited under 100% toss cover scheme, for commercial vehicles and passenger vehicles, was stated in April 2008 and December 2010 respectively amounting to Rs. 11,556 crores. Due to tough economic environment, abnormally high defaults in payments led to huge losses for Tata Motors and TMF. Total estimated loss - based on actual loss, provisions and estimated future losses - adds up to Rs, 2,000crores. Key products that have led to these losses under this scheme are Magic (Rs.853crores),* ***Nano (Rs. 392 crores),*** *207 Pick-up (Rs. 303crores) and Ace (Rs. 214crores), As on March 31, 2014 Tata Motors and TMF have provided for a toss of Rs. 1, 200crores. With expected improvement in macro economy, it is estimated that actual loss may not go beyond the amount provided in the books.*
>
> *The scheme had been discontinued for Passenger vehicles in March 2013, whereas for commercial vehicles it was discontinued for most models only in the later part of the financial year 2014. (P. 416 in the reply filed by Cyrus dtd. 29.12.2016)*

280. On looking at this document, it is clear that TMF had loss of only Rs. 392crores towards Nana out of Rs. 2,000crores. Can it be said that since TMF incurring a loss of Rs. 392crores for financing Nano cars as mismanagement against Mr. Tata, when total loss is around Rs. 2,000crores, to my understating it will not be so.

281. The petitioners as well as Mr. Cyrus relied upon an email dated 07.04.2014 (page no. 435 of reply of

Cyrus dated 29.12.2016} sent by the head of product engineering at **TM** i.e. Dr. Tim Leverton Frengto say that R2 kept on visiting Jayem Auto alluding to Mr. Tata sharing information with Jayem Auto. On seeing such bizarre allegation, when the document is perused, we have noticed that Dr, Tim was asked to take Mr. Tata through to Jayem projects i.e. Nano 2 cylinder TCIC and 3-cylinder diesel engines. The response of Mr. Tata has been written in this email to the Jayem project presented before him. Perhaps, by seeing such project, Mr. Tata might have expressed that he wanted to make a personal visit to have an inspection of those projects, that's why Dr. Tim might have mentioned that he would likely to visit Jayem in the next two weeks. If the entire letter is read, it is understandable that he has made lot of enquiries about technical point, to bring out low cost car and also desire to bring their product in to the market very quickly. By reading this letter, can it be said that Mr. Tata visiting Jayem Auto is to have some personal benefit to him or to cause some loss to TM? It is not that TM sensitive information is given to Mr. Tata and Mr. Tata trying to take sensitive information to Jayem Auto. What all happened is, since Dr. Tim has reported to Mr. Cyrus, for that, Mr. Cyrus himself must have asked Dr. Tim to present these projects to Mr. Tata, after having gone through all those projects, may be, he must have made up his mind to inspect those projects to have his own assessment. For whose benefit he has done all these, it is for the benefit of TM in turn to Tata Sons. Whose company is Tata Sons? It is the company of Tata Trusts, because majority of the shareholding is held by them. It is really disquieting to take out one line from this entire document to hold out as if Mr. Tata carried some secret information so as to benefit Jayem Auto.

282. The Petitioners, upon email correspondence between Dr. Tim and Mr. Cyrus, made an allegation that Mr. Tata was regularly meeting Mr. Anand [Jayem Auto). If this email correspondence in between Tim and Cyrus (page No. 437 of reply filed by Cyrus on 29.12.16), is read, it is ascertainable that every time when Mr. Tata met Mr. Anand, it was on a purpose for getting information from Mr. Anand, the same is evident in this document. Meeting two persons can never be called as conspiracy between them, unless such meeting has happened with a sinister design to cause harm to somebody. Is there any material from these documents to say that Mr. Tata met Mr. Anand to do some harm to TM or to Tata Sons? Is there any material with them to say that Mr. Tata got benefit out of it or Jayem got some benefit causing loss to Tata companies? Is there any underhand dealing in any of the correspondence that has been mentioned here?

283. The petitioners and Mr. Cyrus relied upon an email dated 10.05.2014 comprising of Tata Motors related liabilities, they say, this need to update the Trustees on key matters stem from an incorrect interpretation of the Articles of Tata Sons, whereby Mr. Tata required pre-consultations of several matters of interest to him. (page No. 415 of reply filed by Cyrus on 29.12.16)

234. By showing this, the petitioners tried to impress upon this Bench saying some unpublished price sensitive information (UPSI) has been provided to Mr. Tata and Mr. Tata misused that information causing prejudice to the interest of Tata Motors. Whenever such an allegation has been made, few points that have to be considered are as to whether it is a UPSI as covered under SEBI (Prohibition of Insider Trading) Regulations and then to see as to whether the party received such information traded/misused for personal gains viz. either to make gains or to avoid losses, But to our sense, this issue will not fall under either of the points. Second thing, when it has been said UPSI has been taken out, then it is the duty of the person making allegation first to prove that it is UPSI, second, if so, that is compulsorily to be proved by the person making allegation that the person received such information has used/passed on/traded based on that UPSI in order to make profit/avoid loss. If you test this allegation in the proposition placed above, it is not said anywhere it is a sensitive information, it is not said anywhere that information has been misused by Mr. Tata, Interestingly there is no record provided evidencing that Mr. Tata traded in the securities of Tata Motors and made gains/avoided loss based on the UPSI. Moreover, Mr. Tata being the Chairman of Tata Trusts, by virtue of Article 121(A), Tata Sons is bound to provide information of the Tata Group companies to Tata Trusts prior to bringing the same before board of directors of Tata Sons. Another surprising aspect is there is no material saying Tata himself asking some information, it has been

voluntarily provided by Mr. Cyrus or by his officers, may be by virtue of Article 121(A) or by virtue of their need to take advice from Chairman-Emeritus, such information must have been provided. In this back drop, it is inconceivable to understand how providing such information will become interference with the affairs of Tata Sons or flouting SEBI Regulations. That apart, to say that it is an oppressive conduct, first of all, these petitioners should file proceeding before SEBI then if SEBI is of the opinion that some violation happened reflecting that such conduct is prejudicial to the interest of either the company or the petitioners, then only there is a possibility to look into it in the surrounding circumstances, because as I said umpteen times it is not violation of some law that amounts to prejudice the interest of either the petitioners or the company, it is the unfairness causing prejudice to the aggrieved is the deciding factor to decide the case under section 241 and 242 of the Companies Act.

285. In fact, I can say that seeking information will never amount to conducting the affairs of the company. Yes, when majority shareholder is there and majority shareholder himself is not a director and majority shareholder nominate someone as director, it is obvious such majority shareholder must have prior information to take informed decision to advise his nominee director to take a right call on the said point. The same is happening here. In fact, these petitioners as well as other shareholders of Tata Sons unanimously approved Article 121(A) to provide the information of not only Tata Sons but also group companies prior to taking any decision even by the group companies. Such being the case, there is no point in saying that Mr. Tata has kept on interfering with the affairs of the company. It cannot be said as interference, in fact, it is nothing but exercise of their right by virtue of the Article and by virtue of the majority they have been enjoying in the company. Is there one incident in the past Mr. Cyrus writing to Mr. Tata that Mr. Tata not being director of the company, he would not share information to Mr. Tata? Not, once.

286. The petitioners as well as Mr. Cyrus relied upon the email correspondence in between Dr. Tim and Mr. Cyrus to say that because of the closeness with Mr. Tata, Jayem Auto was able to get stable revenue streams and cover their fixed cost from Tata Motors Ltd., to pep up the same, it has been further said that in the financial year 2014-15, Jayem has got 85% of their revenues from Tata Motors that is aggregating to Rs. 62.15crores.

287. It might be that Jayem Auto must be getting major revenue from TM, when big business houses run their businesses, so many other companies will get business, it is quite natural when a business is run, to feed that business, there will be so many accessory businesses. The company that is getting business may not be in a position to run all the accessory businesses on their own, so in a situation like that, it has to give business to some other companies. In a process like this, Jayem must be one out of them. The only point to be seen is whether the business happening between two companies is at arm's-length or not, is it the case that the business with Jayem Auto not transparent? Is it the case that Jayem taking money and not providing services? When long relationship is there in between two businesses, to sustain themselves, they sometime provide loan to each other, sometimes one company may provide loan to other company, if it is not reflected in the record and if it is not paid by such parties, then only there could be a chance to attribute aspersions on somebody else, Here, no such situation is existing, then how come Jayem Auto getting business from TML could be seen as Mr. Tata doing favor to Jayem Auto at the cost of TML or Tata Sons.

288. The petitioners and Cyrus relied upon other emails dated 31.8.2015 and 16.9.2015 to say that Mr. Tata was unhappy about the fact that TM was not dealing with Ola since Mr. Tata had a personal investment in Ola, despite Mr. Tata knowing that TM and other group companies were in advanced talks with Uber, a competitor of Ola.

289. To cut long into short, let us come directly to the letter written by Mr. Tata to Mr. Cyrus on 16.9.15, which is as follows:

"You will recall when we were together in Pune on September 1st I mentioned to you that Mr.

Bhavish Aggarwal, Co-Founder of OLA cabs told me that they were very keen to immediately acquire 10,000 Nanos and Indicas/Indigos from Tata Motors on outright purchase, lease or joint venture. On as *annual basis they had plans to acquire 150,000 such vehicles. He mentioned that while OLA was keen to do the transaction with Tata Motors, there was no positive response from Tata Motors. By contrast Maruti Suzuki was chasing him everyday.*

In my view, given Tata Motors' current inability to register sales in the market and the lack of expected market acceptance of the newly introduced bolt and zest, I would expect that Tata Motors should be vigorously pursuing such an option. You responded saying that Mr. Aggarwal had sought the meeting with you which was being scheduled shortly.

Unfortunately, it would appear that not much in terms of positive direction has happened. I understand that Tata Motors is in the process of entering into a comprehensive agreement with Uber involving a similar quantity of vehicles from Tata Motors and on an exclusive basis and that this was considered to be a better proposal from Tata Motors' point of view. Ola cabs apparently seem to have now gone ahead with Maruti Suzuki, based on what has been reported in the media.

I am writing this to you in the light of our conversation in Pune on Tata Motors itself and the seeming lack of concern about its declining market position. The company has denied the shareholders of their dividend, and has considerable unutilized capacity due to its law sales. Its new product launches have not resulted in expected volumes and I am unaware of a product portfolio strategy that is in place. My our personal experience in trying to help on new variants of the Nano at Jayem Automotives seems to confirm that the decision-making process within the company is extremely slow, A proposal to off take 150,000 Indicas and Nanos should be welcomed by the company, as it constitutes about 15 months' production at current sales levels, If Tata Motors could execute both the Ola cabs and Uber proposals it would be even better and would be a real shot-in-the-arm for the company. How will Tata Motors justify turning away any proposal for a guaranteed offtake? And how would such a decision be viewed in the public domain? The company has allowed such a potential business opportunity to go to Maruti, While Tata Motors is gasping for breath. I am raising this with you as these would be issues with which you would be involved operationally as you are in fact the de-facto CEO or Executive Chairman of the company.

While Tata Motors has turned away the Ola cabs proposal as being inferior, I hope for your sake and for that of Tata Motors that the Uber proposal for a similar number of vehicles, which Tata Motors is pursuing, does indeed get concluded.

With Regards,"

290. I must also give Introduction what made Mr. Tata to write such a letter to Mr. Cyrus. It is apparent on record from the reply filed by Mr. Cyrus dated 29.12.2016 that Mr. Tata wrote a letter to Mr. Mayank Parekh on 31.8.2015 stating that the CEO of Ola Cabs Mr. Bhavesh Agarwal met him and mentioned that Ola Cabs have been very keen to procure large number of passenger cars from Tata Motors saying that he would immediately procure 10,000 and his eventual forecast would be that it would take 1,50,000 cars in one year period and it is also expressed that the response from TM is slow and if TM is not interested in his business, he would transact this with Suzuki who were chasing him constantly. Knowing this information, Mr. Tata immediately dashed it to Mr. Mayank, Officer of TM that selling 1,50,000 vehicles would constitute approximately 10-months business, if this went to Suzuki, then how TM management would explain, how and why they turn away from such business in offing, he has doubted that there was some disconnect somewhere in getting through, Therefore, he put it to Mr. Mayank and Mr. Mayank immediately brought it to the notice of Mr. Cyrus. Then one man called Shailesh Chandra at the instruction of Mr. Cyrus put it to Mr. Mayank saying that they were in touch with Ola till the month of June 2015 for a potential deal regarding purchase of about 3,000 Manos and 6,000 Indicas in a period of 3

months, since Ola put a condition that vehicles to be financed by TMF with a right of refusal and exclusivity for them, in the meanwhile, as an offer came from Uber with a requirement of 1,20,000 Indicas and Indigos with an offer to keep security deposit with TM agreeing to take the entire risk of default beyond 2%, and since Tata Sons was on the verge of finalization of definite agreement with Uber, he asked Mr. Mayank to understand their inability to respond fast to Ola, When nothing happened as stated by Mr. Shailesh at the behest of Mr. Cyrus, Mr. Tata wrote the letter dated 16.09.20l5 suggesting Mr. Cyrus to become fast to grab the opportunities either with Ola or with Uber, if possible to have with both because in given TM current inability to register sales in the market. He says that they should not lose this opportunity, but ultimately what happened, neither Uber business has come to TM nor has Ola business come to TM. The anxiety of Mr. Tata asking Mr. Cyrus to catch up to the situation and grab the opportunity has been bounced against Mr. Tata saying that Mr. Tata, since having his personal investment in Ola, tried to interfere in the business decisions so as to ensure that business is given to Ota.

291. If the letter written by Mr. Tata is understood in totality, the endeavor of Mr. Tata is only to ensure business come to TM, I could not understand how such a suggestion by Mr. Tata to grab that opportunity amounts to Mr. Tata interfering with affairs of Tata Sons. Has it been said anywhere that Mr. Cyrus should not have any deal with Uber and only to have deal with Ola? Nothing of that kind is apparent in the letter written by Mr. Tata, He only said, try to get the business either with Ola or with Uber or with both before others have grabbed the business. Whether Mr. Tata ignored Mr. Cyrus and directly had a deal with Ola? It is not so. Ultimately, what happened Is his anxiety has remained as suggestion only. Business has not come to TM.

292. The petitioners and Mr. Cyrus sounded that since Mr. Tata had an idea to invest his money in Jayem Auto, he initially supported it like anything, thereafter made investment in that company, which has serious conflict of interest with the interest Trusts have in Tata Sons.

293. It has been answered by Tata Sons as well as Mr. Tata that Mr. Tata wrote a letter to Mr. Cyrus on 09.02.2016 i.e. o the same date I believe Mr. Tata invested in Jayem Auto, stating that he made a minor investment of 10 cores in Jayem Auto in the form of debenture. He has openly put to Tata Sons that he made an investment in Jayem Auto. Is it the case of the petitioners that Jayem Auto is a competitor to the business of TML; is it the case that Mr. Tata made a substantial investment in Jayem Auto shifting its interest from Tata Sons to Jayem Auto? Moreover, this investment was done only on 9.2.16 but all these allegations of Mr. Tata helping are far before Mr. Tata made investment.

294. There is an allegation from Petitioners and Cyrus saying that TM supplied 69 gliders to Jayem Auto during the period Sep-Dec 2017, to which the answer from the respondent side is those gliders have been provided for the development of its own electric car sold under the brand name "Neo" the role of TM in this project has been limited to being the supplier of Nano gliders to Jayme Auto. Of course, it is an allegation made subsequent to filing this company petition because it happened only between sept-dec 2017. Moreover, it is inconceivable to understand how these petitioners could attribute everything that has been done in TM as is done by Mr. Tata. It is a listed company, having its own board and TM decisions are put to the scrutiny of Tata Sons in view of Article 121(A). Is it the case of Petitioners that Mr. Tata did something directly dealing with Jayem Auto? Doing business with anybody is not prohibited under law; the only requisite is such business transactions should be at arm's length? As we said many times, for the sake of repetition I say that, to invoke section 241, it has to be proved that the deal/action complained of has to be proved as unfair and prejudicial either to the interest of the company or oppressive against or prejudicial to the members of the company, of course, prejudicial to the interest of the public as well. Has it been said anywhere that such and such act is unfair and prejudicial causing prejudice either to the petitioners or to Tata Sons? Mere saying prejudicial or oppressive 10 times will not become prejudice or oppression, material has to be provided, figures have to be given, on the top of it, it has to be proved. Here, in the given case, let alone proof, there is no material saying that Mr. Tata indulged in doing some loss to

the company or to the petitioners. All these discussions that have been done over the factualities, without prejudice to the basic arguments that these allegations are not maintainable against Mr. Tata because Mr. Tata has not conducted the affairs of either Tata Sons or TML ever since he stepped down as executive chairman of Tata Sons, TML has not been made as party as 1 said earlier, therefore, we have not found any merit either to say it is maintainable or to say that there is material proving that actions of Mr. Tata are prejudicial to the interest of either the company or the petitioners.

Tata Steel - Corus

295. ***Whether Tata Steel acquiring Corus in the year 2006, thereafter Corus, owing to various external reasons, such as 2008 recession and China steel business impact over steel industry, causing losses to Tata Steel could today become a cause to attribute to Mr. Tata that he has become an obstacle to Mr. Cyrus, in his tenure from December 2012 to October 2016, in salvaging Tata Steel from losing by entering into joint-venture with ThyssenKrupp and other business entities basing on an unfounded allegation against Lord Bhattacharya allegedly making statement in the Parliament of UK and other frivolous allegations not supported by any material paper, which according to the petitioners resulted into conducting the affairs of the company prejudicial to the interest of the company/petitioners or not?***

296. The Petitioners submit that Tata Steel is a listed company, in which the company is the promoter along with its associated companies holding 31.35% share capital of its equity capital. Sometime in 2007, Mr. Tata fed the purchase of Corus Group PLC by Tata Steel for a sum in excess of USD 12 billion, which was at that point of time largest global acquisition by Indian company,, this bid was valued at over USD 12 billion which was more than 33% of its original offer price, By virtue of this acquisition, the shares of Tata Steel on Indian exchanges came crashing down, clearly suggestive of the fact that this transaction was not in the best interest of Tata group.

297. The petitioners submit that they have consistently highlighted the overpriced acquisition of Corus, not to assail a decade old transaction as has been oppressive but to show the persistent refusal and frustration of any attempt to resolve this old mistake, despite having been given decade time to turn it profitable, constitutes oppressive conduct and at least mismanagement. The petitioners questioned Mr. Tata bidding for a value that was more than 33% of its original price offer for a company that was not performing well. This they could not say because they themselves said that they are not assailing acquisition as oppressive to the Petitioners. Mr. Cyrus says despite infusion of funds into the Corus, the plants at UK continue to incur heavy losses and the bleeding at Tata Steel increasing significantly towards the beginning of 2016. In order to turn around the dismal performance of Tata Steel UK$_f$ during his period as the Chairman, he says, he had initiated discussion with UK government, the Pension Trustees, the Pension Regulators and the Labor Unions to restructure the operations of Tata Steel, UK. In furtherance of it, when Mr. Cyrus was considering the possibility of merging Tata Steel Europe with ThyssenKrupp, Mr. Tata remained adamantly opposing to any decision to restructure Tata Steel UK operations, in fact, Mr. Tata was instrumental in jeopardizing the talks to merge Tata Steel Europe with ThyssenKrupp, even though the company was suffering staggering losses that warranted urgent action.

298. To which, the answering respondents submitted that acquisition of Corus was a collective decision of Tata Steel, it was competitively priced, dismal performance of Corus was due to 'Black Swan' event of the global financial crisis and its impact on steel industry and they say that Mr. Tata did not ever interfere in the decision to sell Tata Steel UK or its merger with ThyssenKrupp. To explain this aspect, the answering respondents relied upon various dates and events.

299. On 12.10.2006, it came before directors of Tata Steel to make a proposal for the acquisition of Corus Group Plc with a resolution to submit an indicative offer of up to 500 pence per share, then on 18.10.2006, the board of directors of Tata Steel granted in principle approval for part financing the Corus acquisition. Mr. Cyrus also attended this meeting and approved the resolution. This was formally approved by the

board of directors of Tata Steel on having Tata Steel UK announced a cash offer of 455 pence per share of Corus, In the next meeting dated 26,11.2006, it was informed to the board that a Brazilian Companhia Siderurgicia Nacional (CSN) had approached the Corus management with a proposal to acquire its shares. On having the competitor come, the bid price was revised on 9.12.2006, 10.12.2006, 11.12.2006. As there were competing bids for Corus from Tata Steel UK and CSN, the Takeover Panel of the UK, on 26.01.2007 issued a note setting out the auction process for bidding Corus under UK Takeover Code, On auction process set out by the Takeover Plan, Tata Steel held board meeting on 30.01.2007 authorizing committee of directors to revise the offer up to 650 pence per share for Corus recording that the transaction was in the best interest of Tata Steel and it is the commercial interest of Tata Steel. Finally, Tata Steel UK emerged as winner in the Corus auction process. On 02.02,2007, Tata Steel announced USD 12 billion acquisition of Corus at a price of 60S pence per share, this acquisition made Tata Steel the world's 2nd most global steel producer with a combined presence in 45 countries, then Tata Steel had gone for Rights Issue of ordinary equity shares and Cumulative Convertible Preference Shares (CCPS), thereafter another increase of CCPS happened on 14.8.2007. For the annual financial year of 2007-08, there was year on year consolidated EBIDTA growth for Tata Steel from USD 1,553 million in fiscal 2007 to USD 2,910 million in fiscal 2008. Thereafter from the year 2008-20012, 'Black Swan' event of the global financial crisis structurally impacted the underlined demand conditions in Europe, which caused hardship to the entire steel industry in Europe (including Corus). Globally, the steel sector as a whole has been affected on account of macro-economic factors. Recognizing the impact of macro-economic conditions, the board of Tata Steel took various initiatives as early as January 2009. This was reflected at large in all the papers of the company. The answering respondents submit that it is not correct to say that Mr. Tata has been causing obstruction to the proposed sale of Tata Steel UK business to ThyssenKrupp.

300. On perusal of the submissions of the either side, it is evident that acquisition of Corus was a collective decision of Tata steel which was time to time approved by Mr. Cyrus as a director of board of Tata steel. This entire acquisition was undertaken following the due governance process under the supervision of the board of directors of Tata Steel without any dissent from any of the shareholders of Tata Steel.

301. By seeing the dates, events and the material papers on record, it appears that Tata Steel did not buy it on over price, ft was so happened that Tata Steel took unanimous decision to bid for the shares in the auction process for 60S pence per share while CSN final bid was 503 pence per share. Normally, an allegation would come against the management when the management took a decision on its own without even giving a chance to the minority shareholders to participate in the approval process, here when this proposal of Corus acquisition placed before the board of Tata Steel Mr. Cyrus was present as director, he continued approving every resolution of Tata Steel, for entering into auction thereafter confirming the acquisition share price of 60S pence per share.

302. For Mr. Cyrus having approved all these resolutions, since he could not say today that acquisition of Corus itself is bad,, the petitioners and Mr. Cyrus have come out with a novel allegation that Mr. Tata consistently refusing Mr. Cyrus to enter into a merger with ThyssenKrupp, therefore it is oppressive and prejudicial against the petitioners and the company.

303. If you go through all these allegations, not even a single material paper is available to say that Mr. Tata objected Mr. Cyrus from entering into merger with ThyssenKrupp. Since the petitioners and Mr. Cyrus themselves saying that Mr. Tata has been acting as shadow director getting approvals as he wanted, Mr. Tata would have got an approval from the board even on this issue as will stopping Mr. Cyrus from entering into merger with ThyssenKrupp. If at all Mr. Tata was really interested to cause such objection, at least there should have been some correspondence from Mr. Tata asking Mr. Cyrus not to go ahead with merger with ThyssenKrupp. Mere making a pleading without any material paper will never amount to an action causing prejudice to the person complained of.

304. Mr. Cyrus or these petitioners have not placed any letter or email, Mr. Cyrus making persistent demand for divesting or fundamentally restructuring Corus or any material from Mr. Tata side showing obstruction or opposition to the stand of Mr. Cyrus. Absent the satisfaction of the aforesaid cumulative conjoined conditions, it could be easily held that there is not even a case to answer regarding oppressive conduct or mismanagement qua Corus acquisition. The petitioners have directly imputed this to Mr. Tata without even impleading TSL as party to this proceeding. If at all any member of the company is to raise any allegation in respect to any action of the associate company, it is the bounden duty of that member to make Tata Steel whose action is impugned by the complaining party. They have not made it as a party. There is no material before this Bench to say that Mr. Tata conducted the affairs of the company ever since he retired from the company. As to this aspect is concerned, Mr. Tata has neither given a solicited or unsolicited advice to Mr. Cyrus. It is a basic proposition that since Mr. Tata has not been in the management of Tata Sons, Mr. Cyrus having felt that Mr. Tata was instrumental in jeopardizing the progress of merger with ThyssenKrupp, he should have placed this issue before the board, when he was Chairman, nothing of that sort has happened. These petitioners as well as Mr. Cyrus have come out with unfounded allegations against Mr. Tata so as to settle their score for Mr. Cyrus was removed as Executive Chairman of the company. In view of the reasons aforementioned, none of these allegations fall within the ambit of section 241, therefore, all these allegations are untenable under law against Mr. Tata, even otherwise also, we have not found any merit in any of these allegations raised by the petitioners and Mr. Cyrus, whereby we hereby dismiss all these allegations against Mr. Tata and other respondents.

305. Since the petitioners and Mr. Cyrus themselves stated that they are not assailing acquisition of Corus, but they are on Mr. Tata raising an objection to entering into merger with ThyssenKrupp, we are of the view that we are not required to deal with as to whether Corus acquisition is a business decision or not.

Conversion

306. ***Whether action of passing a special resolution and fifing an application for conversion of the company, without altering any of the articles of the company so as make it private from public u/s. 14 of Companies Act, 2013 and continuation of Article 75 amounts to conducting the affairs of the company in a manner oppressive/prejudicial to the interest of the Petitioners or not?***

307. Before going Into discussion about this issue, it is pertinent to mention that this issue has been raised by the Petitioners and Mr. Cyrus only after this Company Petition was filed, because of which, it is obvious that the Petitioners could raise this issue only after filing this Petition because the company filed this application for conversion only after the Petitioners have filed this Company Petition, therefore, this Bench, considering this as an issue subsequently come into existence after filing of the Petition, we hereby decides this issue as part of this Company Petition by taking additional Affidavit filed by the Petitioners on record.

308. The argument of the Petitioners' Counsel is that since this company was declared as public company upon the advent of Section 43{1A) of the Companies Act, 1956 with the characteristics of private company existing as on the date Section 43(1A) came into existence, and the same being repealed by Companies (Amendment} Act, 2000 with effect from 13,12.2000, this Company should be treated as public company without characteristics of private company because the special provision carved out to consider the company with characteristics of private has been repealed on 13.12.2000, whereby the present action and the timing of the management of Tata Trust seeking conversion of public into private is solely an action to invoke Article 75 of the company against the Petitioners, Invoking such right by converting the company into private, the Counsel says, will certainly cause grave prejudice to the Petitioners, henceforth such action must be declared as oppressive against the Petitioners by rejecting the plea of conversion sought by the company management,

309. On this point, the Petitioners' Counsel elaborated this argument saying that if a Private Limited

Company is proposed to be incorporated for the first time under 2013 Act and the proposed draft Articles of Association did not have the ingredients set out in Section 2(68) of the 2013 Act, such company would not be registered as Private Limited Company. As to the Companies already in existence at the time of 2013 Act taking effect, there could only be two types of companies - viz. a Public Limited Company or a Private Limited Company. Since this company as of now has been continuing as Public Limited Company on the file of ROC, even if any of the Articles of such company falling under Section 2(63) of Companies Act, 2013,, such Articles have to be treated as repugnant to the provisions of Section 6 of Companies Act, 2013.

310. The Petitioner Counsel has also relied upon Section 2(71) of the 2013 Act to say that whichever company that is subsidiary of a public company shall be deemed to be public for the purposes of 2013 Act even where such subsidiary continues to be a private company in its Articles, therefore, he submits there cannot be any situation for considering any company as deemed public company after advent of 2013 Act because under this new Act, no provision is made for deemed public company, He says that it does not matter as to whether Section 465 of the Companies Act, 2013 dealing with repeals and savings is notified or not, especially when the provisions in the new Act relating to public and private have already been notified. For the notified provisions having dealt with the repealed provisions analogous to the new provisions, there cannot be any argument to say that since Section 465 of Companies Act, 2013 has not been notified, the old provisions will still remain in force.

311. The Petitioners Counsel further relied upon General Circular 15/2013, dated 13.9.2013 (Ministry of Corporate Affairs), giving clarification on the Notification dated 12.9.2013 saying that under Section 2(68) of the Act, 2013, the Registrar of Companies will register those Memorandum and Articles of Association received till 11.9,2013 as per the definition clause of the private company under the Companies Act, 1956 without referring to the definition of private company under Companies Act, 2013.

312. He has also relied upon General Circular 23/2002, dated 30.9.2002 (Ministry of Corporate Affairs) to say that though time line has not been prescribed in the statute for the companies to revert from the position of Section 43A, the Department has given a clarification saying that those companies which do not approach the Registrar of Companies, seeking reversion to their original status are deemed to have chosen to remain as public companies.

313. The Counsel further argues that for Section 43A of 1956 Act was repealed on 13.12.2000, the company should have applied for conversion of its status from public to private basing on the then existing provision, i.e. 43A(2A) by virtue of insertion of Section 43A (11) of the Act, 1956, but the company consciously remained quiet for more than 13 years, until before notification of 2013 Act without seeking any conversion of Its status from public to private. Even after 2013 Act has come into existence, the company has until before filing Section 14 Petition that is in the year 2017, no information has been given to RoC seeking such conversion. The Petitioners' Counsel submits that filing of this Company Petition under Section 241 of the Act, 2013 has become a pre-cursor to the management of the company to make it private from public so as to invoke Article 75 of Articles of Association to shunt out the Petitioners who questioned the governance of the company through exit route envisaged in Article 75. If such change has been allowed, the Petitioners' Counsel submits, it is for sure that the answering Respondents would exercise the powers under Article 75 of the Articles of Association. Now this company being public, any Article that is restricting the transfer of shares of a public company being repugnant to Section 6 of the Act, 2013, the answering Respondents could not invoke Article 75 so long as it has continued as Public company.

314. Before recording the reply submissions of the answering Respondents and giving findings over the submissions, I believe it is relevant to place the text of various provisions under 1956 Act and 2013 Act to understand the legal history and development of law in respect to private and public and also in respect to

conversion of public into private.

315. The definitions of 'private company' and 'public company' in the Act, 1956 and in the Act 2013 are as follows:

The Companies Act, 1956	*The Companies Act, 2013*
Section 3 (1): *(iii) "private company" [means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by is articles, -]* *(a) restricts the right to transfer its shares, if any;* *(b) limits the number of its members to fifty not including -* *(i) persons who are in the employment of the company; and* *(ii) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and* *(c) prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company;* *(d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives:] Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this definition, be treated as a single member;*	*Section 2(68): "Private company" means a company having a minimum paid-up share capital as may be prescribed, and which by its articles, -* *(i) Restricts the right to transfer its shares;* *(ii) Except in case of One Person Company, limits the number of its members to two hundred:* *Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause", be treated as a single member:* *Provided further that -* *(A) Persons who are in the employment of the company; and* *(B) Persons who, having been formerly in the employment of the company were members of the company while in the employment and have continued to be members after the employment ceased,* *Shall not be included in the number of members; and* *(iii) Prohibits any invitation to the public to subscribe for any securities of the company;*
[(iv) "public company" means a company which - *(a) is not a private company;* *(b) has a minimum paid-up capital of five lakh rupees or such higher paid-up capital, as may be prescribed;* *(c) is a private company which is a subsidiary of a company which is not a private company.]*	*Section 2(71): "public company" means a company which-* *(a) Is not a private company;* *(b) Has a minimum paid-up share capital as may be prescribed:* *Provided that a company which is a subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles*

316. Looking at the comparative table given above, we have not noticed any big difference in the characteristics of public company and private company between 1956 Act and 2013 Act, since we are concerned in respect to the restriction to the right of transfer of the shares of private company, it has been simply lifted from 1956 Act to 2013 Act without even a letter of difference, therefore, as to this right or

other characteristics of private company is concerned, it could be safely inferred that whichever company that has continued with characteristics of private company under 1956 Act is permitted to continue with the same characteristics under 2013 Act without any change.

317. As to public company also, the definition given under 1956 Act has been allowed to continue in 2013 Act as well, The proviso highlighted by the Petitioners' Counsel as if some change has been taken place in the 2013 Act is not of any different from Section 3(l)(iv)(c) of the Companies Act, 1956.

318. It is also relevant to see as to how in the past, private companies by operation of law were qualified as public limited companies under 1956 Act. Initially, Section 43A in the year 1960, 43A(1A), (IB) and (1C) on 1,2.1975 were brought into existence flagging private companies to be deemed as public companies failing under the respective sections brought into existence at the respective timings mentioned above. In these amendments, Section 43A(1A) is the section that says if turnover is more than Rs. 1 crore, even if it is a private company, it has to be treated as deemed public company, the text of section is as follows:

> *Section 43A (1A)* : *"Without prejudice to the provisions of sub-section 1, where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1974 or incorporated thereafter, is not, during the relevant period, less than (such amount as may be prescribed i.e. Rs. 1.00 crore), the private company shall, irrespective of its paid up share capital, become, on and from the expiry of a period of a period of three months from the last day of the relevant period during which private company had set average annual turnover, a public company by virtue of this sub-section:*
>
> *Provided that even after the private company has become a public company, its Articles of Association may include provisions relating to the matters specified in Clause 3 of Sub-section 1 of Section 3 and the number of its members may be, or at any time be reduced, below seven.*
>
> *Section 43A (2): Within three months from the date on which a private company becomes a public company by virtue of this Section, the company shall inform the Registrar that it has become a public company as aforesaid, and thereupon the Registrar shall delete the word "private" before the word "limited" in the name of the company upon the register and shall also make the necessary alteration in the Certificate of Incorporation issued to the company and its Memorandum of Association.*
>
> *Section 43A(4): A private company which has become a public company by virtue of this section shall continue to be a public company until it has, approval of the Central Government and in accordance with the provisions of this Act, again become a Private Company."*

319. On reading these provisions and the background history of Section 43A, it appears that looking at private companies getting exempted from the operation of several sections and enjoy certain privileges, with large capital doing extensive business and controlling number of public companies, Cohen Committee in England felt that such companies should be treated as public companies, retaining with the characteristics of private companies so as to subject them to the restrictions and limitations as to disclosure applicable to public companies, In the same line, in the year 1960, an amendment to the Act, 1956 was brought in stating whichever private company that has not less than 25% paid up share capital of one or more bodies corporate, such company shall become by virtue of Section 43A, a public company with a proviso saying that it can retain the characteristics of Section 3(l)(iii) of 1956 Act. Subsequent thereto, on 1,2.1975 another amendment was notified bringing in Section 43A (1A) (quoted above) to cover the private companies having more than Rs. 1OOcrore as deemed public companies with private company characteristics as mentioned under Section 3(l)(iii) of 1956 Act.

320. Over a period of time, the Companies Act, 1956 has again been amended adding two sub-sections to 43A of the Act, 1956 which are *as* follows:

The Companies (Amendment) Act, 2000

Dated 13.12.2000

1-11** ** **

12. Amendment of section 43A of the Principal Act -

(*a*) after sub-section (2), the following sub-section shall be inserted, namely;

"(2A): Where a public company referred to in Section 2 becomes a private company on or after the commencement of Companies (Amendment) Act, 2000, such company shall Inform the Registrar that It has become a private company and thereupon the Registrar shall substitute the words 'private company" for the words "public company" in the name of the company upon the register and shall also make the necessary alteration in the Certificate of Incorporation issued to the company and its Memorandum of Association within four weeks from the date of application made by the company

(*b*) *after sub-section (10), the following sub-sections shall be inserted, namely*

Section 43A (11): Nothing contained in this Section, except sub-section (2A), shall apply on and after the commencement of the Companies (Amendment) Act 2000".

321. On giving combined reacting to Section 43A (1A), Section 43A (2), Section 43A (2A)- (Amendment notified on 13.12.2000) and Section 43A (11)- (Amendment notified on 13.12,2000), we are given to understand that sub-section 11 has been brought into declaring that Section 43A shall not apply on and after the commencement of the Companies (Amendment) Act, 2000, i.e. from 13.12.2000, except sub-section 2A that has simultaneously come into existence on the same day. On reading Section 43A (2A), it is evident that whichever private company registered as public company under Section 43A (1) (1A) (IB) and (1C) shall inform the Registrar that they have become private companies and thereupon the Registrar shall substitute the words "private company" for the words "public company" upon the Register and shall also make necessary alteration in the Certificate of Incorporation issued to the company and its Memorandum of Association within 4 weeks From the date of the application made by such company.

322. So by virtue of these provisions, it is to be understood that the mandate of the legislature is, (i) Section 43A shall not be applicable from 13.12.2000, (ii) the private company already registered as public company under 43A (2A) can revert to the status of private company, therefore, ROC is directed to substitute the words "private" for the word "public" within four weeks from the date on application made by such company, (iii) timeline as to within what period, the private company registered as public company under Section 43A (2A) shall apply for substitution of the tag of the word "public", with the word private has not been mentioned in the statute, (iv) it has nowhere mentioned in section 43A (11) that the companies registered as "deemed public companies" under Section 43A will either become public company or private company, (v) in the same sub-section 11, it has not been mentioned that this sub-section will have retrospective effect, but it has been mentioned that it will have prospective effect saying that it will be applicable from 13.12.2000. The only thing said under sub-section 11 is that except Section 2A other sub-sections of Section 43A will not **apply** on and after 13.12.2000, It has also not been envisaged that section 43A is repealed, it has only been said in sub-section 2A, 43A shah not apply hereafter.

323. In a scenario like this, what will happen to the Company which was originally registered as private company has become public company by operation of Section 43A (1A), if it has not been reverted to private as enunciated under Section 43A (2A)?

324. It is pertinent to note that private Companies which have become public by virtue of Section 43A,

have not become public on their volition, but by section of law, they are permitted to continue with the characteristics of private company under Section 43A. Therefore, mere non applicability of Section 43A from 13.12.2000 will not make them as public because by virtue of their characters, they have to be treated as public companies with private characteristics. Had those companies not been converted as public by operation of law Section 43A, they would have remained private only.

325. Since newly inserted Sub-section 11 has categorically stated that Section 43A is not applicable from 13.12.2000, therefore, in all respects the companies converted to public by virtue of Section 43A are given liberty, by virtue of section 43A (2A), to get back to their original status, i.e. "private", or to remain as deemed public companies as stated under sec 43A because nothing has been stated that the companies registered u/s. 43A until before 13.12.2000 have become public or private. Since timeline for becoming private has not been mentioned in the amended legislation, it cannot be treated that its characteristics of private have become redundant for having not availed recourse u/s. 43A (2A). As to sub-section 4 of Section 43A, since this sub-section has not been included under sub-section 11, it cannot be said that because conversion as mentioned under sub-section 4 is not sought, it will remain as "public" forever.

326. In the backdrop of it, the Petitioner Counsel has put forward an argument that since the Ministry of Corporate Affairs has given a Departmental Circular No.3/2002 stating if the private company, which had become deemed public company when Section 43A of the Companies Act was in force, does not approach for re¬conversion, it is deemed to have chosen to remain as a public company. Remember, it is only a Circular given by the Ministry having no statutory force. It has not been mentioned anywhere that this is a notification given under Section 642 of Companies Act, 1956.

327. If you see the history of this company, it was incorporated in the year 1917 as a private limited company with characteristics of private company, ever since it continued as private company until before Section 43A (1A) was notified on 1.2.1975, from that date onwards, by virtue of that amendment, this company continued as deemed public company (Section 43A (1A) company) from 01.02.1975. It is also fact that this company till date has not made an application for deletion of its status as public company as enunciated under Section 43A (2A) of the Companies Act, 1956, Mow the present status of this company is, it has been continuing in the records of ROC as Section 43A company continuing with characteristics of private even after the advent of Companies Act, 2013.

328. To say that the company is still deemed public company or Section 43A company, Sr. Counsel, Dr. Abhishek Singvi relied upon ***Darius Rutton Kavasma Neck* v. *Gharda Chemicals Ltd and Ors.*** **[2013] 14 SCC 277** to say that these deemed public companies/43A companies have been considered by the Hon'ble Supreme Court of India in the aforesaid case as hybrid companies with characteristics of private company as defined under Section 3(l)(iii) of the Act, 1956.

329. Going through this case, we have noticed that the Appellants in that case are minority holding 17% of equity in Gharda Chemicals incorporated in the year 1962 as a private limited company having Article 57 in the year 1967 with restriction on rights of all the shareholders to transfer their shares with a definite clause stating that any shareholder desiring to sell his shares must offer his shares to the other shareholders of the company pro-rata to the holding of each of other shareholders respectively at a fair value, but by virtue of turnover clause in Section 43A (1A) of 1956 Act, with effect from 17.8.1988, Gharda became a public company as its turnover exceeded the limit prescribed there under. When the Company Petition was filed before Company Law Board in the year 2009 on some information that second Respondent in this case was proposing to sell his shares, committing breach of the pre-emption Agreement contained in Article 57, on such prayer Company Law Board granted ad-interim injunction restraining Second Respondent from alienating his shares without permission of Company Law Board, upon which, when an appeal was filed, the Hon'ble High Court of Bombay held that once it is held to be a public company, its shares are freely transferable and the Articles could not restrict transfer of shares as they are contrary to the

statute.

330. On which, the holding of Hon'ble Supreme Court is that if Parliament really wanted to put an end to the existence of all (deemed public companies/43A companies), Parliament would have deleted all references to the hybrid companies in the Act, but Section 111(14) still continues to make reference to Section 43A. This has been held so because in Section 111(14) of the Companies Act, 1956, it has been said that "company" means a private company, including the company which has become a public company by virtue of Section 43A of the Act, 1956. Section 111(14) has been referred by Hon'ble Supreme Court because, Section 111 deals with refusal of registration of shares in respect to private company. It has been explicitly held in Para 67 of this judgment that hybrid companies created prior to 13.12.2000 are public companies which in law are entitled to retain features of the private companies if the shareholders chose to retain those characteristics. Against the argument the Respondent side raised saying if that two class of private companies that is private companies and Section 43A public companies continued, that would have discriminatory results. As to this argument, the Supreme Court held that the said argument is held on a wrong premise.

331. This judgment was given by Hon'ble Supreme Court on 28,10.2014, by that time already Companies Act, 2013 has come into existence. Inspite of it, the judgment recognized companies with characteristics of private company, therefore, these companies cannot be equated to public companies to say that the Articles of the company are fn breach of the provisions of Section 9 of Companies Act, 1956/Section 6 of Companies Act, 2013.

332. Another Sr. Counsel of the Respondents' side, i,e, Mr. Mohan Parasaran has gone further to say that there is no provision analogous to Section 43A (2A) of the Companies Act, 1956 in Companies Act, 2013 and the Section dealing with repeals and savings, i.e. Section 455 having not yet been notified, therefore it cannot be said that Section 43A (2A) has not been in force.

333. It is true that there is no provision in the new enactment stating that if turnover is more than Rs. 1crore, such company, though having characteristic of private has to be treated as public company. So under new establishment, there is no company like Section 43A company therefore, the companies which have the characteristics of Section 2(68) of the Companies Act, 2013 will become private companies. What is the definition of public company? The definition of public company says whichever company is not falling under the definition of Section 2(68) will become a public company. Registration of a company with ROC is a recognition taken from the Government that such and such company is a public company or a private company, but the basic definition to say which company is what company,, one has to go back to Section 2(68) only. Even after Companies Act, 2013 has come into existence, for the characteristic being same as that of old enactment, this company is still construed to be a private company, the only tag that has been put to this company by the legislation under the old enactment, i.e. under Section 43A (1A) (which was said as not applicable from 13.12.2000) has to be taken out from the records of ROC, for which only, their company has filed an application to make it private.

334. Since the Petitioners Sr. Counsel Mr. Aryama Sundaram argued for Companies Act, 2013 has come into force in a staggered manner from 1.4.2014 and having all provisions in respect to Articles have been notified, though Section 465 has not been notified, 1956Act has to be considered as impliedly repealed. And by considering so, for this company has been continuing as a public company, whatever Articles which are dealing with characteristics of private company, more specially Article 75, dealing with restriction on transfer of shares, shall be construed as repugnant to Section 6 of the Companies Act, 2013.

335. To counter this argument, Mr. Mohan Parasaran, Sr. Counsel stated that when there is a repeal of statute either expressly/impliedly accompanied by re-enactment of a law on the same subject, Section 6 would be attracted unless the new legislation manifest the contrary intention. Referring to the way how such incompatibility with preservation of rights under old enactment is to be ascertained, the Hon'ble

Supreme Court in ***State of Punjab* v. *Mohar Singh* [1955] 1 SCR 893, 899** & 900 stated:

> *"Whenever there k a repeal of an enactment, the consequences laid down in sect ion 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion, But when the repeal is followed by fresh legislation on. the same subject we would undoubtedly have to took to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention. The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 of the General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section, Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law and the mere absence of a saving clause is by itself not material."*
>
> ** ** **
>
> "…… *The provisions of section 6 of the General Clauses Act will, in our opinion, apply to a case of repeal even if there is simultaneous enactment unless a contrary intention can be gathered from the new enactment...."* (Emphasis supplied)

336. Looking at the ratio decided by Hon'ble Supreme Court of India, even if an enactment is repealed, under new enactment an analogous provision is not given equivalent to the provision under the repealed enactment, by virtue of Section 6 of the General Clauses Act, the provision under old enactment is to be construed as applicable.

337. Sr. Counsel Mr. Mohan Parasaran has further relied upon the same case which the Petitioners relied upon to say public company cannot become private, i.e. ***Ram Parshotam Mittal* v. *Hillcrest Realty Sdn. Bhd.,*** [2009] 8 SCC 709 at page 724, para 73, for the records of the Registrar of Companies is not an indicator to say which company is a private company which company is a public company, it has to be seen whether it falls within the definition of private company or public company as defined in the Companies Act. The same being held by the Hon'ble Supreme Court in the case above, he has referred the para which is below:

> "73. *We are unable to agree with the contention canvassed on behalf of Motel Queen Road that till such time as the records of the Registrar of Companies were not altered to show that Hotel Queen Road had become a public company, it could not be treated as such.* ***It is not the records of the Registrar of Companies which determines the status of a company but whether it fails within the definition of*** *a* ***"private company" or "public company" as defined in Sections 3(1)(in) and 3(1)(iv) of the Companies Act.*** *On the other hand, the records of the Registrar of Companies reflect the status of the company as per the information received from the company in accordance with the provisions of the aforesaid Act."* (Emphasis supplied)

338. On having gone through the judgments referred by the Respondents Counsel, we are of the view that Section 43A (2A) is still applicable to say that the company is at liberty to inform ROC that it has become private company and thereupon Registrar shall substitute the words "private company" for the words "public company". In the citation above referred, it appears that repeal provision has been notified, here in the Companies Act, 2013, repeal provision 465 of Companies Act, 2013 has not yet been notified- For there is no analogous provision incompatible to Section 43A(1A) &(2A), the company is still entitled to inform the ROC to make it private. Doing such will never become oppressive against the Petitioners because law itself directing the company to become private as per Section 43A (2A) of the Companies Act, 1956. Now there is no deemed public company provision under 2013 Act, only two classes, one is

public company and another is private company, If the Articles of the company are looked into, it falls within the definition of private company under new regime as well, therefore, it is quite obvious that it will continue as private company, for which since it has to restore its original position, it has applied to become private.

339. Another point to be noted is from 13.12.2000, application of section 43A (2A) and non-application of 43A has started, but section 43A is still in the books of the statute, it has not gone, therefore, there cannot be a construction that 43A companies registered up to 13.12.2000 have derecognized as 43A companies.

340. Now when the company filed an application for conversion under Section 14, i.e. after filing this Company Petition, the Petitioners have come out with an argument that for this company has filed Section 14 application for conversion after having remained quite from 2000 till date, the timing of filing this conversion application clearly indicates that the answering Respondents have filed this application with a malafide intention to make it private and then to invoke Article 75 against the Petitioners herein.

Let us see what is said in Article 75 of the Articles of Association.

> *"75, COMPANY'S POWER OF TRANSFER*
>
> *the Company may at any time by Special Resolution resolve that any holder of Ordinary shares do transfer his Ordinary shares. Such member would thereupon be deemed to have served the Company with a sale-notice in respect of his Ordinary shares in accordance with Article 58 hereof, and all the ancillary and consequential provisions of these Articles shall apply with respect to the completion of the sale of the said shares. Notice in writing of such resolution shall be given to the member affected thereby. For the purpose of this Article any person entitled to transfer an Ordinary share under Article 69 hereof shall be deemed the holder of such Share."*

341. This Article has been there in the Articles of Association ever since this company has come into existence, i.e. from the year 1917 onwards, till date, this provision has never been invoked against the Petitioners. The petitioners have come into this company as shareholders somewhere in the year 1965 knowing fully well restriction of transfer of shares is present in the Articles of Association, It need not be separately reiterated that the shareholders of a company are bound by the Articles of Association, so is the case with the petitioner, therefore, they could not expect more than what is accrued to them under the Articles of Association. This share restriction under Article has never been out of the books, it was there before it had become public by virtue of amendment on 1.2.1975, it was there even after 1975, it is there even today as well, therefore, there cannot be an argument that since Article 75 is in the Articles of the Company, if it has been allowed as private company, the answering Respondents are likely to invoke Article 75 against the Petitioners. The Petitioners Counsel as well as the Respondents Counsel relied upon various citations to develop their case but this Bench having felt that the above referred citations are suffice to conclude this point, however, both sides having referred to various judgments, they have also been dealt with for completeness.

342. The Petitioners' Counsel relied upon ***Cricket Club of India & Ors.*** **v.** ***Madhav L Apte 1*** **[1975] 45 Comp Cas 574** to submit that any Article restricting a right repugnant to the provision of law will become void in respect to public company, since Tata Sons is also a public limited company, Article 75 of the Articles of Association of Tata Sons restricting the free transferability of the shares repugnant to Section 6 and Section 58 (2) of the Companies Act, 2013, the same shall be declared as null and void.

343. In the light of the submission made by the Petitioners' Counsel, when this citation above referred is perused it appears that Cricket Club of India Ltd is a public limited company, limited by guarantee, it is a point decided on this company proposed to amend its Articles of Association by passing a resolution to amend Article 74 to make the members continued continuously for six years not to stand for re-election at

least for three years. When such an Article has been moved for amendment, on the Civil Suit filed by one of the members, the said Article has been struck down stating that it is repugnant to Section 6 and Section 283 of Companies Act, 1956.

344. This ratio cannot be applied to the present case because Tata Sons is a Section 43A Company holding characteristics of Private Limited Company, more so, the Respondents have not proposed for any amendment or alteration to any of the Articles already in existence. The relief sought in Cricket Club of India and the relief sought in this case are altogether different, former one is in relation to seeking declaration that alteration of Articles 74 is in violation of Section 6 and Section 9 read with Section 283 of the Companies Act, 1956, whereas here the case is not in respect to an alteration of an Article in violation of the provisions of law, moreover, it is a settled proposition of law that oppression and mismanagement deals with fairness of the actions of the parties not in relation to whether action is lawful or unlawful, It has been vividly held in a judgement the Petitioners themselves relied upon, **i.e.,** ***Seth Mohanlal*** **v.** ***Sayaji Jublee Cotton & Jute Mills*** **[1964] 34 Com Cas 777,** therefore, the ratio decided in that case is not applicable to this case, moreover, the issue involved in that case is in respect to requisition for re-election whereas here it is in respect to restriction over transfer of shares, in Cricket Club case, It is about seeking alteration of an Article here no such alteration has been sought to any of the Articles, In the present case, the company is not a public limited company like Cricket Club of India therefore this ratio is nowhere applicable to the present case.

345. The Petitioners Counsel further relied up ***Brown*** **v.** ***British Abrasive Wheel Limited*** **(1919 B. 97),** ***Dafen Tinplate*** **v.** ***Llanelly Steel Company Ltd.*** **(1919 D. 63),** ***Assenagon Asset Management SA*** **v.** ***Irish Bank Resolution Corpn Ltd (formerly Anglo Irish Bank Corpn Ltd)*** **(2012) EWHC 2090 (Ch),** ***AIG (Mauritius) LLC*** **v.** ***Tata Televentures (Holdings)*** **[2003] 103 DLT 250,** ***Rolta India Ltd & Another*** **v.** ***Venire Industries Ltd.*** **2000 (100) Comp. Cas 19 (Bom),** to submit that Article 75 of Tata Sons being repugnant to the provisions applicable to public limited company, the same shall be struck off from the Articles of Association.

346. On perusal of all these citations, the common line of relief sought in all these cases is for Alteration of Articles of Association which has been discussed in some cases it has been rejected on the ground that alteration is against the legitimate expectation of the parties and the provisions of law, whereas, in the present case, no alteration proposed by the Company herein except seeking deletion of its status as Public Company on the ground that it was registered as deemed public company by virtue of the mandate given under Section 43A (11) of the Companies Act, 1956 without seeking any alteration to any of the Articles of it. As to English cases, referred by the Petitioners herein, they are cases filed under Section 13 of the Companies (Consolidation) Act, 1908 and another English case that is of 2012 case, it is not in relation to alteration of Articles but it is in relation to expropriating the rights of minority noteholders in respect to Bank notes which is not permissible under the terms and conditions in between the bank and noteholders, whereby it has been decided against the proposal for holding such a meeting for passing a resolution against the interest of the minority noteholders which is nowhere applicable to the facts of the present case. Henceforth, we hereby distinguished the ratio decided in all those cases holding that they are not applicable to the facts of this case.

347. To counter the argument of the petitioner side, the respondents counsel relied upon ***Borland's Trustee*** **v.** ***Steel Brothers & Co. Ltd.,*** **(1901) 1 Ch 279,** ***Inland Revenue Commissioners*** **v.** ***Crossman,*** **[1937] AC 26,** ***Albert Philips and Albert Philips Ltd.*** **v.** ***Manufacturers' Securities Ltd.,*** **[1917] 116 LT 290 and** ***Brown*** **v.** ***British Abrasive Wheel Company Ltd.,*** **[1919] 1 Ch 290** to say that the Articles of Association is a contract between the shareholders and the company and once it is a contract, the shareholders are bound by it because rights and obligations emerge from such contract, in this case also, the petitioners having come into the company despite knowing that the shareholders are bound by Article 75 which has been in existence as on the date they have come into the Company, the same shareholders

cannot expect a right more than what has been accrued to them by virtue of articles of association.

348. The respondent counsel further relied upon ***V.B. Rangaraj* v. *V.B. Gopalakrishnan and others* [1992] 1 SCC 160*, Sambu Charan Bhattacharya* v. *The Statesman Ltd,* [1993] ILR 1 Cal 1272*, Claude-Lila Parulekar* v. *Sakal Papers* [2005] 11 SCC 73*, Gothami Solvent Oils Ltd.* v. *Smt. Mallina Bharathi Rao* [2001] 105 Comp Cas 710 (AP),** to say that the restriction on the transfer of the shares of the company is not a unique phenomenon to this company alone, it has been recognised by the Hon'ble Supreme Court and Hon'ble High Courts that a restriction on the transfer of shares is one of the fundamental characteristics of a private company.

349. As to restriction in article 75 over transfer of shares is not a total restriction, the company has an option to purchase those shares on fair value as envisaged in Articles 58of the Articles of Association of the Company, in any event, for the petitioners have become shareholders agreeing to the covenants present in the Articles of Association, they cannot now say that such article is per se oppressive/prejudicial to the interest of the petitioners.

350. The petitioners relied upon an English case in between ***John Victor Constable* v. *Executive Connections Ltd.* [2005] EWHC 2 (Ch),** to say that Article 75 has to be nullified for it has been restricting the right of transferability of petitioners' shares.

351. On perusal of the judgement above referred it appears that there is a shareholders agreement and Articles of Association in difference to the Article of the respondent company intending to introduce so as to compel the shareholder of the company to sell his shares if an offer were made to purchase 100% ordinary shares, the case *supra* referred is a case where the company intended to bring a resolution to compel the existing shareholder to sell his shares in suppression of his pre-existing rights under the shareholders agreement and articles of association, which is not the case in the given facts, in as much as, the respondents neither altering the existing articles nor Introducing new articles thereby the ratio in the case supra is not applicable here. In the case *supra* the article proposed to introduce militates against the rights already in pre-existence in favour of the shareholder.

352. The petitioner counsel relied upon ***Ratan Lal Adukia and Ors.* v. *Union of India* [1989] 3 SCC 537** to say that when old provision is irreconcilable to the new provision that has come into existence, though old provision is not explicitly repealed it has to be treated as impliedly repealed for which the petitioner counsel relied upon the para from the case *supra* mentioned below:

> *"The doctrine of implied repeal is based on the postulate the legislature which is presumed to know the existing state of the law did not intend to create any confusion by retaining conflicting provisions. Courts in applying this doctrine are supposed merely to give effect to the legislative intent by examining the object and scope of the two enactments. But in a conceivable case, the very existence of two provisions may by itself, and without more, lead to an inference of mutual irreconcilability if the later set of provisions is by itself a complete code with respect to the same matter, In such a case the actual detailed comparison of the two sets of provisions may not be necessary. It is a matter of legislative intent that the two sets of provisions were not expected to be applied simultaneously."*

353. It has already been discussed while discussing some other case saying that if the provisions are in conflict with each other, then this concept of implied repeal comes into existence here Tata Sons by operation of law under Section 43A (1A) has become Public Limited Company retaining private company characteristics, the only provision that has been shown as not repealed is section 43A (2A) and 43A (11) of 1956 Act on the ground till date section 465 of the Companies Act, 2013 has not been notified. Section 43A (2A) or 43A (11) are not in conflict with any of the provisions of the Companies Act, 2013 more particularly with Section 2 (58) and section 2 (70) of Companies Act, 2013, Under the old regime as well as new regime, the definition for private company is almost the same, the only thing is that Tata Sons has

not applied for substitution of the word public with the private to ROC therefore by virtue of the provisions of both the enactments, though it has be captioned as public company in all respects it fails within the definition of private company as envisaged under section 2 (68) of 2013 Act as well as section 3 (1)(c) of 1956 Act, therefore in any respect this company cannot be deciphered as public limited company except the caption that has come to it by virtue of section 43A (1A) of the 1956 Act. As there is no conflict in between the provisions of both the enactments, this citation is not applicable to the present case,

354. The petitioners counsel has relied upon ***Commissioner of Sates Tax, Lucknow* v. *Parson Toots & Plants*** **[1975] 4 SCC 22 Paragraph 16 at Page 28,** which is as follows:

> *"If the legislature wilfully omits to incorporate something of an "analogous law in a subsequent statute, or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the Court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity. To do so would be entrenching upon the preserves of Legislatures."*

355. Looking at the ratio placed by the Petitioners, ft appears that the above ratio is in relation to supply of the omissions in the new enactment from the repealed enactment, here nothing has been taken from 1956 Act to say that Tata Sons is a Private Company in substance, this company is a private company by the definition of old enactment as well as new enactment whereby nothing is to be supplied from old enactment to new enactment to say that this company is a private company except the tag that has come by operation of Section 43A (2A) of the Companies Act. Therefore, this ratio is not applicable to the present case.

356. The Petitioners also relied upon ***Needle Industries (India) Ltd.* v. *Needle Industries Newey (India) Holding Ltd.*** **[1981] 3 SCC 333 Para 158 at Page 421-422** to say that when a provision is made for renunciation of shares in favour of a non-member, it will become an invitation to the public to subscribe for the shares in the company, being an infringement to the structure of the private company, such company giving an invitation to the public has to be construed as public company.

357. To make long into short, instead of discussing what is the deliberation went on this issue in the Needle supra, we say it is not applicable to the present context because in Needle Industries, it is in relation to issue of shares therefore the context arose to say how the company is to be considered in a scenario where shares are renunciated in favour of any non-member of the company, but whereas Tata Sons has not come out with any rights issue similar to Needle Industries scenario, that ratio cannot be taken into consideration to say that this company is public in nature henceforth we have not found any merit to apply that ratio to this company.

358. The Petitioners Counsel relied upon ***Peterson Dafen Tinplate Company Limited* v. *Llanelly Steel Company (1907) Limited*** case to say that the Resolutions in conferring an unrestricted and unlimited power on the majority of the shareholders to expropriate any shareholder they might think proper at their will and pleasure could not be bonafide are genuinely for the benefit of the company as a whole and was not such a power as could be assumed by the majority.

359. At the outset it should be dealt with that this was the ratio decided under Companies (Consolidation) Act, 1908 of UK, as we go through the facts of the case, it is evident that the Defendant Company (Llanelly Steel) had no power under its original Articles of Association to acquire compulsorily the shares of members, passed special resolution altering its Articles and introducing a power enabling the majority of the shareholders to determine that the shares of any member (other than a certain named company) should be offered for sale by the Directors to such person or persons (whether a member or members or

not) as they should think fit at the fair value to be fixed from time to time at stated intervals by the Directors.

360. The point that was decided in this case was that the impugned Article, i.e. Article 42(b) is not the original Article but a new Article introduced by special resolution, and if their introduction involve any oppression of the minority by the majority, it has been held that the method of ascertaining the price is also objectionable; it is an unfair method because the possible purchaser themselves fix the price, any element of unfairness in fixing the price is sufficient to vitiate the resolution. This ratio was held solely on the ground that court is unable to find any adequate reason for saying that the exemption of Briton Ferry company from the operation of the new article is or was for the benefit of the Llanelly Company.

361. By seeing this case, it appears that the Plaintiff Company (Briton Ferry Company) challenged passing a special resolution approving Articles of Association prejudicial to the interest of this Plaintiff Company, here in the company , the majority shareholders have neither opted for any alteration of Articles diluting the rights of the Petitioners herein, the time when the Petitioners became shareholders of this company, the Article presently impugned was very much present, it remained good for more than 100 years, now it could not be said just by showing this case where the majority tried to impose some new obligation upon the minority shareholders, therefore, we are of the view that this finding is not applicable to the present case.

362. On the same proposition the Petitioner further relied upon ***Sridhar Sundararajan* v. *Ultramarine & Pigments Limited* [2016] (4) Mh,. L.J. 590, Para 15-22, Pages 594-601,** we are of the view that this ratio is also in line with the ratio already discussed from the citations placed by the Petitioners side, therefore it is hereby held this ratio as well is also not applicable to this case.

363. On the contrary, the Respondents also relied upon Needle Industries supra taking para No.154 from the judgement to say that the privileges and exemptions of a private company are very much available to Section 43A company as well for which the Respondents relied upon the following para;

> *"Private companies enjoy certain exemptions and privileges which are peculiar to their constitution and nature. Public companies are subjected severely to the discipline of the Act. Companies of the third kind like NILL< which become public companies but which continue to include in their articles, the three matters mentioned in sub-clauses (a) to (c) of Section 3(l)(iii) are also, broadly and generally, subjected to the rigorous discipline of the Act. They cannot claim the privileges and exemptions to which private companies which are outside Section 43-A are entitled."*

364. On examination of every aspect, we are of the view that this argument of the petitioners' counsel on this point is preposterous primarily on three grounds:

(*i*) As per law, the only requisite to make it private is as per Section 43A (2A), the company has to apply for making it from public to private. If you see Section 43A (2A), it is only said to inform the Registrar that it has become private by virtue of non-application of Section 43A(1A) to make it as public company. Therefore, it is evident that the Registrar of Companies even cannot go into as to whether it is in compliance with Section 31 of the Companies Act, 1956 or not because under Section 31 of 1956 Act, it has been said subject to the provisions of the 1956Act, and to the conditions contained in its memorandum, a company may, by special resolution, alter its Articles when it is to convert from public to private, but it has to be approved by Central Government. Now on the advent of 2013 Act, this power has been conferred upon National Company Law Tribunal. Perhaps the legislature thought that since the companies under Section 43A were private companies before 43A (1A), the

only requisite that has been mentioned in Section 43A (2A) is to inform ROC that it has become private company and thereupon the Registrar shall substitute the word public into private, accordingly, made necessary alteration in the Certificate of Incorporation. It is only mere information that has to be given to ROC as per sub-section 2A. What this company today doing is, i.e. filing petition u/s 14, i.e. more than what has been directed under sub-section 2A of Section 43A, perhaps they have done it because Section 14 has come into existence on the advent of 2013 Act.

(*ii*) The company has not altered any of the Articles of Association so as to bring any new entrenchment to the Articles already in existence- Therefore, it cannot be said that the management in the company has applied to slap some action upon the Petitioners herein so as to cause prejudice to the rights already in existence. Of course majority is always at liberty to alter the Articles, but that has also not happened here.

(*iii*) Of Course legally, nothing available on record to say that the company by filing an application to declare it as Private is unlawful or in violation of the Articles of Association, as to fairness part is concerned, it is again reiterated that to seek a relief under Section 241 (l){a), the complainant has to prove that some action has been taken prejudicial to the interest of the complainant member or other members, here, an application under Section 14 is in no way can be construed as action to cause prejudice or oppression against the Petitioners, therefore filing an application under Section 14 to get back its original status will never become a cause of action to invoke Section 241.

365. As to interplay of old and new enactment, as I said earlier, section 43A has never been repealed, it has only been said in section 43A (11) that section 43A, except (2A), will not remain in force from 13.12.2000, for section 43A has not been repealed in the year 2000, it cannot be said that section 43A companies registered before 13.12.2000 would not continue as deemed public companies, its time limit has been mentioned under section 43A{2A) of 1956 Act, Repeal Provision Sec 465 has not yet been notified, therefore, we don't find any interface between old and new enactment. For this company has become deemed public company by operation of law, and there being no other definition to private company under new Act other than old definition, it cannot be called that it has to be treated as public company.

366. On having the Petitioners Counsel quoted one order passed by Hon'ble NCLAT on 27.07.2017 in ***Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust* v. *M/s. Chettinad Cement Corporation Ltd.*** we have noticed that Hon'ble NCLAT has dismissed the plea of the Appellant/Objector/ousted shareholder of the Respondent company, holding that conversion proceedings cannot be stayed or stalled on the Appellant asking for stay on the ground he would initiate 241 proceedings against the company. This is no way helpful to the Petitioner indeed it is a finding suicidal to the case of the Petitioners.

367. In view of the same, this Bench hereby decided this issue against the Petitioners herein.

368. ***Whether Articles 104B, 121, 121A and 75 of the Articles of Association, as stated by the petitioners, are per se oppressive against the petitioners and whether the same Articles were/have been used or expected to be used as tools of oppression and mismanagement by the answering respondents against the petitioners or not?***

369. The petitioner's counsel, the answering respondent counsel and Mr. Cyrus counsel having elaborately argued over this issue breaking it into sub-issues lining them as battle front against each other centering us in between to defend ourselves from the battle pitched against each other, let us see how we have come

through. In this discussion, intermittently the interplay of corporate democracy against corporate governance has also got into.

370. Before going into discussion in respect to this aspect, I believe it is essential to place the text of articles and their existence to refer them in the progress of discussion; henceforth the Articles have been placed as below;

"86. Quorum at General Meetings

No quorum at a general meeting of the holders of the Ordinary Shares of the Company shall he constituted unless the members who are personally present are not less than five in number including at least one authorised representative jointly nominated by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust so long as the Tata Trusts hold in the aggregate at least 40% of the paid-up Ordinary share capital, for the time being, of the Company

Explanation: the words "jointly nominated" used in this Article shall mean that the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall together nominate the authorized representative. In the case of any difference, the decision of the majority of the Trustees in the aggregate of the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall prevail, "

"104. General Provisions

A. *Number of Directors*

** ** **

B. Nomination of Directors

So long as the Tata Trusts own and hold in the aggregate at least 40% of the paid up Ordinary share capital, for the time being, of the company, the Sir Dorabji Tata Trust and Sir Ratan Tata Trust, acting jointly, shall have the right to nominate one third of the prevailing number of Directors on the Board and in like manner to remove any such person so appointed and in place of the person so removed, appoint another person as Director.

The Directors so nominated by the sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall be appointed as Directors of the Company

Explanation: the words acting jointly' used in this Article shall mean that the Sir Dorabji Tata Trust and the Sri Ratan Tata Trust shall together nominate such Directors. In the case of any difference, the decision of the majority of the Trustees in the aggregate of the Sir Dorabji Tata Trust and the Sir Ratan Trust shall prevail.

"118. ***Appointment of Chairman***

For the purpose of selecting a new Chairman of the Board of Directors and so long as the Tata Trusts own and hold in the aggregate at least 40% of the paid up Ordinary Share Capital of the Company for the time being, a Selection Committee shall be constituted in accordance with the provisions of this Article to recommend the appointment of a person as the Chairman of the Board of Directors and the Board may appoint the person so recommended as the Chairman of the Board of Directors, subject to Article 121 which requires the affirmative vote of ail Directors appointed pursuant to Article 104B.

The same process shall be followed for the removal of the incumbent Chairman.

The Selection Committee shall comprise - (a) Three (3) persons nominated jointly by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust who may or may not be Directors of the Company, (b) one (1)

person nominated by and from amongst the Board of Directors of the Company and (c) one (1) independent outside person selected by the Board for this purpose. The Chairman of the Committee will be selected by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust from amongst the nominees nominated by the Trusts.

The quorum for a meeting of the Selection Committee shall be the presence of a majority of members nominated jointly by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust.

Explanation: The words "nominated jointly used in this Article shall mean that alt Trustees of the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust acting together shall decide the nominees in the case of any difference, the majority decision of all the Trustees acting together of the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall prevail."

121 Matters How Decided.

*Matters before any meeting of the Board which are required to be decided by a majority of the directors shall require * **the affirmative vote of a majority of the Directors appointed pursuant to Article 104B** present at the meeting and in the case of an equality of vote's the Chairman shall have a casting vote.*

*****121A. The following matters shall be resolved upon by the Board of Directors:***

(a) *a five-year strategic plan that should include an assessment of the proposed strategic path of the Company, business and investment opportunities, proposed business and investment initiatives and a comparative analysts of similarly situated holding companies, and any alterations to such strategic Plan;*

(b) *an annual business plan structured to form part of the strategic plan, that should include proposed investments, incurring of debts, debt to equity ratio, debt service coverage ratio, projected cash flow of the Company and any alterations to such annual business plan"*

(c) *the incurring or renewal of any debt or other borrowing by the Company, which debt or borrowing causes the cumulative outstanding debt of the Company, to exceed twice its net worth or which debt/borrowing is incurred/ renewed at a time when the cumulative outstanding debt of the Company has already exceeded twice its net worth, if not already approved as part of the annual business plan;*

(d) *any proposed investment by the Company in securities, shares, stocks, bonds, debentures, financial instruments, of any sort or immovable property of a value exceeding Rs. 100 Crores if not already approved as part of the annual business plan;*

(e) *Any increase in the authorised, subscribed, issued or paid up capital of the Company and any issue or allotment of shares by the Company (whether on a rights basis or otherwise);*

(f) *Any sale or pledge, mortgage or other encumbrance or creation of any right or interest by the Company of or over its shareholding in any Tata company or of or over any part thereof, if not already approved as part of the annual business plan;*

(g) *any matter affecting the shareholding of the Tata Trusts in the company or the rights conferred upon the Tata Trusts by the Articles of the Company or the*

shareholding of the Company in any Tata Company if not already approved as part of the annual business plan;

(h) *Exercise of the voting rights of the Company at the general meetings of any Tata Company, including the appointment of a representative of the Company under Section 113(1) (a) of the Companies Act, 2013 in respect of a general meeting of any Tata Company and, in any matter concerning the raising of capital, incurring of debt and divesting or acquisition of any undertaking or business of such Tata Company, Instructions to such representative on how to exercise the Company's voting rights,*

Explanation: the term "Tata Company" used in this article shall, as the context requires, mean each or any of the following companies "

Tata Consultancy Services Ltd., Tata Steel Limited, Tata Motors Limited, Tata Capital Ltd., Tata Chemicals Ltd,, Tata Power Company Ltd., Tata Global Beverages Ltd., The Indian Hotels Company Ltd., Trent Limited, Tata Teieservices (Maharashtra) Limited, Tata Industries Limited, Tata Teieservices Limited, Tata Communications Limited, Titan Company Limited and In fin it i Retail Limited and any other company in which the Company (or its subsidiaries) holds twenty percent or more of the paid up share capital and whose name is notified in writing to the Company by the Directors nominated under Article 104B

****121B** Any Director of the Company will be entitled to give at least fifteen days' notice to the Company or to the Board that any matter or resolution be placed for deliberation by the Board and if such notice is received it shall be mandatory for the Board to take up such matter or resolution for consideration and vote, at the Board meeting next held after the period of such notice before considering any other matter or resolution.*

75. Company's Power of Transfer

The Company may at any time by Special Resolution resolve that any holder of Ordinary shares do transfer his Ordinary shares. Such member would thereupon be deemed to have served the Company with a sale-notice in respect of his Ordinary shares in accordance with Article 58 hereof, and all the ancillary and consequential provisions of these Articles shall apply with respect to the completion of the sale of the said shares. Notice in writing of such resolution shall be given to the member affected thereby. For the purpose of this Article any person entitled to transfer an Ordinary share under Article 69 hereof shall be deemed the holder of such Share."

371. The company on 13.09.2000, unanimously, including father of Mr. Cyrus (Mr. P.S. Mistry) approved modifications to the Articles of Association of the company in its 82nd Annual General Meeting, inter alia including following changes:

(1) a right for two Tata Trusts, namely, Sir Dorabji Tata Trust and Sir Ratan Tata Trust, to jointly nominate *"one-third of the prevailing number of Directors on the Board" so* long as the Tata Trusts own and hold in aggregate at least 40% of the paid up ordinary share capital of Tata Sons (Article 104B); and

(2) that all *"matters before any meeting of the Board which are required to be decided by a majority of the Directors shall require the affirmative vote of ail the Directors appointed pursuant to Article 104 3 present at the meeting"* (Article 121). Article 121 was subsequently amended by a unanimous resolution of the shareholders of Tata Sons dated April 9, 2014, pursuant to which the affirmative vote would only be required from a *"majority of Directors*

appointed pursuant to Article 104B present at the meeting".

372. Likewise, in the EGM held on December 6, 2012, Article 118 was modified so that the person recommended by selection committee may be appointed as the Chairman of the Board, subject to Article 121, which requires the affirmative vote of all the directors appointed pursuant to Article lG4B.This resolution was unanimously passed when Mr. Cyrus was chairman of the company.

373. Subsequent thereto, in the EGM held on April 9, 2014, again under the aegis of Mr. Cyrus, Article 104B, 1118, 121,121A and 121B were altered conferring affirmative right in favour of the Trusts' directors making it requisite it to the Board for affirmative vote of the nominee directors for passing resolution, likewise to place some issues of the specified group companies to be placed before the board of the company prior to voting on such issues by any of the group companies mentioned in Article 121A. Minutes of it were signed by Mr. Cyrus.

374. As to Article 75 is concerned, it has been present in the Articles of Association ever since this company was incorporated, the petitioners were not subscribers or members of the company when it was incorporated, they came as shareholders in the year 1965 by acquiring around 18.34% shareholding from erstwhile shareholders. This Article has been there by the time the petitioners have acquired shareholding in the company. For they have come into the company knowing fully well, restriction on transfer of shares in the mode mentioned in Article 75 is binding on them, it has now to be tested as to whether the persons consciously acquired shares of the company despite Article 75 is present, can they say existence of Article 75 wilt amount to per se oppression against the petitioners? As to other Articles impugned above, it is not the case of the petitioners that they voted against the approval of impugned Articles, but it is the case of the petitioners that these Articles were amended with a view to bring in good governance and protect the interest of Charitable Trusts. Now their explanation for assailing the continuation of these Articles is that they have been converted into tools of oppression and device to enable purported charities to run business without being amenable to good governance, which is wholly against public policy and public interest, therefore they are to be struck off from the Articles. Now the onerous duty of this Bench is to test as to whether such argument stands to merit or not.

375. Sr. Counsel appearing on behalf of the petitioners submit that with the change in various laws over the past two decades, the focus has turned to ensure that the affairs of the company being conducted in a manner which is in the interest of the company consisting of shareholders, both majority and minority.

376. The petitioners counsel has submitted a novel argument saying that various regulations that have come into existence regulating the affairs of the company have brought a paradigm shift to the old concept of majority shareholders taking a march to conduct the affairs of the company with inclusion of the concept of independent director and the duties of directors apart from making section 241 wide open for the protection of minority shareholders by including "doctrine of prejudice remedy" in addition to the "doctrine of oppression remedy" already available. He says that new legislation has brought a signal change in the conduct of the affairs of a company moving from the earlier belief of "corporate democracy" embodied by the will of the majority to a more inclusive scheme where the interest of all have to be duly safeguarded, i.e., corporate governance,

377. Basing on this premise, Sr. Counsel Mr. Aryama Sundaram emphasized that insertion of Article 121-A after the advent of 2013 Act is reflective of the fact that all important matters be brought and decided by the board inclusive of independent directors, whose duty is inter alia to protect minority shareholders, as against this, he says, continuation of Article 121 with an affirmative vote of Trust nominated directors comprised of 1/3rdvote to protect the interest of majority shareholders would become counter-productive to the concept embodied in Article 121-A,

378. To the argument of the Sr. Counsel Dr. Singhvi retorting that the will of majority alone counts in

relation to the affairs of the company, the petitioners' counsel submitted that it is retrograde belief of the respondent counsel that the company speaks through its majority is wholly prejudicial, oppressive and stems from total misrepresentation of what corporate democracy would be in the present day context.

379. He submits, in the backdrop of this progressive change in the law, the majority shareholders i.e. Trusts using their might through their two nominee directors to ensure that important matters relating to the affairs of the company and Tata group companies are required to be tabled before the directors of the company subjecting the final decisions to their affirmative vote. By application of this affirmative vote, the Trusts through its nominee directors have made the board meeting as a routine ritual over the decision already taken by the Trusts. This kind of approach has given a go by to any meaningful discussion in the board meetings. The petitioners' counsel submits that granting of affirmative vote to the majority shareholders is a concept unheard of and not found in the Articles of any company.

380. He has placed another argument saying that the petitioners should have the right to proportionate representation on the board of directors of the company. And since the current equity shareholding the petitioners is in excess of 15%, the petitioners should have the right to nominate at least two directors accordingly, the right to affirmative vote (as contained in Article 121) and quorum requirement (as contained in Article 115) must be changed in Favour of the petitioners and the directors nominated by them and not the Trust nominated directors. He further submits that the shareholders of a company indeed have the power to appoint the board of directors, however, once they are appointed, the duty to govern the company gets fastened to the board of directors, by further adding to it, by section 166, the directors are bound by law to take into account the interest of all stakeholders. The petitioners' counsel submits that in the matters to be decided by the board of directors, the intention should be that the entire board of directors should apply its mind to the matters placed before it and the collective wisdom of the board of directors is the fulcrum and the *sine qua non* of good management of a company, but by giving an affirmative vote to the Trust nominated directors, the whole process has become farce, because by virtue of Article 121, the Trusts nominee directors by virtue of the affirmative vote taking decisions with the pre-clearance that have come to them from the Trustees, which is virtually in breach of the fiduciary duty to the company. Because of which, the Petitioner's Counsel says that the subsequent insertion of Article 121 A has become redundant.

381. To bolster this argument, the petitioner counsel relied upon an incident happened in the board room in respect to acquisition of solar power business of Welspun by Tata Power. The petitioner's counsel submits that in respect to acquisition of this power company, on May 31, 2016, a detailed note for information was sent to all directors of the company about the solar power transaction. Despite this information was being sent to the directors, Mr. Tata and Soonawala (R14) alleged that there was a breach of Article of Association and forced the Trust nominee directors to record their allegation of the Articles being violated, eventually, the Trusts nominee directors stepped out of the Board meeting to take instructions as to what is to say and what is to be recorded; since they were being told to record the breach of the Articles of Association, despite Mr. Cyrus firmly refuted the same at the meeting, they did so. The counsel says that nothing could be more demonstrative than this to prove bigger abuse of Article 121, where despite Article 121-A not being attracted, using Article 121, Tata Trust asserted that they were being denied their right to approve matters before Tata Power company approved the resolution.

382. In Tata Motors also the same kind of predicament arose. The petitioners counsel submits that the argument of the respondents saying that the aforesaid situations were fait accompli for they were not being consulted before decisions were taken by Tata group companies is not sensible as it was already circulated.

383. After having gone through the minutes dated 29.6.2016, in the light of the pleadings of the respondents and documents thereof, it appears the facts taken place are slightly otherwise from the version

presented by the petitioners' counsel.

384. It need not be said that as per Article 121 r/w Article 121A, it is evident that any matter affecting the shareholding of the Tata Trusts in the company (TS) or the rights conferred upon the Company by the Articles of the Company or the shareholders of the company in any Tata company, if not already approved as part of the annual business plan, shall be placed before the board of directors of the company, before any of the group company (mentioned in Article 121A-(h))has decided in respect to making any investment exceeding Rs. 100 crores. On reading this minutes, it is clear that no board meeting took place to take a call over this Welspun acquisition which was costing around Rs. 9000 crores. As per Article 121-A(h) of the Articles of the Company, such issue should have come before the Board of the company prior to Tata Power company had taken a decision to acquire such project, because it is the Company that has to provide debt to finance acquisition, Though papers appear to have been sent to the Trust nominee directors, Mr. Cyrus did not hold any board meeting before Tata Power Company signed the documents in respect to Welspun transaction on 12.06.2016 itself. Since the investment was huge in thousands of crores that too since money had to go from Tata Sons, it was the bounden duty of Tata Sons to hold its board meeting to take a decision as to whether such investment was to be made or not, but Tata power company had already signed on the documents in respect to Welspun transaction on 12.06.2016 itself. To that group company, Mr. Cyrus was the non executive chairman. As to this aspect, when Mr. Vijay Singh and Dr. Nitin Nohria stated that the proposal from Tata Power should have come at an earlier stage rather than being presented as fait accompli which was at variance with the understanding between Tata Sons and the principal shareholders as embodied in the Articles of Association of the company, the clarification given by Mr. Cyrus was that a note on the proposed Welspun transaction was circulated to the directors on 31.05.2016 itself, therefore or the basis of it, he said that Tata power proceeded with the proposed transaction on 12.06.2016. Though not holding a meeting to take a decision as to whether such acquisition could go ahead or not is in breach of Article 121-A, Mr. Cyrus reiterated that he fulfilled all the requirements under the Articles. In this piquant situation, Mr. Vijay Singh and Dr. Mohria, before giving an approval to such acquisition, which was already signed by Tata Power Co. Ltd., discussed this issue with Mr. Tata and Mr. Soonawala and then agreed for the same reiterating the views of the Trusts that this proposal should have come earlier.

385. On looking at this transaction, it is evident that Tata Sons did not hold board meeting before Tata Power Co. Ltd. proceeded with the transaction on 12.6.16. Let alone exercising the powers under Article 121-A, when substantial investment to such acquisition was to be made by Tata Sons, is it not the duty of Mr. Cyrus to hold board meeting to take the approval of the board for acquisition of Welspun before TPCL proceeded with this transaction on 12.6.16? It is also evident that this approval is really a fait accompli as stated by the answering respondents because they could not express anything except approving the acquisition for already TPCL has signed papers over the acquisition of Welspun on 12.6.16 itself. Another interesting thing to be noted is when Mr. Vijay Singh and Dr. Nohria made a call to Mr. Tata perhaps he directed them to approve the resolution. The reason for such assumption is Trust Nominee Directors approved the resolution only after they spoke to Mr. Tata. Looking at this incident, can Mr. Tata be called as trouble maker or trouble shooter? Mr. Tata resolved the issue by asking the Trust nominee director to approve the resolution. Can giving such direction to the Trusts nominee directors to proceed with resolution amounts to interference with the affairs of the company? We have to observe that Mr. Cyrus went ahead with Welspun proposal without taking prior approval of either the Trusts nominee directors or the majority shareholders i.e. Trusts who nominated Trust nominee directors.

386. Whose action in this episode is prejudicial? Is it Mr. Cyrus's action or the action of Mr. Tata saying to go ahead with the resolution is prejudicial? For the petitioners have filed this company petition, we have not gone any further over this issue leaving it to the wisdom of the petitioners as to realise that the action of Mr. Cyrus is prejudicial to the interest of the company, or Mr. Tata.

387. Another star argument of the petitioner counsel and Mr. Cyrus's counsel is that the liberty given to Mr. Tata by Mr. Cyrus has been taken as licence to give advices as left, right, and centre without even being solicited. The petitioner counsel submits, it is not their case that Mr. Cyrus never sought advice and guidance of Mr. Tata as Chairman Emeritus, he says, the interference of Mr. Tata went beyond realm of giving advice and guidance, he says that the illustrations mentioned above discloses that diktats were being issued by Mr. Tata, often alleging the breach of Articles of Association, therefore he says, this conduct bears out that not only did Mr. Tata's action go beyond the remit of advice but also Mr. Tata asserting control over the affairs of Tata Sons and other Tata Group companies, especially in the absence of any defined governance framework that ring-fenced the interaction between Trust as shareholders and the management of the Tata Sons.

388. The petitioners counsel has depicted chronology of various events referring mostly the letters of Bharat Vasani to indicate that actions of Mr. Tata as oppressive against the petitioners.

389. Responding to elaborative submissions of the petitioners, the answering respondents counsel wondered as to how these petitioners counsel supports the existence of Article 121A to assail Article 121 providing affirmative vote to the Trust nominee directors when in the petition, the petitioners asked for striking off not only article 121 but also 121A as well.

390. Tata Sons counsel has reasoned out that Article 121 does not give a right to these nominee directors to pass any resolution as they wish, because the mandate of Article 121 is that for passing any resolution, affirmative vote of trusts nominee directors is a requisite but it is not said that these two trust nominee directors could pass resolution without the support of other directors. Indeed, the right that majority kept to itself is less than what they could do as majority in the company, perhaps for that reason only, the respondents counsel have categorically mentioned that the petitioners' counsel tried to paint the affirmative vote vested with the trust nominee directors as tool oppressive against the petitioners.

391. In this background, we are of the view that these petitioners made an attempt to portray that these two trusts nominee directors causing havoc to the functioning of the company, the petitioners counsel who vociferously argued this, has not placed single minutes of the meeting, showing the trusts nominee directors vetoing the resolution by exercising their affirmative vote.

392. Of course, the entire argument is abstract argument without any support of facts, since this Bench has to answer all the points argued by either side, we have been pulling through trying to answer each and every point raised by either side.

393. As to the Articles of Association, the respondents counsel rightly said that none of the Articles have been opposed by these petitioners or Mr. Cyrus at any point of time in the past, indeed all the Articles were unanimously approved by the petitioners, as to Article 75 is concerned, it has already been said this article has been there since incorporation, therefore article that was good for 100 years and good for these petitioners for more than 50 years, has all of sudden become monster only when Mr. Cyrus was removed as Executive Chairman of the company. When no rights or expectations have been conferred upon these petitioners with respect to the covenants of the Article 75, these petitioners could not raise any objection to continuation of this Article-75 on the ground it is oppressive against the petitioners.

394. Normally, oppression and mismanagement petitions will be filed in myriad situations such as allotment of shares, siphoning of funds, dilution of shareholding, insertion of new articles, depriving the rights already in existence, selling of assets, passing resolutions without putting it to the notice of the minority shareholders and etc, but normally nobody will file a petition saying that since an Article is in existence in the Articles of Association and for now the minority having felt that it is likely to prejudice the interest of the petitioners, it has to be struck off.

395. This kind of argument is unheard of for two reasons, one -Article-75 is/was in existence by the time these petitioners have stepped into this company, two -now no alteration has been done to this Article. For action being requisite to file company petition u/s 241, there shall be action, such as either bringing in new Article or altering the existing article which is prejudicial to the member, that has not been done. It is right, if any legal action is rightly or wrongly initiated against the petitioners basing on impugned articles or an attempt to bring in new insertion to the Articles, then there would be an occasion to this Bench to look into such issue to find out as to any expectation or covenant conferred upon the petitioners is frustrated by virtue of exercise of that article. Can courts, could then be used as leverage to break the back of "X" assuming that something may happen tomorrow to "y"? This argument of the petitioners in respect to the Articles of Association is not only far fetching and abstract but also misconceived

396. If we sum up the argument of the petitioners, for them, there should not be any affirmative vote to the nominee directors representing majority, there shall be proportionate representation on the board and all committees to the petitioners. Such law is at least not present in Indian Law. On what basis are they entitled to? No answer. What will happen to majority, if they are deprived of affirmative vote? Is it that Mr. Cyrus will remain whole and sole and call the shots in the company by virtue of he being appointed by the majority as Executive chairman, and keep Mr. Tata representing majority and the trust nominee directors remain as credit cards in his wallet to use them whenever board meetings and shareholder meetings take place?

397. As to the allegation of breach of fiduciary duties by the trust nominee directors of Tata Sons, the petitioners counsel heavily relied upon section 149 & 146 of the Companies Act, 2013 to say that these directors are accountable to the company but not to the shareholders of them because the corporate democracy in the present regime has become secondary to the corporate governance, therefore the majority rule has no place in the present regime. To establish this argument, the petitioners counsel has navigated us through section 149, 166 and schedule 4 (code for independent directors) of the Companies Act, 2013. Let us see what the text of sec 149 & 166 and schedule 4 says:

149. Company to have Board of Directors

(1) Every company shaft have a Board of Directors consisting of individuals as *directors and shall have—*

(a) a minimum number of three directors in the case of a public company, two directors in the case of a private company, and one director in the case of a One Person Company; and

(b) a maximum of fifteen directors:

Provided that a company may appoint more than fifteen directors after passing a special resolution:

Provided further that such class or classes of companies as may be prescribed, shall have at least one-woman director.

(2) Every company existing on or before the date of commencement of this Act shall within one year from such commencement comply with the requirements of the provisions of sub-section (1).

(3) Every company shall have at least one director who has stayed in India for a total period of not less than one hundred and eighty-two days in the previous calendar year.

Provided that in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Provided that this sub-section shall apply to a Specified IFSC public company in respect of financial

years other than the first financial year from the date of its incorporation.

Provided that this sub-section shall apply to the Specified IFSC private company in respect of financial years other than the first financial year from the date of its incorporation

(4) Every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or classes of public companies.

Explanation. -For the purposes of this sub-section, any fraction contained in such one-third number shall be rounded off as one.

(5) Every company existing on or before the date of commencement of this Act shall, within one year from such commencement or from the date of notification of the rules in this regard as may be applicable, comply with the requirements of the provisions of sub-section (4).

(6) An independent director in relation to a company, means a director other than a managing director or a whole-time director or a nominee director, -

(a) *who, in the opinion of the Board, is a person of integrity and possesses relevant expertise and experience;*

(b) *(i) who is or was not a promoter of the company or its holding, subsidiary*

Or associate company;

(ii) who is not related to promoters or directors in the company, its holding, subsidiary or associate company;

(c) *who has or had no pecuniary relationship with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the two immediately preceding financial years or during the current financial year;*

(d) *none of whose relatives has or had pecuniary relationship or transaction*

with the company, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent, or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;

(e) *who, neither himself nor any of his relatives -*

(i) *holds or has held the position of a key managerial personnel or is or has been employee of the company or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;*

(ii) *is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of—*

(A) *a firm of auditors or company secretaries in practice or cost auditors of the company or its holding, subsidiary or associate company; or*

(B) *any legal or a consulting firm that has or had any transaction with the company, its holding, subsidiary or associate company amounting to ten per cent, or more of the gross turnover of such firm;*

(iii) *holds together with his relatives two per cent. or more of the total voting power of the*

company; or

*(*iv*) is a Chief Executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent, or more of its receipts from the company, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent, or more of the total voting power of the company; or*

*(*f*) who possesses such other qualifications as may be prescribed.*

(7) Every independent director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, give a declaration that he meets the criteria of independence as provided in sub-section (6).

Explanation. —For the purposes of this section, "nominee director" means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

(8) The company and independent directors shall abide by the provisions specified in Schedule IV.

(9) Notwithstanding anything contained in any other provision of this Act, but subject to the provisions of sections 197 and 198, an independent director shall not be entitled to any stock option and may receive remuneration by way of fee provided under sub-section (5) of section 197, reimbursement of expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

(10) Subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for reappointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report.

(11) Notwithstanding anything contained in sub-section (10), no independent director shall hold office for more than two consecutive terms, but such independent director shall be eligible for appointment after the expiration of three years of ceasing to become an independent director:

Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in any other capacity, either directly or indirectly.

Explanation, -For the purposes of sub-sections (10) and (11), any tenure of an independent director on the date of commencement of this Act shall not be counted as a term under those sub-sections.

(12) Notwithstanding anything contained in this Act, —

*(*i*) an independent director;*

*(*ii*) a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company*

which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

(13) The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shaft not be applicable to appointment of independent directors.

Schedule IV

[See section 149(8)]

CODE FOR INDEPENDENT DIRECTORS

The Code is a guide to professional conduct for independent directors. Adherence to these standards by independent directors and fulfilment of their responsibilities in a professional and faithful manner will promote confidence of the investment community, particularly minority shareholders, regulators and companies in the institution of independent directors.

I. Guidelines of professional conduct:

** ** **

II. Role and functions:

The independent directors shall:

(1) *help in bringing an independent judgment to bear on the Board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct;*

(2) *bring an objective view in the evaluation of the performance of board and management;*

(3) *scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance;*

(4) *satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible;*

(5) ***safeguard the interests of all stakeholders, particularly the minority shareholders;***

(6) *balance the conflicting interest of the stakeholders;*

(7) *determine appropriate levels of remuneration of executive directors, key managerial personnel and senior management and have a prime role in appointing and where necessary recommend removal of executive directors, key managerial personnel and senior management;*

(8) *moderate and arbitrate in the interest of the company as a whole, in situations of conflict between management and shareholders interest.*

III. Duties:

The independent directors shall -

(1) *undertake appropriate induction and regularly update and refresh their skills, knowledge and familiarity with the company,*

(2) *seek appropriate clarification or amplification of information and, where necessary, take and follow appropriate professional advice and opinion of outside experts at the expense of the company;*

(3) *strive to attend all meetings of the Board of Directors and of the Board committees of which he is a member;*

(4) *participate constructively and actively in the committees of the Board in which they are chairpersons or members;*

(5) *strive to attend the general meetings of the company;*

(6) *where they have concerns about the running of the company or a proposed action, ensure that these are addressed by the Board and, to the extent that they are not resolved, insist that their concerns are recorded in the minutes of the Board meeting;*

(7) *keep themselves well informed about the company and the external environment in which it operates;*

(8) *not to unfairly obstruct the functioning of an otherwise proper Board or committee of the Board;*

(9) *pay sufficient attention and ensure that adequate deliberations are held before approving related party transactions and assure themselves that the same are in the interest of the company;*

(10) *ascertain and ensure that the company has an adequate and functional vigil mechanism and to ensure that the interests of a person who uses such mechanism are not prejudicially affected on account of such use;*

(11) *report concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy;*

(12) *acting within his authority, assist in protecting the legitimate interests of the company, shareholders and its employees;*

(13) *not disclose confidential information, including commercial secrets, technologies, advertising and sales promotion plans, unpublished price sensitive information, unless such disclosure is expressly approved by the Board or required by law,*

IV. Manner of appointment:

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V. Re-appointment:

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VI. Resignation or removal:

** ** **

VII. Separate meetings:

** ** **

VIII. Evaluation mechanism:

** ** **

166. Duties of directors

(1) *Subject to the provision s of this Act, a director of a company shall act in accordance with the articles of the company,*

(2) *A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.*

(3) *A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.*

(4) *A director of a company shall not Involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.*

(5) *A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.*

(6) *A director of a company shall not assign his office and any assignment so made shall be void.*

(7) *If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.*

398. Before going into what Section 149 says, to know the background in bringing independent director concept, it is pertinent to know what corporate governance is meant. Corporate governance is primarily to have transparency of operation, accountability towards shareholders and fairness in dealings. It is a system of rule, practices and process by which a firm is directed and controlled, corporate governance essentially entails balancing interest of the company, the stakeholders, such as shareholders, management, customers, suppliers, financers, government and the community. Since corporate governance also provides the framework for attaining company's objectives, it is encompassing practically every sphere of management from action plans and internal controls to performance management and corporate disclosure. This has initially been invoked in UK but it has come into focus in India after the failure of many high profile corporates more specially M/s. Satyam Computer Services episode involving fraud and financial irregularities. In pursuance of the same, Clause 49 of the Listing Agreement as described by SEBI between the stock exchanges and the listed companies and mandated induction of independent directors on their board w.e.f. January 1, 2016. This has become a watershed event for the institution of independent directors. After several rounds of discussions and debates by the standing committee and Ministry of Corporate Affairs while preparing Company Bill 2009-2011, induction of independent directors in listed companies and public companies has finally become legislation in the Companies Act, 2013. It has also been expressed that independent directors, inter alia, play their designated role to nurture the financial health of the company and to protect the interest of various stakeholders, particularly the minority shareholders.

399. Since it is the intendment of the legislation to bring in transparency of operation, accountability towards shareholders and fairness in dealing, various functions and duties have been assigned to the independent directors. Out of all these functions, Role No. 5 has also been the Schedule to safeguard the interest of all stakeholders, particularly the minority shareholders as well.

400. Likewise, the legislature has brought in another feature that is recognised in UK i.e. duties and responsibilities of directors in Companies Act 2013 so as to take decisions as reflected in Section 166 of the Companies Act 2013.

401. On close reading of Sec 166, the first and foremost clause mentioned in this section is, subject to the provisions of the Act, **a director of the company shall act in accordance with the articles of the company.** As to other sub-sections are concerned, it has been said that **director shall work for the benefit of its members as a whole, in the interest of the company,** its employees, the shareholders, the community and for the protection of environment and exercise his duties with due and reasonable care, skill and diligence by exercising his independent judgment, and he should not involve in a situation that is in conflict to the interest of the company. In between, I must say that this legislation 2013 is much touted as investor/shareholder friendly, transparency is first of it, audit side it has been tightened, accountability

towards shareholders more than before, the reason behind it is, management, most of the times, leaves shareholders high and dry, now information has to reach to the shareholders, this happens mostly in the cases where shareholders are more and to protect the interest of the minority shareholders. This protection is indeed designed to the shareholders, off from management, but not to the minority who uses this protection to pulverise the interest of the company with this heavy weighted provision (sections 241 &242) which can even mar the company if its application is not properly employed. Therefore, by seeing this shareholder/investor protection under new dispensation, it shall not be mistaken as floodgates are open to the minority to proceed on any issue against any company without looking into the applicability of the provision, if that is so, it can even become red herring to the company for that no company could be in a position to take decision unless it is acceptable to the minority, that is not the objective of section 241 & 242 of the Act.

402. A director should not make an attempt to achieve any undue gain or advantage either to himself or to his relatives, if he found guilty of any such things, he shall be liable to pay an amount equivalent to that gain to company. A director is not supposed to assign his office to anybody. On the top of it, a penal sub-section is also included for violation of anyof the duties aforementioned, if violated, he shall be punishable with a fine not less than Rs. 1,00,000 rupees extendable to Rs. 5,00,000. On analysis of these two new sections inserted in Companies Act 2013, both have to work for the benefit of its members as a whole and in the best interest of the company and other stakeholders and they have to exercise their independent judgment.

403. In the given case, is it the case that the independent directors and Trust nominee directors in the company have not worked or discharged their duties as enunciated u/s 149/166 of the companies? The petitioners have not placed minutes of any other meeting except minutes of the meeting taken place on 24.10.2016 where Mr. Cyrus was removed as Executive Chairman, to say that the directors of the company functioned in dereliction of their duties. The ire of the petitioners against independent directors and the directors of the company is that they voted in favour of removal of Mr. Cyrus as an Executive chairman of the company. Can it be called directors approving a resolution for the removal of an employee from the company amounts to the directors not discharging their duties? They have to work for the benefit of the members as a whole and in the interest of the company and other stakeholders. As to the role of the independent directors along with other functions, it is true that they have to safeguard the interest of all stakeholders particularly the minority shareholders as well, but to say about protection of minority, it is a pre-requisite to show minority rights are prejudiced, here in this case we could not conceive as to what right of minority shareholders is adversely affected by the action of the answering respondents.

404. A shareholder right always flows from Articles of Association; here removal of Executive Chairman is not in deprivation of any of the rights of the shareholders of the company. Mr. Cyrus was made as Executive Chairman of Tata Sons, not because he is the owner of the Petitioner companies which holdl8,34% shareholding of Tata Sons. It is very much reflective in the company petition because the petitioners themselves stated in the company petition in para 25 as follows:

> *"In 2010, Respondent No. 11 was a member of the Selection Committee, which was conducting a search for a replacement to Respondent No. 2 as Croup Chairman. After an unsuccessful initial exploration, both Respondent No. 2 and his close persona! friend, the said Bhattacharya approached Respondent No. 11 to be a candidate to chair the Board of Respondent No. 1. After giving it some thought, Respondent No. 11 declined this offer. However, despite interviewing several global leaders, the Selection Committee was unable to locate a suitable candidate, Respondent No. 11 was again asked to reconsider. After consulting the promoter family of the Petitioners, and on being assured by Respondent No, 2 that Respondent No. 11 would be given a free hand, he accepted the offer to become the Chairman, in the broader interests of the Tata Croup,"*

405. In the above para, it is clear that the selection committee of Tata Sons conducted a search for a man fit to be appointed as Executive Chairman of Tata Sons in the place of Mr. Tata for he was in the offing to retire. Thereafter in the second sentence, the petitioners themselves stated that *"after an unsuccessful initial exploration, Mr. Tata and his friend Bhattacharya approached Mr. Cyrus to be a candidate to the Chair"*. By this sentence, can it be said that Mr. Cyrus was taken as Chairman by virtue of their group shareholding in Tata Sons? In the following sentence, it has been further emphasized even though he initially declined, for the selection committee was unable to locate a suitable candidate, he accepted the offer to become the chairman. Therefore, by reading this para, it cannot be by any stretch of imagination, could be construed that Mr. Cyrus was made as Chairman on the ground that their group company has 18.34% shareholding in the company. Fitness being the criteria to recommend Mr. Cyrus to the post of Executive Chairman by the selection committee, how could his removal by the board of Tata Sons would become a grievance to minority shareholders? When that is not the grievance of minority shareholders, the petitioners could not even make it an allegation that removal or Mr. Cyrus as Chairman of Tata Sons as the grievance of minority shareholders. Mr. Cyrus would be considered at the most as an employee to the company for servicing his skills. The board removed him as Executive Chairman for the Trust has lost confidence in him.

406. If at all Mr. Cyrus felt his removal as executive chairman is in violation of any of the articles of association or provisions of the Companies Act, the only recourse available to him is to proceed against Tata Sons before Court of Civil Law to declare such action as invalid in the eye of Law. His removal as executive chairman cannot become a ground to construe it as grievance of minority shareholder falling within the ambit of section 241 of the Companies Act for solely on the ground he incidentally happened to be the person holding 18.40% shareholding in the company.

407. The Petitioners' Counsel has gone to an extent saying that this Company is not governed by Corporate Governance, no accountability to any of the issues happening in the company, violation of Corporate Governance, he says it to be treated as conduct falling within the ambit of Section 241, As I said earlier, though there is no specific definition to Corporate Governance under any of the sections of Companies Act, 2013, the meaning of it could be culled out from the historical developments that have taken place so far.

408. If we see UK Law as well as the spade work that has been done for bringing it into Companies Act, 2013, it is primarily to have transparency of operations of a corporate, accountability towards its shareholders and fairness in dealings of the affairs of the company. Is it the case of the Petitioners that transparency is lacking in respect to the accounts of the company, is it the case that there is no accountability towards its shareholders and is it the case of the Petitioners that fairness is lacking? If at all any of these things are lacking, according to this corporate governance concept, the management is liable to be held for it. Who was in the management until before this company petition was filed? It is Mr. Cyrus who headed this Company as Executive Chairman up to 24.10,2016. Had really been there any infraction to any of these principles, what did he do all along? Is it the case that when auditors audited the accounts something wrong was found indicating it against any of these answering Respondents? For that matter, Mr. Cyrus was answerable to the shareholders of the company that is what corporate governance says. Does it mean that shareholders mean only minority shareholders? Is it that majority will not come into count when accountability is an issue? If you take Welspun issue, who is the man flouted not bringing Welspun issue to Tata Sons Board before TPCL took a decision to go ahead with Welspun acquisition? If at all corporate governance does not mean that having five years' plan, demarcating roles of Tata Sons and Tata Trust, Basic idea of the corporate governance is to have transparency, accountability and fairness. Has it been said anywhere that so and so thing happened in the company is devoid or transparency? Moreover, this argument of Corporate Governance is in fact applicable against Mr. Cyrus because he is the person continued in the management. However, since there is no Company Petition from the

Respondent side before us asking a relief that Mr. Cyrus had run the company in violation of Corporate Governance, we cannot be on that point.

409. One basic concept that one should not forget when dealing with an issue, here as I said, Sr. Counsel Mr. Aryama Sundaram thumpingly argued that for having corporate governance has been set in the new Companies Act introducing Independent Director to safeguard the interest of minority shareholders, the corporate democracy has taken a back seat. If we go by this kind of understanding, whenever a new concept comes into existence, then we have to ignore the concepts already in existence. Yes, such argument could be taken into, if the new concept has come into so as to take away the evils haunting the society or weighing down the society under the old concept in existence. To go by such argument, first of all, the old concept and new concept must be on the same subject and the new concept that has come into existence must either implicitly or explicitly to remove the flaw existing in the old concept. The hallmark of progress of any society is to harmonise old and new with seamless inclusion of one into another. The common phenomenon is; new concepts keep coming as collieries to the basic or core concepts already in existence. Today though this world is being weighed down by the explosion of population, it is still able to run effectively only and only on one concept, i.e. democracy. Whether it is political democracy or corporate democracy, it makes no difference, concept and its objective is one and the same. Corporate Governance is not an anathema to corporate democracy, in fact it is corollary to the Corporate democracy to strengthen corporate democracy, the three principles set out in corporate governance are transparency, accountability and fairness. If you see the word accountability, transparency and fairness, we have to understand to whom who is accountable. If you see political democracy, Parliament is accountable to the people, in turn, Government is accountable to the Parliament. Whenever Parliament fails to have confidence in the Government, Parliament will recall the Government, so is the case here. There in political democracy, Government comes into existence to protect the basic rights of the people like right to speak, right to life and other incidental rights such as property rights. Here, in corporate field, governance is over the economic interest of the shareholders. In both the aspects, if we go little deep into it, it is ascertainable that the persons who are in the management and the people who are running the Government are the persons elected to govern the people in case of political democracy. In case of the company, the persons elected as Chairman/CEO, likewise Board of Directors are to govern the funds of the company. It is not out of context to refer Section 244 of Companies Act to say that corporate management is only to govern the funds of the company. If you read this Section, it is very much evident that in the case of companies other than Section 8 companies, share capital is taken into consideration to initiate action under Section 244. Before that, if you see the election of Board of Directors, the criteria for voting is equity. Such being the case, it is inconceivable even to contemplate that by virtue of introduction of corporate governance, corporate democracy is taken to back seat. It has to be understood that majority comes into rule basing on corporate democracy, and such rule shall be in accordance with rules of corporate governance. Governance is only a part of democracy.

410. If you go little bit backwards, election of somebody to work on behalf of them has come into existence to give an ease to run an institution. It is not that, since somebody is elected to represent them and safeguarding their interest, the persons selecting the elected to remain shut their mouths despite their interest has been put into jeopardy. This ease that is given for the sake of governance will not give any chance to the elected either to supersede the people electing or to ignore the interest of the persons selecting. It is quite natural that since all people cannot remain ad-idem on any particular issue, it is inevitable for the majority to take a call over the aggregate interest of not only of the company but also of themselves. This is how majority rule has come into existence. If at all corporate governance alone is the criteria to govern the company and that too in the perception of the Petitioners, then it is nothing but putting the aggregate interest into somebody's hands upon which majority has no control. Let us put this abstract reasoning into the facts of the present case. In most of the cases u/s 241 & 242, grievances will come before Court of Law saying by virtue of the actions of the majority, minority is put to sufferance.

Here in this case, it is otherwise. The Petitioners have come saying that the interference (in the perception of the Petitioners and Mr. Cyrus) of majority is causing dent to the corporate governance therefore, it is to be considered as grievance under Section 241 of the Companies Act, Of course, such interference, as the petitioners held out, is not present anywhere in this Company Petition.

411. If you see the Welspun issue, it is evident Mr. Cyrus refusing to provide space to Tata Trust and, besides this, other issues would also clearly reveal that Tata Trust has been put to the receiving end, in fact it is fight for upmanship. Mr. Cyrus tried to have ride over the majority shareholders by virtue of the position of Executive Chairmanship given to him. Since we have already set out to discuss the evolution of the rights of minority shareholders separately, we can only say here that the existence of Articles of Association per se will not become oppressive to the Petitioners, indeed exercise of some action under the Articles to which the Petitioners agreed ever since they have come into the company, will never become a ground to raise grievance under Section 241.

412. As we all know, Articles of Association is nothing but an Agreement between the Company and its shareholders, whoever becomes a shareholder basing on the Articles of Association already in existence or whoever becomes a subscriber for constitution of Articles of Association at the time of incorporation will be bound by those Articles of Association. When they are bound by such Articles, can the shareholders of a company raise a grievance saying that compliance of Articles is unfair or prejudicial to the interest of them, It is basic ethics of human being, that a person enters into an agreement with another is bound by such agreement, so is the case of shareholder who is bound by the Articles of Association. Therefore, law does not permit shareholder to seek any remedy under law against Articles save and except in the cases where it falls under the exceptions given under the Contract Act, i.e. competency of the parties, coercion, undue influence, misrepresentation and mistake (mistake as stated in the Contract Act, not otherwise) or such article which is repugnant to Companies Act. It is also known to everybody, if any of the persons bound by an Agreement raises any issue under any of the heads mentioned above, heavy duty lies upon him to prove the same. Here it is not the case of the Petitioners that these Articles should not have binding effect upon them by virtue of any of the exceptions mentioned above.

413. As to fairness concept is concerned, it is not different or separate from the law in existence. Most of the equity principles, over a period of time have become statutes. For that matter even this equity that is given under Section 241 is also brought under the statute. It goes without saying that those equity principles shown as exceptions under the Contract Act will not have any applicability to nullify the Articles of Association binding upon the petitioners. What after all equity means, it is fairness to each other? Fairness here is, persons have become shareholders implicitly agreeing to be bound by the Articles, if any exceptions are carved out or any expectations are accrued by virtue of their original stands, then there can be a possibility to say it is not fair to act otherwise. If anybody enters into an agreement willingly, such person cannot wriggle out of it with lame excuses. Saying so itself, is unfair and inequitable.

414. For the Petitioner Counsel referred four Articles as likely to be used as tools of oppression and mismanagement, i.e. to look into one by one to find out any truth is there in impugning these Articles.

415. Article 104B is an Article inserted on 09.04.2014 that so long as Tata Trust owned 40% of the paid up ordinary shares of Tata Sons, Sir Dorabji Trust and Sir Ratan Tata Trust shall have one third of the prevailing number of directors on the board. It need not be reiterated again that Trust hold majority of shareholding, including the other Trusts, companies and independent persons supporting the Trusts, i.e. more than 3/4th of the shareholding of Tata Sons so they can pass ordinary resolution as well as special resolution as and when a situation arises for passing such resolution.

416. In the Companies Act, a separate Chapter has been carved out under the caption of "Management and Administration" dealing with provisions for holding meetings, quorums to be maintained for meetings, the

procedure for voting, the provisions for holding Annual General Meeting and Extra Ordinary General Meeting, modus for holding ordinary and special resolutions. This entire procedure has been set out to decide as to how the company has to be run and election of the Directors and other issues that fell for decisions of the shareholders basing on the voting proportionate to the share capital invested by the shareholders. This entire chapter has come into existence to have corporate democracy in the company. By virtue of this election, it is quite obvious that majority will get control over the company which is called Majority Rule.

417. In this Company, i.e. Tata Sons, the majority shareholders, i.e. Tata Trust instead of electing majority Directors, they have come out with a different method of controlling the company. As we all know, the Board of Directors of the Company is the body that managed the company. Instead of bringing entire board from their side, Tata Trusts inserted a provision to have 1/3rd of Directors on the Board with an affirmative vote so that no resolution would be passed without their vote. Instead of having positive control over the company, for their own reasons, they have opted for a negative control over the company by having affirmative vote. Though the result of these two ways of control is not exactly the same, but it is for sure that no resolution would be passed unless majority accepts such resolution. The Trusts otherwise can have full control over the company by virtue of their majority; but because of this arrangement, they have limited their control through negative voting to the resolutions that come to Tata Sons Board. In fact, Tata Sons curtailed their rights to the extent of having negative vote instead of having total number of directors from their side, We don't know how the majority having such affirmative control over the company will amount to oppression against the Petitioners, i.e. minority shareholders of the company. To me nothing has appeared to say this Article is per se oppressive against the Petitioners,

418. In between, I must say that we are dealing with this per se oppressive argument without prejudice to the contention that these Petitioners ought not have raised these points for they themselves alongwith other shareholders unanimously passed resolutions for bringing in amendments from time to time ever since they have come into the company. As to Article 75 also, since it has been there right from the beginning, these Petitioners cannot have any argument over that Article also but for the sake of completeness, we discussed that aspect as well.

419. As to Article 121, it is nothing but furtherance to Article 104B for saying that the matter that has come before the Board shall not be decided without affirmative vote of majority of the Directors appointed pursuant to Article 104B. Yes, to have majority control, they have opted the route of affirmative vote, since the majority limited its strength to l/3rdof the Board of Directors, they have to have affirmative vote, otherwise how a majority rule will work out. Had there been directors from the majority side, entire Board would have been occupied by the directors of the majority, that not being the situation, to have their majority, they have settled to affirmative vote. Affirmative right having not given anything more than majority by strength, we don't see anything as per se oppressive in this article against the interest of the Petitioners.

420. As to Article 121A, the Petitioners stated that existence of 121 is repugnant to exercise rights under Article 121A but in the same breath, the Petitioners sought for striking off this Article as well in the relief asked, though asking such relief is in conflict to the pleadings of the Petitioners, for the sake of completeness, let us look into it as to whether anything is oppressive in Article 121A.

421. It talks of the power of Tata Sons Board Directors to decide about 5-year strategic plan, annual business plan, debt restructuring, company's investment in securities, shares, stocks, bonds, debentures, financial instruments of any sort or immovable property of a value exceeding Rs. 100 crores, if such investment has not been approved as part of the annual business mentioned in clause B of this Article, for increase of share capital, for alienation or encumbrance of properties.

422. Apart from these rights, another right the Board is conferred with to exercise is in relation to any

matter affecting the shareholding of the Tata Trusts in the company or the rights conferred upon Tata Trust by the Articles of the company or the shareholding of the company in any Tata Company, The words "any Tata company" means various Tata companies mentioned in Article 121A.

423. In Clause (h) of this Article, it has been categorically mentioned that the Board of Directors shall resolve in respect to exercise of the voting rights of Tata Sons at the General Meetings of any Tata company, including the appointment of a representative of the company u/s 113 (l)(a) of the Companies Act, 2013 in respect of a General meeting of any Tata Company and, in any matter concerning the raising of the capital, incurring of debt and divesting or acquisition of any undertaking or business of such Tata company, instructions to such representative on how to exercise the company's voting rights.

424. As we know that Tata Sons is an investment company to its all group companies, normally the funds will flow from Tata Sons to these group companies as and when any acquisition or any investment is to be made to these group companies. In a situation like this, how Tata Sons is to act has been laid down in this Clause. To our understanding it appears that Tata Sons Board has to decide how to exercise their vote in a General Meeting of Tata Company when that company intends to raise capital, or incur any debt, in divesting or acquisition of any undertaking or business of such Tata company. To exercise such function, whenever any of these issues are likely to come before the General Meeting of any Tata Group company, it is necessary that such an issue has to come before the Board of Tata Sons so that the Board would be in a position as to how Tata Sons would exercise their voting rights in the General Meeting of Tata Group company. Welspun is a tell-tale example as to how Tata Sons Board to take the decision in respect to investment for acquisition of Welspun, It need not be said separately all these group companies either acquired by Tata Sons or promoted by Tata Sons. All these group companies virtually have been set up by Tata family members to spread its business and to use the funds for the well-being of the society. Since the investments of Tata Sons lying in various group companies, it is always good to take collective decision in the Board of Directors whenever any money is to be invested in the group companies, That being the purpose and object of this Article, it is sordid on the part of the petitioners to plead that Articles have become all of sudden per se oppressive against the interest of Petitioners. We remind that this is also an Article that has been approved in the EGM held on 09,04.2014 headed by Mr. Cyrus as Executive Chairman. To us, nothing appears per se oppressive against the interest of the Petitioners, Of course, the petitioners subsequently filed a memo deleting the relief for annulment of this article.

425. As to Article 75 is concerned, it has been already discussed in the issue relating to conversion. That discussion may be read as part of this discussion so as to say per se existence of Article 75 is not oppressive against the interest of the Petitioners, In respect to restriction in Article 75, Tata Sons' counsel relied upon ***Gothami Solvent Oils Ltd.*** **v.** ***MallinaBharathi Rao*** **[2001] 105 Company Case, paras 14& 15,** ***SambuCharan Bhattacharya*** **v.** ***The Statesman Ltd.*** **[1993] ILR 1 Cal 1272, para 23 & 24 and** ***N.C Sanyal*** **v.** ***Calcutta Stock Exchange*** **[1971] 1 SCC SO, para 11, 13** & 14, to say that provisions akin to Article 75 empowering a company to cause a compulsory transfer of its members shareholding have been found to be perfectly valid and binding.

426. On the Petitioner Counsel referring Section 235 of the Companies Act, 2013 for saying that as to public companies in case any restraint over the transfer of shares is to be recognised, it has to be only as stated in Section 235 of the Act, When we have gone through this Section, we have noticed that if any of the shareholders not assenting to the Scheme approved by not less than 9/10th in value of the shares whose transfer is involved, the transferee company, as per law is entitled to give notice to the dissenting shareholders to acquire their shares. It is a provision that is an exception to free transferability concept lying in public company. This is a right conferred upon the company when a company has gone into Scheme under the head of "Compromises and Amalgamations", The petitioners' Counsel has submitted that there cannot be any other restraint for free transferability of shares of public companies other than the situation enunciated under Section 235 of the Companies Act. The Petitioners' counsel has gone to an

extent saying, this Article is hit by Article 300A of the Constitution of India. Whether share falls within the definition of property as stated In Article 300A of the Constitution of India or not is not a question, It is to be seen as to what rights have been conferred upon a shareholder governed by Companies Act. If at all to say it is hit by Article 300A of Constitution of India, first the Companies Act that has recognised this Article for the last 100 years has to be challenged. The petitioners can say for the sake of saying Article 300A of the constitution is applicable. This argument is completely misplaced because no state action constituting expropriation of property rights is even remotely involved.

427. In this case, we have elaborately discussed and made an observation that it is a company running under the caption of Public company with private characteristics. We have already reiterated that it was a private company and it has been private company under the caption of "Deemed Public company/Hybrid company" after the advent of Section 43A (1A) and even after non application of Section 43A{1A) of the Companies Act, 1956. I again recall the judgement of Hon'ble Supreme Court in between ***Ram Parshotam Mittal* v. *Hillcrest Realty Sdn. Bhd.* [2009] 8 SCC 709,** to say that characteristics of the company is a decisive factor to decide which company is private company and which company is a public company, not the caption that has remained on the file of ROC. Since legal intricacy has already been discussed in the issue of conversion, we need not again say that it is a company running with characteristics of private, therefore, this company asking ROC to restore its status as private company cannot make this Article per se oppressive against the Petitioners. If at all the Petitioners feel that existence of such an Article in the company is in violation of any of the laws in force, they have to seek civil remedy before Civil Court, of course, how much it stands after passing 100 years is a million-dollar question. In any event per se existence of this Article in the Articles of Association will never amount to causing or likely to cause any prejudice against the Petitioners or oppressive against the Petitioners.

428. In addition to the argument of the petitioners' counsel, Mr. Cyrus Counsel Mr. Janak Dwarkadas, Sr. Counsel, referred ***Re. H.R. Harmer Ltd.* [1959] WLR. 62** - Harmers case referring the following paras that decisions have to be taken by validly elected board. For which, he has taken out two paras from Harmer, which are as follows.

> *"I think that there may welt be oppression from the point of view of member-directors where a majority shareholder (that is to say, a shareholder with a preponderance of voting power) proceeds on the strength of his control, to act contrary to the decisions of, or without the authority of, the duty constituted board of directors of the company."*

Lord Romer in Harmers case has held that;

> *"Members are entitled to expect that their board shall perform its functions as a board and that the proceedings of the directors shall be carried out in a normal and orthodox manner. They are entitled to the benefit of the collective experience of the directors, and to expect that the directors and each of them can freely express their views at board meetings and that regard shall be had to what they say and to resolutions properly passed. If the board is browbeaten and either ignored or overruled by one of its member, in this case the father who was the chairman, in reliance on his superior voting power, the proprietary interests of the minority shareholders cannot fail to be affected and a case of oppression within s. 210 is, in my judgment, made out."*

429. Before relying upon these paras, I must say what are the historical facts of this case and how much reliance could be placed to apply the ratio decided in this case to the facts of the present case.

430. It is a company formed on July 1, 1947 to acquire a business run by Harmer and his two sons Cyril and Bernard who joined in their father's business in the year 1921 and in the year 1931 respectively, by 1935 Cyril has become responsible for the day-to¬ day management of the London office, his brother Bernard in the year 1946 went to New York to take up the office of Vice President of H.R. Harmer

incorporated as an American company. This family business was merged into the company incorporated on July 1, 1947. In this company, father i.e. Harmer to be the Chairman of the board of directors for life. He was also to be the governing director, but the article contained no provision conferring any power on the governing director or restricting the powers of the other directors, The shareholding in the company at the date of the petition was: (a)"A" ordinary shares - the father - 1,028; Cyril - 4,611; Bernard - 4,361; (b)"B" ordinary shares - the father - 491; Cyril - 4; Bernard - 4; the father's wife - 295; Cyril's wife - 103; Bernard's wife - 103; (c) preference shares - the father - 11,029; Cyril - 5,291; Bernard - 3,230; Cyril's wife - 150; Bernard's wife - 150, the remaining 14,152 of the issued preference shares were held by other members of the family, by directors and former directors of the company and by the American company. Over a period of time, father became old but remained clinging to the position of governing director not allowing the board to take any decision, by doing so, the father used to deal with the affairs of the company without even consulting any of the directors, more specially his children. To ascertain the same, instead of mentioning all the incidents, we mention one instance i.e. Mr. Edward, who was with the company from far before this company was incorporated, was summarily thrown out from the company. The reason for the purported dismissal was the father's annoyance because Mr. Edward had written a letter to Bernard about collection of postage stamps and had not referred it to the father in that letter. Likewise, when the secretary of the company protested for using the company money for his wife's expenses, the father replied that he was the company and the secretary was to do as she was told, in another incident in the board meeting, he refused to renew the service agreement of one Mr. Buck whose service was of immense value at that time, so many incidents, of like nature, were mentioned reflecting autocrat approach of the father ignoring the prospects of the company as well. Here, one more fact, I should mention that the nominal capital of the company was $50,000 divided into 39,000 preference shares of £1, 10,000 "A" ordinary shares of £1 and 1,000 "B" ordinary shares of £1. Of course, the preference shares conferred with dividend right, as to "A" ordinary shares had the right to the residue of the divisible profit, and "B" ordinary shares conferred no right to participate in the profits but carried the whole of the voting power. On going into the details of shareholding pattern, the understanding I get is, the preference shares and ¨A" ordinary shares conferred no voting rights and holder of "B" ordinary shares were entitled to vote at the general meetings of the company. Accordingly, the equity of the company was held as to a little over 10% by the father and as to the remainder by Cyril and Bernard approximately equally, but the voting control of the company was held approximately as to 49% by the father 21% by Cyril and Bernard and their wives and as to 29% by the father's wife. Accordingly, the father was down to the date of original Court order, in a position to control the company by the use of his and his wife's vote, their combined preponderance of voting power was sufficient to procure the passing of extraordinary and special as well as ordinary resolutions. The Judge Roxborough found that Mrs. Harmer agreed with her husband, when her holding of "B" shares were transferred to her, to vote in accordance with his direction and it was to be assumed that she would in fact always do so. It seems father executed an agreement that on his death the remaining 3,250 "A" shares and 760 "B" shares allotted to him were to be allotted to the three sons. The third son was not in the business of the company. Under the Articles of Association, the father was to be the chairman of the board of directors and as such he was entitled to casting votes in the event of equality of votes. Further by the articles, the father was appointed governing director for life but no special rights were attached to that office. He also had a service agreement appointing him as Managing Director for 10 years from 31.08.1946, at a salary of $3000 a year. That agreement was expired in 1956 and was not renewed. And no special power was delegated to him in his capacity as Managing Director. Thereafter, it appears from the judgment, I am given to understand, the shares that have beneficial interest were rest with the sons whereas voting power remained with father. Because of unwise and reckless decisions taken by the father on the premise he was whole and sole of the company, the company started degenerating and its prosperity getting drifted. This father was not even in a position to hear what was being said to him and his memory power was also lost. In this case, father did not allow his sons even to have board meeting to discuss over the issues of the company. Taking the whole episode into consideration, it was held that father rode

roughshod over his sons and everybody else and dictated the general conduct of the company affairs and its policy with an intolerant disregard to the wishes of his co-directors and indeed in some instances, in disregard of the company's best interest. It is further held that the most dangerous and most oppressive form of conduct is, the habit that the father had of going behind properly constituted decision of the board and taking it on himself to countermand them. The Court felt that such conduct cuts at the very root of proper company procedure and makes it virtually impossible for the business of a company to be carried on.

431. This judgment has been heavily relied upon by the Petitioners as well as Mr. Cyrus to say that Mr. Tata and Mr. Soonawala having constantly interfered with the affairs of the company, by relying on the ratio decided in this case, they should be restrained from interfering with the affairs of the company, Now the point to see that whether this ratio is decided in this case is applicable to the present case or not.

432. As to words oppression and mismanagement is concerned, it has been time and again said that word oppressive or prejudice has not been defined anywhere because it all depends upon the facts of the given case. In Harrner's case, our observation is, one - it is a family company primarily between father and sons, two - father almost settled the economic interest of the company to his sons by giving the shares having right to the residue of the divisible profit of these shares, three - the shares left to the father are only shares having voting rights.

433. So, whatever decision that had been taken by the father in the *Harmer* case has adversely affected the beneficial interest of the sons. In England, while dealing with section 210 cases of English Act, 1948, evidence is taken before giving a judgment. It has been proved that father has many health problems not in a position to hear, not in a position to remember, but one thing is clear that he was very much obsessed in the notion that he is whole and sole of the company and his sons should not speak anything until his demise. He could not even tolerate his sons suggesting anything to him in respect to affairs of the company. Moreover, the father did not give any chance to sons to have any discussion in the board because he used to say that he has casting vote whatever he said should happen. By seeing the attitude of the father and his actions causing sufferance to the company, his actions were declared as actions falling within the ambit of section 210 of English Companies Act, 1948.

434. In Harmer case, no ratio has been decided saying voting power cannot be exercised. They have decided that case in the backdrop of the shareholding pattern, family concept and proved wrong doings of the father causing damage to the company without even letting the board to take collective decisions; the arbitrariness the Court noticed in Harmer case is the father not allowing the other co-directors to speak anything. That is not the situation in this case; what is the instance that prevented Mr. Cyrus From taking decision, is there any incident where nominee directors outvoted the resolution proposed by Mr. Cyrus?. In *Harmer,* father had no economic interest, whereas the Trusts, in this case, have economic interest five times to the interest of the petitioners. Therefore, the findings in Harmer case are of no help to say that Mr. Tata and Soonawala have done something wrong to the company.

435. The petitioners counsel and Mr. Cyrus counsel tried to take out the aforesaid italic paras from the judgment to project that relying on voting power, the proprietary interest of the minority shareholders cannot have failed to be effected and oppression is to be considered as made out. In Harmer's case, it has been highlighted again and again father had only voting power against the beneficial interest of his sons. It has also been said that father considered himself as board without even giving an opportunity to hold even meeting. Not only that, he used to dismiss the people, renew the tenancy which were already terminated by the board. By doing such acts, he had caused irreparable loss to the company. This has been termed as interference by the father in Harmer case.

436. Now, the petitioners' counsel and Mr. Cyrus' Counsel tried hard to equate the interference referred to "Harmer" to the suggestions and advices given by Mr. Tata and Mr. Soonawala as interference with the

business of Tata Sons. There that father had no economic interest, he had almost lost his sense, still adamantly tried to exercise power and control over the company, therefore by taking the motive in doing such things into consideration, the deeds of the father were declared as oppressive despite he had voting power not coupled with any economic interest.

437. Here it is a company worth of Rs. 6, 00, 000 corers, out of which, Rs. 5,00,000 crores worth economic interest is lying with Tata Trusts and individuals whereas these petitioners according to the petitioners had only Rs. 1,00,000crores economic interest. In Harmer case, it is a small family company which ultimately to come to his sons therefore, when Court decides an issue, it will take many aspects into consideration, in that case, no doubt father taking such decision just to show up his authority when such conduct causing sufferance to the company, the court has risen up to resolve this issue by regulating the idiotic conduct of the father, Here Mr. Tata has never said that board meeting should not happen, he has never tried to rewrite any of the minutes of the board meetings, the petitioners have also failed to show minutes of a single meeting that either the petitioners or the answering respondents differing with each other.

438. Per contra, it is evident on record, most of the time, almost all the times, Mr. Tata as well as Mr. Soonawala gave advises on being solicited. Even otherwise also, they being majority and it is being a practice to take decisions on informed basis, for they being richly experienced over the affairs of company, what is wrong in giving suggestions. In what way, it has affected the affairs of the company?. Any material that Tata refused to take a call over either Nano or Corus or for that matter on any other issue?. The petitioners cannot generalize by showing some letters saying that Mr. Tata and Soonawala jeopardising the interest of the company, There were instances that their suggestions were also not taken into consideration, For Tata Trusts having majority that headed by Mr. Tata and Soonawala, is it not their interest to say if anything is going to adversely affect the company?. Is it the case of the petitioners that Mr. Tata and Mr. Soonawala gave some wrong advice to causing unlawful loss to the company or to ensure some unlawful gain to provide to somebody else?. Does Mr. Tata or Mr. Sooonawala have their own companies in conflict with the interest of the company or its group companies?.

439. Though it is not requisite to mention that the power lying in any of these Articles is not exercised by the answering Respondents at any point of time till date, it is a fact no occasion arose to invoke powers under any of the meetings so far happened, It is true that affirmative right and board deciding the issues of Tata Group companies have come into existence only after Mr. Tata retired from the company because when Mr. Tata was the Executive Chairman of Tata Sons, the person manning Tata Trust and Tata Sons was one and the same. Therefore, since the man in the driving seat of Tata Sons at that point of time being the man heading Tata Trust, there was no occasion to have any apprehension to the Trusts to contemplate that there would be danger to the rights of the majority, i.e. the Trusts. When the Executive Chairman post went into the hands of the person who does not belong to the Trusts, to protect the rights of the majority, Article 104B, 121 and 121A, 121B have been amended and inserted by Tata Sons when it was under the leadership of Mr. Cyrus. Protecting the rights of majority in the Articles can never become either oppression against the Petitioners or mismanagement of the affairs of Tata Sons.

440. To establish grievance u/s 241, the complainant has to pass various tests as stated in Section 241 and 242, and then alone a relief could be passed. Section 242 reliefs cannot be invoked just by seeing abstract arguments like this without any proof of oppression or unfairness and prejudice against the Petitioners. Therefore, we have not found any merit in the submission of the Petitioner Counsel saying that existence of these Articles in the Articles of Association is per se oppressive against the petitioners; henceforth we decided this issue against the Petitioners.

441. ***Whether or not the removal of Mr. Cyrus as Executive Chairman of the company on 24.10.2016 and his removal as Director of the company on 06.02.2017 is oppressive/prejudicial to the petitioners/the company?.***

442. ***For discussion is getting overlapped spreading the same discussion to various issues, whatever residual issues such as argument on just and equitable ground, unfair prejudice, corporate governance, shadow director, legitimate expectation, equitable consideration, leakage of information to outsiders, interplay of sections, development of law from section 397-398of 1956 Act to section 241-242 of 2013 Act, business judgment rule, non-joinder of parties, etc. have been discussed along with the issue of removal of Mr. Cyrus as Director of the company.***

443. The story lying to make his removal as Executive Chairman and subsequently as Director of the company is that the Board of the company removed Mr.- Cyrus working as Executive Chairman of the company on 24.10.2016 on the ground that Tata Trusts lost confidence in the functioning of Mr. Cyrus as Executive Chairman, thereafter on 06.02.2017 he was also removed as Director of the company in the extra-ordinary general meeting held on 06.02.2017.

444. At the outset, the petitioners counsel clarified that though the removal of Mr. Cyrus as the Executive Chairman is wholly illegal, ultra-vires and oppressive, they are not seeking relief of reinstatement of Mr. Cyrus as Executive Chairman so that the argument of the answering respondent saying that this petition is in the nature of directorial complaint is blatantly false and oblique attempt to divert the attention for the core issues raised by the petitioners vide their petition. The petitioners though not sought reinstatement of Mr. Cyrus as Executive Chairman, they have focused on saying that the underlying reason forhis removal as Executive Chairman as well as director was nothing but retribution for the incisive attempts at stopping the acts of the mismanagement and restoring transparency and integrity in the functioning of the company and its group companies.

445. The grounds, according to the petitioners, to say that this action of removing Mr. Cyrus as Executive Chairman on 24.10.2016 is oppressive are as follows;

i. The said board resolution and removal of Mr. Cyrus is contrary to the Articles of Association and in particular Article 118 of Articles of Association.

ii. The said board resolution and removal of Mr. Cyrus is contrary to and in breach of shareholder resolution of 01.08.12.

iii. The said board resolution and removal of Mr. Cyrus are at the behest of Tata Trusts and the participation of Tata Trust's nominee director in the board meeting constitutes a clear conflict of interest under Companies Act 2013

iv. The removal of Mr. Cyrus was patently harsh and wrongful in as much as it was in complete breach of norms of corporate governance and transparency and done in haste to cover up various irregularities that Mr. Cyrus was trying to address as Chairman of The company

v. Breach of Shareholders Resolution dated 01.08.2012: -

-The Shareholders Resolution of 1st August 2012, in its relevant part, states *""Resolved that……..the Company hereby approves the appointment and terms of remuneration of Mr. Cyrus as the "Executive Deputy Chairman of the Company with substantial powers of management for a period of 5 years with effect from April 1, 2012 to March 31, 2017....*] **II, 249, Petition**

446. The petitioners counsel submits that it is thus clear that the office of Executive Deputy Chairman held by Mr. Cyrus was up to a fixed date i.e. 31stMarch 2017. The limited authority and mandate given by the Shareholders to the Board of Directors was that they could designate Mr. Cyrus as Executive Chairman during this period and any removal of Mr. Cyrus by the Board during this period would on the face of it be in breach of the Resolution of Shareholders and would logically have to be approved by the Shareholders. In other words, it was not just a matter for the Board of Directors in view of the Shareholders Resolution of

1stAugust 2012, and for admittedly, there has been no Shareholders Resolution in respect of the purported removal of Mr. Cyrus, the counsel therefore says, the removal of Mr. Cyrus has become illegal and oppressive act and deliberately done so as to circumvent the requirements of shareholders' approval for the same.

447. The petitioners counsel has further relied upon other instances such as on 28,6.16 nomination and remuneration committee of the company giving a glowing account after the review of Mr. Cyrus performance, Mr. Cyrus flagging, as per the petitioners, the legacy issues ranging from expensive Nana project to unworkable international hotel and hospitality acquisition, indiscriminate vehicle financing by Tata Finance cumulatively creating non-performing assets of Rs.4000crores and increase of cash-flows by about Rs.460crores to Tata Trusts and other issues such as Sivasankaran issue, Nano, Air Asia, Corus, Mehli Cyrus, etc. to say that for Mr. Cyrus tried to clean up all these legacy issues, since the same being inconvenient to the answering respondents, the petitioners counsel submits that the nominee directors surprised Mr. Cyrus as well as the petitioners by coming out with an unforeseen agenda on the very day of board meeting i.e. on 24.10.2016 for the removal of Mr. Cyrus as Executive Chairman of the company.

448. On 24.10.2016 when meeting was held for taking up various issues such as cover note on Tata Teleservices, presentation on Tata Teleservices, for updating of Accounts of Air Asia India, execution of summary of Air Asia, about annual business and other various agenda items but at 11th hour before board meeting was to be held, the Chairman Mr. Cyrus was informed that Mr. Tata would be joining the board meeting and before commencement of consideration of items, Dr. Mitin Nohria mentioned that Tata Trusts had asked its nominee on the board of the company to bring a motion to the board of the company. No sooner had Dr. Nitin Nohria mentioned about bringing a motion, Mr. Amit Chandra mentioned that at the meeting of the Trusts directors held earlier in the day, it was agreed to move a motion to request Mr. Cyrus to step down from the position of the Executive Chairman as the Trusts had lost confidence in him for a variety of reasons. When Mr. Cyrus did not agree to step down by saying that he needs 15 days for taking up such item for the consideration, Mr. Amit Chandra mentioned the Trusts had obtained legal advice stating that such a notice is not necessary to which, when Mr. Cyrus also said that he would obtain legal advice since the legal opinion were not made available to him, inspite of it, the board proceeded further with their agenda asking that since Mr. Cyrus as an interested party in relation to the motion, he was asked to abstain from voting. Since Vijay Singh was elected as the Chairman of the Board Meeting, when motion was made for replacement of Mr. Cyrus as Executive Chairman, for seven including independent directors voted for the removal of Mr. Cyrus as Executive Chairman of the company, in the said meeting, Mr. Cyrus recorded his objection to moving the resolution stating that it was not legal for the resolution to be taken up. Then Mr. Tata mentioned recognizing the services Mr. Cyrus rendered to the company by further saying that it was important for the group to move forward in as seamless manner as one can, It was further put to Mr. Cyrus that it is his choice whether he would like to continue as non-executive director of the company, after he was removed as the Executive Chairman, for which, Mr. Cyrus said he would continue on the board. It is how the meeting ended,

449. In this historical background, now it has to be seen as to whether such removal has made out any case u/s 241 and 242 of the Companies Act, 2013 or not. The petitioners counsel and Mr. Cyrus counsel submit, it certainly falls within the ambit of section 241 and 242 reiterating that it is not an item in the agenda, it was not discussed in the meeting, the legal opinion upon which the nominee director of the trust said to have relied upon was not placed before the meeting, his removal is not only in violation of article 118 of the company but also in violation of secretarial standards mandate i.e. to give 15 days prior notice in regard to any issue to be taken up before the board of directors and also in violation of Article 121B of the company, apart from this, the petitioners counsel submits the underlying reasons for his removal is that it had become discomfort to the answering respondents when Mr. Cyrus tried to dean up the books of the company by taking steps against the issues causing loss to the company.

450. To which, the respondents counsel replied that it is a directorial complaint therefore it cannot be raised in a petition filed u/s 241 because the directorial dispute will not have nexus with the shareholders' proprietary rights, therefore, the same cannot be agitated or entertained in a petition u/s 397/398 of the Companies Act 1956 or sec. 241 of the Companies act, 2013. It has been said that the provisions of the Chapter oppression and mismanagement cannot be used to agitate complaints regarding loss of office or directorship. They have further stated removal of director could become grievance u/s 241 only when a vested right is conferred upon the minority shareholders to participate in the management of the company.

451. As to the argument of the petitioners that the board of directors did not exercise its independent judgment while taking the decision regarding the replacement of Mr. Cyrus as the Chairman of the company, they say it is self-evident in the minutes of the board meeting held on 24.10.2016 reflecting that all other directors, other than Mr. Cyrus, participated and voted in favor of removal of Mr. Cyrus from the post of Executive Chairman.

452. When such decision being taken by the board of directors, thepetitioners or Mr. Cyrus merely saying that it is not independent judgment will not vitiate the decision taken in the board meeting for the removal of Mr. Cyrus as the Executive Chairman.

453. Mr. Janak Dwarkadas, the Sr. counsel appearing on behalf of Mr. Cyrus said that the removal of Mr. Cyrus was painted with impropriety reiterating what all the petitioners counsel stated about the removal of Mr. Cyrus. Looking at this episode, it is evident that Mr. Cyrus was taken as Executive Chairman as an employee of the company not as a representation to any of the shareholders, here appointment is not an issue, the removal is an issue, no direct or indirect loss to the petitioner by the removal of Mr. Cyrus either as Executive Chairman or as the director of the company, no arrangement or agreement among the shareholders to provide a position of Executive Chairman to any of the shareholders or to any of the group of the shareholders of the company.

454. If you see the observation one after another, as to Mr. Cyrus position as Executive Chairman, as I have already discussed, was a position given to him to work as Executive Chairman with approval of the majority of shareholders through its nominee directors. The time when he was appointed, a selection committee was constituted as envisaged Article 118 of the Articles of Association of the Company, which has already been reproduced in other context. In the said Article, a provision has been made for constitution of selection committee to recommend the appointment of a person as the Chairman of the board of directors, on such recommendation, the board may appoint the person recommended as the Chairman subject to Article 121 which requires the affirmative vote of all directors appointed pursuant to Article 104B. If you see this language, it is pertinent to know that the selection committee constituted is competent only to make recommendation, on such recommendation, since the language is employed in such a way that "the *board may appoint",* it is to be construed that the discretion is left to the board as to whether to appoint or not to appoint such person recommended by the selection committee. If such appointment is to be made on the recommendation made by the committee that has to be done only as mentioned in Article 121 where affirmative vote has been given to the nominee directors of the Trusts. As we all know, whenever any selection is required to choose one out of many or to search or identify somebody competent to such an assignment, then only selection process will come into existence. It is the convention that takes place whenever anybody has taken for any assignment, because pick and choose is in the hands of the body that takes in somebody for some assignment. But when it comes to removal of such person, there cannot be such convention of constituting selection committee, because what selection would be done for removal?. Selection committee is only a recommending authority. Decision of appointment will always lie in the hands of appointing authority. Here in this case appointing authority is the board of directors. As we all know, appointing authority is the competent authority to remove the person appointed by such authority- Therefore, we have not seen any merit in saying that since he was appointed on the recommendation made by the selection committee; he could not be removed unless

selection committee is constituted. If such is the case, it cannot be called as selection committee. The petitioners as well as Mr. Cyrus counsel anchored to the argument saying that since it has been said in the following sentence that same process shall be followed for the removal of the incumbent chairman", for his removal not being recommended by selection committee, the board removing Mr. Cyrus on their own is vitiated for non-compliance of the procedure laid under Article 118. This addition of a sentence saying that same process shall be applied for removal has to be read and understood in respect to taking a decision with the affirmative vote of the Trust nominee directors because it has been explicitly said that appointment is subject to affirmative vote of the directors appointed pursuant to Article 104 B, therefore the same subjection is applicable for removal as well. This language is very clear, no ambiguity, any layman whoever reads could only understand that the procedure for appointing alone is applicable to removal, not selection process. Asking for the recommendation of selection committee for removal is an anathema to the doctrine of reasonableness. If at all such reading is given as ushered into by the petitioners and Mr. Cyrus counsel, it would become irrational and meaningless, therefore we consider this argument as bizarre and misconceived.

455. With regard to the contention that the item of agenda for removal of Mr. Cyrus, which was not present in the original agenda circulated, the petitioners and Mr. Cyrus counsel submit that bringing such item for discussion and resolution on the day of meeting is nothing but flouting the procedure set out in Article 121B of the Articles of Association.

456. In Article 121B, it has been said that any director will be entitled to give 15 days' notice either to the company or to the board for deliberation and if such notice is not received by the board, it shall be mandatory to take up such matter in the following board meeting. Here no such notice has been issued. In furtherance of this argument, the petitioner counsel has also stated that paragraph 1,3-7 of the secretarial standards provides that *"the agenda setting out, the business to be transacted at the meeting and notes on agenda shall be given to the directors at least 7 days before the date of the meeting, unless the Articles prescribe a longer period"*, in the following paragraph of secretarial standard it has also been stated that *"each item of the business requiring approval of the meeting shall be supported by a note setting out the details of the proposal, relevant material fact that enable the directors to understand the meaning, scope and implications of the proposal and the nature of concern or interest, if any, of any director in the proposal, which the director had earlier disclosed"*. It has been answered by the answering respondents counsel that in the same secretarial standard in para 1.3.10 it has been stated that *"any item not included in the agenda of a board meeting may be taken out for consideration with the permission of the chairman and with the consent of the majority of the directors present in the meeting, which shall include at least one independent director, if any"*.

457. As to this point is concerned, including an agenda item with short notice is not new, here the chairman himself being interested, the board has validly elected some other director as Chairman of the meeting to transact the business of that meeting. Merely because of holding a meeting with short notice or inclusion of an agenda item on the date of the meeting cannot be ascribed as a transaction afflicted by fraud. Of course, removal of Mr. Cyrus would have become heart-burn not only to Mr. Cyrus but to others holding the shareholding of the petitioners, but it cannot ipso facto become a grievance under section 241 unless the ingredients of section 241 have been fulfilled. Basically, it cannot be called as grievance of the shareholders, or the company. His removal, who is taken as employee, will not make any difference either to the shareholders or to the company. Therefore, unless an action is vitiated by fraud, it will not become a fraud or unfairness. This clause of prejudice will be only in respect to either the economic interest of the petitioners or the economic interest of the company. Here, personal emotions or personal egos will not have any place to attribute it as grievance under section 241.

458. In view of the same, we have not found any merit to say that inclusion of agenda item for removal would become grievance under section 241. Henceforth, this point is decided against the petitioners.

459. On the contention of the petitioner that replacement of Mr. Cyrus as Executive Chairman was in breach of the shareholders' resolution dated 01.08.2012, when we have gone through this resolution, it appears it has been resolved that the company in its annual general meeting dated 01.08.2012 approved the appointment and terms of remuneration of Mr. Cyrus as the Executive Dy. Chairman of the company with substantial powers of management for a period of five years with effect from 01.04.2012 to 31.03.2017 upon the terms and conditions set out in the explanatory statement with authority to the board to re-designate Mr. Cyrus as it may deem fit. Basing on this resolution, now the petitioners counsel argued that as the shareholders approved Mr. Cyrus as Deputy Executive Chairman for five years w.e.f. 01.04.2012, Mr. Cyrus could not have been removed from the office prior to 31.03.2017 by the board of directors of the company. Subsequent thereto, Mr. Cyrus was later, by the board resolution passed on 18.12.2012 designated as Executive Chairman by the board and not by the shareholders of Tata Sons.

460. It is also to be noted that, power of re-designation was given in the above said shareholders meeting to the Board of Directors, power For appointment as well as removal of the Dy. Executive Chairman has already been conferred upon the Board underArticle119. Once anybody has been re-designated from one post to other post, then necessarily it should be construed that the person given another assignment is to be treated as vacated the earlier position, the same is the thing happened in this case, therefore these petitioners today could not say that for there being a resolution on 18.12.2012 appointing him to continue for five years up to 31.03.2017, the board should not remove him as executive chairman before 31.03.2017. In view of the reasons, we have not found any merit in this point saying that Mr. Cyrus should have been permitted to continue until 31.03.2017 for he was appointed as Dy. Executive Chairman by the shareholders on 01.08.2012 w.e.f. 01.04.2012, In addition to this, if we see the Welspun issue, Ola and Uber issue and other issues, it can be inferred that trust deficit started growing in between them, which does not go well in a company of that size. It is a decision taken by the competent body to end this trust deficit and to move forward, moreover, since the petitioners themselves said that they are not on reinstatement of Mr. Cyrus then the point left to this Bench is, as to whether the reason upon which the removal is mala fide or not for which we hereby held that his removal is based on the trust deficit between Mr. Cyrus, the Board and the Majority. Hence this point is decided against the petitioners and Mr. Cyrus.

461. On the argument of the petitioners and Mr. Cyrus counsel saying that there was conflict of interest in the Trust nominated directors attending the board meeting on 24.10,2016 because the Trust nominee directors brought motion for removal of Mr. Cyrus as Executive chairman and not by the board of directors of the Company, for the board of directors (barring the Trust nominated directors) were kept in dark of the removal of Mr. Cyrus as Executive Chairman, it has been submitted by the respondent counsel that this argument is ex-facie contrary to the mandate of the Articles of Tata Sons, and the Trust nominee directors did not have any personal interest in the removal of Mr. Cyrus as Executive Chairman as such there is no conflict of interest which arose on account of Trust nominee director participating in the board meeting on the resolution to remove Mr. Cyrus. Merely the Trust/Trust nominee directors losing confidence in the functioning of Mr. Cyrus as Executive Chairman will never amount to conflict of interest with the interest of the company.

462. It has to be born in mind that every act that has been moved by a director cannot be considered as their proposal is in conflict with the interest of the company. Interest has specified meaning. We have been all through saying, interest of the shareholders in a company or interest of the company meaning that the Interest that makes some difference to the pecuniary interest of the company or the shareholders. If at all we go through section 166 of Companies Act 2G13, it could be evident that directors shall act in good faith for the benefit of its members and in the best interest of the company. Under section 184, the directors *are* required to abstain themselves from the board meetings in respect to the commercial transaction of the company, therefore, if any of these shareholders or directors give any requisition for removal of director or Executive Chairman, it cannot be said that since they have interest in the removal they shall abstain

attending voting. The interest that has been mentioned in section 166 and 184 has to be taken in the spirit that it has been mentioned in respect to commercial transactions. On this background, can it be said that the shareholders, who were required for appointment could not vote at the time of removal, if that is the case, it is nothing but mockery of corporate democracy, therefore, we don't find any merit in this argument saying that the Trust nominee director should have abstained themselves from on the proposal moved by them, Accordingly, this issue has been decided against the petitioners and M, Cyrus.

463. As to the argument that real reason for removal of Mr. Cyrus was because he was attempting to rectify certain irregularities and stop mis-governance of Tata group, the respondents counsel has submitted that this contention is bereft of any merit because as to taking legal action against Siva group, it is Dr. Nitin Nohria, (Trusts nominee director) who proposed at the board meeting on 15.09.2016 to initiate arbitration proceedings against Siva group, as to institutional frame-work is concerned, the answering respondents counsel submit that the proposed governance guidelines, which were said to be brought in by Mr. Cyrus, were in fact proposed in consultation with the very same Trustees i.e. Mr. Tata and Mr. Soonawala, as to DoCoMo issue, it is a Trustee and its nominee director suggested to make payment to Tata DoCoMo for the overall benefit and reputation of Tata companies, likewise, in respect to AirAsia issue also, statement was made with impunity that the answering respondent divested funds for financing terrorist activities for which there is no material on record to say; as to remuneration to the directors, it was for six non-executive directors in the F.Y. 2015-16, when it has come to 2016-17, the strength of non-executive directors has increased to 9, for that reason only, the remuneration has simultaneously gone to Rs.9.75crores. But this fact was glossed over by the petitioners herein.

464. The petitioners counsel and Mr. Cyrus counsel argued that despite R11 performance has been lauded by the company nomination and remuneration committee only a few weeks before the Board Coup dated 24.10.2016. They further submit that, in the tenure of Mr. Cyrus, the net worth of the company by 2015 had increased to Rs.42,000crores from Rs.26000crores in 2011, many new business were launched, the Tata group market cap/valuation increased to Rs.2,95,000 crores from 2006 to 2013, in 3 years 6 months, between 2013 and October 2016, increased to Rs.3,26,000crore, the ratio of operation cash-flow to capex was 100% for first time in the last 10 years, Tata Tiago *car* was declared as the best compact car for the year 2016 by over drive, the brand value has increased by USD 5 billion in spite of all these achievements, the petitioners counsel submits, Mr. Cyrus was unceremoniously removed from the post of the executive chairman.

465. As against this, the answering respondents counsel, stating that though the respondents are not required to give reasons for the removal of the executive chairman of the company, it has been said that the reasons for losing the confidence in the stewardship of Mr. Cyrus are detailed as below (page 335-341 of Tata Sons Ltd. reply to the Petitioners):

> *Respondent No, 11 did not demonstrate any results in turning around areas where the operating companies were facing problems viz. Tata Steel's Europe operations, Tata Motors Indian operations and Tata Teleservices. In fact, the market shares for commercial vehicles (which is the mainstay of sales for Tate Motors) saw a decline from 60% (in 2012) to around 40% (in 2016) under Respondent No. 11's chairmanship. (@ Para 25, Pg. 11, RNT Reply to CPM's Reply to the Petition). Likewise, there was drop in market share from 13.1% in 2012 to 5.2% in 2017 in the passenger vehicle segment of Tata Motors* ***(@ Para 20, Pg. 74, TSL's Reply to the Additional Affidavit dated 31 October 2017)*** *What is worse, Respondent No. 11 used the public relations services of the Tata Group and attempted to portray that he had 'inherited' these problem hotspots.*

The indebtedness of portfolio companies increased without corresponding growth in profits (@ ***pg. 337 of TSL Reply to the Petition).***

Respondent No. 11 was in favor of write-offs/provisions in group companies to push problems under the carpet without making a conscious attempt to turn around business operations (@ ***pg. 339 of TSL Reply to the Petition)***

Respondent No. 11 modified the composition of the board of directors of several companies to ensure that he was the only common director between many operating companies (like IHCL) and the company in order to wrest control over the companies and reduce the company' ability to influence these companies in spite of being the promoter and the single largest shareholder (@ ***pg. 340 of TSL Reply to the Petition)***

Past performance may not be the only criteria for replacement of managerial personnel as the board and shareholders is entitled to take into account not only past performance, but also future potential. In the present case not only was there a historical lack of performance, there were also a loss of confidence regarding future conduct, Other reasons which contributed to Respondent No. 11 's replacement as the Executive Chairman have been set out in detail in ***paragraphs 17 to 23 of TSL Reply to the Petition,*** *and fall under two broad heads; (i) Respondent No. 11 did not demonstrate leadership which was expected from the Chairman of the Tata Croup; (ii) there was a growing lack of trust in Respondent No. 11 by the board of directors of the company.*

466. Both sides projected the figures in fitting to the pleadings taken by them, ail these being the decisions and transactions relating to business, it is not wise on our part to dig out something from the business decisions and reflections of the businesses to scale the performance one saying he has done well and other saying he has doomed the company. We don't believe that it is right to measure out his removal basing on achievements and figures given by either side, it is evident that Mr. Cyrus came to the company as an employee, the position may be executive chairman, but that is also employment. Moreover, this will not become a ground u/s 241 primarily for the reason that it is not in relation to managing the affairs of the company, it is in relation to removal of a man managing the affairs of the company on being appointed by the directors, It has been time and again said, removal of an employee from the company by any stretch of imagination could not become a ground u/s 241 because removal of a person appointed on remuneration cannot be said as conducting the affairs of the company, it can at best be employment dispute.

467. In view of these reasons, we have not found any merit in the argument attributing removal of executive chairman as an act falling within the ambit of section 241. Otherwise also there is no merit in any of the points these petitioners and Mr. Cyrus raised, after all company comes into existence for the benefit of the members of the company, to get that benefit they devise their own governance within the four corners of the Companies Act, while doing so the majority will have right to exercise their right within the parameters, the only safeguard that is to the minority shareholders u/s 241-242 is, if at all the actions of the majority or the management causing oppression or prejudice to the interest of the petitioners or to the company, then they can invoke this jurisdiction. It cannot become a bugbear in the hands of the minority shareholders to stifle the freedom of functioning and freedom of management lying with majority. By seeing some actions of Mr. Cyrus as executive chairman, it appears he felt that the majority exercising their right for the benefit of the company and its group companies perhaps perceived as the interference by the majority. The word interference itself denotes that if anybody gets into some others business then it can be called as interference. Here, Mr. Tata and Mr. Soonawala have been committed to the growth of the company and its group companies for the last several decades, with the same spirit though their age is not on their side, have been looking into every aspect upon which an advice is sought,

at times when they felt that situation is alarming, they used to apprise situation to Mr. Cyrus so that he would take the company in right direction. They have been suggesting for their own company. The Trusts have majority shareholding in the company, inspite of it, they have not transgressed their limit in respect to advising Mr. Cyrus, of course they remained serious and they have to remain serious in respect to the business happening in Tata companies, because the majority will be more effected than anybody else, if the decisions are important.

468. The petitioners raised hue and cry in the company petition that the people outside of the board i.e. Mr. Tata and Soonawala sought unpublished price sensitive information of the listed companies as if these two leaking price sensitive information to have some unlawful gain or to cause some unlawful toss from / to the group companies of the company.

469. Is there any information before this Bench that these two leaked any of the information of the company to the people outside of this company, is there any one case against them by SEBI saying that they used such information against the company Rs. Answer is no. Such situation is possible where the people having some marginal shareholding in the company if they happened to be in the board, then there is a chance of leaking such information so as to have some unlawful gain by causing sufferance to the company whose information has been leaked out. Here the majority in the company belongs to Tata Trusts. If at all any such thing happens, the first loser will be Tata Trusts. Is that majority will do damage to themselves?. Normally not. To say yes to it, no information before this bench. It is highly preposterous on the part of these petitioners and Mr. Cyrus making such unfound and serious allegations just as a retribution to the heart-burn they had by the removal of Mr. Cyrus as Executive Chairman. In view of the observations we have made, we don't find any material to say that Mr. Tata or Trusts Nominee Directors caused the removal of Mr. Cyrus as chairman as a retort to the purported legacy issues set out in this company petition.

Removal of Mr. Cyrus as director

470. Another argument under this head is removal of Mr. Cyrus as Director of the company amounts to oppression, as to this point, the Petitioners' Counsel submits that to set up a ground for removal of Mr. Cyrus as Director the answering Respondents linked it to (1) email dated 25.10.2016 alleging Mr. Cyrus leaked confidential information to outsiders, (2) Mr. Cyrus reciprocating to the letter sent by DCIT.

471. The petitioners Counsel says, as to letter dated 25.10.2016, it has been captioned as "confidential" addressing to the Directors of the company asking them as to on what reasons he was removed as Executive Chairman of the Company and putting his side of version to the Directors of the Company, discussing various issues in respect to the performance and pitfalls of the company.

472. As to the letter sent to Income Tax Authorities, the Petitioners' Counsel explains that letter has been written responding to the notice under 5ection 133 (6) of the Income Tax Act calling for certain information regarding relationship between the Trusts and the company, the Counsel submits this information being in relation to the Trusts, even if any disclosure happened in respect to the said information, it could not be taken as disclosure of information relating to the company.

473. The Petitioners Counsel further submits that since there had been representation on the Board from the Petitioners' side since long and the company being a company primarily comprised of two groups, i.e. Shapoorji Group and the Tata Trusts, though no Article has been there in Articles of Association providing proportional representations to the petitioners herein, the Petitioner side is entitled to continue having its representations on the Board, not only by the convention but also on the foundation of having proportionate representation on the board by virtue of Section 163 of the Companies Act, 2013.In view of the same, the Petitioners Counsel submits that these two acts in anyway could not have become grounds for removing Mr. Cyrus as Director of the company, therefore, removal of Mr. Cyrus as Director is

nothing but causing continuation of oppression against the Petitioners and Mr. Cyrus.

474. To which the answer of the Respondents is, the Counsel appearing on behalf of the company and other counsel appearing on behalf of answering Respondents is that Mr. Cyrus was provided this position in his professional capacity and not on the ground hehas right to seat on the board by virtue of his shareholding orArticles of Association. It is an admitted position that Pallonji Mistry became director of the company in the year 1980, though Palfonji family acquired shares in the company in the year 1965. Mr. Pailonji Mistry entered as Director in the company and continued as Director till 2004 and then for a period of two years (2004-2006), thereafter Mr. Cyrus came as director in the year 2006 and continued until he was removed.

475. The Respondents submit that the Petitioners in their rejoinder affidavit to the reply by the company, in their additional affidavit dated 21.1.2017, they have admitted (Para 31) that " *even though there is no written agreement between the parties, byconduct the Respondent No-1 (The company) has ensured that Shapoorji Pailonji Group is represented on its Board of Directors"*. It is not correct to say that Shapoorji family group had representation on the Board continuously ever since they came into this company, the Respondent Counsel submits, in any case such conduct cannot constitute a legal foundation for Mr. Cyrus continuation on the Board of the company de hors the Articles of the company. Moreover, by conduct also the trustees of the company conceded that Shapoorji family will have permanent position in the Board.

476. The respondents counsel relied upon ***Hanuman Prasad Bagri and Ors.* v. *Bagri Cereals Pvt. Ltd.*** **[2001] 4 SCC 420** to say that the petitioner to be successful, he has to prove not only that it is just and equitable to wind up the company, but also that such winding up would unfairly prejudice the petitioning shareholder, in the event the petitioner fails to make out such a case, the petition is liable to be dismissed.

477. We agree with the principle aforementioned by further saying that just and equitable ground for winding up which was precondition for considering such winding up would unfairly prejudice the petitioning shareholder is now not only applicable to the conduct oppressive/prejudicial to the interest of the member complainant but also in the cases where the conduct prejudicial to the interest of the company, in a way that the jurisdiction in respect to mismanagement which was earlier wide open has been narrowed down by laying down a precondition to prove facts which would justify the making of winding up order on the ground that it was just and equitable that the company should be wound up, which was not there earlier. The major change in the present enactment is addition of prejudicial remedy in respect of the interest of the members, another addition is restriction of granting a relief to the cases of mismanagement by bringing an additional ground to be proved i.e. facts justifying for winding up on just and equitable ground.

478. The respondents counsel further relied upon ***S.P. Jain* v. *Kalinga Tubes*** **[1965] 2 SCR Pg 720,** ***Hanuman Prasad Bagri and Ors.* v. *Bagri Cereals Pvt Ltd.*** **[2001] 4 SCC 420,*Atmaram Modi* v. *ECL Agrotech Ltd.*, [1999] 98 Comp Cas 463 (CLB)** to say that where a directorial dispute has no nexus with the shareholders' proprietary rights, the same cannot be entertained under oppression and mismanagement, We agree with the ratio the respondents relied upon.

479. We agree with the argument of the Respondents Counsel saying that no director has vested right to stay in office and is amenable to removal under Section 169 of the Companies Act, the only Director as per law cannot be removed by the Shareholders is, the Directors appointed by this Tribunal under Section 242, To understand as to whether the Petitioners are entitled to the claim of proportional representation as envisaged under Section 163, the text of the Section is as below:

"Section 163: ***Option to adopt principle of proportional representation for appointment of directors***

Notwithstanding anything contained in this Act, the articles of a company may provide for the

appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161".

480. On reading Section 163 It is no doubt that it is an overriding provision laying down that Articles of the Company may provide for the appointment of not less than 2/3rd of the total number of directors in accordance with the principle of proportional representation with three years' term, but whereas in this company, no such provision has been made in the Articles of Association to have Directors in accordance with principle of proportional representation. It goes without saying that application of this proportional representation in the Board is only a discretion given to the company, in the earlier enactment, i.e. 1956 Act, it was limited to public companies, now it has been extended to private companies as well. Such right could be asserted only when such right has been incorporated in the Articles of Association, in this company no such article is incorporated to provide any seat to the petitioners, this cannot become a ground to set against the removal of Mr. Cyrus as Director of the company.

481. To establish that it is a sovereign prerogative of the company to appoint or remove a director from office and the shareholders are not required to provide reasons for seeking removal of Director, the company Counsel relied up ***Life Insurance Corporation of India* v. *Escorts Ltd* [1986] 1SCC 264** *Paras 95, 96, 99, 100"* which are *as* follows;

"95. A Company is, in some respects, an institution like as State functioning under its 'basis Constitution' consisting of the Companies Act and the memorandum of Association. Carrying the analogy of constitutional law a little further, Gower describes "the members in general meeting" and the directorate as the two primary organs of a company and compares them with the legislative and the executive organs of a Parliamentary democracy where legislative sovereignty rests with Parliament, while administration is left to the Executive Government/ subject to a measure of control by Parliament through its power to force a change of Government. Like the Government, the Directors will be answerable to the 'Parliament' constituted by the general meeting. But in practice (again like the Government), they will exercise as much control over the Parliament as that exercises over them. Although it would be constitutionally possible for the company in general meeting to exercise all the powers of the company, it dearly would not be practicable (except in the case of one or two - man - companies) for day-to-day administration to be undertaken by such a cumbersome piece of machinery. So the modern practice is to confer on the Directors the right to exercise all the company's powers except such as general law expressly provides must be exercised in general meeting. Gower's Principles of Modern Company Law. Of course, powers which are strictly legislative are not affected by the conferment of powers on the Directors as section 31 of the Companies Act provides that an alteration of an article would require a special resolution of the company in genera! meeting. But a perusal of the provisions of the Companies Act itself makes it clear that in many ways the position of the directorate vis-a-vis the company is more powerful than that of the Government vis-a-vis the Parliament. The strict theory of Parliamentary sovereignty would not apply by analogy to a company since under the Companies Act there are many powers exercisable by the Directors with which the members in general meeting cannot interfere. The most they can do is to dismiss the Directorate and appoint others in their place, or alter the articles so as to restrict the powers of the Directors for the future. Gower himself recognizes that the analogy of the legislature and the executive in relation to the members in general meeting and the Directors of a Company is an over-simplification and states "to some extent a more exact analogy would be the division of powers between the Federal and the State Legislature under a Federal Constitution." As already noticed, the only effective way the members in general meeting can exercise their control

over the Directorate in a democratic manner is to alter the articles so as to restrict the powers of the Directors for the future or to dismiss the Directorate and appoint others in their place. ***The holders of the majority of the stock of a corporation have the power to appoint, by election, Directors of their choice and the power to regulate them by a resolution for their removal. And, an injunction cannot be granted to restrain the holding of a general meeting to remove a director and appoint another.***

96. In Shaw S *Sons (Salford) Ltd.* v. *Shaw 1935 2 KB. 113, Greer, L.J. expressed:*

"The only way in which the genera! body of the shareholders can control-the exercise of" powers vested by the articles in the Directors is by altering the articles or, if opportunity arises under the articles, by refusing to re-elect the Directors on whose action they disapproved.

99. Again in Bentley-Stevens v. Jones, 1971 (2) All E.R. 653, it was held that a shareholder had a statutory right to move a resolution to remove a Director and that the court was not entitled to grant an injunction restraining him from calling a meeting to consider such a resolution. A proper remedy of the Director was to apply for a winding-up order on the ground that it was 'just and equitable' for the court to make such an order. The case of Ebrahimi v. *Westbourne Galleries Ltd., 1972 (2) All E.R. 492, was explained as a case where a winding-up of order was sought. In the case of Ebrahimi v. Westbourne Galleries Ltd. (supra), the absolute right of the general meeting to remove the directors was recognized and it was pointed out that it would be open to the Director sought to be removed to ask the Company Court for an order for winding-up on the ground that it would be 'just and equitable' to do so. The House of Lords said,*

"My Lords, this is an expulsion case, and I must briefly justify the application in such case of the just and equitable clause……. The law of companies recognizes the right, in many ways, to remove a director from the board. Section 184 of the Companies Act 1948 confers this right on the company in general meeting whatever the articles may say. Some articles may prescribe other methods, for example, a governing director may have the power to remove (of Re Wondoftex Textiles Pvt. Ltd.). And quite apart from removal powers, there are normally provisions for retirement of directors by rotation so that their re-election can be opposed and defeated by a majority, or even by a casting vote. In all these days a particular director-member may find himself no longer a director, through removal, or non-re- election: this situation he must normally accept, unless he undertakes the burden of providing fraud or mala fides. The just and equitable provision nevertheless comes to his assistance if he can point to, and prove, some special underlying obligation of his fellow member(s) in good faith, or confidence, that so long as the business continues he shall be entitled to management participation, an obligation so basic that if broken, the conclusion must be that the association must be dissolved."

100. Thus, we see that every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act. He cannot be restrained from calling-a meeting and he is not bound to disclose the reasons for the resolutions proposed to be moved at the meeting, Nor are the reasons for the resolutions subject to judicial review. It is true that under s. 173(2) of the Companies Act, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent if any, the secretaries and treasurers, if any, and the manager, if any. This is a duty cast on the management to disclose, in an explanatory note, ail material facts relating to the resolution coming up before the general meeting to enable the shareholders to form a judgment on the business before them. It does not require the shareholders calling a meeting to disclose the reasons for the resolutions which they

propose to move at the meeting. The Life Insurance Corporation of India, as a shareholder of Escorts Limited, has the same right as every shareholder to call an extraordinary general meeting of the company for the purpose of moving a resolution to remove some Directors and appoint others in their place. The Life Insurance Corporation of India cannot be restrained from doing so nor is it bound to disclose its reasons its reasons for moving the resolutions."

482. By reading these paras, it is ascertainable that corporate democracy is almost akin to the parliamentary democracy existing in India, upholding the same what Hon'ble Supreme Court held in this landmark judgment is that sovereign prerogative to elect or remove the director of the company is lying with the shareholders and they need not give any reasons for removal of Directors from the company, while saying so, the Hon'ble Supreme Court has also dealt with the ratio decided in *Ebrahimi v, Westbourne Galleries Ltd. (supra)* holding that the absolute right of general meeting to remove the directors even recognized and it was pointed out that it would be open to the Director sought to be removed to ask the Company Court for an order for winding up on the ground that it would be just and equitable to do so.

483. If I don't say now how the House of Lords considered just and equitable ground, it may give an impression that whenever director has been removed as per Companies Act, courts ought to provide relief under Section 241 & 242 considering removal of director itself as a ground for winding up on just and equitable ground, therefore I have discussed the facts and finding that was arrived on the facts of Ebrahimi.

484. The company involved in Ebrahimi case is Westbourne Galleries Ltd, before incorporation of this company, from about 1945, Ebrahimi(Appellant) and one Asher Najar were partners in a business, subsequent thereto, in the year 1958, a private company was floated by these very two persons by taking over partnership business into the newly incorporated company. In the said company, Ebrahimi and Najar were first directors, in the said Articles, there was a provision for removal of Director by an ordinary resolution in the General Meeting, In this background, Mr. Asher Majar's son, George Najar was also made as Director, for doing so, both Ebrahimi and Najar transferred 20% shareholding of each to George Najar, by which he had got 20% shareholding in the company. This company was doing good and all the profits of the company going to the directors as remuneration. No dividends were ever paid. Over a period of time, in the year 1969, for there being some misunderstanding among them, George Najar being son of Asher Majar, both of them flexing their majority, removed Ebrahimi as director of the company in the general meeting held as per the Articles of Association. Aggrieved of such removal, Ebrahimi petitioned for an order under Section 210 asking that father and son should purchase his shares in the company or sell their shares to him as the Court should think Fit, alternatively for an order under Section 222 (f) of the Companies Act that the company is wound up. On hearing the same, the original Court judge refused to make an order under Section 210 but held that the father and the son had done Ebrahimi a wrong that has been abuse of power and breach of good faith which partners owed to each other to exclude one of them from participation in the business in which they had embarked on the basis that all should participate in its management and that accordingly, it was said that Appellant has made out a case for winding up order under Section 222(f) of the Companies Act, 1948.

485. Over which, when it was appealed, it was allowed holding that in a case of quasi partnership company, the exercise by majority in general meeting of the power under the Articles and Section 184(Removal of Directors) of the Companies Act, 1948 to remove a director from office and consequently to exclude him From participation in the management and conduct of the business did not form a ground for holding that it was just and equitable that the company should be wound up unless it was shown that the power has not been exercised bonafide in the interest of the company and that the grounds for exercising the powers such that no reasonable man would think that the removal was in the interest of the company.

486. On which when appeal came to House of Lords, it was discussed at length relying the historical background and evolution of law in respect to just and equitable concept operating on partnership and partnership evolving into company to propound the ratio that the companies formed out of partnerships were to be dealt with taking partnership principles into consideration.

487. Lord Wilberforce authored this judgment saying that this company is a private company formed in 1958 to take over a business founded by Mr. Najar. The point highlighted by Lord Wilberforce is that it is of **cardinal importance since about 1945 the business had been carried on by Ebrahimi and Najar as partners equally sharing the management and the profits,** when it was incorporated as a company they appointed themselves as first directors. As I said subsequently, Najar's Son George Najar came into the company as the two promoters transferred 100 shares each to the son of Mr. Najar. It was also recorded that **the company made good profits all of which were distributed as director's remuneration,** no dividends have ever been paid before or after the petition was presented. The Trial Court held that company was to be wound up under the just and equitable provision. Upon which, when appeal was filed, it was reversed saying that just and equitable ground could not be invoked unless it was shown that the power has not been exercised bonafide in the interest of the company or that the grounds for exercising the powers was such that no reasonable man would think that the removal was in the interest of the company. His Lordship has further held as another sign post that these words "just and equitable" appears in the Partnership Act, 1892, Section 25, as a ground for dissolution of partnership, He said that the importance of this is to provide a bridge between cases under Section 222 (f) of the Act, 1948 and the principles of equity developed in relation to partnerships. Of course, we also have analogous provision to 397 & 398 of Companies Act in Section 44 of our Partnership Act, 1932 which is as follows:

> ***"Section 44: At the suit of a partner, the Court may dissolve* a *firm on any of the following grounds, namely: -***
>
> (*a*) to (*f*)** ** **
>
> ***(g) on any other ground which renders it just and equitable that the firm should be dissolved."***

488. This theory of relating this concept of **"just and equitable"** in the Partnership Act to the Companies Act in relation to quasi partnership companies, has been well discussed in this case. It was held that in this Westbourne Company, when the members of the company are in substance partners or quasi partners, the winding up may be ordered if such facts are shown as could justify the dissolution of partnership between them. The common use of words "just and equitable" in the company and partnership law supports this approach. To show the consistency of applying this just and equitable concept, the House of Lords referred cases from ***Symington* v *Symington's Ltd,* [1905] 121*, In re Yenidje Tobacco Co Ltd,* [1916] 2 CH 426*, Loch* v. *John Blackwood Ltd,* [1924] AC 783*, Thomson* v. *Drysdale,* [1925] SC 311*, In re Lundie Brothers Ltd,* [1965] 1 WLR 1051*, In re Expanded Ftex Ltd,* [1966] 1 WLR 514*, Baird* v. *Lees,* [1924] SC 83*, Elder* v. *Elder & Watson,* [1952] SC 49*, In re Leadenhalf General Hardware Stores Ltd,* (unreported February, 1971),** to say that this principle of just and equitable provision has been in use for several decades. All these companies referred above are either quasi partnerships or in substance partnership in character. For this reason only, the concept of just and equitable has been applied to the companies of this kind tracing its origin to the same concept present in the common law thereafter in the Partnership Act. The reason for saying so is, it has been held that the Boards are recognition of the fact that a limited company is more than a mere recognition of a fact that behind it *or* amongst it, there are individuals with rights, expectations and obligations inter se which are not necessarily submerged in the company structure.

489. To apply this principle, Lord Wilberforce has made the following observations which are as follows:

> *"It would be impossible, and wholly undesirable, to define the circumstances in which these*

considerations may arise. Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element wilt often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that ail, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere".

490. By the above para, it is evident that to apply this principle, there must be element of personal relationship or mutual confidence as pre-existing partnership before converting such partnership into limited company; or an agreement or understanding among the shareholders to participate in the conduct of business and then restriction of transfer of shares, which are the basic principles of partnership because if confidence with which they come together is lost or if any member is removed from the management, the man aggrieved would suffer like anything, for this reason alone, these principles are applied to the companies which have come into existence in partnership lines- It is not said in this case, that these principles are applicable to all companies, as to Ebrahimi supra, it has culminated into reasoning that to apply just and equitable concept, there shall be prerequisites as mentioned in the para above quoted which are akin to partnership principles. Before dealing with a case under this provision, we have to see as to whether any expectations are in existence in favour of the shareholders, if so, whether they have been flouted or not and such flouting has been done to cause prejudice or oppression to the respective members is essential before invoking section 242 to grant relief.

491. In Ebrahimi supra what Petitioner has asked is for an order directing the Respondents either to purchase his shares or to sell their shares, but it appears the appellant having failed to show that the conduct of majority is oppressive and also that it affects him in his capacity as a shareholder, winding up has been ordered basing on just and equitable concept. The essence of the matter is Mr. Majar and Ebrahimi had been carrying on business as partners at will in equal shares. The reason for passing this winding up order is, had no company been formed, Mr. Ebrahimi could have had the partnership wound up and though Mr. Majar and his son were entitled by law to oust him from his directorship and depriving him of his income, they could only do so subject to Mr. Ebrahimi's right to obtain equitable relief in the form of winding up order under Section 222 (f) of the Act of 1948.

492. The point that has been held in this case is that in Partnership companies, it has to be recognized that the limited company is more than a mere legal entity, with a personality in the law of its own; that there is a rule in the company law to recognize individuals with rights, expectations and obligations inter se which are not necessarily submerged in the company's structure. It is a qualified statement in respect to the rights of the shareholders. This ratio is applicable to the companies where aggregation is knitted with individuals having rights, expectations and obligations which are not submerged in the company even after individuals being knitted. When company is not based on partnership lines, when no rights, expectations or obligations have not been carved out in the Articles, the Courts are not supposed to go beyond the contractual arrangements already the shareholders have among themselves in the form of Articles of Association because the basic proposition behind it is nobody can have any right more than what he has agreed to.

493. To say that since exclusion has been considered in Ebrahimi and other cases, it does not mean that the same is applicable to this case because as it Is said in Escorts supra, appointment or removal of director is one of the primary right of shareholders, therefore, it could not be diluted ascribing the principle that has

been decided in Ebrahimi,

494. Even in Ebrahimi itself, Lord Wilberforce has time and again held that Westbourne Galleries is primarily a partnership company therefore by looking at the individuals behind it, just and equitable concept has been applied. By such application, it could not be said that same could be applicable to each and every case. The equity that is seen in Ebrahimi is whatever profits coming to the company were going to directors in the form of remuneration, removing a director in a situation like that, is nothing but depriving such person from the basic objective of incorporation of company that is availing profits of the company. For saying so, it has also been said that the company was making profits. All these principles like quasi partnership concept, just and equitable concept - a concept to sequel to partnership, are to be dealt with depending on the facts of the case, but not to set it against the concept of corporate democracy.

495. The principle that has been held in Ebrahimi i.e. to recognize individuals with rights, expectations and obligations underlying the company is applicable in the cases based on partnership companies, family companies and small companies, the reason behind applying just and equitable concept to these kind of companies is, in such companies there will be an understanding to have equal participation in the management, accruing expectations basing on personal relationship involving mutual confidence and restriction upon the transfer of shares. In such situations, section 210 is applicable when confidence is lost or one member is removed from the management putting him in a piquant situation that neither he can continue in the management nor come out of the company taking out his stake on valuation. To attend such kind of piquant situation, section 210 of the English Companies Act had come into existence enabling such person to take honorable exit from a company. We can say section 210 of English Companies Act is mother of this alternative remedy.

496. Therefore, in the given case, for having Mr. Cyrus on his own sent cartels of papers to Income Tax Department, initially came from Income Tax Authorities to Principal Officer of the company, by the time when that letter came, Mr. Cyrus was not the Executive Chairman of the company, had he been really apprehensive of some action by Income Tax Authorities against him instead of sending papers to Income Tax Authorities, he should have written letter to company stating that what action the company took to the letter sent by Income tax Authorities. Nothing has been done.

497. He said that he sent an email making it confidential to the Directors of the company but it is a fact that letter has come out into public domain, before it was reached to the Board of Directors.

498. As I already said, there is no proportional representation to the shareholders of the company to have a seat on the board, no special rights to the petitioners to have their man on the board, no court order providing a seat to the Petitioners on the board, in the backdrop of it, for the Respondents have taken every precaution and procedural steps in compliance with the Companies Act for removal of the Petitioner. A complaint assailing the removal of director cannot become a grievance to the Petitioners under Section 241 of the Companies Act, 2013. As I said earlier, grievance means the economic interest of the shareholders because the interest of the shareholders is counted basing on the funds invested into the company, for that reason only, the criteria for filing company petition has been qualified basing on the share capital the shareholders holding, not the head count of shareholders whereby removal of a Director being the right of shareholders, as long as no understanding to provide a seat on Board, no member removed as Director can raise it as a dispute under Section 241 of Companies Act, 2013. In view of this, we have not found any merit in saying that removal of Mr. Cyrus as Director of the company is oppressive or prejudicial to the interest of the Petitioners. Henceforth, this issue is decided against the Petitioners.

499. As to the argument of the Petitioners' Counsel stating that for having Section 241 under the Companies Act, 2013 replaced Section 397 and 398 of the Companies Act, 1956 with an alternative "prejudice test", "oppression test" as earlier required need not be established for seeking relief under Section 241, the Petitioners' Sr. Counsel Mr. Aryama Sundaram, R11 Counsel Mr. Dwarkadas, from the

Respondent side, Sr. Counsel Dr. Abhishek Singhvi, Mr. Sudipto Sarkar, Mr. S. M. Mukherjee, explained interplay of various provisions under the old enactment and new enactment and English Companies Law.

500. The primary argument on behalf of the Petitioner side is the word "prejudicial" introduced in Section 241 significantly enhanced the scope of protection afford to the shareholders in as much as in the advent of the Companies Act, 2013, "acts which may not strictly qualify as oppression", secondly, introduction of the concept of "class of members" in Part B of sub-section 1 of Section 241 has conferred right not only upon any member or members of the company but also any class of members. By this signal change in the new dispensation, the proof of harsh, burdensome and wrongful conduct of the wrong doer need not be proved by the aggrieved because 2013 enactment has brought in this concept basing on change brought in into the English Companies Act, 2006 for having Jenkins Committee recommended that the words "oppressive" used in Section 210 of the English Act, 1948 be replaced with the words "unfairly prejudicial" on the ground that the definition of oppressive conduct in *Elder* v. *Elder & Watson* [1959] SC 49 has been equated "to the conduct complained of at the lowest involve a visible departure from the standards of fair dealing and violation of the conditions of fair play on which every shareholder who entrusts his money to a company entitled to rely".

501. The Counsel submits that by adding words "prejudicial to a member" in Section 241, Parliament has adopted the doctrine of "unfair prejudice" under the English Companies Act 1980, then English Companies Act, 1985 and thereafter, under the English Companies Act, 2006. The Petitioner Counsel himself stated that the doctrine of "unfair prejudice has been interpreted by English Companies Act to mean exercise of powers by the company which breaches promises or expectations of shareholders.

502. To establish that concept, the Petitioner Counsel relied upon *O'Neil* v. *Philips* [1999] 1WLF 1092,the House of Lords held that "such promises would arise by words or conduct, which it would be unfair to all the members to ignore" and it was not "necessary that such promises should be independently enforceable as a matter of contract." A promise may be binding as a matter of justice and equity although for one reason or another (for example, because in favor of a third party) it would not be enforceable in law. Unfair prejudice has been defined as *"conduct that lacks probity and involves a visible departure from standards of fair dealing"*.

503. The respondents relied upon *Scottish Co-operative Wholesale Society* v. *Meyer*, [1959] AC 324, to say that the word oppressive has been interpreted as "burdensome, harsh and wrongful", and *Needle Industries (India) Ltd.* v. *Needle Industries Newey (India) Holding Ltd.* [1981] 3 SCC 333 to say that unfair prejudice tantamount to oppression, therefore the precedent that has been followed till date in respect to oppression has invariably to be followed to prove as to whether the actions impugned are oppressive against the interest of the petitioners or not.

504. On perusal of the section 241 against the ratio in respect to oppression consistently followed by Indian courts, it has to be accepted that a new dimension has been given to section 241 to invoke oppression and mismanagement jurisdiction if the aggrieved proves that the acts complained of are either oppressive or prejudicial to the interest of the petitioners. When new statute has come into existence with a different mandate it is not that whole ratio covered by earlier judgements is required to be followed. Now in the present dispensation the complainant/aggrieved is at liberty to prove that the actions complained of are either oppressive or prejudicial to the complainant's or any other members' interest. It has not just come like that in section 241, it has been taken out from section 994 of English Companies Act 2006. This is a change that has come by the recommendations made by the Jenkins Committee in England, therefore it can't be said that prejudicial act means burdensome, harsh and wrongful act.

505. As to just and equitable principle, the Petitioners' Counsel relied upon the aforesaid text to say that just and equitable means that when a party introduced into an association on the expectations basing on the investment put into the company,, if the majority shareholder exercises overwhelming voting power to the

detriment of the minority shareholder, it has to be construed that grounds for winding up on just and equitable ground are made out. He also said that it is not necessary that such principle can only be invoked in relation to quasi partnerships or in cases where there is a deadlock. This point has already been dealt with referring the elements mentioned in ***Ebrahimi supra*** indicating what would be just and equitable, in view of the same, we don't believe that argument of the petitioners saying the majority exercising overwhelming majority amounts to a ground under just and equitable concept.

506. The petitioners counsel further submits in the given case, the affirmative rights providing an overwhelming voting power to the Tata Trust, coupled with the practice of R2 and R14 presenting various incentives at their personal level vitiated the guarantee of the commercial probity that should be expected such as disinterest in recovery of dues in Siva, disinterest in closure of Nano, doing favors to Mehli, keeping Corus with the company despite it has been bleeding Tata Steel India since long.

507. The Petitioners' Counsel relied upon the judgment given by Hon'ble High Court of Madras in "*Ethiraj* v. *Sheetata Credit Holdings (P.) Ltd.* [2017] 204 Company Cases"by saying that just and equitable concept is applicable to listed public companies as well because the Hon'ble High Court observed that running of the company requires inclusiveness which is intrinsic part of democracy process and that cannot be different where Corporate jurisprudence or governance is involved.

508. Basing on this argument, the Petitioners' Counsel made out the following points as acts caused prejudice to the Petitioners:

a. The affairs of R1 would be managed by the Board of Directors acting independently without interference by the majority shareholders and with probity.

In Fact, for nearly 36 years, voting rights in relation to the shares held by the Tata Trusts, was exercised by a Public Trustee appointed by the Government under Section 153-A of the Companies Act, 1956 i.e. from 1964 to 2000, when the Public Trustee was abolished;

b. The Articles of Association would not be misused by the Trustees of the Tata Trusts to undermine the Board of the Company by demanding pre-consultation and pre-approval on all matters including matters which do not have any bearing on the interests of the Tata Trusts, before it is tabled at the Board of R-1;

c. The Board of Directors of R-l would act independently and the trust nominees would apply their independent judgment and not become spokespersons for the trustees of the Tata Trusts;

d. That material decisions concerning R-l would be taken after due consultation with the representative of the SP Group. For example, when R-l proposed a rights issue in July, 1995, it was undertaken after consultations with the SP Group recognizing the fact that it was *"a large shareholder of the company."*

e. That the Board of R-l would always have a nominee from the SP Group - this is evident from the fact that the Petitioners have been presented on the Board of R-l for 35 years, i.e. from 1980-2004 and thereafter from 2006-2017; and

f. That Company would always continue to function as a public company and adhere to the highest standards of corporate governance.

509. On which the answering Respondent's Counsel argued that the introduction of the word "prejudicial" in addition to the "oppression" in Section 241 and 242 does not improve the case of the Petitioners and prejudice qua to members does not constitute as standalone cause of action under Section 241, therefore,

the Petitioners have failed to satisfy the test of prejudice as advocated by them They further said there is no understanding for it or expectations given to the Petitioners so as to say that the Respondents undermine the expectations and understandings allegedly entered with the Petitioners, They further submit the Petitioners counsel erroneously interpreted the concept of just and equity.

510. On hearing the arguments of either side on unfair prejudice concept and just and equitable concept, we believe, it is important to look into the evolution of oppression and mismanagement concept thereafter historical changes brought in From time to time in Indian Law as well as English Law to answer this argument

511. This oppression and mismanagement law has in fact originated in England and from there it has been percolated down to British India, at the point of time when this law was evolving, since India was ruled by England, this taw also simultaneously developed in India,

512. This concept started brewing From *Foss* v. *Harbottle* [1843] 67 ER 189,it is a leading English precedent in corporate law, known as "the rule in *Foss* v. *Harbottle",* over which, the several important exceptions that have been developed are often described as "exceptions to the Rule in *Foss* v. *Harbottle",* Amongst these, the 'derivative action', is one which allows a minority shareholder to bring a claim on behalf of the company. This applies in situations of 'wrongdoer control' and is, in reality, the only true exception to the rule. The rule in *Foss* v. *Harbottle* is best seen as the starting point for minority shareholder remedies.

513. The exceptions developed to the Rule in *Foss* v. *Harbottle,* to protect basic minority rights, regardless of the majority's vote, the sum and substance of the judgement is as follows.

514. It is a case, where two minority shareholders, Foss and Edward sued five directors of a company called Victoria Park Company alleging that property of the company was misapplied by the defendants, therefore, make them accountable to the company and the recovery be done from them. On which, the Court dismissed the suit holding that when a company is wronged by its directors, it is only the company that has standing to sue on two rules; Firstly, the proper plaintiff rule is that wrong done to the company may be vindicated by the company alone; Secondly, the majority rule principle states that if the alleged wrong can be confirmed or ratified by simple majority of members in **a** general meeting, then the Court will not interfere.

1. ***Ultra vires* and illegality:** The directors of company or majority shareholding may not use their control of the company to paper over actions which would be *ultra vires* the company, or illegal.
2. **Actions requiring a special majority:** If some special voting procedure would be necessary under the company's constitution or under the Companies Act, it would defeat both if that could be sidestepped by ordinary resolutions of a simple majority, and no redress for aggrieved minorities to be allowed,
3. **Invasion of individual rights** such as expectations and entrenchment rights in Articles of Association, etc.
4. **"Frauds on the minority":** Fraud in the context of derivative action means abuse of power whereby the directors or majority, who are in control of the company, secure a benefit at the expense of the company.

515. In this line, law has developed by way of common law subsequently, it has become part of English Companies Act, 1948 as section 210 as an alternative remedy to winding up in cases of oppression, under this head, landmark judgments like Scottish Cooperative Society, Ebrahimi and many other judgments have come holding that whenever oppression has been mentioned u/s 210,if the Court is of the opinion that the company affairs are conducted in a manner oppressive to any member/members and that to wind up

the company would be unfairly prejudicial to such member only when those facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. This has been further developed into unfair prejudice in English Companies Act 1980, thereafter as 1985 Act, finally as English Companies Act, 2006. Along this journey, many changes have also come in giving more clarity to this concept from time to time.

516. On reading section 210 of English Act, 1948, any member of a company complained saying that the company affairs are being conducted in a manner oppressive to some members of the company, then a relief could be passed instead of winding up the company on just an equitable ground. In this section, it was not said as to whether any legal action could be taken if the actions are prejudicial to the company or to the public interest and it has also not been said anywhere in this section that the actions of prejudice aiming at the interest of the members, it has only been said that prejudice against the member, when their position has come to 1980, in the English Companies Act 1980 oppression remedy was morphed into unfair prejudice remedy when the interest of the members is affected, for the first time English law was changed from oppressive to unfairly prejudice to the interest of the members, in this section also, it was nowhere mentioned that when an action is prejudicial to the company, member could take action against such company on any actual or proposed act or omission of the company. Signal change is just and equitable ground was removed basing on Jenkins Report. It remained unchanged in English Companies Act, 1985, The reason for change of oppression remedy to unfair prejudice remedy is in Scottish Cooperative Society case when it was laid down that for granting relief against oppressive action, such action must be burdensome, harsh and wrongful. Simultaneously, in *Elder* v. *Elder and Watson Ltd.*, 1952 SC 49, Lord Cooper said that the essence of the matter seems to be that is the conduct complained of at the lowest involve a visible departure from the standards of the fair dealing and violation of the conditions of the fair play on which every shareholder who entrusts his money to a company entitled to rely. By saying different yardsticks being taken by Courts in respect to oppression remedy, to make this remedy more protective, in Jenkins Committee, it was recommended to cover the acts which are oppressive or unfairly prejudicial to the interest of the complaining member. By this recommendation, an amendment has come into English Companies Act 1980, 1985, finally in the year 2006 settling it as action causing unfair prejudice to the interest of members generally or some part of its members, Side by side another change has also come into English companies Act demarcating shareholder action from derivative actions. In corporate jurisprudence it has already been well established that the actions which cause prejudice directly to the shareholders can be shareholder action, for example, dilution of shareholding, denying the right of voting, but as to corporate actions which cause prejudice to the company are called as derivative actions because the complaining member initiate action on behalf of the company. For which, rather two separate parts were made under English Companies Act, 2006. Derivative actions have been set out in sections 260-264, the remedy for shareholders' actions are set out in sections 994-996. When it has come to English Companies Act 2006, for granting relief under either Derivative actions or shareholders actions, it is not requisite to prove that facts would justify the making of winding up order on the ground it was just and equitable to windup the company before granting relief against unfair prejudice caused to the complaining member. But to take derivative action, the complaining member has to take permission from the Court on placing an application and evidence disclosing prima facie case, if the party fails to place prima facie case, the application moved by the complaining member shall be dismissed. When it comes to members' grievance against unfair prejudice, such permission is not required to take action against the company. In the case of subsidiary companies, this derivative action is said as double derivative action, which requires lot of compliance, normally in England, granting relief under section 260 of English Companies Act 2006 itself is difficult, then we can imagine how difficult to get relief in the case of double derivative actions. Here, the petitioner impugned the actions of group companies without even making them as parties,

517. For taking derivative action it shall be only against the cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of

the company. So to take derivative action, the cause of action should be vested in the company, the relief shall be on behalf of the company. Such cause of action shall arise from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company. In this section, shadow director is also to be treated as director,

518. When it comes to section 994, it applies when a member if excluded from the management of quasi partnership company, when there is an understanding for provision of management in the articles or agreement, when an excessive remuneration or dividend has been taken and when serious mismanagement like the assets of the company are used for the personal benefit of the majority shareholders, when criminal conduct of the management is proved and when removal of an auditor, It is not that this unfair prejudice concept is not in flexible, reliefs of like nature could be included because there is no clear cut definition for it, it all depends on the facts of the case. Ordinarily, no relief could be passed u/s 994, if there has been no breach of the terms on which the complaining member has agreed to and it has also established that mere breakdown of trust among quasi partners will not be a basis for a successful petition - the breakdown must be related to conduct which is unfair and prejudicial,

519. A commercial misjudgment cannot become a ground to raise a plea of unfair prejudice, In Re *a Company* [1987] BCLC 8 at 14, it has been said, members are at liberty to claim legitimate expectations provided such understanding and expectations is in existence between the parties but as to these aspects, Lord Hoffman in the leading a case of *O' Neill* v. *Philips* [1999] WLR p1092 commented on his earlier use of the phrase "legitimate expectations" and said it was probably a mistake and that the phrase "legitimate expectation" should not be allowed "to *lead a life of its own"*. It has been said that Section 994 petition do not give the Court a general power to assess the fairness of the conduct of company controllers. He said that they preferred to use the phrase "equitable considerations to describe the circumstances when court should grant relief to the petitioners".

520. The first respondents counsel and second respondents counsel relied upon *Sri V.S Krishnan and Ors* v. *West forth Hitech Hospital Ltd. and Ors.* [2008] 3 SCC 363 to say that Legitimate Expectation has no place in Company law and mere proof of unfairness does not amount to oppression, therefore this theory of legitimate expectation, according to the respondent, is not applicable to the present case.

521. As to facts of this case, the petitioners has not raised any ground as such under legitimate expectation except saying that Mr. Cyrus' father continued as director from 1980 to 2004 and Mr. Cyrus continued as director from 2006 to 2016, there is no other ground for them to say that legitimate expectation is available to them. Merely a person continuing as director for some time itself will not become legitimate expectation and to call it as oppression if a director is removed from that post. As to continuation of director in a company as a legitimate expectation is evolved from partnership concept, which is not the case here therefore the concept of legitimate expectation is not applicable to the present case. On this ground, we have not made any further discussion on the doctrine of legitimate expectation.

522. As to Indian Company jurisprudence, when section 397-398 has brought to Companies Act, section 210 of English Companies Act, 1948 was rewritten adding mismanagement, initially in section 153C of Companies Act 1913 by way of amendment in the year in 1951 and then u/s 398. Now in 2013 Act, sections 397-398 have been abridged into one section i.e. section 241 including just and equitable ground regarding to actions prejudicial to the interest of the members as well as the company, whereas under 1956 Act, "just and equitable" ground was not required to be fulfilled for passing a relief u/s 398 dealing with mismanagement in the company.

523. Now under English law to seek a derivative claim, prima facie test has to be passed, but the same is not the case in India, in English law 'just and equitable ground' was done away from 1980 onwards but that is still remained in our law even in 2013 Act. Under English law, it has been made difficult to make a derivative claim because the Court will not take cognizance of the same unless the case filed under section

260 passes prima facie test. For derivate action petition has to be filed against the director only on the ground set out in the section 260 of English Companies Act, 2006.

524. In this ambivalent situation, our law has not been the same as that of English law, we can only take out broad guidelines into consideration to deal with cases filed u/s 241. As to oppression and mismanagement remedy, in England it has been largely applied in the case in partnership companies, small companies. In our country, as against partnership companies in England, most of our companies are family companies. The features of partnership companies are more or less akin to family companies of our country, therefore, whenever any issue of oppression and mismanagement comes for hearing, Courts always considered such issue treating it like partnership company.

525. As we all know, basic difference between partnership firm and company ownership is, management remains same in partnership, whereas owner and management are distinct in company. For this reason alone, in the cases of partnerships converted into companies, quasi-partnership companies and partnership like companies, when dispute arises over shareholder continuing In the management by virtue of his position as shareholder with rights of partner, such dispute is always treated as partnership provided articles, which the subscribers entered into, do not disclose intending to deviate from the earlier bond under partnership existing among them.

526. These are elementary principles in respect to business run by an association and an aggregate of persons, As we know every decision in a case always turns on its facts, we have to be serious in examining the facts and also to see whether those facts are admitted or at least proved to be true before venturing into apply statute and ratio decided on facts similar to the given facts of our case. This is how application of law happens.

527. Even in *Ebrahimi* also, the case was decided on the premise that it is Partnership Company, holding Mr. Ebrahimi removal would tantamount to deprivation of profits of the company, because the directors receive entire profits as remuneration to the directors so as to sustain their lives. It was also held that it normally happens in small companies.

528. But as to big companies, management is always different from ownership - there, these kind of legitimate expectations or assumptions do not exist. This concept of quasi partnership company has come into existence to meet with eventualities that come up in small companies and partnership companies, in our country it is family companies. The base for this premise is, when partnership has been dissolved, it will be dissolved on just and equitable ground along with other grounds. As we know, in partnerships if one of the partners has some contentious issues leading to breakdown of trust among them, the dissolution is the answer on just on equitable ground, but it is not the case in companies incorporated under companies Act, In company, members (shareholders) may come and go but the company goes on forever. It is one of the fundamentals of company's existence. Unlike in partnership, it is perpetual in succession; company's life is not determined by the longevity of its members, shareholders, promoters, directors, employees or anyone else. Despite being so, this just and equitable clause present in Partnership Act (section 39) (in England as well as in India) has been inserted as one of the clauses for winding up of companies to meet a situation that arise in quasi partnership companies and family owned companies, knowing that their structuring is somewhere in between a company and partnership. Otherwise, there could not be any chance to have such principle in company law, because company is perpetual in succession with independent entity, which Is not the case in partnership.

529. As to this point is concerned, it has been clarified in Ebrahimi case, how just and equitable concept is applicable to the cases u/s 210 of English Act. When we read the paras below mentioned, this just and equitable ground is applied in small companies or private companies, in such company, depending on the origin of that company, it has to be seen the individuals stand behind it with expectations and obligations inter se which are not submerged in the independent entity i.e. the company, in the same breadth, it has

also been said that the shareholders agreed to be bound by the Articles of Association, The important point held in Ebrahimi is, "just and equitable" provision does not entitle one party to disregard the obligation, he assumes by entering a company nor the Court to dispense him from it. It is also made clear the equitable considerations, which subject the exercise of legal rights, shall be of a personal character arising between one individual and another. Therefore, some pre-existing equitable consideration of personal character shall be present to invoke the same against the legal rights.

530. In the following para of Ebrahimi, below it has also been said merely the fact that the company is small or private will not ipso facto entitle the complainant to have roughshod over the company which is purely commercial with adequately and exhaustively laid down articles. It has been specified that the superimposition of equitable consideration over legal rights will come into picture only when the elements that have been mentioned in the following paras of Ebrahimi. So, there is a clear line in which cases this just and equitable ground is applicable and in which case just and equitable ground of winding up is not applicable.

531. In section 397 of the old Act as well as 241 of the new Act, the precondition for passing an order is, there shall be just and equitable ground before coming to an opinion that it is unfairly prejudicial to the member if winding up order is passed. As per the ratio decided in Ebrahami and the same being referred in catena of judgments of Indian Courts, the same guidance could be taken by this Tribunal for stating that just and equitable ground would be in the cases where preexisting partnership has been converted into a limited company, a stipulation for shareholders to participate in the conduct of business and restriction on the transfer of shares.

532. In Tata Sons, first ground is not in existence because this company has not been converted from preexisting partnership into a limited company, second, no stipulation entitling the shareholders to participate in the conduct of the business, third, no full restriction upon transfer of shares, the restriction is only limited to the extent of selling shares to the company. As to application of third element also that could arise only when confidence is lost or a member is removed from the management by virtue of the right that has accrued under second element enunciated in Ebrahimi. To apply third element taking exclusion from the management ground, it has to be proved that his right of continuation in the management has been curtailed. In the given case no such right of participation in the management is ever present to the petitioners in the company. To visualize every aspect that has been dealt with above, the relevant paras from Ebrahimi have been placed below:

> *"My Lords, in my opinion these authorities represent a sound and rational development of the law which should be endorsed, The foundation of it alt lies in the words "just and equitable" and, if there is any respect in which some of the cases may be open to criticism, it is that the courts may sometimes have been too timorous in giving them full force, The words are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own; that there is room in company law for recognition of the fact that behind it, or amongst, it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure, That structure is defined by the Companies Act and by the articles of association by which shareholders agree to be bound. In most companies and in most contexts, this definition is sufficient and exhaustive, equally so whether the company is large or small. The "just and equitable" provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and an another, which may make it unjust, or inequitable, to insist on legal rights, or to exercise them in a particular way.*
>
> *It would be impossible, and wholly undesirable, to define the circumstances in which these*

considerations may arise, Certainly the fact that a company is a small one, or a private company, is not enough. There are very many of these where the association is a purely commercial one, of which it can safely be said that the basis of association is adequately and exhaustively laid down in the articles. The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence - this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be 'sleeping" members), or the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company - so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere,"

533. Since it has not been qualified in section 241 that It could be invoked only in respect to issues relating to small companies, partnership companies and family companies, it cannot be said that it is applicable to the companies professionally managed.

534. This is also known fact that oppression and mismanagement concept is an exception to the majority rule, therefore applicability of it has to be limited to the extent as enunciated in the statute or else any person who has even one share also, through waiver route, can cause havoc to the companies running business.

535. This concept is not a declaratory concept, if you see the heading of the chapter, heading of the chapter is prevention of oppression and mismanagement, so relief will be preventive, not declaratory as to action impugned before court. It is to arrest malafide happening in the company. So to invoke this jurisdiction, company must be a going concern, there shall be an action in progress, and it shall be oppressive or prejudicial to any of the members complaining or on behalf of whom the complaint has been made. After having complied with all these characteristics above mentioned, the Tribunal, before granting any relief, must come to an opinion that the proved facts would justify winding up of the company on just and equitable ground. Therefore, we should always remain very cautious in passing order u/s 241-242, because it is basic principle, that whoever invested more shall have his say over the affairs of the company that is run on his money. It is obvious that minority sailing along with majority is bound by the rule of majority. Otherwise, it will become curtailment of the rights of the majority shareholders. At the most, if oppression or prejudice or mismanagement is proved, then what right he gets is to extricate himself from company through exit route on fair valuation of his shares, but he will not get any right to impose his rule upon the shareholder who have majority in the company. But to get this relief also, the person complained of shall prove all elements mentioned in section 241 and 242 (1) of the Companies Act, 2013.

536. In any civil case, the normal relief that is granted is declaration of some rights in favor of a person who is entitled to such rights. If at all the management or any other director of the management or for that matter the majority shareholders, do something malafide aiming the aggrieved to be put to sufferance, that can be dealt with under the head of oppression and mismanagement relieving him honorably, means by compensating him with his due in the company. This itself is relief, because this cannot be otherwise granted, because once money goes into company as equity, shareholder will not have any right to ask for the refund or return of it, because he has no such right under company law for title of it is vested with independent entity, i.e., company. Therefore, even if anybody is identified doing wrong, it has to be limited to the wrong that has been done to such member, because by virtue of such wrong, company should not be put to sufferance. For this reason alone, whenever the grievance of the complainant is proved, the regular and common relief that has been passed in many of the cases is, providing exit to such person on fair valuation, the reason is the aggrieved cannot continue in such company, where trust levels are put to question. If you see the closing clause to section 242(1} of the Act, it could be ascertainable that the relief that is to be passed is to bring an end to the matters complained of, not to declare what action is

illegal or legal.

537. In *Ethiraj & Ors.* v. *Sheetala Holdings* (Madras) (2017) 204 Company Cases 325, the reason for upholding the company law board order providing exit on the grounds as below.

538, Natarajan was held to be a co-venturer along with Ramaswami and on his death his son Venkatachalam, Nand Gopal and Ethiraj, Natarajan was a "promoter director"; the court had found that the co-venturers had arrived at an understanding that each would have a representative on the Board; there was in reality a "practical deadlock" and/or "gridlock" in the management and affairs of the company; relief was justified in this case as majority had usurped the assets of the company for its personal use, because it itself is an act of mismanagement under Section 398 of the Act. In this case, the Hon'ble High Court has come to a conclusion that the complainant is a promoter of the company indeed continuing as director of the earlier company with which resulting company was merged i.e. First Respondent in that case, the complainant has not been re-nominated in the company as sought by him, therefore he has been provided exit from the company despite holding non re-nomination of Mr. Natarajan is unfair.

539. In view of the same, we hereby hold that Ethiraj ratio not applicable to this case for the facts of it are different and no such situation trying to cause prejudice or oppression to the petitioners. Moreover, as we already held that just and equitable ground not being applicable to this case, this company cannot be equated to first respondent company or to the facts of the case. As it is said in Ebrahimi, several parameters have to be complied with to apply relief u/s 241, First of all action to be there and it should flow from the management or from majority, then it should be depriving some right which is vested either by legitimate expectation or obligation on other party in favor of the petitioners, then only it will become prejudicial, finally after such act being proved as prejudicial, it has to be proved such prejudicial action should lead to winding up on just and equitable ground additionally it has to be proved that such winding up would be unfairly prejudicial to the person complained of.

540. All this has been done because the petitioner's counsel tried to impress upon this Bench that this so called interference by Mr. Tata and Mr. Soonawala is prejudicial to the interest of the company as well as the petitioners, of course, these petitioners utterly failed to prove that Mr. Tata and Mr. Soonawala acted prejudicial either to the interest of the company or to the interest of the petitioners.

541. A question may arise that had their actions of Mr. Cyrus prejudicial to the interest of the majority; they would have sought the same relief against the petitioners herein, For this, the answer is when majority is given right to set right the business of the company or transactions of the business including management issues, they could set right the same as per law by bringing change in the management to which they are entitled to. The Court also will not grant majority shareholders a remedy under the head of unfair prejudice where such prejudice can be avoided by the exercise of their rights as majority shareholders. The same is done here.

542. If you see the correspondence and transactions happened under the stewardship of Mr. Cyrus, it is evident on record that Mr. Cyrus created a situation that since he being the executive chairman of the company, he is not accountable either to majority shareholders or to the trusts nominee directors. As I said earlier, in this case the majority vote has been changed to affirmative vote, if a minority has affirmative vote and causing impediment to the majority to go ahead with their decisions, it is conceivable that such affirmative vote is interference to the affairs of the company. Any executive chairman, for that matter, to all big companies will act, as a face of the company, but that does not mean that he is whole and sole and the majority will remain at the beck and call of him.

543. The best example to prove that Mr. Cyrus tried to convey his way is highway is Welspun issue, where Mr. Cyrus on behalf of Tata Power entered into acquisition of an asset costing around Rs. 9,000 crores even before Tata Sons passing a resolution as mentioned under Article 121A of AoA, which is nothing but

bypassing the approval that was to be taken from the board of Tata Sons before entering into any understanding with other parties, the reason behind it is, Tata Sons is an investment company, ultimately money has to go from Tata Sons, that means, acquisition in Tata Power is intrinsically connected to the economic interest of Tata Sons. As to when Mr. Tata wanted to take some space on rent from Tata Motors Ltd., initially they said that they would give that place at World Trade Centre, after having negotiations completed, Tata Motors communicated to back out from the deal. Initially, Tata Motors itself offered the space to Tata Trusts since it was vacant for three years but subsequently changed its mind. That time Mr. Cyrus was the chairman of Tata Motors, Could it be said that Mr. Cyrus was not aware of Tata Motors conveying to Tata Trust to back out from the deal? In a situation like that, will it be that Mr. Tata writing a letter to Mr. Cyrus about this issue become interference with the affairs of its group companies.

544. On reading e-mail correspondence and other letters, from Mr. Cyrus to Mr. Tata and Mr. Soonawala and others and also from Mr. Tata and Soonawala to Mr. Cyrus, on reading either side correspondence, it is evident that Mr. Tata as well as Soonawala responded to the advices sought not only by Mr. Cyrus but also from other officers of Tata Sons as well as group companies. As to Ola and Uber, Mr. Tata tried to caution Mr. Cyrus to make sure that at least one out of those deals not slipped out from Tata Motors. It seems finally neither Uber did a deal nor Ola did a deal for Tata Motors cars. In a situation like this, when majority felt that Mr. Cyrus should not continue as executive chairman, they removed him, in the same time when he showed anxiety in sending bundles of papers to Income Tax authority without even putting it to the notice of principal officer, and leaking out information of the company to media, conflicting with the interest of the company, he was even removed as Director.

545. On having the petitioners relied upon ***Amalgamations Ltd.*** **v.** ***Shankar Sundaram*** **(2011) (6) CTC 594** to assert that in a petition u/s 241, members can raise a grievance/complaint not only regarding the company in which they are shareholders but also regarding subsidiary companies of the former company. However, when this matter went to Supreme Court, in Civil Appeal No. 4574-4585/2017, it has been held that the Appellant shall be at liberty to argue on the ground in the said petition and the prayer regarding the alleged mismanagement of the companies in question, in case the corporate veil is lifted, by holding further that the High Court is not correct in saying the subsidiary companies above mentioned should be struck from the array of the parties. Since Hon'ble High Court of Madras reversed order of CLB for having deleted the subsidiary companies from the array of parties, single judge of Hon'ble High Court of Madras reversed the CLB order saying deletion of subsidiary companies from the array of the parties is not correct, over which, when division Bench of Hon'ble High Court of Madras reversed the order of Hon'ble Single Judge by restoring the order passed by CLB, on this order, when parties went to Hon'ble Supreme Court of India, clarified that the subsidiary company against whom the Appellant has not made any allegations in the petition and no relief has been sought for against need not be added as parties, however, the subsidiary companies already arrayed as respondents should be added as parties and the Appellants shall be at liberty to argue on the ground *in* the said petition and the prayer regarding mismanagement of the company in question in case the corporate veil is lifted. It is not a main petition that was decided, when the CLB deleted the names of subsidiary companies from the array of the respondents of the Company Petition, the petitioners proceeded before Appellate authority, here no other company has been made as party whose affairs have been impugned before this Bench. This is the final hearing, not on an application, for the petitioners consciously has not made the group companies or subsidiary companies as parties to this Company Petition, this Bench is under no obligation to deal with issues of the affairs of the companies which are not parties before this Bench, which is against the fundamental of civil law, therefore, the ratio held in Amalgamations supra is not applicable to the present case.

546. To understand the evolution of oppression and mismanagement remedy, the statutory provisions in India as well as in England have been placed below:

LEGISLATIVE EVOLUTION OF STATUTORY PROVISIONS

CONCERNING OPPRESSION AND MISMANAGEMENT

IN INDIA AND ENGLAND

I. LEGISLATIVE EVOLUTION UNDER INDIAN LAW

COMPANIES ACT, 1956

Chapter VI- Prevention of oppression and mismanagement

Section 397- Application to Tribunal for relief in cases of oppression:

(1) Any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner **oppressive to any member ormembers** (including any one or more of themselves) may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the [Tribunal] is of opinion

(*a*) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner **oppressive to anymember** or members : and

(*b*) that to **wind up the company would unfairly prejudice such member or members,** but that **otherwise the facts would justify the making of a winding up order** on the ground that it was **just and equitable** that the company should be wound up ;

the [Tribunal] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

Section 398-Application to [Tribunal] for relief in cases of mismanagement:

(1) Any members of a company who complain - (*a*) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner **prejudicial to the interests ofthe company;** or (*b*) that a **material chanqe** (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) **has taken place inthe management or control ofthe company,** whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that **byreason of such change,** it is likely that the **affairs of thecompany will be conducted ina manner prejudicial to publicinterest or in a mannerprejudicial to the interests ofthe company**;

may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the

COMPANIES ACT, 2013

Chapter XVI- Prevention of oppression and mismanagement

Section 241- Application to Tribunal for relief in cases of oppression, etc.:

(1) Any member of a company who complains that-

(*a*) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner **prejudicial oroppressive to him or any other member** or members or in a manner **prejudicial to theinterests of the company;** or

(*b*) the **material chanqe,** not being a chance brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place **in the management or control of thecompany,** whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that **by reasonof such change, it is likely that** the **affairsof the company will be conducted in amanner prejudicial to its interests or itsmembers or any class of members,**

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

Section 242- Powers of Tribunal:

(1) If, on any application made under section 241, the **Tribunal is of the opinion** —

(*a*) that the company's affairs have been or are being conducted in a manner **prejudicial oroppressive to any member or members** or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(*b*) that **to wind** up the company would**unfairly prejudice such member ormembers** but that **otherwise the factswould** justify **the making of a winding-up** order on the ground that it was **just andequitable** that the company should be wound up,

the Tribunal may, with a view to bringing to an end

[Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

Section 402- Powers of [Tribunal] on application under Section 397 or 398-

Without prejudice to the generality of the powers of the [Tribunal] under section 397 or 398, any order under either section may provide for -

(*a*) the regulation of the conduct of the company's affairs in future;

(*b*) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(*d*) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely : (*i*) the managing director, (*ii*) any other director, (*iii*) and (*iv*) [Omitted w.e.f. 13.12.2000] (*v*) the manager, upon such terms and conditions as may, In the opinion of the [Tribunal] be just and equitable in all the circumstances of the case;

(*e*) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (*d*), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(*f*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(*g*) any other matter for which in the opinion of the [Tribunal] it is just and equitable that provision should be made.

the matters complained of, make such order as it thinks fit.

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—

(*a*) the regulation of conduct of affairs of the company in future;

(*b*) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(*d*) restrictions on the transfer or allotment of the shares of the company;

(*e*) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(*f*) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e);

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(*g*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(*h*) removal of the managing director, manager or any of the directors of the company;

(*i*) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

(*j*) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

(*k*) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

(*l*) imposition of costs as may be deemed fit by the Tribunal;

(*m*) any other matter for which, in the opinion of the Tribunal, it is just and equitable that made provision

should be made.

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable,

(5) Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

(6) Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said memorandum or articles so altered.

(7) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

(8) If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to to six months or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both.

II. LEGISLATIVE EVOLUTION UNDER ENGLISH LAW:

ENGLISH COMPANIES ACT, 1948	**ENGLISH COMPANIES ACT, 1980**	**ENGLISH COMPANIES ACT, 1985**	**ENGLISH COMPANIES ACT, 2006**
Part IV- Management and Administration **Minorities** **Section 210- Alternative remedy to winding up in** cases **of** oppression: (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive **to** some part the **members** (including	**Part VI- Miscellaneous and General Interests of employees and members** **Section 75- Power of court to a rant relief** against **company wheremembers unfairly prejudiced:** (1) Any member of a company may apply to the court by petition for an order under this section on the ground that the affairs of the company are being or have been conducted in a manner	**Part-XVII Protection of company's members against unfair prejudice** **Section 459- Order on application of company member:** (1) A member of **a** company may apply to the court by petition for an order under this Part on the ground that the company's affairs are being or have been	**Part 30- Protection of members against unfair prejudice** **Main Provisions** **Section 994- Petition by company member:** (1) A member of a company may apply to the court by petition for an order under this Part on the ground- (*a*) that the company's affairs are being or have

himself) or, in a case falling within subsection (3) of section one hundred and sixty- nine of this Act, the Board of Trade, may make an application to the court by petition for an order under this section.

(2) If on any such petition the court is of opinion—

(*a*) that the company's affairs are being conducted as aforesaid; and

(*b*) that **to wind up the company would unfairly omission on its behalf) is or would be so prejudice that part of the members,** but **otherwise the facts would justify the making of a winding-up** order on the around that it was just **andequitable** that the company should be wound up;

the court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition any company's memorandum or articles, then, notwithstanding anything in any other provision of this Act but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any

which is **unfairly prejudicial to the interests of some part of the members including at least himself) or that any actual or proposed actor omission** of the company. (including an act or omission on its behalf) is or **would be so prejudicial.**

(2) If in the case of any company-

(*a*) the Secretary of State has received a report under section 168 of the 1948 Act (inspectors report) or exercise his powers under Part III of the 1967 Act or section 36(2) to (6) of the Insurance Companies Act 1974 (inspection of company's books and papers); and

(*b*) it appears to him that the affairs of the company are being or have been conducted in a manner is **unfairlyprejudicial to theinterests of someDart of themembers** or that any actual or proposed act or omission of the company (including an act or omission on its behalf) is or **would be so** prejudicial, he may himself [in addition to or instead of presenting a petition for the winding-up of improper the company under section 35(1) of the 1967 Act) apply to the court by petition for an order under this section.

(3) If the court is satisfied that a petition under this section is well founded it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(4) Without prejudice to the generality of subsection (3) above, an order under this section may-

(*a*) regulate the conduct of the company's affairs in the future;

(*b*) require the company to

conducted in a manner which is **unfairly prejudicial to the interests of some part of the Members including at least himself) or that any actual or proposed act or omission** of the company (including an act or omission on its behalf) is or **would be so prejudicial**.

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the transferred or transmitted by operation of law, as those provisions apply to a member of the company; and references to a member or members are to be construed accordingly.

Section 461- Provisions as to petitions and orders under this Part-

(1) If the court is satisfied that a petition under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of.

(2)Without prejudice to the generality of subsection (1), the court's order may—

(*a*) regulate the conduct of the company's affairs in the future,

(*b*) require the company to refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do,

(*c*) authorise civil proceedings to be brought in the name and on behalf of the

been conducted in a manner that is **unfairly prejudicial to the interests of members generally or of some part of its members (Including at least himself),** or

(*b*) that an **actual or proposed act or omission of the company (including an act or omission on its behalf) is or would me so prejudicial**.

(1A) For the purpose of subsection (l)(a), a removal of the company's auditor from office -

(*a*) On grounds of divergence e of opinions on accounting 9 treatment s or audit procedures, or

(*b*) On any other grounds,

Shall be treated as being unfairly prejudicial to the interests of some part of the company's members,

(2) The provisions of this Part apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as they apply to a member of a company.

(3) In this section, and so far as applicable for the purposes of this section in the other provisions of this Part, "company" means—

(*a*) a company within the meaning of this Act, Or

(*b*) [omitted].

Section 996- Powers of the court under this Part

(1) If the court is satisfied that a petition

further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(4) An office copy of any order under this section altering thinks fit for or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen reduction of the days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section three hundred and sixty-five of this Act shall apply as it applies in relation to a winding-up petition, and proceedings under this section shall, for the purposes of Part V of the Economy

(Miscellaneous Provisions) Act, 1926, be deemed to be proceedings under this Act in relation to the winding up of companies.

refrain from doing or continuing an act complained of by the petitioner or to do an act which the petitioner has complained it has omitted to do;

(*c*) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct;

(*d*) provide for the (1) If the court is satisfied that a petition under this Part is well founded, it may purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the a company's capital accordingly.

(5) Where an order under this section requires the company not to make any, or any specified, alteration in the memorandum or articles then, notwithstanding anything in the Companies Act, the company shall not have the power without the leave of the court to make any such alteration in breach of that requirement.

(6) Any alteration in the memorandum or articles of the company made by virtue of an order under this section shall be of the same effect as if duly made by resolution of the company and the provisions of the Companies Acts shall apply to the memorandum or articles as so altered accordingly.

(7) An office copy of any order under this section altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes

company by such person or persons and on such terms as the court may direct,

(*d*) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

(3) If an order under this Part requires the company not to make any, or any specified, alteration in the memorandum or articles, the company does not then have power without leave of the court to make any such alteration in breach of that requirement.

(4) Any alteration in the company's memorandum or articles made by virtue of an order under this Part is of the same effect as if duly made by resolution of the

company, and the provisions of this Act apply to the memorandum or articles as so altered accordingly.

(5) An office copy of an order under this Part altering, or giving leave to alter, a company's memorandum or articles shall, within 14 days from the making of the order or such longer period as the court may allow, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every

under this Part is well founded, it may make such order as it thinks fit for giving relief in respect of the matters complained of

(2) Without prejudice to the generality of subsection (1), the court's order may-

(*a*) regulate the conduct of the company's affairs in the future;

(*b*) require the company—

(*i*) to refrain from doing or continuing an act complained of, or

(*ii*) to do an act that the petitioner has complained it has omitted to **do;**

(*c*) authorise civil proceedings to be brought in the name and on behalf of the company by such person or persons and on such terms as the court may direct; company itself and, in the case

(*d*) require the company not to make any, or any specified, alterations in its articles without the leave of the court;

(*e*) provide for the purchase of the shares of any members of the company by other members or by the company itself and, in the case of a purchase by the company itself, the reduction of the company's capital accordingly.

default in complying with this subsection, the company and every officer of the company who is in default shall be liable on summary conviction to a fine not exceeding one-fifth of the statutory maximum for every delivered. (8) In relation to a petition under this section, section 365 of the 1948 Act (general rules for winding up) shall apply as it applies in relation to a winding-up petition. (9) This section shall apply to a person who is not a member of a company but to whom shares in the company have been transferred or transmitted by operation of law as it applies to a member of the company, and references to a member or members shall be construed accordingly. (10) in subsections (2) to (9) above "company" means any body corporate which is liable to be wound up under the 1948 Act. (11) Section 210 of the 1948 Act and section 35(2) of the 1967 Act (which are superseded by this section) shall cease to have effect in relation to proceedings on a petition presented before the appointed day.	officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine. (6) Section 663 (winding-up rules) applies in relation to a petition under this Part as in relation to a winding-up petition

With respect to just and equitable concept, both sides relied upon ratio decided in various cases, which we have dealt with as follows;

547. The Petitioner Counsel, to say that just and equitable cannot be put in straight jacket formula, relied upon ***Loch* v. *John Blackwood*** **(1924) AC 783** by referring the para below:

> ***"In Re Bteriot Manufacturing Aircraft Co,*** **(1916) 32 Times L. R. 253** *Neville J, made an order for winding up on the ground that the substratum of the company was gone and upon a further ground of proved misconduct by the directors. His observations upon the latter point are apt in the present case:*
>
> *"But there is another ground. Here the company has considerable capital, and it is alleged that there Is misconduct by the directors. It is truly said by Mr. Russell that the mere fact of misconduct is no ground for winding up.* ***The words 'just and equitable' are words of the widest significance and do not limit the jurisdiction of the Court to any*** case. *It is a question of fact, and each case must depend on its own circumstancesI think the moneys of the company have been misapplied, and that the company is so constituted that it is deprived of its usual remedies. This is again sufficient for a winding up."*

548. He goes on to rely upon the judgement in **Baird v. Lees 1924 S. C, 83** where Lord Clyde has held, **"J** ***have no intention of attempting a definition of the circumstances which amount to a 'just and equitable' cause.*** *But I think I may say this. A shareholder puts his money into a company on certain conditions. The first of them is that the business in which he invests snail be limited to certain definite objects, The second is that* ***it shall be carried on by certain persons elected in a specified way.*** *And the third is that the* ***business shall be conducted in accordance with certain principles of commercial administration*** *defined in the statute, which provide some* ***guarantee of commercial probity and efficiency. If shareholders find that these conditions or some of them are deliberately and consistently violated and set aside by the action of a member and official of the company who wields an overwhelming voting power, and if the result of that is that, for the extrication of their rights as shareholders, they are deprived of the ordinary facilities which compliance with the Companies Acts would provide them with, then there does arise, in my opinion, a situation in which it may be just and equitable for the Court to wind up the company.***

549. The Petitioners' Counsel also relied upon Re. *H, R. Harmer Ltd* (1959) WLR 62 quoting the para below:

> *"For a petition to succeed it must be shown that there has been oppression in a real sense of members qua shareholders and not merely a subordination of their wishes to the power of a voting majority. As to this, however, I accept the submission of Counsel for the Petitioners that shareholders are entitled to have the affairs of the company conducted in a way (aid down by the company's construction, Members are entitled to expect that their board shall perform its functions as a Board and that the proceedings of the Directors shall be carried out in a normal and orthodox manner. They are entitled to the benefit of the collective experience of the Directors, and to expect that the directors and each of them can freely express their views at Board Meetings and that regard shall be had to what they say and to resolutions properly passed. If the Board brow bitten and either ignored are overruled by one of its members, in this case, the father who was the chairman, in reliance of his superior voting power, the proprietary interest of the minority shareholders cannot fait to be affected and a case of oppression within Section 210 is in my judgement made out.*

550. He also referred ***Ramshankar Prasad* v.** ***Sindbri Irion Foundry Private Limited*** **(AIR 1966 Cat 512)** reiterating the proposition that has been reflected in ***Harmer and Re. Albert David Ltd*** **68 CWN 163** and ***Hind Overseas Pvt Ltd* v.** ***Raghunath Prasad Jhunjhunwala*** **(1976) 3 SCC 259*, San gram Singh Gaekwad* v.** ***Santadevi Gaewad*** **(2005) 11 SCC 314*, Kamai Kumar Datta* v.** ***Ruby General Hospital Ltd., MS DC Radharamanan* v.** ***MSDC Chadrasbekara Raja,*** for saying that just and equitable concept is very much applicable to all companies including public limited companies.

551. He has specifically mentioned Hind Overseas (supra) referring the following para to say that the applicability of just and equitable principle depends upon the facts and circumstances of each case, the said para is as follows:

> *"The principle of "just and equitable" clause baffles a precise definition. It must rest with the judicial discretion of the court depending upon the facts and circumstances of each case. These are necessarily equitable considerations and may, in a given case, be superimposed on law. Whether it would be so done in a particular case cannot be put in the straitjacket of an inflexible formula,"*

552. As against this argument, Senior Counsel Dr. Abhishek Singhvi made the following submissions:

1. A division bench of the Calcutta High Court in the case of ***Bagree Cereals & Others* v.** ***Hanuman Prasad Bagri and Others*** **2001 105 Comp. Cas. 465** has held that for a petitioner to be successful under Section 397 of the 1956 Act he had to prove not only that it was just and equitable to wind up the

company, but also that such winding up would unfairly prejudice the petitioning shareholder. In the event the petitioners fail to make out such case, the petition is liable to be dismissed. The division bench held the aforesaid to be a prerequisite jurisdictional requirement for obtaining relief under S. 397 of the 1956 Act. In appeal against the said decision the Supreme Court in ***Hanuman Prasad Bagri & Others* v. *Bagress Cereals Pvt, Ltd. & Others* (2001) 4 SCC 420** affirmed the view taken by the Division Bench of the Calcutta High Court, Therefore, in so far as 1956 Act is concerned, it was well settled that Section 397(2) which postulated the satisfaction of the just and equitable requirement was a mandatory precondition.

2. While enacting the 2013 Act, the legislature has retained the said test of 'just and equitable' winding up under Section 242(l)(b). In fact, the legislature has extended the applicability of 'just and equitable' test to cases of mismanagement as well, which under the 1956 Act were not subject to this test. While doing so, the legislature was conscious of both (a) the position under English law which dispensed with the just and equitable test from the statute book almost 28 years before the enactment of the 2013 Act; and (b) the position under Indian law which made just and equitable a mandatory requirement under Section 397 of the 1956 Act was not applicable to section 398.

3. The retention of the just and equitable requirement under the 2013 Act indicates that the legislature wanted to reaffirm the applicability of the just and equitable test in its full vigour to cases of oppression and prejudice under the 2013 Act.

4. This Hon'ble Tribunal is also cognizant of the settled law that if a provision of a law is identical to the provision of law that it has repealed or replaced, then the same is a strong pointer to fact that in respect of this reincarnated provision, the legislature intended to apply the interpretation that the repealed provision had received before its repeal **(see *Sakai Deep Sahai Srivastava* v. *Union of India* (1974) 1 SCC 338 *(para 8), Pradip J. Mehta* v. *Commissioner of Income Tax, Ahmedabad* (2008) 14 SCC 283 *(Para 20, 25) and Parvathy Am ma & Others* v. *Krishna n & Anr.* 1962 KU 428 (para 8))*.**

553. We have already seen enough in English Law that this principle of just and equitable concept initially evolved in Partnership Act, the same has been percolated down to India first in the Partnership Act, thereafter, through an amendment to Companies Act, 1913, in the year 1951 as Section 153(c) of the Companies Act 1913. Looking at the change that came in the English Companies Act, 1948 as Section 210.Indeed, this power of winding up on just and equitable ground is a relic of English Partnership Law. The same has first come as Indian Partnership Act, under Section 46 thereafter, it has become part of Section 153(c) of Indian Companies Act, 1913. It is the fundamental foundation of a partnership that good faith of the partners is pledged mutually to each other that the business shall be conducted with the actual personal interposition, subject to the Agreement of Partnership, so that each may see that the other is sparing it for their mutual advantage (vide Per Lord Eldon in Peacock v. Peacock). While applying the analogy of Partnership Law, for winding up a quasi-partnership company on the 'just and equitable' ground, a passage was referred from ***Lindley in Re Yenidje Tobacco Co Ltd* (1916) 2 Ch 426f 430 (CA) *Loch* v. *John Blackwood Ltd* (1924) AC 783 (PC) *at 791; Re Lundie Brothers Ltd* (1965) 1 WLR 1051, *Ebrahimi,*** which is as follows;

" *It is not necessary, in order to induce the court to interfere, to show persons/ rudeness on the part of*

one partners to the other, or even any gross misconduct as a partner. All that is necessary is to satisfy the court that it is impossible for the partners to place that confidence in each other which each has a right to expect, and that such impossibility has not been caused by the person seeking to take advantage of it".

554. The sum and substance of the English Law before and after the Companies Act, 1948, is that when a company is a quasi-partnership, i.e. is in the substance a partnership even though operating in a corporate form, it should be wound up if the facts put before the court will give grounds for dissolution of partnership in just and equitable ground under Partnership Law.

555. When we come to Indian Law, it is evident that Section 153(c) was introduced in the year 1951 not only oppressive remedy but also for a remedy to the wrong of mismanagement. This was not there in the statutory remedy given under Section 210 of the English Companies Act, It is a unique phenomenon that has come into existence in Indian Law on its own without any backing of English precedent. Before Section 153(c) and 153(d) were brought into our Companies Act, the remedy used to be given is whenever the Petitioners' sought an order for winding up the company under the just and equitable clause, the court would reject the prayer for winding up a company if it was found that there was an alternative remedy available for the redress of their grievance, The situation before 1948 Act was that either the court had to wind up the company or to reject the petition for winding up leaving the petitioners to find the redress of their grievance. For this remedy would be worse than disease, in this background, Section 210 was introduced in the English Companies Act and after sometime Section 153(c) and 153(d) were introduced vide (Cohen Committee).

556. If we read Section 210 of the Companies Act, 1945, we can visualize a member can complain if the affairs of the company are being conducted in a manner oppressive to some part of the member (including himself), whereas under Section 153(c), it was said for the first time that a member can complain when the affairs of the company are being conducted not only in respect to oppressive action against some part of the members (including himself) but also in a manner prejudicial to the interest of the company (mismanagement). This provision as to mismanagement was purely an innovation of Indian legislation by virtue of a recommendation made by two Indian Lawyers, i.e. M/s. T. Dwarkadas & Thiruvenkatacharya and Shri N. K. Mujumdar, an officer in the old Ministry of Commerce. What is most important note here before we leave the Companies (Amendment) Act, 1951 is that this provision on mismanagement in Section 153(c) was inextricably linked to winding up on the "just and equitable" ground just as the provision regarding oppression was linked both in Section 210 of the English Act and in Section 153(c). Under Section 153(c), to invoke jurisdiction under the head of "mismanagement", the complainant was invariably to prove that the facts would justify the making of a winding up order on the ground that it is "just and equitable" that the company should be wound up. From 1951 when it came to 1956 Companies Act, this 153(c) was bifurcated into two Sections, i.e. Section 397, as to mismanagement is concerned Section 398 (l)(a). In regard to mismanagement, it has been delinked from proving or showing the facts that would justify making of a winding up order on the ground that is just and equitable that the company should be wound up.

557. For the sake of historical importance, Section 153(c) of Companies Act, 1913 and Section 397-393 of Companies Act, 1956 are placed herein.

COMPANIES ACT, 1913	**COMPANIES ACT, 1956**
The Indian Companies (Amendment) Act, 1951.	**Chapter VI- Prevention of oppression and mismanagement**
Alternative remedy to winding up in cases of mismanagement or oppression:	**Section 397- Application to [Tribunal] for relief in cases of Oppression:**
153C Power of court to act when company acts in a prejudicial manner or oppresses any part of its	(1) Any members of a company who complain that

members. -

(1) Without prejudice to an other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted-

(*a*) In a manner prejudicial to the interests of the company, of

(*b*) In a manner oppressive to some part of the members (including himself)

may make an application to the court for an order under this Section.

(2) An application under sub-section (1) may also be made by the Central Government if it is satisfied that the affairs of the company are being conducted as aforesaid.

(3) xx xx xx

(4) If on any such application the court is of opinion-

(*a*) That the company's affairs are being conducted as aforesaid, and

(*b*) That to wind up the company would unfairly and martially prejudice the interests of the company or any parts of its members, but otherwise the facts would justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit."

the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members (including any one or more of themselves) may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the [Tribunal] is of opinion

(*a*) that the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(*b*) that to **wind** up the**company would unfairlyprejudice such member ormembers,** but that **otherwisethe facts would justify themaking of a winding** up order on the ground that it was **justand equitable** that the company should be wound up ;

the [Tribunal] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit,

Section 398-Application to [Tribunal] for relief in cases of mismanagement:

(1) Any members of a company who complain - (a) that the affairs of the company are being conducted in a manner prejudicial to public interest or in a **mannerprejudicial to the interests ofthe company;** or (b) that a **material change** (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) **has taken** place **inthe management or control ofthe company.** whether by an alteration in its Board of directors or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by **reason** of such **change.** it is likely that the **affairs of thecompany will be conducted ina manner prejudicial to publicinterest or in a mannerprejudicial to the interests ofthe company** ;

may apply to the [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the [Tribunal] is of opinion that the affairs of the company are being conducted as bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

Section 402- Powers of [Tribunal] on application **under Section 397 or 398-**

Without prejudice to the generality of the powers of the [Tribunal] under section 397 or 398, any order under either section may provide for -

(*a*) the regulation of the conduct of the company's affairs in future;

(*b*) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(*c*) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

(*d*) the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely ; (i) the managing director, (ii) any other director, (iii) and (iv) [Omitted w.e.f. 13,12,2000] (v) the manager, upon such terms and conditions as may, in the opinion of the [Tribunal] be just and equitable in all the circumstances of the case;

(*e*) the termination, setting aside or modification of any agreement between the company and any person not referred to In clause (d) provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(*f*) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(*g*) any other matter for which in the opinion of the [Tribunal] it is just and equitable that provision should be made.

558. All this was very much present in various judgements Indian Courts dealt with such as ***Rajamundry Electric Supply Corporation Ltd* v. *A Nageshwar Rao* AIR 1956 SC 213*, Seth Mohanlal* v. *Sayaji Jublee Cotton & Jute Mills* (1964) 34 Com Cas 777*, Navnittat M. Shah and Qrs,* v. *Atul Drug House Ltd and*** Ors. to know how this change has come in law and its implications. Out of all these cases, Seth Mohanlal supra elucidated with erudition over oppression and mismanagement law by Hon'ble Justice P. N. Bagawati when he was with Gujarat High Court to understand the interplay of these Sections, it is very much to know what has been said in that judgement, thereby we place some of the paras of that judgment which are as follows:

"28. *Sections 397 and 398 are part of a fascicles of sections commencing from section 397 and ending with section 407 and this fascicles of sections occurs in section A dealing with powers of court under Chapter VI headed "Prevention of oppression and mismanagement". Under section 397 any members of a company who complain that the affairs of the company are being conducted in a manner oppressive to any member or members including any one or more of themselves, may petition the court which, if satisfied that the company's affairs are being conducted in a manner oppressive to any member or members and that the facts justify the making of a winding-up order on the ground that it is just and equitable to do so but that this would unfairly prejudice such member or members, may make such order as it thinks fir with a view to bringing to an end the matters complained of. This section corresponds to section 210 of the English Companies Act, 1948. Section 398 considerably enlarges the scope of the remedy by providing that any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial t the interests of the company or*

that a material change has taken place in the management or control of the company and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company, may apply to the court and the court may, if it is of the opinion that the affairs of the company are being conducted aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid make such order as it thinks fir with a view to bringing to an end or preventing the matters complained of or apprehended. It is obvious that this remedy provided by section 398 is of a much wider nature than the remedy under section 397, since unlike the remedy under section 397, it is not limited by the requirement that the facts must be such as justify the making of the winding up order against the company on the ground that it is just and equitable to do so. The question of construction which arises for determination on these provisions is as to what is the extent of the power of the court under sections 397 or 398. Does the power of the court extend to the making of an order, setting aside or interfering with past and concluded transactions between a company and a third party which are no longer continuing wrongs or is the power of the court confined to the making of an order preventing future oppression or mismanagement? Mr. 5.B. Vakil, learned advocate appearing on behalf of the petitioners, pleaded for the former construction on the ground that such construction would enlarge the power of the court rather than limit it and in support of this plea he relied on the well-known rule of interpretation that in the case of provisions of a remedial nature, which sections 397 and 398 undoubtedly were, the construction to be made should be such as will suppress the mischief and advance the remedy and add force and life to the cure and remedy according to the true intent of the makers of the Act, pro bono publico. Now Mr. S. B, Vakil is certainly right in his submission that sections 397 and 398 being designed to suppress an acknowledge mischief, they should receive liberal Interpretation and the court should give such construction as will advance the remedy, but even applying this principle of interpretation, it is not possible to accept the construction contended for on behalf of the petitioners- The reasons are as follows:

29, Prior to the enactment of the Companies Act, 1956, the statute relating to companies was the Indian Companies Act, 1913. There was in the Indian Companies Act, 1913, section 153C which corresponded to sections 397 and 398 of the Companies Act, 1956. This section was introduced in the Indian Companies Act, 1913, by Act LII of 1951 following the enactment of section 210 in the English Companies Act, 1948. The genesis of the provisions contained in section 397 and 398 of the Companies Act, 1956, is therefore, to be found in section 210 of the English Companies Act, 1948. Now the position which obtained prior to the enactment of section 210 of the English Companies Act, 1948, was that even if the affairs of a company were being conducted in a manner oppressive to some part of the shareholders or in a manner prejudicial to the interests of the company, the aggrieved shareholders had no effective remedy to put an end to such conduct, for unless the case fell within any of the three recognized exceptions to the rule in Foss v. *Harbottle* (1) (1843) 2 Hare 461.*, the court had not jurisdiction to interfere with the internal management of the company and even in a case failing within any of the three recognized exceptions to the rule in Foss* v. *Harbottle (1)* (1843) 2 Hare 461.*, all that the aggrieved shareholders could do was to challenge an act already done by the controlling shareholders as part of such conduct and they could not take any effective steps to prevent the continuance of such conduct. The only remedy which the aggrieved shareholders had was just and equitable to do so. That remedy was however totally inadequate for it meant kilting the company for the purpose of putting an end to the oppression and mismanagement. But killing the company would be a singularly clumsy method of ending oppression and mismanagement and such a course might well turn out to be against the interests of the minority shareholders. The liquidation of the company may result in the sale of its asset at break-up value which may be small and the minority who, urged by the oppression of the majority, petitions for a winding up order may in effect play its*

opponent's game, for the only available purchaser of the assets of the company may be the very majority whose oppression has driven the minority to seek redress. Hence, the Cohen Committee recommended an alternative and less drastic expedient for bringing to an end oppressive conduct on the part of those in control of the company and this expedient is now embodied in section 210 of the English Companies Act, 1948. Following the enactment of this section the legislature introduced section 153C in the Indian Companies Act, 1913, providing an alternative remedy for putting an end to oppression or mismanagement on the part of the controlling shareholders. The remedy given by section 153C was a more effective and less drastic remedy then the remedy of winding up for if there was oppression or mismanagement, the aggrieved shareholders could, instead of applying for winding up the company in order to put an end to such oppression or mismanagement, apply for relief under the section and the court could make such order as it thought necessary with a view to putting an end to such oppression or mismanagement and preventing its recurrence. When the Companies Act, 1956, was enacted, what was originally section 153C was split up into sections 397 and 398 and the scope of the remedy was expanded by removing in cases covered by section 398 the requirement that the aggrieved shareholders must make out a case for winding up under the just and equitable clause before they can apply for relief under that section. The object and purpose of the remedy, however, remained the same, namely, to curse the mischief of oppression or mismanagement on the part of controlling shareholders by bringing to an end such oppression or mismanagement so that it does not continue in future. The remedy was intended to put an end to a continuing state of affairs and not to afford compensation to the aggrieved shareholders in respect of acts already done which were no longer continuing wrongs. It is in the light of this background that the principle of interpretation relied on by Mr. S.B. Vakil must be applied and applying that principle of Interpretation the widest power may be inferred for the court to interfere in the internal management of a company with a view of putting an end to oppression or mismanagement on the part of controlling shareholders so as to advance the remedy and suppress the mischief. But no power, I am afraid, can be inferred by the application of that principle of interpretation to set aside or interfere with past and concluded transactions between a company and third parties which are no longer continuing wrongs, unless the sections by use of clear and unambiguous language confer such power on the court.

30. Going to sections 397 and 398, I find that the language of these sections also far from conferring any power on the court to set aside or interfere with past and concluded transactions between a company and third parties which are no longer continuing wrongs, confines the power of the court to making an order for the purpose of putting an end to oppression or mismanagement on the part of controlling shareholders. It is undoubtedly true that the power of the court under sections 397 and 398is very wide-- it is conferred in terms of the widest amplitude—and the court and make such order as it thinks fit, but this power is conditioned by the purpose for which it can be exercised, namely, "with a view to bringing to an end the matters complained of" in a case under section 397 and "with a view to bringing to an end or preventing the matters complained of or apprehended" in a case under section 398. These words indicate the confines within which the power of the court under sections 397 and 398must operate. Now what ***are*** *these confines? The answer is clear from the language of sections 397 and 398. The remedy under section 397 can be invoked only when the affairs of the company are being conducted in a manner oppressive to a shareholders or shareholders and similarly the remedy under section 398 can be invoked only when the affairs of the company are being conducted in a manner prejudicial to the interests on the company. Of course when I say this I am referred only to the first part of section 398 and leaving out of consideration the second part to which I shall refer a little later. Sections 397 and 398 thus clearly postulate that there must be at the date of the application a continuing course of conduct of the affairs of the company which is oppressive to any shareholder or shareholders or prejudicial to the interests of the company and it is this course of oppressive or prejudicial conduct which would form the subject-matter of the*

complained in the application. Now the purpose for which an order can be made under sections 39? and 398 being to bring to an end the matters complained of and the matters complained of in an application under these sections being a course of conduct on the part of controlling shareholders in the management of the affairs of the company which is oppressive to any shareholder or shareholders or prejudicial to the interests of the company, it is clear that an order can be made under these sections only for the purpose of bringing to an end such course of oppressive or prejudicial conduct, that is for the purpose of putting an end to oppression or mismanagement on the part of controlling shareholders so that there may not be in future such oppression or mismanagement. The language of sections 397 and 398 leaves no doubt as to the true intendment of the legislature and it is transparent that the remedy provided by these sections is of a preventive nature so as to bring to an end oppression or mismanagement on the part of controlling shareholders and not to allow its continuance to the detriment of the aggrieved shareholders or the company. The remedy is not intended to enable the aggrieved shareholders to set at naught what has already been done by controlling shareholders in the management of the affairs of the company. If such were the intention of the legislature, which as I will presently show it could never have been, the language of sections 397 and 398 would have been different and the legislature would not have confined the power of the court by limiting the purpose for which it can be exercised under the sections. That the remedy provided by sections 397 and 398 is essentially preventive in character is also borne out by the second part of section 398 which applies when a material change has taken place in the management or control of a company and by reason of such change it is likely that the affairs of the company would be conducted in a manner prejudicial to the interests of the company and empowers the court in such a case to make an order with a view to preventing the matter apprehended, namely, the prejudicial conduct of the affairs of the company, so that such prejudicial conduct may not at ail result from such change and may be totally prevented, Whereas the first part of section 398appties to a case where the affairs of the company are being conducted in a manner prejudicial to the interests of the company and it is required to put an end to such existing course of prejudicial conduct, the second part of the second applies where there is not existing course of prejudicial conduct but prejudicial conduct is apprehended by reason of a material change in the management or control of the company and what is, therefore, required is the presentation of occurrence of such prejudicial conduct. These then are the confines within which the remedy provided by sections 397 and 398 operates. But it must be remembered that within these confines the remedy is a very potent and effective remedy, since the power it confers on the court is extremely wide and the court can pass such order as it thinks necessary for the purpose of putting an end to oppression or mismanagement on the part of controlling shareholders. The nature of the order would depend on the state of affairs prevailing in the company and the nature of the restrictions required to put an end to such state of affairs. The necessity of interference under these section may arise in an infinite variety of circumstances and the legislature has, therefore, left the discretion of the court unfettered in the matter of making an appropriate order. Such power can, however, be exercised by the court only for the purpose of bringing to an end oppressive or prejudicial conduct in the management of the affairs of the company.

31. This, in my opinion, is the true import of sections 397 and 398 and it is apply supported by the heading under which the sections occur. It is now well settled that heading of this kind can be referred to for the purpose of construction of the sections ranged under the headings. In Inglis v. *Robertson (1)* [1898] A. C. 616.*, Lord Herschell, called upon to construe section 3 of the Factors Act, 1889, relied upon the fact that the section appeared in a group of sections headed "Dispositions by Mercantile Agents" and after referring to the headings of different parts of the Act, observed: "These headings are not, in my opinion, mere marginal notes, but the sections in the group to which they belong must be read in connection with them and interpreted by the light of them." Lord Collins also*

said much to the same effect in Toronto Corporation v. *Toronto Railway (1) [1907] A.C. 315, 324., when he observed: "This clause is the last of the fasciculus, of which the heading is Track, & C, and Railways' and, as was held In Hammersmith Ry. Co.* v. *Brand (2) (1869) L.R. 4 H.L 171., such a heading is to be regarded as giving the key to the interpretation of the clauses ranged under it, unless the wording is inconsistent with such interpretation." These observations of Lord Herschell and Lord Co/fins were relied upon by the Court of Appeal in a recent decision in Quater Hall & Company* v. *Board of Trade(3) [1961] 3 W.L.R. 825; [1962] 32 Comp. Cas. 591. It is, therefore, clear that the heading under which a section occurs can be referred to as throwing light on the interpretation of the section unless the language of the section is plainly contrary to such interpretation. The fasciculus of sections comprising sections 397 and 398 occurs in a chapter headed "Prevention of oppression and mismanagement", the sub-heading being "Powers of Court". The heading read with the sub- beading clearly shows that sections 397 and 398 deal with powers of courts for prevention of oppression and mismanagement in the affairs of the company and that the remedy given by these sections is, therefore, of a preventive nature intended to prevent occurrence or continuance of oppression or mismanagement in the affairs of the company and is not intended to set at naught what has already been done by controlling shareholders in the course of such oppression or mismanagement which is past and concluded and no longer a continuing wrong.*

32. Apart from the plain dictate of the language of sections 397 and 398 there are other considerations which weigh with me in taking the view that a past and concluded transaction between a company and a third party cannot be set aside on an application under section 397 or 398. Let us see what are the consequences to which tbe other construction must logically and inevitably lead and then consider whether the legislature could have possibly intended such consequences. The effect of accepting that construction would be that if a transaction has been entered into between a company and a third party as part of a continuous and continuing course of oppressive or prejudicial conduct, any shareholders who are aggrieved by such conduct would be entitled to ask the court to set aside such transaction. Now such transaction may not come within any of the three recognized exceptions to the rule in Foss v. *Harbottle (4)* (1843) 2 Hare 461. *and yet the aggrieved shareholders would be entitled to challenge such transaction by taking proceedings in their own right under sections 397 and 398. The result would be that on this construction the exceptions to the rule in Foss* v. *Harbottle (1)* (1843) 2 Hare 46 L, *would be enlarged beyond the three well recognized exceptions and whenever any transaction is entered into by a company with a third party which is part of oppressive or prejudicial conduct on the part of those in management of the affairs of the company, it would be liable to be challenged at the instance of the aggrieved shareholders, Now could the legislature have intended to being about such a result which would have the effect of almost abrogating the rule in Foss* v. *Harbottle (1)* (1843) 2 Hare 461. *In so far a$ transactions with third parties are concerned? Could the legislature have intended to strike a death-blow to the rule in Foss* v. *Harbottle (1)* (1843) 2 Hare 461. *which has held the field now for well-night over a hundred years and that too in this indirect manner? I should be certainly stow to accept a construction which would have the effect of producing this consequence.*

33. Not only would this consequence ensure but also the basic and fundamental principle on which the three well recognized exceptions to the rule in Foss v. *Harbottle (1)*(1843) 2 Hare 461. *have been evolved would be completely set at naught. In all cases falling within the three well-recognized exceptions to the rule in Foss.* v. *Harbottle (1)* (1843) 2 Hare 461. *the aggrieved shareholders can sue a third party but that is permitted to be done merely as a matter of procedure ; the cause of action on which they sue is a cause of action properly belonging to the company, but since the persons in control of the management of the affairs of the company are themselves the alleged wrong-doers and will not, therefore, permit an action to be brought in the name of the company, the aggrieved shareholders are permitted to enforce the cause of action belonging to the company. But if the*

construction contended for by Mr, 5,B. Vakil were accepted, the result would be that though a company may have no cause of action to sue a third party to set aside a transaction entered into by the company with such third party, the aggrieved shareholders would be entitled to move the court and at the instance of the aggrieved shareholders the court would be entitled to set aside such transaction, provided only that such transaction was part of oppressive or prejudicial conduct on the part of those in control of the management of the affairs of the company. The aggrieved shareholders would in that event have a cause of action of their own and in taking proceedings under section 397 or 398, they would be enforcing their own cause of action and not a cause of action belonging to the company. One might well ask the question: Did the legislature intend to confer such a new cause of action on individual shareholders against third parties so as to entitle them to set aside transactions which the company could not? I think not. If such were the intention of the legislature, I should have expected appropriate language and not language indicative only of preventive relief

34, Another question also arise on the construction advocated by Mr. S.B, Vakil and it is difficult to find an answer to that question. If sections 397 and 398 are intended to confer a new cause of action on individual shareholders to set aside transactions entered into by the company with third parties, on what ground are those transactions liable to be impeached? No clue to the answer to this question is furnished by the sections save and except that the transactions would be liable to be set aside if they are part of a continuous and continuing course of oppressive or prejudicial conduct on the part of controlling shareholders. But this would mean that individual shareholders would have a right to ask the court to set aside any transaction entered into by the company with a third party on the mere ground that such transaction, though otherwise perfectly legal and valid and hence, incapable of being avoided by the company, was oppressive to the complaining shareholders or prejudicial to the interests of the company. Such a view would make it Impossible for any outsiders to deal with the company and far from advancing the interests of the company would be clearly detrimental to the interests of the company, for it would scare away persons dealing with the company. How would an outsider dealing with the company know or even have the means of knowing whether the affairs of the company are being conducted in a manner oppressive to some part of the shareholders or prejudicial to the interests of the company? The result would be that having entered into a transaction perfectly lawful and valid with a company, an outsider may suddenly discover one fine morning that his transaction is bad, because it was oppressive to some part of the shareholders or prejudicial to the interests of the company. Perfected titles to property would on this construction be rendered uncertain. Could the legislature have intended to bring about such a result? The answer to my mind is plainly no.

35. Mr. 5.B. Vakil sought to support the construction suggested by him by relying on section 402 which particularizes, without prejudice to the generality of the powers under section 397 or 398, what orders may be made by the court under either of the two sections. Mr. S.B. Vakil pointed out that section 402 enumerated by way of illustration the different kinds of orders which may be made by the court under section 397 or 398 and contended that clauses (e) (f) of section 402 clearly showed that a transaction entered into bay company with a third party could be set aside or interfered with by the court under section 397 or 398. The particular orders specified in section 402 as orders which may be made by the court under section 397 or 398 were, argued Mr. S. B. Vakil, illustrative of the kinds of orders which could be made by the court and since clauses (e) and (f) of section 402 provided for making of orders setting aside or interfering with transactions between a company and third parties in certain specified cases, it was obvious that the power of the court under section 397 or 398 extended to making of an order setting aside or interfering with transaction between a company and a third party provided that the other conditions of the section were satisfied. This contention, though at first blush attractive, is, in my opinion, fallacious and for several reasons."

559. Now the interesting part under new regime that Companies Act, 2013, the Section for oppression and the section for mismanagement have been abridged into one section making just and equitable ground applicable to both scenarios, i.e. for oppression as well as mismanagement. The scope that was open for more than 60 years, i.e. from 1956 to 2013 for making out cases under the caption of mismanagement without proving a ground for winding up under just and equitable principle. It is not that something new has come in in the regime of 2013 Act, indeed the position that was in existence from 1951 to 1956 has been restored under 2013 Act. Now it is not opened to any member to raise mismanagement ground saying that since mismanagement has been proved relief is to be granted. Now twin conditions have to be proved for mismanagement, i.e. mismanagement as well as ground for winding up under just and equitable ground.

560. Right of minority shareholders as against majority rule is paradoxical to each other; it is an anathema to each other, but beauty of dispensation of justice lies in employment of law and seamless application of contrast concepts to the conspectus of given facts to meet the ends of justice. Justifying these two given concepts is somewhat uphill task because governance by majority is a rule; protecting minority from majority is an exception, in fact minority protection is an occasional departure devised when majority rule has become a ruse to aim at decimation of minority. Rightly so, because there is no place to majority, for that matter to anybody, to selectively use their authority to solely decimate the minority and erosion of their economic interest and their expectations with which they remain in the company. This exception is to be examined on the fulcrum of fairness doctrine. This fairness doctrine has to be applied only when majority rule is deployed solely to cause prejudice to the minority shareholders. However, the primordial thing to be looked into is, the doctrine of majority rule should not be truncated by getting carried away by the exception of protection to minority despite the given facts are short of unfairness or prejudice against the minority shareholders. What is unfair or prejudice all turns on the facts of the case. What is oppression or unfairness or prejudice, how much is oppression or unfairness or prejudice depends on the injury caused to wronged party by the wronging party as envisaged under section 241 of the Act, not otherwise.

561. The problem is Mr. Cyrus was taken as Executive Chairman to preside over the Board of Directors, he could not become a sovereign authority over this company because the superior body in any company is at first level the shareholders, thereafter, Board of Directors elected by those shareholders. As long as those Board of Directors are not removed and as long as they work within the powers endowed upon them to manage the affairs of the company, there can't be any sovereign concept in corporate structure, it is a collective responsibility of the Board of Directors and their actions are accountable to shareholders of the company. Even though Executive Chairman was appointed by Board of Directors, one point to be remembered is, it is not a position elected by the shareholders. Though Executive Chairman takes a lead in taking decisions but every such decision in respect to policy issues or an issue that requires Board of Directors approval, it has to go through the Board of Directors only. Executive Chairman post is not an elected post; therefore, every action of the Executive Chairman is amenable to the Board of Directors. So is the case in Tata Sons also. It is like an Agreement of employment for five years.

562. On reading the plaint and the reply of Mr. Cyrus, it is ascertainable that Mr. Cyrus, according to him joined as Executive Chairman under the assumption that he was given free hand to run the affairs of the company. To agree with this argument, there should be an understanding or an Agreement to show that Mr. Cyrus joined as Executive Chairman with a liberty to handle the affairs of the company as per his wish, but no such indication or something in writing reflecting that Mr. Cyrus was given free hand to run the affairs of the company as he wishes.

563. The very idea Mr. Cyrus assumed in his mind that he was given free hand to run the affairs of the company is incongruous to the corporate governance and corporate democracy. Until before one-man company has come into under Companies Act, 2013, there should not be less than two persons in the Board of Directors and they should come to an agreement to take a decision in respect to any of the affairs

of the company. Such being the ethos of the company structure, Mr. Cyrus could not even by imagination expect free hand in running the affairs of the company.

564. For Mr. Cyrus started his journey as an Executive Chairman under the impression that he was given free hand or would be given free hand to run the affairs of the company, perhaps caused all these problems because he was obsessed with an idea that he alone would lead the company and others to remain assisting him in running the company. Administration of the affairs of the company is the collective responsibility of all the directors except some actions day in and day out dealt with by the Executive Chairman. Perhaps since he saw Mr. Tata working as Executive Chairman, he might have gone into the mind that he would exercise the powers as Mr. Tata exercised forgetting the fact that Mr. Tata at that point of time had two hats, one, as the Chairman of Tata Trusts holding majority shareholding of Tata Sons, two, as the Executive Chairman of the company, but that is not the case with Mr. Cyrus. By the time when Mr. Cyrus came, he came as an employee to the company not with another hat that Mr. Tata had while he was working as Executive Chairman.

565. Though the position of Executive Chairman, by virtue of its position looking as if he is head of the company, he is in fact accountable to the Board of Directors, who are elected by the majority shareholders. Any company that comes with an objective to run a business for profits, every company will have its own ideals and way of approach. This normally comes from promoters of the company, the people whoever coming to the company, they come into the company with implicit understanding that they have to pit into the ideals and approach of that company. To take those ideals, values and objectives to its zenith, the Board of Directors keep working in that line. Every business house will have its own line of working culture, as no two men are same, the businesses also though working on the objective of earning profit, every business entity will have its own way of working. This world is a large community keep working together at times with known persons at times with strangers, over a period of time, every business will have its own clout around it, its own peripheral businesses, nobody can bring any person from some other planet to prove that the deal is at arm's length. The only test to prove that every deal is at arm's length is as to whether standard due diligence that is required to be taken is taken or not. While doing business transactions, a company cannot keep changing its customers or traders or manufacturers on the footing that they had a deal with them in the past. When people working together for a long time, trust level will also keep increasing, of course there would be one-two issues where things happen otherwise also. With this, we hold that this free hand rule concept is an antithesis to collective responsibility and collective decision making.

566. Section 241-242 is a jurisdiction where ordinary jurisdiction could not reach, for that reason only it is called extra ordinary, it is a jurisdiction not about declaration of what is legal and what is illegal, it is a jurisdiction to test the fairness of actions. Under this jurisdiction, Advocates committed to put forward the cause of their clients may take sides to justify the case of their clients, but whereas Court cannot take sides, more specially in this jurisdiction, what action is done in relation to the affairs of the company is important, not who has done what. If such action is proved in relation to the affairs of the company then it has to be seen whether it has been done in the course of conducting the affairs of the company or not, if that is so, then to prove that such action is oppressive/prejudicial to the interest of the shareholders and then to the interest of the company. Paramount concern to the Court is the interest of the company, in the event if any act is prejudicial to the interest of the company, or to any of the members, it has to be seen how to bring to an end by passing a preventive relief. This entire jurisdiction revolves around justness and fairness in conducting the affairs of the company which amounts to cause prejudice either to the Petitioners or to the company, after having proved all these, it is also imperative on the party to see as to whether such actions causing prejudice either to the company or to the Petitioners, then to indicate grounds for winding up on the ground of just and equity. Finally, before granting relief in this case another requisite to be accomplished that such winding up of a company on just and equitable ground would

unfairly prejudice such member/members. If this whole process is through, then only a relief could be passed under oppression and mismanagement. Though jurisdiction is on equity, it has to be proved as envisaged in these two Sections, there cannot be any compromise in ascertaining as to whether grievance is potential enough to grant relief under Section 242 (2) of the Act, 2013. The reason behind such strict proof is, the grievance falling under this Section cannot be taken as grievance to any Civil Court because to get a relief under Civil Court it has to be proved that action is not in compliance with law. It does not mean that this Section does not permit to seek relief over an action which is unlawful. It is only said to give emphasis that whether action is legal or illegal, if such action is coupled with unfairness, then certainly it will fall under this jurisdiction provided such action meets all the requisites mentioned under Section 241 and Section 242(1) of the Act, 2013. If action is illegal, remedy is available under Civil Court jurisdiction, if action is legal, but not fair, since relief being asked basing on the test of fairness, especially when action is legal, Court shall be more careful in granting such relief because over a period of time, it has been umpteen times said what could be fair and unfair in respect to this subject matter. In a layman language it could be said, as I already mentioned once or twice in this order itself, that when any two persons enter into an agreement to do something, they enter into such agreement, oral or written, with explicit terms or with expectations with which they started working together. These terms, conditions and expectations normally known to each other right from the beginning, if they are not known to each other, one person cannot later surprise other with his assumed expectations. Fairness is as simple as this. The action which is 'not fair' or 'unfair' should be prejudicial to the interest of a member. Normally the actions which are prejudicial to the company are siphoning, acting in conflict with the interest of the company, etc. Of course, if you go to the fundamentals of prejudice to the company are also based on unfairness. What all I say is mere unfairness of the action is not enough it must be prejudicial either to the Petitioners or to the company. It may be said that prejudicial action will not amount to have caused harm to the aggrieved, but such action is potential enough to cause prejudice to a member or company. For that reason only, the heading of this Chapter is also mentioned as "Prevention of Oppression and Mismanagement", so that if at all any action is prejudicial, potential enough to cause harm to the member or the company as envisaged in the Sections, preventive relief could be granted, normal relief that is granted in most of the oppression and mismanagement cases, if oppression/prejudice is to the members, especially to the minority, the Courts so far provided is exit remedy on fair valuation of the shares of the aggrieved member.

567. It is an argument from the Petitioner side that the Petitioner need not proceed against subsidiaries or group companies, whereas the Respondent side says when actions of the subsidiaries are impugned they have to be necessarily made as parties to the proceeding. If this point is pragmatically approached, it can be said if the actions in a wholly owned subsidiary are impugned as acts prejudicial to one of the shareholders of the holding company and if the management of the holding company and subsidiary is one and the same, then there could be a possibility that the persons in action being one and the same, there can be a possibility to examine as to whether such action is prejudicial to the member of the holding company, except this situation, to my understanding it is not possible to construe something that has happened in a subsidiary which is managed by a different Board as an action prejudicial to the member of the holding company, it has to be examined independently either along with the holding company as Respondent in the same proceeding or different proceeding. The disadvantage in our system in contrast to UK system is, as far as my knowledge goes by seeing various decisions of UK Courts, there trial takes place to prove the actions impugned, therefore, there is a chance to examine every issue threadbare but here, since we are going by the sworn Affidavits placed by the parties, we mostly rely upon admitted facts, if the facts are not admitted, a letter or something written by third party is taken into consideration to decide an issue, there is every possibility to deviate from the truth because facts available are assumed facts, not admitted facts- Third party statements cannot be taken as material having evidentiary value for two reasons, (i) his interest is not involved in a dispute between two persons, (ii) he is not before Court of Law to ascertain as to such statement is true and correct, if so, such statement has any relevance over the issue impugned before the

Court of Law. Before arriving to a conclusion as to whether impleadment of subsidiaries is essential or not, I must say most of the companies are not at all subsidiaries of Tata Sons they are only associate companies or having shareholding by Tata Sons, If at all we go by this argument, since Mr. Cyrus continued as a Non-Executive Chairman of most of the group companies, he is more answerable than anybody else to the issues of the group companies. However, the Petitioners having raised the group companies issues without making them as Respondents, adjudication on such business decisions without making the bodies taken such business decisions is nothing but deciding issues without hearing the party who actually conducted the affairs of such group companies. The Petitioner proceeded with this case for more than one year, argued on maintainability, argued on waiver, argued on main petition but has not filed any application for impleadment of those group companies as parties to this proceeding. In view of these reasons, non-joinder of such parties is fatal to this case. It is, as per Section 241 also, necessary to implead the company whose affairs have been impugned in the proceeding. It is one fatality out of many fatalities writ large in this case.

568. If you examine this case, the Petitioners mostly relied upon statements of third persons rather than the facts admitted against each other. The risk lying in entertaining such cases is that there is a chance of arriving to a conclusion without ascertaining truth in those facts, therefore, in view of the above reasoning, on the believable facts available, we have not found any truth in the allegations made against Mr. Tata, Mr. Soonawala and the other Respondents.

569. In this case, the Petitioners main argument is that Mr. Tata has close relationship with Siva, Mehli, Bhattacharya and many, by seeing such deals with them, could it be said that the transactions with them are not at arm's length only because they know each other. To my mind, it is not so. The test to see whether such transactions are arm's length or not is by measure out as to whether any fraud is involved, as to whether any dealing is there, as to whether unlawful gain is there, as to whether standard practices that are to be followed are not followed, without seeing all those things, we cannot jump from seeing closeness between two persons to a conclusion that the deal in between them is not at arm's length, not for the benefit of the company. It is very easy to say to anybody, had it not been like this, it would have been like that-What business is right, what business is not right, is a business judgement. A decision to one person looks like a decision taken at hindsight, the same decision looks to somebody else as a decision taken at foresight, it all depends upon the perception of a person. Perception differs from person to person. Moreover, money belongs to the shareholders, they are the best judges what is right to them, as to minority, the only right left to minority is either to sail with them or to part with them provided there is an action prejudicial to the interest of them as enunciated under section 241 & 242, not otherwise, not otherwise because company is an entity, whatever goes to the kitty of it, no shareholder will have any exclusive right over the asset of the company, except aggregate rights, which are called shareholders rights. Courts are mindful of the fact that the business judgments are very complex dependent on various external factors, therefore, unless and until all elements that are mentioned under 241-242 are complied with, no relief will be passed. It is not like Civil Court that once it is in violation an order is invariably to be passed, knowing well business will have so many complexities, the discretion is still left to the Court to pass a relief only on satisfaction of it. Every equity relief is a discretionary relief; it has to be in alignment with justice to be done in the facts of that case.

570. What situations were in existence at the time Mr. Tata entered into Corus were known to him likewise what happened in Nano everybody knows. It is not that all business judgements would click and pump in money into the company, some fail, some succeed. Sometime before when maintainability issue was decided it was already said no magic wand is present in the hands of Mr. Tata. They are all past and concluded acts. Right, they may be continuing still now, but Mr. Cyrus did all along about the same issues which he yelled out as legacy issues. Is there any one instance where Mr. Tata said no to the proposal raised by Mr. Cyrus. Not even one, if at all he said no to something Mr. Cyrus proposed, then there would

be an occasion to see who has to take a call whether a majority has to take a call through its vote or the Executive Chairman merely appointed by the Board of Directors. The crucial aspect that should be remembered is in corporate democracy, decision making always remain with Board of Directors as long as they enjoy the pleasure of the shareholders. Likewise, even Executive Chairman will also continue as long as he enjoys the pleasure of the Board of Directors.

571. The Shadow Director concept is recognized by the Companies Act, 2006 of United Kingdom, though the same has not been incorporated in the Companies Act 1956 or Companies Act, 2013 it has been included in the definition of "officer who is in default" to extend punishment to any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity. It is included solely to identify the person who defaulted in doing something that is ought to be done under Companies Act. In section 2 (60), the person directing the Board of Directors to do something that is punishable under the Companies Act is also defined as "officer in default", I am afraid that action of such person shown as officer in default under section 2 (60) of the Companies Act, 2013 causing default through the Board of Directors cannot be treated as an action falling under Section 241 and 242 of the Companies Act, 2013.

572. The Petitioners all along referred Mr. Tata as well as Mr. Soonawala as Shadow Directors causing Nominee Directors to influence the Board in getting their wish done.

573. The Petitioners' Counsel relied upon an English Case in between ***Secretary of State for Trade and Industry v. Deverelf and Anr.(2 WLR 907)****-Court of Appeal Judgement dated 1999 Nov. 9, 10, 11; Dec 21,* to say that *it is not necessary that the shadow directors influence was exercised to the whole of its corporate activities; that the Court has to ascertain objectively in the light of all evidence whether any particular communication from an alleged shadow director, whether by words or conduct was to be classified as a direction or instruction; that, while it would be sufficient to show that in the case of directions or instructions from the alleged shadow director the properly appointed directors or some of them task themselves in a subservient role or surrender their respective discretions, it was not necessary to do so; that the judge, in looking for the additional ingredient of the subservient role or the surrender of discretion by the Board, had imposed a qualification beyond that justified by the statutory language; and that on the facts found by the judge, D and H were both shadow directors of the company and were fit to be a director of the company and disqualification orders were made against them.*

574. On reading the above judgement, we have observed that it is not a case filed under Section 459 of the Companies Act, 1985, nor under Insolvency Act, it is only a case decided under Section 6 of the Company Directors Disqualification Act, 1986 for the deliberate deception of and concealment from ASTA of this involvement in the management of the company; the deception of Civil Aviation Authority, and trading whilst insolvent. Since the persons referred in that case being involved in doing something unlawful, they were punished under the Act mentioned thereof. Even as I mentioned above, though not named as Shadow Director, the people doing such things are being covered under the caption of "officer who is in default" in Companies Act, 1956 as well as Companies Act, 2013. Identifying somebody as a shadow director and punishing him under some other enactment, cannot be equated to dispensation of justice on altogether different parameters. The meaning of shadow director itself indicates that he is a person indirectly does something which causes another to act which is unlawful or not permissible under law. Therefore, the concept of shadow Director cannot be equated to the advices and suggestions given by Mr. Tata and Mr. Soonawala, moreover the word shadow itself indicates as something done lurking behind, normally this term is used only when foul play has taken place by the advice of somebody. If shadow director concept is taken into consideration the person to whom such advice is given should have done something causing harm to somebody else. Moreover, when section is clear that actions of the management in relation to the affairs of the company alone will become a causative factor to invoke section 241, something else cannot be lifted from some other section of law to read into the section to be applied in a given case. In the

definition of officer in default it is not that shadow director will be punished and real directors will not be punished, both of them will be punished for committing some unlawful act, It is a concept that has come into existence not to leave the real culprit scot free. When any culpable act has been done, to keep the society in order, the person abetting somebody to act will also be imputed with charges. It is known that Companies Act is inclusive of civil law and criminal law as regard to the violations of Companies Act therefore by looking at a provision taking action basing of the culpability of a person cannot be dragged into the concept of oppression and mismanagement, therefore the petitioners and Mr. Cyrus dragging Mr. Tata and Mr. Soonawala advices and suggestions as shadow director action deserves no merit to be treated as actions falling under section 241 and 242 of the Companies Act, 2013. In view of the same the ratio above decided is not applicable to the present case.

575. Regarding leakage of Information by Mr. Cyrus to the outside people, the answering respondents submit that soon after Mr. Cyrus was replaced as Executive Chairman of the company, he made unsubstantiated allegations casting aspersions not only on Tata Sons but also other Tata Group companies revealing confidential information of the Tata Sons and its group companies such as writing a mail on 25.10.2016 making personal allegations against directors discussing every issue in respect to Tata Sons and Its group companies addressing to Tata Sons directors, but this information has not remained restricted to the directors, though it has been labelled as confidential, this has simultaneously come in the media. For instance, the answering respondents counsel submits, the petitioners did not redact the references to the proposed transactions involving Tata ATA Life Insurance Co. Ltd. and PNB Metlife Insurance Co, India Ltd., which led to protest by PNB Metlife Insurance Co. India Ltd. regarding the manner in which confidential details of an impending business transactions were made public and has exposed Tata Sons to potential legal actions on account of breach of the non-disclosure agreement with PNB Metlife. Besides this, the counsel says Mr. Cyrus on his own, provided information to Income Tax Department after he was removed as Executive Chairman, even after the assessment for the relevant year has been closed on 31.12.2016. When this was put to Mr. Mistry why such information was sent to Income Tax Authority, his advocate on 05.01.2017, instead of answering what triggered Mr. Cyrus to send information to Income Tax Authority, wrote that the answering respondent could not escape the legal consequences of violating tax compliances which dearly demonstrates the hostility Mr. Cyrus bears towards the directors of Tata Sons. Mr. Cyrus did not stop at there, he further directly submitted to DCIT along with four box files containing several documents though he was not authorized to submit such information to DCIT, it so happened that Tata Sons was compelled to inform DCIT vide its letter dated 26.12.2016 informing that Mr. Cyrus's letter and information is motivated and distortion of the facts relating to the management of Tata Sons and the true nature of the relationships between Tata Sons and its stakeholders. When this onslaught was continuing, on having Mr. Cyrus revealed information in relation to PNB Metlife India Insurance Co. Ltd., MetLife wrote a letter to Tata AIA Life Insurance Co. Ltd. on 27.12.2016 informing that they were disappointed to see the confidential consideration of a possible transaction publicized as part of the ongoing events of Tata company, and PNB Metlife shareholders were concerned about the potential impact on their business.

576. There is no befitting reply to any of these allegations except saying that they gave information to DCIT so that Mr. Cyrus would not be penalized for non-compliance of filings with Income Tax authorities for he was continuing as one of the directors of the company. As to leakage of his confidential letter dated 25.10,2016 sent by email, the reply is so irrational that he could not explain away leaking email correspondence to outsiders except the person who has been using such email id,

577. On reading the assertions and denials in respect to leakage, It is evident that the information that was not known to any outsiders in respect to Tata Sons and its group companies, because of this rift in between Cyrus and the board of Tata Sons, the business transactions of Tata Sons became public for the letter captioned as confidential simultaneously came to media and the same not been denied either by the

petitioners or by Mr. Cyrus, the fact of this information coming out after Mr. Cyrus was removed on 24.10.2016 is undeniable. The only fact that Mr. Cyrus counsel denied is that Mr. Cyrus did not reveal that information. When that confidential information was admittedly come from Mr. Cyrus's mail id, the burden lies upon Mr. Cyrus to prove that it was not leaked from his side, but no such efforts has been made by either by the petitioners or by Mr. Cyrus to prove that this information was not leaked by him. According to law, a fact admitted as done results into another action, such other action presumed to be remained in the special knowledge of the person done first act, it could be inferred as done by him only as envisaged under section 106 of Indian Evidence Act unless it has been disproved that fact of leaking information is proved as done by somebody else. In view of the same, for Mr. Cyrus has not made any effort to show that somebody else leaked that email, it is to be construed that it is done by Mr. Cyrus only. Here in this case, since the letter dated 25.10.2016 came from Mr. Cyrus through email and the same not been disproved that it has not been leaked from his end, it has to be held that it was leaked by him only. With such presumption, we hereby hold that the information letter dated 25.10.2016 about hotel issue, Tata Capital issue, DoCoMo issue, Airlines issue, is leaked by Mr. Cyrus to the media, in the same line, we further hold that Mr. Cyrus sent Tata Sons information to DCIT, though he was not continuing as Executive Chairman at the time when he sent such information to the DCIT without even putting it to the responsible officers of the Tata Sons. In view of these two reasons, we hereby hold that Mr. Cyrus perhaps by virtue of being removed as Executive Chairman, leaked the information above, forgetting that he was giving out Tata Sons information, whose affairs today Mr. Cyrus impugned before this Bench, to the outsiders, which does not go well to the company. Whatever be the differences, as long as Mr. Cyrus continuing as one of the directors along with others as on the date the aforesaid episode happened, he should not have divulged the information at least for the sake of fiduciary obligations cast upon him.

578. All these things, according to the answering respondents led the board to initiate proceedings for removal of him as director of the company on 06.02.2017.

579. The Petitioners counsel has made a long argument to impress upon this Bench that the correspondence, letters or advices that have come from Mr. Tata and Mr. Soonawala as interference to the affairs of Tata Sons, it has been answered at various places in this order that the letters that have come from Mr. Tata and Soonawala are their inputs to the company, that too most of the times Mr. Tata and Soonawala gave suggestion on being solicited, it was already held that it was not an interference, moreover, such advices or suggestions either on being solicited or not being solicited, first - it would not fall within the ambit of conducting the affairs of the company, two - it was Mr. Cyrus who administered the company until before the removal, therefore no act in respect to the company which was not translated into the action could not be called the conduct in relation to the affairs of the company. Besides this, when Mr. Cyrus himself was privy to every action in relation to the company, neither Mr. Cyrus nor the petitioners could say that Mr. Tata and Mr. Soonawala giving some suggestions would amount to interference in relation to the affairs of the company, as I already said the meaning of interference, when anybody gets into the affairs of somebody else then it would be called as interference. May be Mr. Cyrus was under the impression that the affairs of Tata Sons are not related to Mr. Tata and Mr. Soonawala, when somebody goes into such assumption, then only it appears to them as interference. As we all know, Mr. Tata is the Chairman of majority shareholders of the company, Mr. Soonawala is one of the Trustees of the Trust, for their interest being more than anybody else, as long as their suggestions are not fraught with malafides, it has to be treated as the advice and suggestions for the benefit of the company not as an interference. This company has run for more than 100 years; it was headed by Mr. Tata for more than 12 years. Tatas dedicated not only their fortunes but their lives as well for the good of the society by giving everything to the Trusts, Mr. Cyrus and the petitioners should have been more careful in making allegations against the Trusts and the people working for it. Whenever any 241-242 proceedings are initiated, it should not be to dig out mountain to get a mole as to whether any actions are there falling under section 241 or 242, it must be manifest enough to any bystander to feel that something harm has been done

to the economic interest of the aggrieved member, it must be unconscionable conduct, not by holding out some suggestions as interferences,

580. There has been another argument beyond interference argument i.e. tone and tenor argument emphasizing the language used in the correspondence of Mr. Tata and Mr. Soonawala, not the content of the letters, I wonder from where to where this case is going, initially in the Company Petition they tried to highlight purported legacy issues and removal of Mr. Cyrus as Executive Chairman as grievances falling under section 241, but when it has come to argument it has been expanded to removal of Director and conversion, as to these two issues, it is conceivable that it is possible to raise those points as issues before this Bench but whereas these petitioners went even beyond that making advices and suggestions of Mr. Tata and Mr. Soonawala as interference falling u/s 241-242. The petitioners have also come out with another new argument i.e. existence of articles itself is per se oppressive and prejudicial to the petitioners, finally it has been pepped up to tone and tenor argument to emphasize that language used by Mr. Tata in his letters to Mr. Cyrus as actions falling under section 241-242 of the Companies Act, 2013, in spite of the best efforts the counsel made arguing no case as big case, we are unable to make out anything from their arguments to believe that the actions impugned are covered within the ambit of section 241/242 of the Companies Act, 2013.

581. In view of the same, we have summarized the findings of us as follows:

(*a*) Removal of Mr. Cyrus Mistry as Executive Chairman on 24.10.2016 is because the Board of Directors and Majority of Shareholders, i.e., Tata Trusts lost confidence in Mr. Cyrus as Chairman, not because by contemplating that Mr. Cyrus would cause discomfort to Mr. Tata, Mr. Soonawala and other answering Respondents over purported legacy issues. Board of Directors are competent to remove Executive Chairman; no selection committee recommendation is required before removing him as Executive Chairman.

(*b*) Removal of Mr. Cyrus Mistry from the position of Director is because he admittedly sent the company information to Income Tax Authorities; leaked the company information to Media and openly come out against the Board and the Trusts, which hardly augurs well for smooth functioning of the company, and we have not found any merit to believe that his removal as director falls within the ambit of section 241 of Companies Act 2013.

(*c*) We have not found any merit to hold that proportional representation on Board proportionate to the shareholding of the petitioners is possible so long as Articles do not have such mandate as envisaged under section 163 of Companies Act, 2013.

(*d*) We have not found any merit in purported legacy issues, such as Siva issue, TTSL issue, Nano car issue, Corus issue, Mr. Mehli issue and Air Asia issue to state that those issues fall within the ambit of section 241 and 242 of Companies Act 2013.

(*e*) We also have not found any merit to say that the company filing application under section 14 of Companies Act 2013 asking this Tribunal to make it from Public to Private falls for consideration under the jurisdiction of section 241 & 242 of Companies Act 2013.

(*f*) We have also found no merit in saying that Mr. Tata & Mr. Soonawala giving advices and suggestions amounted to interference in administering the affairs of the company, so that to consider their conduct as prejudicial to the interest of the company under section 241 of Companies Act 2013.

(*g*) We have found no merit in the argument that Mr. Tata and Mr Soonawala acted as shadow directors superimposing their wish upon the company so that action to be taken under section 241 & 242 of Companies Act 2013.

(*h*) We have not found any merit in the argument that Articles 75, 104B, 118, 121 of the Articles of Association per se oppressive against the petitioners.

(*i*) We have not found any merit in the argument that Majority Rule has taken back seat by introduction of corporate governance in Companies Act, 2013, it is like corporate democracy is genesis, and corporate governance is species. They are never in conflict with each other; the management is rather more accountable to the shareholders under the present regime. Corporate governance is collective responsibility, not based on assumed free-hand rule which is alien to the concept of collective responsibility endowed upon the Board.

(*j*) We have observed that prejudice remedy has been included in 2013 Act in addition to oppressive remedy already there and also included application of "just and equitable" ground as precondition to pass any relief in mismanagement issues, which was not the case under old Act.

582. For the reasons afore said, we hereby dismiss this company petition by closing applications if any remain pending. No costs.

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