

NCLAT ORDER ON CYRUS INVESTMENTS PVT. LTD. VS. TATA SONS LTD. & ORS – A CASE STUDY

BACKGROUND

Tata Group is an Indian multinational conglomerate founded in 1868 by Jamsetji Tata. The company gained international recognition after purchasing several global companies. One of India's largest conglomerates, Tata Group is owned by Tata Sons. The group operates in more than 100 countries across six continents, 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**'.

Tata Sons is the principal investment holding company and promoter of Tata companies. Approximately 66% of the equity share capital of Tata Sons is held by philanthropic trusts, which supports education, health, livelihood generation, art, culture etc. The next major chunk of approximately 18% is controlled by Shapoorji Pallonji Group, whose heir apparent* is Cyrus Mistry.

Mr. Cyrus Mistry was appointed as the Chairman of Tata Sons in the year December, 2012 who was the sixth chairman of Tata Sons.

TIMELINE OF EVENTS

Cyrus Mistry's Ouster

- 1) In the Board meeting of Tata Sons Limited held on **24th October, 2016**, Mr. Cyrus Mistry, was replaced from the post of Executive Chairman with immediate effect on ground of growing trust deficit and repeated departures from the culture and ethos of the Tata group and Mr. Ratan Tata was appointed as the interim Chairman of Tata Sons and a committee was formed to hunt for a new chairman in four months.
- 2) On **25th October, 2016**, Tata Sons filed caveats in Supreme Court, Bombay High Court and National Company Law Tribunal to prevent ousted Tata Sons Chairman Cyrus Mistry from getting an ex-parte order against his sacking. They don't want any court to pass *any ex-parte* orders without hearing their side of the story.

Legal Battle

- 3) In **December, 2016**, two investment firms backed by Mistry family in the names - 'Cyrus Investments Private Limited' and 'Sterling Investment Corporation Private Limited', the minority group of shareholders/ 'Shapoorji Pallonji Group' ("SP Group" for short) holding 18.37% of equity share capital "hereinafter referred to as Petitioner" has filed a suit in National Company Law Tribunal (NCLT) Mumbai bench under Sections 241-242 of the Companies Act, 2013 alleging prejudicial and oppressional acts of the majority shareholders. They also challenged Cyrus Mistry's removal.

* *Heir Apparent is an heir whose claim cannot be set aside by the birth of another heir.*

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View expressed in the Article is the sole expression of the Authors and it does not express the views of the Institute, where the Authors Working for. Article is based on the order of National Company Law Tribunal, Mumbai, C.P. No.82(MB)/2016, Order dated 9th July,2018 and National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT) Nos. 254 and 268 of 2018, Order dated 18th December, 2019 in the case of Cyrus Investments Pvt. Ltd. & Anr. Vs. Tata Sons Ltd. & Ors, and facts available in the print as well as electronic media.

- 4) In reply to this suit, Tata Sons alleged that Mistry family backed investment firms don't have the requisite eligibility conditions to file a suit against them. As the petitioners do not hold at least 10% of the "**issued share capital**" of Tata Sons or representing at least one-tenth of the total number of members, as required by the Companies Act, 2013. According to Tata Sons, though the petitioners hold 18.37% of equity share capital of the company, their holding fell to approximately 2.17% when both equity and preference shares were taken into account. With regard to the power of a tribunal to waive off such requirements if applied for by a petitioner, Tata Sons has contended that since, the petitioners had not sought such a waiver during the filing of the petition, such a request should not be accommodated at a later stage.
- 5) In the application filed by Mistry family firms stated that the Tata Sons' understanding of the legal provision is not correct. They hold 18.37% of equity shares in the Company and if preference shareholding is considered none of the groups would have the requisite 10% issued and paid up share capital and would lead to an absurdity as none of them would be able to maintain an application. Further, it requested the tribunal to waive off the 10% minimum shareholding norm requirement stating that there are enough 'facts, circumstances and sufficient reasons, which warrants the tribunal to exercise its powers so that the petition can be heard on its merits. If not done so "the grave issues raised in the petition would go entirely un-investigated".

PROVISION OF THE COMPANIES ACT, 2013

Under Section 244 of Companies Act, 2013, the following members of a Company shall have the right to file application under Section 241 of Companies Act, 2013 namely:

- (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than **one-tenth of the issued share capital** of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- (b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) above so as to enable the members to apply under section 241 of Companies Act 2013, for prevention of oppression or mismanagement against minority shareholders.

- 6) Meanwhile during pendency of the case in NCLT, Tata Sons issued notice in month of January calling for Extraordinary General Meeting ('EGM') of the company on **6th February, 2017** with subject of business being removal of Mr. Cyrus Mistry as director of Tata Sons.
- 7) On **6th February, 2017**, shareholders of Tata Sons removed Mr. Cyrus Mistry as director of Tata Sons.
- 8) With effect from **21st February, 2017**, Mr. N Chandrasekaran took the charge as Executive Chairman of Tata Sons.
- 9) The National Company Law Tribunal (NCLT), Mumbai Bench, initially dismissed the petition under Sections 241-242 of the Companies Act, 2013 being non-maintainable, citing that no cause of action was established in any of the allegations raised by the Petitioners, as

they didn't meet the criteria of 10% ownership in a company for the filing of a case of alleged oppression of minority shareholders under the Companies Act, 2013 and also dismissed the petition for waiver.

- 10) Petitioner moved The National Company Law Appellate Tribunal (NCLAT), challenging NCLT order which rejected their petitions over maintainability. They also challenged rejection of their waiver plea.
- 11) NCLAT by its order dated **21st September, 2017** allowed the plea by the petitioners seeking waiver in filing case of oppression and mismanagement against Tata Sons taking into consideration the exceptional circumstances and directed the Mumbai bench of the NCLT to proceed in the matter.

ALLEGATIONS OF THE PETITIONER

- i) The Articles of Association of the Company ("Articles") are per se oppressive as they ensure that Sir Ratan Tata Trust and Sir Dorabji Tata Trust control the affairs of the Company.
- ii) Huge interference of Mr. Ratan N. Tata and Mr. N.A. Soonawala in every decision of the Company.
- iii) The Petitioners alleged that the powers vested under certain Articles were not exercised in a judicious manner and should be struck off in entirety. However, the Petitioners failed to disclose in their pleadings whether at the time of making amendments to the specific Articles, they did not attend the meeting, contested and voted against the resolution.
- iv) Overpriced Corus acquisition- Tata Steel Limited purchased Corus Group PLC (Corus) for a sum approximately in excess of USD 12 billion at a substantial premium, the value of which was more than 33% of its original offer price.
- v) Continuation of doomed business of Nano Car Project undertaken by Tata Motors upon insistence of Mr. Ratan Tata.
- vi) Use of Tata Sons shareholding in certain Tata Group Companies to requisition EGM for removal of Cyrus Mistry as Director from the Board of Tata Sons.
- vii) Illegal removal of Mr. Cyrus Mistry as the Chairman of the Company was in violation of law, principles of governance, fairness, transparency and probity.
- viii) Actions of Tata Sons undermined the position and status of independent Directors in listed Tata Group companies and taking steps to remove Nasli Wadia as he expressed support towards Mr. Cyrus Mistry.
- ix) Joint Venture between Air Asia Limited and Telstra Trade place Private Limited entering the aviation sector including possible fraudulent, hawala transactions as indicated in the Deloitte Forensic Report.
- x) Actions of Mr. Ratan Tata constitute breach of SEBI Regulations on prohibition of Insider Trading.
- xi) Close relationship of Ratan Tata with Shiva leading to leakage of Board meeting discussions.
- xii) Bestowing contracts upon Mr. Mehli Mistry and enriching him at the cost of Tata companies.

REPLY TO THE PETITION ON BEHALF OF TATA SONS:

- i) The company says that this petition is primarily filed to advocate the cause of Mr. Cyrus Mistry's removal as illegal and prejudicial to the petitioners so that to raise the issues of alleged oppression against the petitioners and alleged mismanagement in the company, but in reality, it is nothing but a strategy by Mr. Cyrus Mistry to publicly express his displeasure at the loss of his office as executive chairman of the company and also to tarnish the reputation of the company.
- ii) Mr. Ratan 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.
- iii) In December 2012, the board of the company decided to re-designate Mr. Cyrus Mistry as executive chairman of the company, in the same board meeting. The board decided that Mr. Ratan 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. Ratan Tata could attend at his choice, any meeting which he would feel appropriate but whereas Mr. Ratan Tata clarified that he would no longer be on the board, he would always be available if the directors needed his guidance.
- iv) As to the allegations regarding arbitrary articles of the Company are concerned, shareholders of the company passed an unanimous resolution 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 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 104B at the meeting". This article was subsequently amended by the shareholders of the company pursuant to which, the affirmative vote could be exercised by "majority of directors appointed pursuant to Article 104B present at the meeting". Tata Sons states that it is pertinent to note that Mr. Pallonji Shapoorji Mistry was present at the General Meeting and voted in favour of the adoption of the new version of the Articles of Association which the petitioners now want to struck off in entirety.
- v) During the tenure of Mr. Cyrus Mistry, 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 of businesses, reluctant to embrace the articles of association and alike, led to growing trust deficit between the Board of Directors and Mr. Cyrus Mistry.
- vi) Mr. Cyrus Mistry 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 Mistry 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 Mistry 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 Companies.

- vii) Mr. Cyrus Mistry acted unwisely 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 was in already 40,000 crores debt apart from non-resolution of tariff issue of its Mundra Project. In addition to this problem, Mr. Cyrus Mistry, without placing it before the Directors of the company, agreed for such an execution.
- viii) The Articles of Association against which these Petitioners making hue and cry were unanimously approved either by the father of Mr. Cyrus Mistry or by Mr. Cyrus Mistry himself, though amendments have come to these Articles long before, they did never become a problem to these Petitioners until before Mr. Cyrus Mistry's removal, now all those past acts have all of sudden become oppressive against the Petitioners from the day he was removed as Chairman.
- ix) As to historical business decision and investment by the Tata Group, the company says, Tata Steel acquisition of Corus Group is the largest overseas acquisition by Indian corporate, making Tata Steel the world's sixth largest steel producer. The launch of Nano 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 mentioned in the Petition that Mr. Cyrus Mistry was the 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 Mistry was removed as Chairman.
- x) The company submits that this petition is sponsored by Mr. Cyrus Mistry to pursue personal vendetta against Mr. Ratan Tata and Mr. Soonawala to adopt a "scorched earth policy" so as to tarnish the reputation of the company on being removed as Chairman of the board of directors of the company
- xi) 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.
- xii) 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.
- xiii) The company submits that the petitioners have cherry picked certain business decisions predicating Mr. Ratan 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 Rover acquisition and phenomenal rise and success of TCS.
- xiv) As to the allegation of interference by Mr. Soonawala, it has been said that he has 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, 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.

- xv) It is denied that the removal of Mr. Cyrus Mistry 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
- 12) On **September 21, 2017**, Tata Sons' shareholders approved conversion of Tata Sons from Public Limited Company to a Private Limited Company.
- 13) In **November, 2017**: Cyrus Mistry's camp moves petition to the NCLT, Mumbai, against Tata Sons going private.
- 14) On **July 9, 2018**: NCLT Mumbai dismissed pleas of Mr. Mistry challenging his removal as Tata Sons chairman and also the allegations of rampant misconduct on part of Mr. Ratan Tata and the company's Board. NCLT said it found no merit in his allegations of mismanagement in the Company. The two-judges bench also cleared the deck for Tata Sons going Private.
- 15) Accordingly, NCLT highlighted the past and products of the 'Tata Sons Limited' and observed that "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....." and passed stricture observations against the Petitioners and dismissed the petition.
- 16) The Petitioners approached the NCLAT against the order of the NCLT of dismissal of plea of Mr. Mistry challenging his removal as chairman of the company. The NCLAT admitted petition filed by the petitioners and also admitted Mr. Cyrus Mistry's petition in his personal capacity and decided to hear along with the main petitions filed by the two investment firms.
- 17) On **August 6, 2018**: Tata Sons got nod from Registrar of Companies for conversion from Public to Private Company.
- 18) On **May 23, 2019**: NCLAT reserves its order after completing the hearing in the matter.
- 19) On **December 18, 2019**, the NCLAT gave its judgement in favour of petitioner and set aside the order of NCLT. The NCLAT reinstated Mr. Mistry as the Executive Chairperson for Tata Sons for his remaining term, and declared that the appointment of Natarajan Chandrasekaran as executive chairman of Tata Sons was illegal, but suspended its implementation for four weeks in order to provide time for Tatas to appeal. The NCLAT order had also set aside Tata Sons' decision to convert itself into a private company. The NCLAT enquired the Registrar of Companies (RoC) to explain the rationale behind allowing Tata Sons to convert into a private company and also sought details of the process for the permission.
- 20) In **January 2020**, Tata Sons appealed to the Supreme Court against National Company Law Appellate Tribunal (NCLAT) decision to re-instate Mr.Cyrus Mistry as its Chairman as this decision is a blow to corporate democracy and rights of the Board of Directors.

GROUND OF APPEAL

- i) Restoration of Cyrus Mistry "undermines corporate democracy". He was replaced after a majority in the Board voted against him.
- ii) Mr. Mistry never sought re-instatement after his tenure ended.

- iii) NCLAT's conclusions are based on an error that Tata Sons continues to be a Public Company.
 - iv) NCLAT imposed an unsolicited consultative process by asking the Tatas to consult minority shareholders Shapoorji-Pallonji group before appointing the executive chairman.
 - v) Restraint imposed by NCLAT on Mr. Ratan Tata and the nominee of the 'Tata Trusts' "from taking any decision in advance which requires majority decision of the Board of Directors or in the Annual General Meeting". According to Tata Sons such a direction was "wholly nebulous and seeks to stifle the exercise of rights of the shareholders and board members, resulting in their disenfranchisement which cripples corporate democracy".
- 21) Supreme Court on **10th January, 2020** stayed NCLAT order reinstating Mr. Cyrus Mistry as the executive chairman of Tata Sons and restoring his directorships in the holding company, with a preliminary observation that the first impression of the order was "not good" and that the tribunal 'could not have given consequential relief that had not been sought in the first place'.
- 22) On **24th January, 2020** The Supreme Court put stay on the NCLAT order of dismissing the Registrar of Companies (RoC) plea seeking modification of its verdict in the Tata-Cyrus Mistry matter.
