

Catalysts of Corporate Change: A Profound Examination of the TCS vs. Cyrus Investments Legal Odyssey

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ABSTRACT

In this scholarly investigation, we delve into the highly discussed legal conflict between Cyrus Investments Pvt Ltd. and Tata Consultancy Services Limited (TCS), which brought important issues in corporate governance to the fore. The main goal of this study is to provide an in-depth analysis of this legal dispute, its implications, and the long-lasting effects it has had on India's corporate landscape.

An introduction to the case serves as the preface to our discussion and sets the stage for a deeper investigation. Here, we go into the main goal of this study, which is to analyse the many parts of this dispute and shed light on its implications for India's corporate governance sector.

We unfold a narrative scenario in the section devoted to the historical and contextual background, illuminating the historical events that led to the estrangement between Tata Sons Private Limited (TATA Sons) and Cyrus Mistry's family. The core of this scholarly paper is encompassed in the analysis of governance conundrums, which includes a critical assessment of Section 241 of the Companies Act, 2013 (Act) and the Articles of Association (AOA) of Tata Sons, specifically Article 75. We examine the legal ramifications while focusing on the discussions and court rulings that have shaped the outline of this battle. The study explores the Tata Group's influence in more detail, thinking about how it may affect the conglomerate's reputation and operational strategy. To determine whether this legal conflict has prompted changes in the field of corporate governance methodology, the regulatory implications are carefully investigated.

In this discourse, ethical considerations are painstakingly weaved into the fabric to reveal the case's ethical dimensions, which include corporate morality, fiduciary duties and corporate accountability. We summarize important findings and offer suggestions, highlighting the significant ramifications for corporate governance in India. This research study offers essential insights for policymakers, academics and practitioners in the field of corporate governance by providing a thorough dissection of a legal conundrum that has significantly altered the corporate landscape.

Keywords: Corporate Governance, Tata Sons, Cyrus Mistry, Article, Companies Act 2013.

INTRODUCTION

The Mistry family owns a construction company “Shapoorji Poonji”, which was started by Shapoorji Mistry, grandfather of Cyrus Mistry. The construction company was responsible for the construction of some of Mumbai’s famous landmarks like Hong Kong and Shanghai Bank, the Grindlay’s Bank etc.

The relationship between the Mistry and The Tata family can be traced back to the 1930's, when Shapoorji Mistry bought some shares in the Tata Sons, which in 2011, stood at 18.4 %, making the Mistrys, the largest individual shareholder of the Tata Sons.

In 2012, Ratan Tata retired as the Chairman of Tata Sons and he was succeeded by Cyrus Mistry, thus becoming the 6th chairman of the Tata group.

Cyrus Mistry pushed the company towards success during his period as the Chairman. The tussle between Mistry and the Board of Directors of Tata Sons started when he voiced his opposition against “expensive decisions” like the acquiring of Jaguar Land Rover. He was also against Ratan Tata's Idea of introducing an economical car into the Market, which is NANO, priced at Rs.1 lakh When Tata Sons wanted to invest in the aviation business, Mistry opposed it by stating that it was a “cash sink business, since it is a business with huge capital Investment and it was prone to big financial losses. But, Tata Sons went ahead and acquired a 51% stake in Singapore Airlines, a \$100 million venture, against Mistry's commitment of 30 % in a \$300 million venture.

In October 2016, Mistry was removed as the Chairman by the respective Board of Directors of Tata Group Companies, stating that they took this decision keeping in mind the performance of few industries and the future of the Tata Group as a whole. Mistry approached the NCLT, which ruled in favor of Tata Sons. Later Mistry appealed to NCLAT, which ruled in favor of Mistry. The Tata Sons then approached the Supreme Court (*Tata consultancy Services Limited Vs. Cyrus Investments Pvt. Ltd.*¹)

OPPRESSION AND MISMANAGEMENT

Oppression and Mismanagement is covered under Section 241 of the Companies Act 2013, though there is no proper definition, the legal definition has been derived over the years through landmark Judgments.

Oppression and mismanagement describes about the conduct of a company that is against the interest of its members or the public as a whole. The term oppression was defined in *Elder v. Watson Limited*² by Lord Cooper. “The essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely.”³

Oppression is a fact based determination and it is based on subjectivity. In *Shanti Prasad Jain v Kalinga Tubes Ltd*⁴, the Hon'ble Supreme Court held that the courts should decide these cases based on facts and circumstance of each case, but should check whether the Company was oppressive towards the interests of the minority shareholders. Mere tussle between the majority and the minority shareholders is not enough to be classified as a case of oppression. In *Maharashtra Power Development Corp. Ltd. vs. Dabhol Power Company*⁵, it was held that a single act of oppression was enough to file a case. It should be proved that the act of oppression has been continuous, keeping the minority's interest at stake In *V.S.Krishnan v Westfort Hi-Tech Hospital Ltd*⁶, following activities were classified as oppression:

- If the conduct is harsh and wrong, is mala fide and it benefits some shareholders instantly, even though ultimate objective is for the interest of the company.

¹ 2020 SCC OnLine SC 595

² [1952 SC 49 (Scotland)]

³ Ibid

⁴ [(1965) 1 Comp LJ 193 (SC)]

⁵ (2003) 56 CLA 263 (Bom.)

⁶ [2008] 142 Comp Cas 235 (SC)

- The action is against probity and good conduct.
- The oppressive act complained of may be fully permissible under law but may yet be oppressive and therefore, the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, harsh or wrong or is mala fide or for a collateral purpose, it would amount to oppression under Sec.397 and 398. (1956 Act)

ISSUES RAISED

- **Issues raised by the Respondent Company (CYRUS INVESTMENTS PVT. LTD)**
- Cyrus Mistry put forth his claim to the NCLT under Section 241 of the Companies Act, 2013, which states that any Member of the company or the government has the right to file an application with the Tribunal if the company's affairs have been or being handled and conducted in an oppressive manner that harms the Company, its Members, or the general public.
- In this case, the Board of Directors of the Tata Sons collectively decided to remove Cyrus Mistry from his position and no prior notice about the removal was given to him. He also stated about the mismanagement and abuse of powers particularly Articles 121, 121A, 86, 104B and 118 of the Articles of Association.
- He was also removed from the Directorship of Tata Sons, by a Resolution dated 16.02.2017. It was also claimed by the Complainant, Cyrus Investments Pvt. Limited, , that the affairs of Tata Sons were carried out as if it was a Sole proprietary concern owned and controlled by Ratan Tata.
- The Complainant Company's claim on oppression and mismanagement revolved around the following:
- The affairs of Tata Sons were carried out as if it was a Sole proprietary concern owned and controlled by Ratan Tata, with the Board of Directors acting as his "Puppets", resulting in the failure in carrying out the fiduciary responsibilities by the Directors.
- Alleged abuse of Articles of Association, particularly Articles 121. 121 A, 104B and 118, which enabled the trusts and its nominee Directors to exercise control over the Board of Directors.
- Illegal removal of Cyrus Mistry as the Executive Chairman without Notice.
- Attempt to remove him from the Directorship of other operating companies in the Tata Group.
- The suspicious transaction in relation to Tata Teleservices Limited involving one Mr. C. Sivasankaran.
- Violation of the rights of minority shareholders due to the losses incurred due to the Nano automobile project.
- Giving a corporate guarantee to the Trust Company for a loan to Sterling from Standard Chartered Bank and making Kalimati Investments Ltd., a subsidiary of Tata Steel, in order to make an inter-corporate bridge loan to Sterling.
- Gigantic Arbitration Amount resulting from the dealings with NTT DoCoMo and Sterling.
- Ratan Tata making a personal gain by selling a flat owned by the Tata Company to Mehli Mistry. (*Glass vs. Atkin*⁷).

⁷ (1967) 65 D.L. (2D) 501.

- Companies controlled by Mehli Mistry, receiving favors.
- Fraudulent transactions in Air Asia deal.
- **Issues raised by the Appellant Company (TATA CONSULTANCY SERVICES LIMITED)**

Tata sons appealed before the Supreme Court, challenging the orders of NCLAT, which held the removal to be illegal and passed an order to reinstate Cyrus Mistry as the Chairman of Tata Sons. Tata Sons contended that its Board of Directors had the right and the power to remove, stating that the removal was “*Well within its rights to do so*”.

ANALYSIS OF THE JUDGEMENT

Mistry filed a petition for oppression and mismanagement on the grounds “prejudicial and oppressive behavior” by the company in NCLT (National Company Law Tribunal), Mumbai. The Bench dismissed all the charges made against the Tata Sons and held that the Board of Directors of Tata Sons was competent enough to remove Mistry from the post of Chairman.

Mistry then filed an appeal in the NCLAT (National Company Law Appellate Tribunal). The NCLAT overruled the NCLT judgment and held the act of removal of Cyrus Mistry from the post of Chairman was illegal and ordered the Board of Directors of Tata Sons to restore Mistry as the Chairman.

The Supreme Court raised 3 questions:

1. Did the case fit into the ambit of section 241 of the Companies Act, 2013 (Oppression and Mismanagement)?
2. Does the removal procedure fall under the ambit of the Companies Act, 2013?
3. Is Article 75 of AOA of Tata Sons is oppressive in nature?

The Supreme Court, in the first issue, observed that Under Section 241 of the Companies Act, 2013, unless the removal of a person from the post of Chairman is oppressive, mismanaged or done in a prejudicial manner that damages the interests of the company, its Members or the public, NCLT cannot interfere in the removal in a petition under Section 241 of the Companies Act, 2013.”

Supreme Court determined that a person’s removal as Chairman of the Company is not a subject matter under section 241 unless it is demonstrated to be “oppressive or prejudicial” in the second issue.

Article 75 of the AOA of Tata Sons states that “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.” The Supreme Court held that Section 241 provides a remedy only for past, present and continuous conduct, but NCLAT has stretched it to likelihood of a future bad conduct, which is imperishable in law and this is reason behind the neutralization of Article 75.

ANALYSING THE GOVERNANCE PITFALLS

Tata Sons is a traditionally run family business, with the Chairman always being from the Tata family (except in the case of Sir Nowroji Saklatwala, Cyrus Mistry and Natarajan Chandrashekar). When Ratan Tata announced his retirement, many thought that Noel Tata, half-brother of Ratan Tata, would take over as the chairman of the TATA group, but the position was given to Cyrus Mistry, whose family had been one of the largest individual shareholders in Tata Sons. All the decisions in a family run business like this, is taken keeping in mind the long term future of the Company, and a balance between the company and family is practiced (unwillingness to sell Nano) and this why key managerial posts are kept in the family, to keep the legacy that was built by their forefathers.

But when a person, who is outside the family is appointed, he works for a particular remuneration and he is under the pressure to show their competence. Their main purpose is to steer the Company towards success, which might create an imbalance in family and business resulting in the family interests being hurt. Professional directors try to maintain a balance between the business and the interests of the shareholders. They aim for quick results, which are short term in nature. This is main strategic difference between the methods of Ratan Tata and Cyrus Mistry. Many shareholders felt that if Noel Tata had been appointed as the Chairman, all these problems would not have arisen, since he is not an Outsider.

The independent Directors faced a dilemma. Even if they wanted to support Mistry, they didn't because Tata would withdraw all the support and as a consequence, the company would suffer.

In this case, the main governance problem is the promoter's need for control of the business. Cyrus Mistry proved to be a successful and efficient Chairman as the revenue grew from Rs 50 billion to over Rs 80 billion during his tenure, but the methods and strategies of Ratan Tata and Cyrus Mistry were poles apart. This can be clearly seen when Mistry became the chairperson, he replaced selected CEO's of Indian Hotels, Tata Motors and Tata steel, with younger persons of his choice. Seeing as someone else make changes in the management and decide the future of the company. Ratan Tata would have clearly felt that the legacy of Tata Sons is slowly being destroyed.

In June 2016, Tata Power's unanimous decision to acquire Welspun Renewables without informing Tata Sons was not well received. The Board of Directors of any company has the power to take any corporate decisions for the wellbeing of the company (*Automatic Self-Cleansing Filter Syndicate Co Ltd v Cuninghame*⁸) and in the case of bigger decisions, the company needs to get the approval of the shareholders and they have no obligation to take permission from the parent company. Ratan Tata, though being a major shareholder, has no right to influence the Board's decisions, as it is against the fundamental principle corporate governance that each shareholder, small or big, has the same rights.

Companies can use the brand name of Tata, but they have to pay certain sum as royalty. The group companies were threatened by the Tata team that the right to use the brand name would be withdrawn if Mistry remained at the Top. The Group Companies act as per the wishes of the big companies because they depend on the Big Companies for resources right from financial to technical resources. The shareholders were asked to vote for the removal of Cyrus Mistry as a director from TCS.

Any stance against the Tata Sons would eventually lead to severe consequences which included the removal of the Directors. In the case of *Ratan N. Tata And Ors vs The State Of Maharashtra And Anr*⁹, Nusli Wadia, one of the group's fierce independent director was removed from the Board of Tata Steel and Tata Motors after he publicly backed Mistry, this created a wave questioning the vulnerability of Independent Directors in India.

Even though the shareholders have voting right, they have rights only to the extent as provided under the Act. Unless it is mandated under the Act to seek approval of Members for such transactions, the Board of directors of the Company is competent and powers to take decisions on all matters. In the case of Tata Sons, the Articles of Association was altered to allow Ratan Tata to participate in the Board meetings post retirement. Tata Consultancy Service (TCS) removed Mistry without passing a Board resolution by using their powers under the AOA.

⁸ [1906] 2 Ch 34

⁹ MANU/MH/1948/2019

But on the other hand, there are many cases where in Tata's Governance is considered as "GOOD CORPORATE PRACTICE", especially with respect to the good treatment and protection of the rights of shareholders.

IMPACT AND ANALYSIS OF GOVERNANCE ENVIRONMENT

In the 1860's sole proprietorship was the major business preference in the country mainly due to the family legacy. Slowly, due to rise in overall consumption and demand, the sole proprietorship firms wanted more resources and thus they graduated into partnerships, which was slowly to private limited companies, the main reason being the source of fund was from the shareholders. The erstwhile Companies Act, 1956 ensured that the private companies were treated as public once they exceeded certain specified capital. Section 43 A of Companies Act 1956 stated that private companies were considered to be public companies under three scenarios:

1. when more than 25% of the share capital of a private limited company was held by one or more bodies corporate,
2. when the average turnover during the relevant period exceeded the specified amount and (
3. when not less than 25% of the share capital of a public company was held by a private limited company.

In *Jer Rutton Kavasmaneck vs Gharda Chemicals Limited*¹⁰, it was held that if a private company is to become a public company in certain cases, then, all attributes and characteristics of a public company get attached to it.

The other main issue was the dismissal of a Key Managerial Personal (KMP) due to a personal feud, when his/her perform was praised before. (Increase in revenue from Rs 50 billion to over rs 80 billion during Mistry's Tenure. There was even a raise in Mistry's remuneration. The company tends to put the burden of performance on the Chairman alone and not on the Directors.

The Director's independency is at risk as they operate as puppets who take decisions based on how they are expected to. The whole purpose of the concept of "Independent Directors" is being questioned.

The law states that every shareholder is to be treated equally, with the chairman being the first amongst equals, despite a casting vote. But the rights of Minority shareholders in most cases, are violated and they are not taken into account during major decision making. The majority shareholders exercise power and decide everything. This ultimately questions the purpose of Independent Directors who are supposed to safeguard the interests of minority shareholders. There should be adequate laws and measures that safeguard the rights of the minority shareholders.

Of the total investment of Rs6 lakh crore in Tata Sons, SP group's share was Rs1 lakh crore!! If the SP group can lay claim to oppression and mismanagement, justified or unjustified, what about those minority interests, who are less fortunate and unlikely to have the same financial muscle power as that of the SP group?

The venerable house of TATAs has always been the epitome of values, ethics and morality in the private sector. The hitherto unblemished shine has however been spoilt, at least to some extent, by the muck created by this unsavoury saga. Every threat brings with it some opportunities. Legalities apart, the house of Tatas has an excellent opportunity to re-affirm its position as the lodestar for corporate governance.

¹⁰ [2011] 100 CLA 464,

CONCLUSION

It is pertinent to note that Cyrus Mistry, whose methods were completely different from that of Ratan Tata, did not fail to succeed. There seems to be a clear lack of confidence on the leader as Mistry, in his short tenure proved that he was a fairly a “good leader” as he went on to increase the overall revenue of the Company. He was experienced, as he had served as the Board Member of Tata Sons from 2006, but the main cause of the removal might have been his inability to manage the complex portfolio of the company, but 4 years is a very less period to decide whether a Chairman is incompetent or not.

The removal of Mistry as the Chairman was very quick and unanimous, as there was no prior notice that was given to Mistry about his removal. This has created a negative image for the Company and has left a scar in the Governance ethics in the Country. , “The right thing would have been to follow correct corporate norms and value systems by appointing a committee to look at all the allegations and counter allegations and then take a decision.”¹¹

We can never say that Mistry lacked vision, maybe he lacked vision that was considered as “competent” by the Board of Directors. No doubt, all his methods and techniques proved that his vision for the future of the company were outstanding. The conspirators killed Julius Cesar stating that he was ambitious and here, Mistry had big ambitions, ambitions that would have paved a way for the prosperity of the company, and the board of Directors, comprising of honorable men and the Promoter, had other sets of ambitions for the company, which was not in the same road as those of Mistry. The independency of the Board of Directors is clearly at stake here.

There is no clear wrong on anybody in this case. It is clearly clash of short term and long interests and ego. This created an image that the appointed Chairman works only for the salary and has no view for the betterment of the company. This is where the Promoter steps into the business, because of their emotional attachment with the company. The law never prevents the Promoter from stepping into the management of the company, but there should be a balance in the use of the powers and rights that are vested in them. The Chairman’s position in the company is crucial and it is clearly not easy for a person to acquire that position. Proper space in managing the business should be given to them, trusting the power the seat holds. Tata Sons has been an icon and an integral part of the nation, with its ventures from a “pin to a plane”. In the minds of the citizens, Tata is not a company, but an emotion and pride, as they strive to accelerate the nation’s development. Through this legal dispute, we can say that there is definitely a dent on the image of Tata group, in lacking good corporate governance. The question here is not about good or bad corporate governance, but whether the Tata companies followed the right corporate governance. Though the highest Court and the Capital Market Regulator have validated the acts of Tata Group, yet it is felt that the Tata Group could have followed a better Corporate Governance Practices deeming to its stature. The governance ethics followed by the Tata Sons by itself, is a study for management gurus and with amendments in the in their governance structure, the Tata Sons can achieve their goals and ultimate vision.

11 Mohandas Pai- <https://www.linkedin.com/pulse/key-lessons-we-can-learn-from-cyrus-mistry-episode-samir-joshipura/>