

## Comparative Analysis of NCLT & NCLAT Orders in the Tata-Mistry Case

Tata Sons, the parent company of the Tata Group, has been in the limelight for several years now. Ever since Cyrus Pallonji Mistry was ousted from the position of Executive Chairman of Tata Sons on 24<sup>th</sup> October, 2016, the company has been entangled in a series of legal battles. Owing to the sheer size of the company and the risks involved, any legal decision taken with respect to this Tata-Mistry case is now crucial for the company law jurisdiction of the country. The Mumbai bench of National Company Law Tribunal (NCLT) and The National Company Law Appellate Tribunal (NCLAT) have already pronounced their judgments in this matter. Now, the matter is to be heard by the Supreme Court of India, which earlier on 10<sup>th</sup> January, 2020 stayed the relief provided by NCLAT. This article establishes the differences in the NCLT and NCLAT orders and compares the major company law aspects which were considered by both these courts.

NCLT before hearing the matter and giving its verdict had dismissed the petition of Mistry on eligibility grounds but had to hear the matter afresh after appeal to NCLAT was successful. The eligibility ground was that the minority shareholders filing the suit of oppression and mismanagement against Tata Sons did not meet the requisite qualification to maintain the petition which was holding minimum 10 percent of the issued share capital, according to Section 244(1)(a) of the Companies Act, 2013.<sup>1</sup> But this requirement was waived by NCLAT as permitted by the proviso of the same section.

On July 9, 2018, NCLT dismissed the petition as it found no merit in allegations of oppression of minority shareholders or mismanagement on the account of Ratan Tata or Tata Trusts.<sup>2</sup> Whereas the NCLAT verdict declared the acts of removal of Mistry from his various posts as illegal and established a clear case of oppression and mismanagement.<sup>3</sup>

## **OPPRESSION OF MISTRY**

The main contention by Mistry was that his removal from the post of Executive Chairman of Tata Sons and subsequently as Director on its board as well as other Tata companies was due to oppression by the promoters of Tata Sons i.e. Tata Trusts, who had an ownership over 68%. Oppression, as instilled under Section 241,<sup>4</sup> refers to conducting the affairs of the company in a manner prejudicial or oppressive to public interest, interests of the company or its member(s). NCLT clarified that the act of removal of an employee cannot fall within the ambit of Section 241<sup>5</sup> and also that this claim holds no merit as company comes into existence for the benefit of the members and it is up to them to choose their Executive Chairman. They also believed that Mistry leaking confidential and sensitive information was the reason why he was removed from the post of Director from boards of various Tata companies. Whereas NCLAT held that the removal of Mistry from his post was neither discussed nor expected as the records show the company under his leadership flourished and hence a case of lack of performance cannot be built. Hence, he was restored as Director of various companies and even the Executive Chairman of Tata Sons but after four weeks of the judgment.

## **OPPRESSION OF MINORITY SHAREHOLDERS**

It was also argued that there was a case of oppression of minority shareholders especially through Article 75 of the Articles of Association of Tata Sons. Article 75 allows Tata Sons, through passing of a special resolution, to ask any shareholder to sell his shareholdings either to existing shareholders or to outsiders chosen by the board. NCLT commented that this article which restricted the transferability of shares was in existence well before the petitioners became subscribers, has existed for over fifty years after that and that they knowingly accepted it. Moreover, for a case of oppression, a new article or alteration of an article needs to be done to prove prejudice to minority shareholders, which is not the case here. While NCLAT, accepting the consequences of this article in light of the facts, ordered Tata sons to refrain from invoking against Shapoorji Pallonji Group.

## **CONVERSION OF PUBLIC COMPANY INTO PRIVATE COMPANY**

Further the move of the company to become private was questioned too. NCLT held that they found no merit in the argument that such a conversion falls under the jurisdiction of Section 241<sup>6</sup> and Section 242.<sup>7</sup> NCLAT, on the other hand, identified a case of prejudice and oppression by the board against the minority shareholders and the company. It held that the conversion from public to private was hurriedly done amidst a pending litigation and it was illegal and unsustainable as it did not even follow proper procedures under Section 14.<sup>8</sup> The verdict asked the Registrar of Companies to make the correction and declared Tata to remain public.

## **QUASI-PARTNERSHIP**

The issue whether Tata Sons can be perceived as a quasi-partnership was considered by both the courts. NCLT negated the claims of petitioners that the company in anyway functioned as a quasi-partnership between Tata Group and Shapoorji Pallonji Group. Although NCLAT accepted this claim, they refused to accept that legitimate expectations, which are a result of mutual trust and confidence, arising from such a partnership can be a factor of oppression. Also through a plethora of judgments, Supreme Court has established certain principles in order to determine a company as a quasi-partnership but NCLAT ignored these principles and used its own understanding to back such reasoning.

## **MISMANAGEMENT OF TATA SONS**

Another significant argument was with respect to mismanagement of Tata Sons and other Tata Group firms by Ratan Tata and the Tata Trust. NCLT disregarded these allegations of prejudice towards Tata Sons as the Trusts were majority shareholders who could never act in a self harming manner. Further, the claim of Ratan Tata being a shadow director was held baseless as the petitioners failed to prove that Tata or any other trustees acted in a manner prejudicial and oppressive either to interests of the company or the petitioners. Additionally, reliance on e-mail correspondence proved that Tata responded well to advice sought by Mistry and other officers of Tata Sons and group companies. On the contrary, NCLAT held that mismanagement can be easily visible through the losses incurred by Tata Sons and other firms

through prejudicial decisions taken by the respective Board of Directors which were essentially filled with a majority of Tata Trust's representatives.

## CONCLUSION

As observed, the verdict of NCLT on the Tata-Mistry case was in the favour of the Tata Group while NCLAT set aside the judgment and ruled in favour of Mistry and Shapoorji Pallonji Group. These are very contrasting judgments with respect to every aspect of law which the case dealt with. The same now has been appealed to the Supreme Court by Tata Sons. Post the stay of the NCLAT order by the Supreme Court, Mistry appealed against this same order seeking judicial protection and Board of Directors representation for his family i.e. the minority shareholders. This new appeal will be heard along with the appeal of Tata Sons before a Supreme Court bench comprising of Chief Justice S.A. Bobde, Justice Surya Kant and Justice B.R. Gavai. The two most important issues to be heard are now the validity of converting from public to private and the board position for the minority shareholders.

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<sup>1</sup> S. 244(1)(a), The Companies Act, 2013.

<sup>2</sup> *Cyrus Investments Pvt. Ltd & Anr. v. Tata Sons Limited & Ors.*, C.P. No. 82(MB)/2016.

<sup>3</sup> *Cyrus Investments Pvt. Ltd & Anr. v. Tata Sons Limited & Ors.*, Company Appeal (AT) Nos. 254/2018 & 268/2018.

<sup>4</sup> S. 241, The Companies Act, 2013.

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> S. 242, The Companies Act, 2013.

<sup>8</sup> S. 14, The Companies Act, 2013.