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Oppression & Mismanagement: Taking Snippets from the Tata Mistry Saga

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ABSTRACT

The elongated battle between Cyrus Mistry and Tata Sons has spotlighted the rule of majority settled long ago in the Foss v. Harbottle case. Oppression and mismanagement is the idea of administration that has seen huge improvements as of late, and the most compelling motivation has been the court question among Ratan Tata and Cyrus Mistry. The Tata Group had unexpectedly eliminated Mr Mistry from its chairmanship in 2016, and it was anything but a glad goodbye by any means. The Tata Board of Directors takes this strange advance eventually finishes into one of the most scandalous and discussed fights in the Court of the corporate world. This article has been an endeavour to comprehend how the relations between two of the greatest corporate houses weakened with around fifty years of relationship. The fight in the Supreme Court that Mr Cyrus resulted in was not to get back the seat but to make the statement that the minority investors premium is co-broad with larger part investors. Besides, the previous' advantage can't be defaced by last as and when they are not in concurrence with one another. This paper attempts to analyze the legal provisions of the oppression and mismanagement in Tata – Mistry Saga and the issues appertain to the prevention by the Companies Act, 2013.

I. INTRODUCTION

The primary activity of the Tata group is to invest in and assist the growth of operating firms. Originally Tata Sons were formed as a private company under the Companies Act of 1913 and became a considered public company on the basis of turnover on May 1, 1975, under the Companies Act, 1956, which was laid down by section 43A. Tata Sons is a key shareholder and owned one of the promoters of the Tata group of companies, which is generally referred to as the Tata empire. Sir Dorabji Tata Trust, which Tata sons hold, has 65.89 per cent of the equity shares. Sir Ratan Tata Trust and other family Trusts, headed by chairman emeritus Mr Ratan Tata, Shapoorji Pallonji group, known as the Mistry family, through two family firms: "Cyrus Investments and Sterling Investment Corporation." The Group owns an 18.37 percentage of the equity stake in Tata Sons. 12.87 per cent equity shares of Tata Sons are held

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by Tata companies. Ratan Tata had served for more than 21 years as the Chairman of Tata Sons. He has also served as the Tata Group of Companies Chairman, then he took retirement on December 28, 2012, in pursuance of the policy of the company, which has set 75 years of age as the retirement age. Cyrus Mistry from the Shapoorji Pallonji Group, the largest private shareholder of the Tata Sons, was chosen by a 5-member nomination committee as the Chairman of Tata Sons. Normalizing in Tata Sons and its group companies were interrupted when the Directors of the company met on October 24 2016. The removal of Cyrus Mistry from Tata Sons was followed up with Mr Mistry's forced removal from Tata group companies. The allegations and counter-allegations became the national headlines that later culminated in legal suits in Courts / Tribunals by Cyrus Mistry against Tata Sons and Ratan Tata.

II. EXPLAINING THE TATA – MISTRY SAGA

Shapoorji Pallonji Group's investment firms had filed a suit in the Mumbai Bench of the National Company Law Tribunal (NCLT), which accused the Tata Group of oppression and mismanagement violation of sections 241 to 244 of the Companies Act, 2013. The petition was dismissed. They requested an exemption from the qualifying requirements set forth under section 244 of the Companies Act incorporation. The issues that were raised before the NCLT for its consideration of oppression and mismanagement. The petition alleging oppression of minority shareholders was made to the Mumbai Bench of NCLT by the Mistry family after the unceremonious removal of Cyrus Mistry as Chairman of Tata Sons on October 24, 2016.

The allegations were mainly focused on the oppression of minority shareholders. The two ancestral firms of Mistry Group owe from Tata Group because Cyrus Mistry had been removed from the Chairman from Tata Sons. Oppression is where one must have to prove that the decisions taken against the interest of the minority shareholders by the majority shareholders alone are in the interest of individual shareholders. "In Shanti Prashad Jain v. Kalinga Tubes Ltd., the Supreme Court of India opined as follows: It must be shown that the conduct of the majority shareholders was oppressive to the minority as members. There must be continuous acts on the part of the majority shareholders showing that affairs of the company were being conducted in a manner oppressive to some parts of the members. The conduct must be burdensome, harsh, and wrongful, and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough."[2]

The Court stated that the oppression must have at least some elements of lack of probity or fair

[2] Removal of cyrus mistry from tata group-A study of legal provisions-Indian Journals Indianjournals.com, https://www.indianjournals.com/ijor.aspx?target=ijor:ajmr&volume=8&issue=1&article=005 (last visited Dec 17, 2021)

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dealing with a member in order to be considered oppressive in terms of the rights of members. The Supreme Court has also ruled that the directors' foolish or inefficient conduct would not provide a basis for relief from oppression under the anti-oppression statute. – "Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd. according to sub-section (1) of Section 241 of the Companies Act." Oppression & mismanagement incorporate the company's conduct and the activities that are detrimental to the general public's interest. The term "public interest" refers to a company's operation in the public interest or for the general welfare of the community, rather than in a manner that is damaging to the public interest – "N R Murty v. Industrial Development Corporation of Orissa Ltd."

"Sections 397, 398, 401, 402, 403, and 404 of the Companies Act, 1956" deal with provisions for preventing oppression and mismanagement. Act section 244(1) allows the following members to seek remedy under Act section 241 through the National Company Law Tribunal. Ten percent of the company's issued share capital or at least a hundred members of the company held by any member or members, provided that all calls or sums due on the applicants' shares have been compensated. At the very least, one-fifth of a company's members may be without share capital. Issued share capital refers to the capital that the company issues from time to time for subscription, i.e., both preference and equity share capital of the capital, as per section 2(50) of the Companies Act. As a result, the company's business has been conducted in a way that is harmful to the public interest and harmful or oppressive to the member making the application and/or to any other members. If the company's management or control has changed materially due to a switch in its Board of directors or manager, or if it doesn't have any share capital at all, in its membership or in another way, it's likely that managing the company's operations that will affect the company's interests as well as the interests of any group of members.[3]

The petition of Cyrus Mistry does not contend conduct of affairs of Tata Sons prejudicial to the public interest. The ongoing battle of the Mistry family is certainly not for the benefit of shareholders or for the public interest of the company. These kinds of feuds, besides hampering the normal functioning of the company, impact market capitalization negatively. Oppression and mismanagement do not include apprehension of the future of the company– Central Government v. Kopran Ltd. That's not enough to say that the company's operations have been or are unfair to minority employees. A course of Oppressive conduct and the applicant should

[3] 'Corporate Governance' Vis-À-Vis 'Oppression and Mismanagement': A Case Study of Mr. Ratan Tata and Mr. Cyrus Mistry Dispute Indraprasthalawreview.in, https://indraprasthalawreview.in/wp-content/uploads/2020/10/Paper-5-converted-1.pdf (last visited Dec 17, 2021)

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also give specific instances and facts of oppressive actions, not merely statements or opinions of third parties. These provisions are never intended for settling the disputes between warring groups of shareholders or directors – "Hungerford Investment Trust Ltd. v. Turner Morrison & Co. Ltd."

The Board of directors of a company or, for that matter, majority shareholders exercising its power to remove directors, including Chairman of the Board of directors, cannot be construed as a case of unfairly prejudicial conduct when the Board or majority is acting within its powers as laid down under the articles of association of the company. However, ousting of the majority by force or other wrongful Acts to prevent the lawful exercise of their rights as shareholders by the minority is a case of oppression – "Ramashankar Prashad v. Sindri Iron Foundry Pvt. Ltd."

The decisions taken by the Board of Directors to manage the company's affairs cannot be challenged under oppression or mismanagement. It seems extremely difficult to sustain the allegation of oppression or mismanagement against Tata group companies. "Tata companies have consistently adhered to the values and ideals articulated by the Founder for over 150 years. Code of Conduct of the Tata was formalized first by Mr Ratan Tata articulates values and ideals of the Group that guide and govern the conduct of Tata companies."[4] Shares of the Tata group have shown an impressive performance on the Stock market over the period of the last three years. Affairs of holding company may include the affairs of the subsidiary company as well – Shankar Sundaram v Amalgamations Ltd. Poor performance of Tata Motors Ltd (TML), a group company of Tata Sons, ostensibly on account of 'unsuccessful' Nano car project, has been a cause of concern and rift between Mr Tata and Mr Mistry.

After Cyrus Mistry's removal from the Chairman of Tata Sons and Tata Motors, with the limited new vehicle releases and minimal market activation that combined with increasing margin pressure and a complicated organizational structure, Tata Motors Limited had embarked on a transformational approach in the financial year 2016-17. Sixty-one new products were launched during 2017-18 as part of the turnaround strategy compared to 31 in the preceding year. There has been a turnaround of losses into profits since the change of guard at the top. The most important issue in cases of oppression and mismanagement is to establish that the decisions taken through the majority shareholders have impacted only on the minority shareholders or benefitted only the majority shareholders. Memorandum of Association and

[4] Tata Code of Conduct Tata.com, https://www.tata.com/content/dam/tata/pdf/Tata%20Code%20Of%20Conduct.pdf (last visited Dec 18, 2021)

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Article of Association will be referred to in a dispute between the majority or minority on the issues of governance or management. The majority will prevail provided it is acting within the domain of law as laid down by the Act. It is highly unlikely that the allegation of oppression or mismanagement, the management of the company's Board of directors, are significant.

Under Section 244(1) of the Companies Act, 2013 waiver 3.2 "The case of a company having a share capital, at least one hundred members of the company or not less than one-tenth of the total number of members, whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company, may apply to the NCLT for relief against oppression and mismanagement."[5] The aggregate shareholding of Cyrus Mistry firms in Tata Sons, including both Equity and Preference, is just 2.82 per cent of the total issued share capital of Tata Sons. The Shapoorji Pallonji Group was not eligible to seek relief against oppression and mismanagement. NCLT has the power of waiver in this regard. The two firms sought a waiver from the NCLT on the 10 per cent threshold eligibility criteria, which was rejected by the NCLT. While the legal battle on relief against oppression and mismanagement was continuing at the Mumbai Bench of NCLT, shareholders of Tata Sons that was a deemed public company on account of the then operative section 43A of the Companies Act, 1956, passed a special resolution on September 21, 2017, to convert the company into a private company. It was vehemently opposed by the Mistry family, terming it yet another act of oppression of the minority shareholders as this would restrict the rights of the family to transfer the shares. Setting aside the apprehensions and arguments of the Mistry family, the Mumbai Bench of NCLT approved the Tata Sons' conversion as a private company.

Tata Sons minority shareholders had also raised concerns on the issue of transparency and corporate governance. A trust deficit and end of group culture had been the reason for the removal of Mr Mistry from the chairmanship of Tata Sons. As a matter of fact, it is in the benefit for the company as a whole because when the company's Chairman has lost the trust of the Board, especially the major shareholders, the Chairman of the company should resign. There was a mismatch between the working styles of Ratan Tata and Cyrus Mistry, which led to a growing trust deficit with the major shareholders. Mutual trust and confidence among all the shareholders' groups is the strong basis of a company's corporate governance. When key shareholders of a company have fundamental differences with the Chairman or the CEO, for that matter, there is bound to be a situation like this where either the Chairman would resign

[5] Ministry Of Corporate Affairs - Minority Interests Mca.gov.in, https://www.mca.gov.in/MinistryV2/minority+interests.html (last visited Dec 18, 2021)

on his/her own or would be ousted.

The Board of Directors of the Tata Group had removed Cyrus Mistry from the chairmanship of Tata Sons on October 24, 2018. The Board is within its power to remove or appoint the Chairman so long the majority shareholders support the Board. Mr Cyrus Mistry was forced to step down as the non-executive Chairman of boards of all listed companies of the Tata group as the Chairman of Tata Sons is the Chairman of all Tata group companies. In a few cases, like Tata Consultancy Services Ltd. (TCS), an extraordinary general meeting was requisitioned on Mr Mistry's removal. A few independent directors in some companies of the Tata Group (Tata Chemicals, Tata Motors, Tata Steel) had raised their concerns over the removal of Mr Cyrus Mistry. Those independent directors were also removed following a due process laid down by the Companies Act. It is also perfectly appropriate as bitterness between promoters/major shareholders and directors is not in the interest of the company as well as a whole.

After the ouster of Cyrus Mistry, allegations and counter-allegations started flowing abruptly, including the petition to the Mumbai Bench of NCLT seeking relief against 'oppression and mismanagement. Tata group companies have an impeccable record of corporate governance. All the listed companies under the Tata Group are fully compliant with the corporate governance norms of the SEBI and other regulators. It is laudable that Tata Sons has retained a sound corporate governance structure while converting the company into a private company.

In its Annual General Meeting of September 21, 2018, a special resolution had been passed by the Tata Sons to alter the Articles of Association to make an appointment of thirty per cent of the total number of directors as independent directors with the criteria as applicable to listed public companies; appointment of alternate director in place of absentee independent director; appointment of a woman director; constitution of remuneration & audit committee; and norms of related-party transactions, to make it at par with the norms applicable to a listed public company.

The Mumbai Bench of NCLT, in its order dated July 9, 2018, rejected the petition by Mistry's investment firms seeking relief against alleged oppression and mismanagement. The Bench has also justified Cyrus Mistry's removal from the Executive Chairman of Tata Sons on October 24, 2016. The Bench was on the opinion that "In corporate democracy, decision making always remains with Board of directors as long as they enjoy the pleasure of the shareholders. Likewise, even the executive Chairman will also continue if he enjoys the pleasure of the Board of directors. The majority shareholders have absolute control over the affairs of a company, and minority shareholders cannot challenge the actions of the majority unless it is oppressive

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and illegal." Under section 179(1) of the Companies Act, 2013, the sovereignty of the Board of directors of the company has been mentioned.[6]

The important question that arises here is whether the minority owners can object to majority shareholders' choices or not, which will directly affect them? While digging it up, one should also bear in mind that there would be many such cases where relief would be sought by a few disgruntled shareholders on frivolous grounds as a possible remedy to settle their score with the promoters and management. In March 2021, the Securities and Exchange Board of India made a remarkable proposal. Although an independent nomination and remuneration committee of the Board screened independent directors, the appointment was ultimately dominated by the promoters during shareholder vote, according to the market regulator's comment document.[7]

Thus, SEBI proposed a "dual approval" system in which the appointment of an independent director required the approval of two conditions: First, the approval by a majority of all shareholders, and second, the approval of a "majority of the minority," namely the approval of shareholders other than the promoters. After a 90-day cooling-off period, if the corporation fails to meet the two-step process, it can resubmit the same candidate for approval by a 75 per cent majority of all shareholders voting. This may act as a dysfunctional deterrent to the smooth conduct of corporate affairs.

III. CONCLUSION

As part of the petition against oppression by Cyrus Mistry, a certain scurrilous allegation of fraudulent transactions involving Tata Trusts chairman Ratan Tata and Trustees were made. It has heightened the level of allegations and counter-allegations, giving an ugly turn to the corporate battle, leaving the company's shareholders in a lurch on account of a dent to the long-standing reputation of Tata group. The verdict by the country's highest judicial body has become a precedent in oppression disputes. It has given a new perspective to the jurisprudence of Foss v. Harbottle, and Shanti Prashad Jain v. Kalinga Tubes Ltd. Tata – Mistry saga was a high-profile corporate dispute that was fought in the courtroom of the Supreme Court. The outcome of The Supreme Court's judgement favoured Tata Group, which allowed the Tata Group and Shapoorji Pallonji Group challenges to be thrown out. Instead of fair compensation,

[6] Minority shareholders bound by rule of majority: NCLT - Times of India www.timesofindia.com, https://timesofindia.indiatimes.com/business/india-business/minority-shareholders-bound-by-rule-of-majority/articleshow/64968187.cms (last visited Dec 22, 2021)

[7] SEBI's backtrack on independent directors The Indian Express, https://indianexpress.com/article/opinion/columns/tata-mistry-corporate-dispute-nusli-wadia-sebi-appointment-removal-of-independent-directors7403380/. (last visited Jan 14, 2022)

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Tata Sons and others should be directed to separate the Shapoorji Pallonji group's ownership interests in Tata Sons by the dissolution of remaining shares by the Shapoorji Pallonji group, a strategy of reducing capital is executed. Cash can be used to settle the balance value of unlisted companies and intangible assets, such as brand value. That would be the alternative relief.

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