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Analysing the Tata- Mistry Feud: A Quest for Balancing the Stakes and Upholding Corporate Democracy

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Abstract

The tussle between the two eminent groups finally came to a halt in this very year of 2021 after the Supreme Court gave its decision in the Tata and Mistry case. This case mainly revolves around the concept of Corporate Democracy which implies that the majority plays a key role in decision making of a company. This research paper delves into the case of Cyrus Investments vs. Tata Sons. Authors critically analyses the prevalence of Corporate Governance and Corporate Democracy prevalence in India. Paper further deals with aspects regarding the situation of Minority Shareholders.

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Introduction

The corporate tussle between Tata and Mistry is known to be one of the most vigorous jolts of the Indian corporate sector. On March 26, 2021, this hostile battle which had grabbed headlines for more than five years was put to an end. A three-judge bench of the Supreme Court, led by Chief Justice S. A. Bobde and including Justice V Ramasubramanian and Justice A S Bopanna, issued a 282-page ruling on December 18, 2019, overturning the National Company Law Tribunal's (NCLAT) decision and putting an end to a particularly tumultuous chapter in India's corporate history.

Cyrus Mistry's departure as Executive Chairman of Tata Sons Ltd is at the centre of the issue. When Cyrus Mistry, the CEO of Tata Sons Ltd., was abruptly fired, the legal battle began. He was ousted by the majority of shareholders officially through a board meeting. No-one had the idea that this was the beginning of the major legal battle in corporate history.

Tata and Mistry's business conflict has evolved through three stages: The National Company Law Tribunal (NCLT) dismissed all of Tata's allegations and declared Cyrus Mistry's removal legal; this was followed by Cyrus Mistry's appeal to the National Company Law Appellate Tribunal (NCLAT), which found Mistry's removal to be illegal and against minority shareholders' interests. NCLAT also gave the order for reinstatement of Cyrus Mistry as Executive Chairman. And lastly, on March 26, 2021 The Supreme Court gave its judgement on appeal filed by the Tata's. The judgement stood in favour of the multinational conglomerate

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Tata Group and all the allegations of oppression and mismanagement made by Mr. Cyrus Mistry was set aside by the Supreme Court.

It becomes crucial to state that the battle of Tata and Mistry is not limited to a feud between two business tycoons, but it also raises some important questions which are further covered in the paper.

Corporate Democracy

Corporate Democracy and Corporate Governance are two terms which are complementary to each other. The word *"Corporate Democracy"* denotes the legal rights of the shareholder to participate in corporate governance[1]. The background of Corporate Democracy can be well understood from the principle of "*Majority Rule*". The first case in which the concept of Majority rule was enunciated was the case of *Foss v. Harbottle* In this case it was ruled that an individual shareholder cannot in any way initiate legal action against the wrong done to a corporation. Thus, it was ruled that if any harm is caused to the Company by an action of a member or outsiders then, it is only the company that can take actions. There is no denying the fact that Shareholders are one of the most important part of any corporate scenario.

Another case in which the rule of Corporate Democracy was enunciated is the case of *LIC vs. Escorts Ltd. & Ors*. Thus, this Corporate Democracy concept which is based on Majority Rule has a restriction too as imposed vide Section 241 of the Companies Act, 2013 which enunciate that when any member feel that the company decision are going against the interest of members, the can be granted relief vide section 241 of the companies act. But the act has given some power to the Tribunal as well to waive off the case which comes to them which do not follow requisites mentioned. And in that situation, Tribunal has power to waive off meaning thereby that aggrieved person shall have no remedy where the requirements as mentioned in the action are not duly fulfilled. This Research paper analyses the factors which the Tribunal had considered while deciding the case of *Cyrus Investments Pvt. Ltd v. Tata Sons Ltd.*

Corporate Governance

During the 1970s, the concept of corporate governance was first published in American law journals. The notion was later imported into the United Kingdom in the 1980s. According to the Cadbury Committee (UK), which was created in 1992, "Corporate Governance is the framework through which corporations are controlled and governed.". It strives to offer a system of checks and balances among shareholders, directors, employees, the auditor, and management by incorporating all elements of a company's activity.' This issue has been brought to India's attention by the Kumar Mangalam Birla committee, the Narayan Murthy committee, the Naresh Chandra committee, and the Uday Kotak committee.

For the better understanding of the term corporate governance authors are hereby mentioning the statement of Mr. Uday Kotak, from the report- Uday Kotak Committee on Corporate Governance., *"is a sincere attempt and enables sustainable growth of enterprise, while safeguarding interests of various stakeholders. It is an endeavour to facilitate the true spirit of governance. Under the leadership of a vigilant market regulator- SEBI, and with the persistent efforts of key stakeholders, corporate governance standards in India will continue to improve. A stronger Corporate Governance Code will enhance the overall confidence in Indian markets and in India."*

As a result, corporate governance is not primarily based on shareholder supremacy, but rather fosters the company's development by taking into account the goals of all stakeholders, independent of their status or the number of shares they possess. Three components of corporate governance are: (i) *Transparency*: Means sharing all the information honestly and openly while communicating any business-related information to stakeholders, investors, partners or employees of the organization; (ii) *Accountability:* The board of directors must be accountable to the shareholders and the entire management team for their decisions under corporate governance. It also involves the dissemination of critical information to all stakeholders on a regular basis, such as changes in

shareholding patterns, future company strategies, and so on; (iii) *Security:* An organization is relied upon to make their cycles straightforward and their kin responsible while keeping their endeavour information secure from unapproved access.

Tata Consultancy Services Limited v. Cyrus Investments and Pvt. Ltd. and Ors. was one of many legal battles. The primary question was whether Ratan N. Tata and the Board of Directors were right to fire Cyrus Mistry. Was it a violation of corporate governance? Also, under the pretence of the corporate majority control government, were minority investors' concerns ignored? Were minority investors' concerns were overlooked under the guise of a corporate majority government, this was also another question?

Cyrus Mistry: *An outsider in Family- Run Business*

Mr Cyrus Pallonji Mistry is an Indian businessman. Mr. Cyrus Mistry, the Chairman of Tata Groups, was appointed on November 24, 2011. It was the second time in 143-year old history of Tata's that a Non-Tata was going to lead the Tata group, first was Sir Nowroji Saklatwala held the managerial position during 1932-1938. After a 15-month search, Cyrus Mistry, 43, was named deputy Chairman of the $ 77.4 billion Tata Group, which has $ 83.3 billion in revenue, putting an end to debate about the Tata Group's succession.

After Mr. Ratan Tata left the post of Chairperson of Tata group, the selection committee appointed Cyrus Mistry as the successor of the Tata Group. At that time Mr. Ratan Tata was strongly in favour of Mistry's appointment as the Chairman. At the time, Mr. Ratan Tata backed Mr. Mistry's candidacy. As per the report of Bombay House, Cyrus Mistry was a compromise candidate and was appointed in place of Noel Tata, who was the brother-in-law and half-brother of the legend Ratan Tata.

Basis of Selection

Herein an important question rises with regards to the selection of Cyrus Mistry, i.e. what was the basis of selection for this position as per the Company Articles. First and foremost objective of the selection committee for this position was to find a candidate who has the capability of managing large business having wide international coverage and other specified criteria.

From 2012 until 2016, he served as the Tata Group's sixth Chairman. On 25th November, 2016 announcement of his removal was made. Both the decisions were surprising for the market. The factors employed by the Selection Committee to select Mr. Mistry as Chairman in 2011, as mentioned in the Company Articles, are also worth considering.

Now, the authors would like to bring out the fact to light what the selection committee saw in Mistry which forced them to appoint an outsider in a family run business for the second time in 143 years old Tata history. In October 2010, Mr. Mistry had submitted a comprehensive note on how to manage a honeycomb maze business like the Tata's and apart from this he also gave a detailed management structure comprising minute details like the composition and purpose of each section of the structure. The selection committee was impressed by Mistry's note and as they have been searching for the candidate since past 15 months and failing to find the same made them to recommend Mr. Mistry as the suitable person as his views were aligning with the Tata's ideology.

However, tensions between him and other Directors immediately erupted over his working style, and an environment of uncertainty and distrust progressively developed. Mr. Mistry's ideology was diametrically opposed to Mr. Ratan Tata's, and his working style was seen as unduly dictatorial and incompatible with the Tata Group's and Bombay House's vote-based governance structure. The decision he made in June 2016 to complete Tata Power's acquisition of Welspun's solar farms for Rs 1.4 billion without consulting or receiving the consent of Mr Ratan Tata and other major investors sealed his doom. It was not the way things were done at the Bombay House.

On October 24, 2016, Mr. Mistry was sacked as Chairman of Tata Sons after a majority of the Board of Directors voted to oust him due to a lack of trust. Following his discharge, the Shapoorji Pallonji Group made a concerted effort to remove him from all gathering organisations. Interim Chairman Ratan

Tata has returned to the Tata Group. On January 27, 2017, Sri N Chandrashekaran, the then- CEO and MD of TCS, was named Chairman of Tata Sons. Cyrus Mistry was obliged to quit as Chairman of the Board of Directors as a result of this.

Background of the Case

The whole case revolves around Cyrus Pallonji Mistry, who was a minority shareholder of the company. An interesting fact to be noted is that Cyrus Mistry was the second Non-Tata person to be appointed as the Chairman.[2] For the purpose of this Research paper, he is referred to as CPM in short. CPM has held many positions in the Tata group since years. In the year 2016, Mr. Mistry was removed from the post of chairman. And this was the main issue in the whole judgment that whether ousting Mr. Cyrus from the position held by him was correct or not?

Then, Tata Sons and Ratan Tata appeared before the Supreme Court challenging the decision given by NCLAT wherein NCLAT had ruled in favour of Mistry asserting that the Mistry removal from Tata Sons was illegal and had directed the Tata sons to change to Private Company from the public. The judgment was declared on March 26, 2021 ruling in favour of Tata Group.

Though there were some independent directors in the company who were not happy with Cyrus' bid. But the result of this was too awful for those persons who supported Cyrus. Nusli Wadia, who had objected to Mistry's resignation, was unable to attend the EGM because he was too far removed from the Tata Motors board of directors. Mr. Vijay Singh, the Tata Trust's Nominee Director, agreed that CPM's performance was satisfactory. And removal of such directors just because they favoured CPM raises issues regarding independence of the Director. On the one side, Mr. Vijay Singh claimed that a framework for operationalizing the Articles was required, yet on the other hand, they lauded CPM's performance as Executive Chairman four months before he was removed.

If Mistry would not have been removed, then the situation would be different in terms that he must have continued for a long time. As once appointed, a chairman would remain until he retires. J.RD. Tata was himself a chairman for over 50 years and Ratan Tata remained for 20 years.

The Three Phase Judgement

NCLT

Mistry's complaint against Tata Sons was dismissed by the Mumbai bench of the National Company Law Tribunal (NCLT) on July 9, 2018, noting that the Board of Directors has the right to remove Cyrus Mistry from his post as Chairman and dismissing all accusations. The NCLT further asserts that the allegations of mismanagement at Tata Sons are unfounded.

NCLAT

On December 18 2019, The National Company Law Appellate Tribunal (NCLAT) overturned the NCLT judgment...And held that the removal of Mistry from the position of Tata Sons Chairman was illegal.

SC

In a 282-page ruling, the Supreme Court's three-judge panel, led by Chief Justice S. A. Bobde and including Justice V Ramasubramanian and Justice A S Bopanna, overruled the National Company Law Tribunal's verdict (NCLAT). The Supreme Court ruled in favour of Tata Sons in the case of Tata Consultancy Services Limited vs. Cyrus Investments Pvt Ltd, dismissing all of Mr. Cyrus' claims.

Situations in which Oppression and Mismanagement is considered to be constituted?

The 2013 Companies Act has nowhere defined "*Oppression*" and "*Mismanagement*" in the act but the terms means that any act which is being conducted in the manner which is prejudicial to the interest of members or public. Though we can to get an idea about Oppression from the case titled "*Elder vs. Watson Ltd*", in which meaning of the

term was explained in this was as "*a misdemeanour committed by majority shareholders who under the colour of their majority power, wrongfully inflict upon the minority shareholders*[3]."

It was declared in the case of Shanti *Prasad Jain v. Kalinga Tubes Ltd*. that, as a prerequisite to applying Section 397, it must be demonstrated that majority shareholders' conduct was oppressive to minority shareholders as members.

Further, in this case it was also mentioned that whatever is written in the Articles of Association is binding on all. In the present Tata Case it can be seen that there were some directors who earlier praised the performance of CPM but later on voted for removal of CPM.

Analysis of the decision held by Supreme Court

The Supreme Court had ruled in favour of Tata Sons and had rejected all allegations of Mr. Cyrus in the case titled *Tata Consultancy Services Limited vs. Cyrus Investments Pvt Ltd*.

Mr. Anil Singhvi's view towards this decision is that the Supreme Court chose to limit itself for removal of Cyrus. And on what basis did the Supreme Court come to know about what had happened in the Boardroom? Whether everything was maintained in a decorum or not, that was the issue which the Supreme Court must have evaluated first by indulging any committee in investigating this. The Supreme Court must have gone into the roots of the case to check whether there was Minority Oppression or not?

The decision by the Supreme Court once again had made us stand on that point where our Companies law provisions are not sufficient enough to provide protection to Minority Shareholders.[4] Furthermore, the decision makes no mention of whether SP Group can use its shares in Tata Sons to raise funds to help them with their financial difficulties. The view of the Supreme Court in this way is not expressed. The Supreme Court's point of view is not expressed in this manner. "The amount of Tata Sons' investment in listed equities influences the value of the SP Group's shares," according to the Supreme Court. But author believe that this statement nowhere results in any conclusion for the question raised above?

Since, for the successful functioning of the company, the interest of all shareholders should be considered, be it minority group. But the judgment given by the Supreme Court in Tata matter has eventually put the Minority Shareholders at a weaker footing**.** Thus, the recourse available for Mr. Cyrus is only filling out a Review Petition, which can to some extent decide the fate in favour of Mr Cyrus**.**

There were some aspects which were ignored by the Supreme Court that in the Article of Association of the company it was specifically stated that only the committee is entitled to removal of the chairman. In the current situation, Mr. Mistry, on the other hand, was sacked without the formation of a committee. Moreover, the Independent directors were also removed from the company and that too without any prior notice.

Mistry was also apparently not served with a show cause notice or given the opportunity to be heard or defend himself when he was removed. Tata Sons also gave no explanations for the sudden withdrawal at the time. Ideological disputes between the two parties, according to the author, were the basis for the removal. Both were supposed to have different leadership styles and tactics, which is why Author believed Tata wanted to appoint someone from his family to the office of Chairman at all times. This assertion is supported by the fact that every chairman of the Tata Group before to Mistry was a member of the Tata family.

Sudden and Hasty Removal of Mistry without notice amounts to Violation of principles of Natural Justice

Authors also want to bring the attention of the readers towards the fact that removal of Cyrus Mistry was all of sudden, and it was even confirmed and declared in the initial paragraphs of Judgments delivered by NCLAT. Providing notice on the part of management is mandatory and as management has not done their duty to provide notice, this

action is in violation of principles of natural justice and that cannot be brushed aside. Moreover, it was mandatory to give 15 days' prescribed notice, which was not duly fulfilled in the present case. S.L. Kapoor vs. Jagmohan is a significant case in which the New Delhi Municipal Committee's supersession was challenged on the grounds that it violated natural justice principles because no show cause notice was sent before the supersession decision was issued. The matter was linked to the question of whether failing to follow principles counts at all, if such compliance would have made no difference in the face of undeniable facts. And thus this order of removal of Mistry without observance of principles of Natural Justice is liable to be struck down.

It's also awkward to note that Mistry was not removed in accordance with established norms and processes after being named "Executive Chairman" following a professional selection process. Removal of Mistry is justified by Tata on the fact that Mistry does not have the required values, ethos, and vision which is the basic foundation of Tata Group, but how do values affect the performance of the company because contention of TATA is regarding the bad performance of Mistry.

No record to substantiate bad performance of Mistry

Tata and the Directors who favoured removal of Mistry asserted that Removal of Mistry is due to his bad performance. But no records substantiate this fact. No report provides proof of lack of performance of Mistry. Moreover, in contrast to this, the Nomination and Remuneration Committee had even appraised Mistry for his good performance. This report was 3 months before Cyrus was removed. Thus, the removal of Mistry is not the result of anything but the conflict of interests with his family which were thrived for business coupled with Tata perception that Mistry leadership would result in dismantling of Tata group.

Lacunae in the present Companies Act, 2013

The Companies Act, 2013 only protects the rights of Small shareholders (as mentioned in Section 151 of the Companies Act, 2013) and not minority Shareholders which is indeed a big flaw in the current legislation, which leaves a large proportionate number of people who are minority shareholders with no remedy and with no provision. This issue was not in the spotlight before the case of Tata-Mistry. The entire base of Corporate Governance enunciates on equal protection of all shareholders. The present Companies Act, on the other hand, clearly does not provide appropriate protection for minority shareholders.

Therefore, interests and rights of minorities should be kept in mind irrespective of the share percentage they hold. Because sometimes the concern of minorities is really crucial to decide. The judgment also brought the issue that in the Companies Act of 2013 there is no provision through which Minority shareholders can claim representation on board.

Conclusion

The Supreme Court's judgment in the Tata-Mistry case is undoubtedly a major precedent in Indian Company Law. In any case, there are as yet specific angles that stay behind the lenses, for example, the issue with regards to oppression, mismanagement and voting rights. The concept of corporate governance for inspiring genuine profitability and openness has been rapidly gaining acceptance. However, this doesn't disrupt the corporate democracy system.

Tata Sons is not compelled to follow the corporate administration processes in this case because it is a private unlisted firm. As is obvious, the organisation has dealt with its illegal links in compliance with the appropriate agreements. When corporate democracy is practised in its real sense, it carries with it its own set of advantages.

"We have not seen any substance in the allegation that the introduction of corporate governance in the Companies Act, 2013, has pushed Majority Rule to the background; it's as if corporate democracy is the origin, and corporate governance is the species," the Supreme Court ruled in the current case. They are never at odds with one another; in fact, management is more accountable to shareholders under the current arrangement. Corporate governance is based on

collective responsibility rather than an assumed free-hand rule, which is incompatible with the Board's mandate of collective responsibility.

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