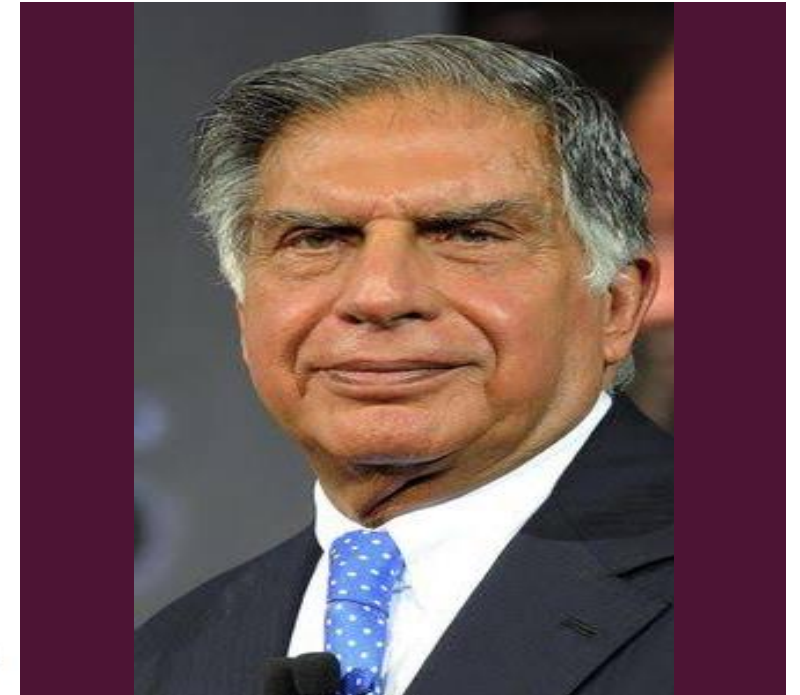


# TATA SONS V/S CYRUS MISTRY

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## OUTLINE OF THE CASE

Background of the Company

Meaning of Oppression and Mismanagement

Governing Law- Companies Act, 2013 Provisions.

Timeline of Events

Legal Battle

Conclusion

## BACKGROUND OF THE COMPANY

Tata Sons is an Indian Multinational Conglomerate founded in 1868 by Jamsetji Tata, the company gained international recognition after purchasing several global companies. One of the Indian's Largest conglomerates, Tata group is owned by Tata Sons.

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, art, culture, etc. The next major chunk of approx 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.

# MEANING OF OPPRESSION AND MISMANAGEMENT

- The word oppression in common parlance refers to a situation or an act or instance of oppressing or subjecting to cruel or unjust impositions or restraints.
- The term mismanagement refers to the process or practise of managing ineptly, incompetently, or dishonestly.
- However it is to be noted that the terms are not defined under the companies act and is left to the **discretion of the court** to decide on the facts of the case whether there is oppression or mismanagement of minority or not.
- As India is a democratic country, the companies being a legal citizen also bestows in itself the power of democracy. Corporate democracy is more vulnerable to it because it is reckoned with the number of shares and not with number of individuals involved. The rule of majority has been made applicable to the management of the affairs of the company. The members pass resolution on various subjects either by simple or three-fourth majority. Once resolution is passed by majority it is binding on all members. As a result, court will not ordinarily intervene to protect the minority interest affected by resolution. The minority shareholders who are affected by the decision may file for oppression and mismanagement.

# PROVISIONS OF COMPANIES ACT, 2013

## **241. Application to Tribunal for relief in cases of oppression, etc**

(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company;

or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.

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# RIGHT TO APPLY FOR OPPRESSION & MISMANAGEMENT

## **Sec. 244. Right to apply under section 241**

(1) The following members of a company shall have the right to apply under section 241, 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) so as to enable the members to apply under section 241.

# TIMELINE OF EVENTS

On December 2012, Cyrus Mistry was appointed as the chairman of the Tata Sons,

**Dec. 2012**

On 25th October 2016, Tata Sons filed Caveats to prevent exparte orders

**25 Oct. 2016**

On 6th February 2017, Resolution was passed in EGM removing Cyrus Mistry as Director of Tata Sons.

**6 Feb. 2017**

**24 Oct. 2016**

On 24th October 2016, Cyrus Mistry was removed from the position of Chairman.

**Dec. 2016**

On December 2016, Cyrus Mistry filed a case for oppression and mismanagement.

# CYRUS MISTRY'S OUSTER

- In the Board Meeting of Tata Sons Limited held on 24<sup>th</sup> October, 2016 Mr. Cyrus Mistry was replaced from the post of Executive Chairman with immediate effect on the ground of trust deficit and repeated departures from the culture and ethos of Tata Group and Mr. Ratan Tata was appointed as the interim chairman of Tata Sons.
- On 25<sup>th</sup> October, 2016 Tata Sons filed caveats in all the courts to prevent ousted Cyrus Mistry from getting an ex-parte order.
- In turn, Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, belonging to the SP Group, filed a petition before NCLT under Sections 241 and 242 read with 244 of the Companies Act, 2013, on the grounds of unfair prejudice, oppression and mismanagement.



## LEGAL BATTLE

Meanwhile during pendency of the case in NCLT, Tata Sons issued notice calling Extraordinary General Meeting (EGM) of the Company with subject of being removal of Mr. Cyrus Mistry as the Director of Tata Sons.

Later, the two companies filed a miscellaneous application for waiver of requirement of Section 244 (1)(a) along with a demand to put a stay on EOGM for removal of Cyrus Mistry.

On 6<sup>th</sup> February, 2017 shareholders of Tata Sons removed Mr. Cyrus Mistry as director of Tata Sons.

# MISTRY'S ALLEGATIONS FOR OPPRESSION & MISMANAGEMENT

The AOA are per se oppressive as they ensure that Sir Ratan Tata Trust and Sir Dorabji Tata Trust control the affairs of the Company.

Huge interference of Mr. Ratan Tata and Mr. N.A. Soonawala in every decision of the Company.

Continuation of doomed business of Nano Car Project undertaken by Tata Motors upon insistence of Mr. Ratan Tata.

Illegal removal of Mrs. Cyrus Mistry as the chairman of the Company was in violation of law, principles of governance, fairness, transparency and probity.

The acquisition of Corus at overpayment by Tata Trusts.

Transactions made with Siva and Sterling Group of Companies by Tata Groups.

Fraudulent transaction worth Rs. 22 crore in Air Asia by Tata Trusts.

## NCLT'S DECISION

- NCLT, Mumbai Bench, initially dismissed the petition under Sec. 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, they didn't meet the criteria of 10% ownership in a company for filing the case of Oppression and mismanagement under the Companies Act, 2013 and also dismissed the petition of waiver.
- In its detailed judgement, NCLT stated For the allegation regarding Air Asia, the bench held that it have been made with impunity by Cyrus Mistry flouting all legal principles.
- As regards allegations on the Nano project, NCLT held that allegations were made without making Tata Motors a party to the case.
- The NCLT also rejected allegations on the acquisition of Corus and the transactions made with Shiva and Sterling Group by Tata Group.
- The bench also states that it found no merit in the arguments on the oppression of minority shareholder rights and operational mismanagement of the Tata Sons.
- After NCLT rejecting the petition, the two companies appealed to NCLAT, to the two companies and Cyrus Mistry respite, NCLAT ruled in their favour and reversed orders passed by NCLT and ruled that Mr. Cyrus Mistry shall be reinstated at his original designation Executive Chairman of 'Tata Sons Limited' and consequently as Director of the 'Tata Companies' for rest of the tenure in final order dated 18.12.2019.

## APPEAL TO NCLAT

- After NCLT rejecting the petition, the two companies appealed to NCLAT, to the two companies and Cyrus Mistry respite, NCLAT ruled in their favour and reversed orders passed by NCLT and ruled that Mr. Cyrus Mistry shall be reinstated at his original designation Executive Chairman of 'Tata Sons Limited' and consequently as Director of the 'Tata Companies' for rest of the tenure in final order dated 18.12.2019.
- NCLAT stated that there's nothing on record to suggest that Tata Sons' board or Tata Trusts had expressed any displeasure over Cyrus Mistry's performance, the NCLAT has pointed out. In fact, the material on record shows that under Mistry's leadership, Tata Sons performed well, which was appraised by Nomination and Remuneration Committee a few months before he was removed.
- For the board meeting of Oct. 24, Tata Trusts had asked its nominee directors to bring the motion for Mistry's removal but no reasons for seeking the removal have found any mention in the minutes of the meetings. In this meeting, two directors who had voted for Mistry's removal were part of the appraisal committee which had just four months earlier found no fault with his performance.

## DECISION OF NCLAT

On December, 2019, the NCLAT gave its judgement in favour of Mistry 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's decision to convert itself into a private company.

In saying so, the NCLAT has concluded that:

- Mistry's removal from Tata Sons' board had no basis.
- Abuse of power by directors nominated by Tata Trusts led to losses at Tata Sons' group companies.

IN JANUARY 2020, TATA SONS APPEALED TO THE SUPREME COURT AGAINST NCLAT'S DECISION TO RE-INSTATE MR. CYRUS MISTRY AS ITS CHAIRMAN.

## GROUND:

Restoration of Cyrus Mistry “undermines corporate democracy”. He was replaced after a majority in the Board voted against him.

Mr. Mistry never sought reinstatement after his tenure ended.

NCLAT's conclusions are based on the error that Tata Sons continues to be a private Company.

NCLAT's imposed an unsolicited consultative process by asking the Tatas to consult minority shareholders Shapoorji-Pallonji group before appointing the executive chairman.

Restraint imposed by NCLAT on Mr. Ratan Tata and the nominee of the Tata Trusts from taking any decision

# SUPREME COURT'S VERDICT

To this, on March 26, 2021 Supreme Court reversed the NCLAT order and ruled in favour of TataSons citing that removal from the directorship cannot be called as acts oppressive to minority shareholders. The Court said that it “valid and justifiable reasons” and could not be termed as “oppressive or prejudicial in law”.

The Supreme Court held that minority shareholders or their representatives are not automatically entitled to a seat on the private company's board like a small shareholder's representative.

In its judgment, the Apex court noted that the provisions contained in the 2013 Companies Act only protects the rights of small shareholders of listed companies by asking such companies to have on their board at least one director elected by such small shareholders.

Grounds for rejecting NCLAT order :

The removal from the from directorship cannot be called as acts oppressive to minority shareholders

- It is “valid and justifiable reasons” and could not be termed as “oppressive or prejudicial in law” as Cyrus Mistry had leaked mail dated October 25, 2016, to the media and sent replies to tax authorities even while continuing as a Director.
- Mistry family didn't have any right for representative on Board as they were minority shareholders.

# CONCLUSION

The five-year-long and the most high-profile corporate legal battle between Cyrus Mistry and Ratan Tata gave us the precise definition of Section 241 of the Companies Act, 2013 and its applicability.

The Judgement also gave a brief idea concerning the power of the Company Law Tribunal and held that it cannot interfere with the removal of a person as a Chairman of a Company in a petition under Section 241 of the Companies Act, 2013 unless such removal is “oppressive or prejudicial in nature”.

There wasn't a case, to begin with, the only dispute that arise was the removal of Cyrus Mistry as chairman of Tata Sons Limited.

Cyrus Mistry was removed from the post of Executive Chairman of Tata Sons Limited on October 24, 2016, is because the Majority Shareholders and Board of Directors of the company lost confidence in Cyrus Mistry as Chairman, not because by contemplating that Cyrus Mistry would cause discomfort to Ratan Tata.