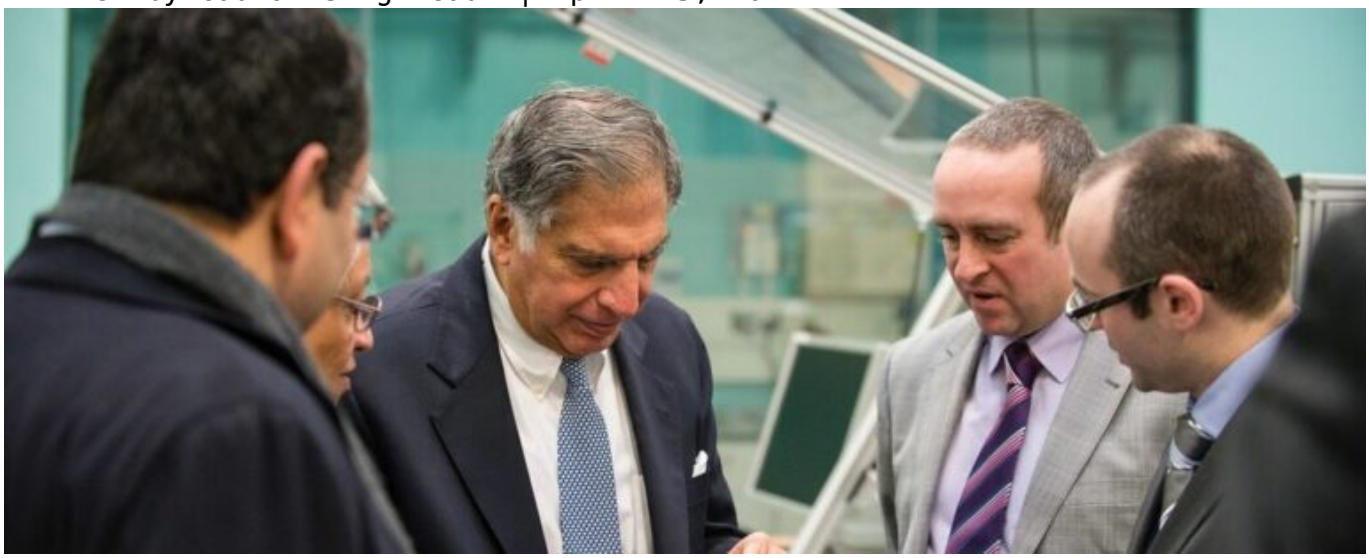
Chronicles of Tata-Mistry: How the Supreme Court of India overturned a 'Pyrrhic Victory' into an 'Irenic Victory'?

written by Gaurav Singh Gaur | April 15, 2021



Settling the controversy in yet another notable judgment dated March 26, 2021 in *Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. and others.*(The Tata Mistry Controversy) [1], the three-judge bench of the Hon'ble Supreme Court of India, comprising Chief Justice of India S.A. Bobde, Justice A.S. Bopanna and Justice V. Ramasubramanian allowed the appeals and set aside the order dated 18-12-2019 ('impugned order') passed by the National Company Law Appellate Tribunal ('NCLAT').

It is pertinent to note that there was a total of 15 Civil Appeals that were filed and clubbed for disposal by the Hon'ble Apex Court. Out of these 15 Appeals, 14 were filed by the Tata Group ('Appellants') and one appeal was preferred by the Shapoorji Pallonji Group ('Respondents') seeking additional relief than what had already been granted by the NCLAT.

Tata Sons (Private) Limited had preferred Civil Appeal Nos.13-14 of 2020 challenging NCLAT's order dated 18-12-2019 which reinstated Mr. Cyrus Pallonji Mistry ('CPM') as Chairman of Tata Sons Limited. The Tribunal in the impugned order had further held the decision of Registrar of Companies ('RoC') regarding conversion of the Company from 'Public' to 'Private' was illegal and the same was set aside by NCLAT. Furthermore, Mr. Ratan N. Tata ('RNT') also preferred two independent appeals i.e. Civil Appeal Nos.19-20 of 2020 against the same order on similar grounds. Trustees of the two trusts namely 'Sir Ratan Tata Trust' and 'Sir Dorabji Tata Trust' had preferred two independent appeals i.e. Civil Appeal Nos.444-445 of 2020 challenging the impugned order. In addition to the same, a few of Tata Group companies which were referred during course of arguments before the tribunals, had also preferred separate appeals in Civil Appeal Nos.440-441 of 2020, 442-443 of 2020 and 448-449 of 2020.

The original complainants before the NCLT namely (i) Cyrus Investments Private Limited and (ii) Sterling Investment Corporation Private Limited, had preferred a cross-appeal in Civil Appeal No.1802 of 2020. Their grievance was that in addition to the reliefs granted, the NCLAT ought to have also granted a direction to accord them proportionate representation on the Board of Directors of Tata Sons Limited and in all Committees formed by the Board of Directors. Another grievance was that the NCLAT ought to have deleted the requirement of an affirmative vote in the hands of selected Directors under

Article 121 or ought to have restricted the affirmative vote to matters covered by Article 121A.

Further, in addition to C.A.Nos.13 and 14 of 2020, Tata Sons have also come up with 2 more appeals in C.A.Nos.263 and 264 of 2020 challenging the order passed by the NCLAT on 06-01-2020 on two interlocutory applications filed by ROC Mumbai seeking removal of certain remarks and observations against the ROC for having issued an amended certificate of incorporation to Tata Sons by striking-off the word “Public” and inserting the word “Private”. The said interlocutory applications were dismissed by NCLAT.

The Hon’ble Supreme Court in its detailed and elaborative judgment analysed the factual matrix and controversy between the parties. The Supreme Court also pointed out the relevant differences between the approach of the NCLT and NCLAT in the present case. The Hon’ble Apex Court stepped in and decided the outcome of the long-standing legal battle between the parties basing the judgment on material facts and point of law.

CONTENTIONS ON BEHALF OF TATA SONS, TATA GROUP COMPANIES AND TRUSTEES

Challenging the judgment of NCLAT, Mr. Harish Salve and Dr. Abhishek Manu Singhvi, learned Senior counsel for Tata Sons contended on several grounds.

- NCLAT lacked the jurisdiction to reinstate CPM as Chairman since the said relief was never actually sought before NCLAT.
- Father of CPM was inducted as a Non-Executive Director on 25-06-1980, though the Articles of Association did not confer any right of Directorship upon the SP Group.
- Removal of CPM was on account of the complete breakdown of trust between the other members of the Board and CPM.
- NCLAT failed to explain the prejudice and oppression of the Board and did not consider the aspects of the legal test under Section 241 and 242 of the Companies Act.
- Effects of the Amendment Act 53 of 2000 on a deemed to be a public company under Section 43A and the provisions of the 2013 Act, were not appreciated in correct perspective by the NCLAT while dealing with the question regarding conversion of Tata Sons into a private company.
- Even though Article 75 of the AoA was not found to be illegal, the NCLAT committed a serious error in whittling down the said Article.
- Direction to the majority group (Tata group) to consult the SP Group for all future appointments of Executive Chairman or Director, was wholly unsustainable in law.

CONTENTIONS ON BEHALF OF THE SP GROUP - The Tata Mistry Controversy

Learned Senior Counsel appearing on behalf of the SP Group raised various contentions both in defence of the judgment of NCLAT and for attacking NCLAT for not granting additional reliefs. The gist of the same is as follows:

- The trustees misused the Articles of Association (‘AoA’) to undermine the Board of Directors of Tata Sons and also caused erosion of their ability to exercise independent judgment and to act in the interest of the company.
- Tata Sons was a public company in form and conduct and hence the conversion of the company into a private company by a handwritten order of the RoC, effected at night just before NCLAT was to hear the appeals, was completely shocking.
- The removal of CPM was contrary and in complete violation of the procedure laid down under the AoA.

Additionally, on behalf of CPM, various other contentions were also raised,

such as:

- With the advent of the Companies Act, 2013, there is a paradigm shift in law from *'corporate majority'* or *'corporate democracy'* to *'corporate governance'* which includes principles of fairness.
- There was a series of acts of oppression and mismanagement including breach of Articles by the Tata Group.
- In the dealings of the majority, there was a clear lack of probity and honesty.
- Articles 104B, 121 and 121A have been misinterpreted, misconstrued and misapplied by the majority group.

CONTENTIONS OF THE ROC

Learned Solicitor General appearing on behalf of RoC contended on limited extent of justifying the action of RoC in issuing the amended certificate of incorporation to Tata Sons. He further submitted that the AoA contained provisions that come within the ambit of the definition of 'private company' under section 2(68) of the Act.

QUESTIONS OF LAW

After considering all the rival contentions and arguments, the Hon'ble Supreme Court formulated the following questions of law:

1. *Whether the formation of opinion by the Appellate Tribunal that the company's affairs have been or are being conducted in a manner prejudicial and oppressive to some members and that the facts otherwise justify the winding up of the company on just and equitable ground, is in tune with the well-settled principles and parameters, especially in the light of the fact that the findings of NCLT on facts were not individually and specifically overturned by the Appellate Tribunal?*
2. *Whether the reliefs granted and the directions issued by the Appellate Tribunal, including the reinstatement of CPM into the Board of Tata Sons and other Tata companies, are in consonance with the pleadings made, the reliefs sought and the powers available under Subsection (2) of Section 242?*
3. *Whether the Appellate Tribunal could have, in law, muted the power of the Company under Article 75 of the Articles of Association, to demand any member to transfer his ordinary shares, by simply injuncting the company from exercising such a right without setting aside the Article*
4. *Whether the characterisation by the Tribunal, of the affirmative voting rights available under Article 121 to the Directors nominated by the Trusts in terms of Article 104B, as oppressive and prejudicial, is justified especially after the challenge to these Articles have been given up expressly and whether the Tribunal could have granted a direction to RNT and the Nominee Directors virtually nullifying the effect of these Articles?*
5. *Whether the reconversion of Tata Sons from a public company into a private company, required the necessary approval under section 14 of the Companies Act, 2013 or at least an action under section 43A(4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT?*

OBSERVATIONS OF THE SUPREME COURT

The Hon'ble Apex Court answered the first question of law in favour of Appellants while observing as follows:

1. Every one of the allegations forming the basis of the complaint was dealt with by the NCLT and categorical findings based on evidence were recorded. None of these findings, except the one relating to the removal of CPM, was

specifically and individually overturned by NCLAT. All the observations were analysed in detail by the Hon'ble Court and the same was presented in a tabular form listing out all these allegations made in the complaint, the findings recorded by the NCLT with an indication of whether NCLAT dealt with the same or not.

2. The Hon'ble Court further observed that the real reason why the SP Group thought fit, quite tactfully, not to press for the reinstatement of CPM is that the mere termination of Directorship cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Sections 241 and 242. The Court further placed its reliance on the decision in *Hanuman Prasad Bagri & Ors. v. Bagress Cereals Pvt. Ltd.*[2]
3. It was further observed that the fact that as on the date of filing of the petition, the removal of CPM was only from the post of Executive Chairman and not that of the Director of the Company and the fact that in law, even the removal from Directorship can never be held to be an act of oppression or prejudice, was sufficient to throw the petition under Section 241 out, especially since the NCLAT chose not to interfere with the findings of fact on certain business decisions.
4. The Court further pointed out the fact that under Section 242, the primary focus of the Tribunal should not have been the validity of and justification for the removal of a person, unless the same is a result of conduct oppressive or prejudicial to some of the members. The Court further observed that the post of Executive Chairman is not statutorily recognised or regulated, though the post of a Director is.
5. Regarding invocation of the just and equitable clause, the Court relied on the Privy Council's judgment in *Loch v. John Blackwood*[3] wherein it was held that *"there must lie a justifiable lack of confidence in the conduct and management of the company's affairs, at the foundation of applications for winding up."* More importantly, *"the lack of confidence must spring not from dissatisfaction at being outvoted on the business affairs or on what is called the domestic policy of the company".* But, *"wherever the lack of confidence is rested on a lack of probity in the conduct of the company's affairs, then the former is justified by the latter."*
6. Relying on *Rajahmundry Electric Supply Corpn. Ltd. v. Nageshwara Rao*[4] *"that for the invocation of just and equitable clause, there must be a justifiable lack of confidence on the conduct of the directors, as held. A mere lack of confidence between the majority shareholders and minority shareholders would not be sufficient, as pointed out in S.P. Jain v. Kalinga Tubes Ltd.*[5]*"*
7. The Hon'ble Court further observed and held that *"But all these arguments lose sight of the nature of the company that Tata Sons is. As we have indicated elsewhere, Tata Sons is a principal investment holding Company, of which the majority shareholding is with philanthropic Trusts. The majority shareholders are not individuals or corporate entities having deep pockets into which the dividends find their way if the Company does well and declares dividends. The dividends that the Trusts get are to find their way eventually to the fulfilment of charitable purposes. Therefore, NCLAT should have raised the most fundamental question whether it would be equitable to wind up the Company and thereby starve to death those charitable Trusts, especially on the basis of uncharitable allegations of oppressive and prejudicial conduct. Therefore, the finding of NCLAT that the facts otherwise justify the winding up of the Company under the just and equitable clause, is completely flawed."*

The second question of law was also answered by the Hon'ble Court in favour of Appellants while observing as follows:

1. Removal and reinstatement are two different things. The original motive of the Complainant was to restrain Tata Sons from removing CPM as Director. Subsequently, there was a climb down and the complainant companies sought what they termed as "reinstatement" of a representative of the complainant companies and thereafter it modulated into a cry for proportionate representation of the Board.
2. NCLAT understood what the complainant companies and CPM truly wanted, though they attempted to camouflage their intentions with legal niceties. Therefore, despite there being no prayer for reinstatement of CPM either as a Director or as an Executive Chairman of Tata Sons, NCLAT directed the restoration of CPM as Executive Chairman of Tata Sons and as Director of Tata Companies for the rest of the tenure. However, the NCLAT failed to notice that the Board re-designated CPM as Executive Chairman, with effect from 29-12-2012 by a resolution, passed on 18-12-2012. The judgment of NCLAT was passed on 18-12-2019, by which time, a period of more than 7 years had passed from the date of CPM's appointment as Executive Chairman.
3. The question of reinstatement will not arise after the tenure of office had run its course. The Court further placed its reliance on decisions in *Raj Kumar Dey v. Tarapada Dey[6]* and *Mohd. Gazi v. State of Madhya Pradesh[7]*
4. The Hon'ble Court further observed that the architecture of Sections 241 and 242 does not permit the Tribunal to read into the Sections, a power to make an order (for reinstatement) which is barred by law vide Section 14 of the Specific Relief Act, 1963 with or without the amendment in 2018. The Court further opined that the Tribunal cannot make an order enforcing a contract that is dependent on personal qualifications such as those mentioned in Section 149 (6) of the Companies Act, 2013.
5. It was categorically held by the Hon'ble Apex Court that *"Thus the relief of reinstatement granted by the Tribunal, was too big a pill even for the complainant companies (and perhaps CPM) to swallow."*

The third question of law was also answered by the Hon'ble Court in favour of Appellants while observing as follows:

1. The complainant companies did not make a grievance out of Article 75 on the ground that it had been misused in the past and that such misuse tantamount to oppressive or prejudicial conduct to the interests of some of the members. The sine qua non for invoking Section 241 is that the affairs of the Company should have been conducted or are being conducted in a manner oppressive or prejudicial to some of the members. No single instance even of invocation of Article 75, leave alone misuse, is averred in the main company petition or the application for amendment.
2. It was further observed by the Hon'ble Court that *"a person who willingly became a shareholder and thereby subscribed to the Articles of Association and who was a willing and consenting party to the amendments carried out to those Articles, cannot later on turn around and challenge those Articles. The same would tantamount to requesting the Court to rewrite a contract to which he became a party with eyes wide open."*

The fourth question of law was also considered by the Hon'ble Court and answered in favour of Appellants while observing as follows:

1. The complainant companies sought for the deletion of the Article that necessitated the affirmative voting right of the majority of the Directors

nominated by the two Trusts. There was no prayer for restraining RNT and the nominee Directors of the Trusts from taking any decision in advance.

2. It was further observed by the Hon'ble Court that *"If the argument relating to corporate governance is carefully scrutinized in the context of the fact: (i) that a large industrial house whose origin and creation was familial, was willing to handover the mantle of heading the entire empire to a person like CPM (a rank outsider to the family); and (ii) that the identification of CPM as the successor to RNT was done by the very same nominees of the two Tata Trusts (who is now accused of interference), then it will be clear that Tata Group was guided by the principle of Corporate Governance (even without a statutory compulsion) and not by tightfisted control of the management of the affairs of the Group."*
3. The Hon'ble Court further held that "*whatever it be, the right to claim proportionate representation is not available even to a minority shareholder statutorily, both under the 1956 Act and under the 2013 Act. It is available only to a small shareholder, which S.P. Group is certainly not."*

The fifth question of law formulated for consideration was also answered in favour of Appellants while observing as follows:

1. Tata Sons was actually incorporated as a Private Limited Company but was deemed to have become a Public Limited Company, with effect from 01.02.1975, by virtue of Section 43A (1A) of the Companies Act, 1956. However, by virtue of the proviso to Subsection (1A), the AoA of the Company, continued to retain the provisions relating to the matters specified in sub-clauses (a), (b) and (c) of Clause (iii) of Subsection (1) of Section 3 of the 1956 Act.
2. Act 53 of 2000, removed the deeming fiction under Section 43A and the Companies Act, 2013 did not include any provision similar to Section 43A. Therefore, Tata Sons passed a resolution in its 99th Annual General Meeting held on 21.09.2017 to alter the Memorandum and Articles so as to insert the word "private" in between the words "Sons" and "Limited" in its name.
3. The Court further observed that there are two aspects to Subsection (2A). The first is that the very concept of "deemed to be public company" was washed out under Act 53 of 2000. The second aspect is the prescription of certain formalities to remove the remnants of the past. What was omitted to be done by Tata Sons from 2000 to 2013 was only the second aspect of Subsection (2A), for which Section 465 of the 2013 Act did not stand as an impediment. Section 43A(2A) continued to be in force till 30-01-2019 and hence the procedure adopted by Tata Sons and the RoC in July/August 2018 when section 43A(2A) was still available, was perfectly in order.
4. Thus, it was held by the Hon'ble Court that "Therefore, NCLAT was completely wrong in holding as though Tata Sons, in connivance with the Registrar of companies did something clandestinely, contrary to the procedure established by law. The request made by Tata Sons and the action taken by the Registrar of Companies to amend the Certificate of Incorporation were perfectly in order."

JUDGMENT

Consequently, in light of the aforesaid, the Hon'ble Supreme Court allowed all the appeals except C.A.No.1802 of 2020 in favour of the Appellants and set aside the order dated 18-12-2019 passed by NCLAT with the observations discussed hereinabove. Furthermore, the C.A.No.1802 of 2020 filed by the Respondents was dismissed with no orders as to costs.

DECISION ON APPLICATION FOR FAIR COMPENSATION

Peculiarly, an interlocutory application i.e. IA No. 11387 of 2020 was also filed by the SP Group during the course of proceedings, praying for a direction to the Appellants to cause a separation of ownership interests of SP Group in Tata Sons and other companies, through selective reduction of share capital. The SP Group further prayed for a 'fair compensation' effected through the transfer of proportionate shares of the underlying listed companies in lieu of its equity interests in Tata Sons.

The aforesaid application was also dismissed by the Hon'ble Court while observing that Article 75 of AoA is nothing but a provision for an exit option and that after challenging the same before NCLT, the SP Group cannot ask the Court to go into the question of fixation of fair value compensation for exercising an exit option. The Hon'ble Court further left it to the parties to take the Article 75 route or any other legally available route in this regard.

COMMENTS

Just like the popular television series 'Game of Thrones', this verdict of the Hon'ble Supreme Court of India also gave a *'bittersweet ending'* to this four-year-long tightly-fought legal battle between these two corporate giants.

The impugned order of the NCLAT which
contributed to mayhem and turmoil of uncertainty among businesses and the legal environment in India resulted in setting up a dangerous legal precedent. The decision of the NCLAT was craftily dealt with and overturned by the Apex Court. The said impugned order indeed suffered from numerous illegalities and the same was thus ipso facto liable to be nipped in the bud. The Hon'ble Supreme Court comprehensively and categorically dismissed the charges of oppression and mismanagement against Tata Sons since the petition of the SP Group failed to demonstrate or sustain the veracity of those serious allegations. In the hindsight, while the Supreme Court delivered a sweeping verdict in favour of the Tata Group, it is also pertinent to note that no opinion was expressed by the Hon'ble Court either on separation of ownership interest of SP Group in Tata Sons or on the 'fair valuation' of the Tata Group. The Supreme Court refused to entertain the application filed by the SP group since it necessitated adjudication on facts and left the same on the contesting parties to take recourse to the AoA or any other legally available route.

At this juncture, it is crystal clear that the exit of the SP Group from Tata Sons is inevitable. While the issue of 'fair valuation' is yet to be decided, the verdict of the Hon'ble Apex Court and its refusal to entertain the said interlocutory application filed by the SP group, is certainly going to impact the bargaining power of the SP group in future negotiations with the Tata Group to arrive at the fair value compensation for exercising an exit option. The judgment of the Hon'ble Supreme Court essentially settled the endless dispute between the parties involved and provides a clear interpretation of the laws and issues involved in the instant appeals. And that is how the Hon'ble Supreme Court of India successfully overturned a pyrrhic victory into an irenic victory.

- [1] 2021 SCC OnLine SC 272.
- [2] (2001) 4 SCC 420.
- [3] [1924] AC 783.

- [4] (1955) 2 SCR 1066.
- [5] AIR 1965 SC 1535.
- [6] (1987) 4 SCC 398.
- [7] (2000) 4 SCC 342.

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