

## National Company Law Tribunal, Mumbai Bench

### Case summary - Cyrus Investments Private Limited & Another v. Tata Sons Limited & Others

The National Company Law Tribunal, Mumbai Bench (“NCLT”) delivered a landmark decision in the case of *Cyrus Investments Private Limited. & Another (“Petitioners”) v. Tata Sons Limited & Others<sup>1</sup>* (“Respondents”) on 12 July 2018 pertaining to oppression and mismanagement under the company law regime. The decision was delivered by the Bench comprising Hon’ble Mr. B.S.V. Prakash Kumar, Member (Judicial) and Hon’ble Mr. V. Nallasenapathy, Member (Technical).

#### Facts of the case:

The Petitioners, minority shareholders of Tata Sons Limited (“Company”), holding 18.37% equity shareholding in the Company had filed a company petition before the NCLT against the Company, Mr. Ratan Tata (former chairman of the Company), Mr. Noshir Soonawala (a trustee of Tata Trusts) and various other persons, wherein they had alleged acts of oppression and mismanagement in the affairs of the Company which includes grounds of expulsion of Mr. Cyrus Mistry.

Further, other allegations were raised by the Petitioners during the proceedings, which include that the articles of association (“AOA”) of the Company were oppressive against the Petitioners. Furthermore, it was also alleged by the Petitioners that Mr. Ratan Tata was involved in insider trading and was abusing his powers by acting as a shadow director (along with Mr. Noshir Soonawala), funding terrorist activities, enriching other parties at the cost of the Company etc.

Hence, based on the abovementioned allegations, the Petitioners sought relief under Sections 241-244 of the Companies Act, 2013 (“Act”).

#### Allegations and NCLT Ruling:

Key highlights of the judgement are summarised below:

1. ***Mr. Ratan Tata and Mr. Noshir Soonawala acted as shadow director in influencing the board of directors of the Company and interference to the affairs of the Company.***

The concept of shadow director has not been incorporated in the Act or the Companies Act 1956. However, the concept has been included in the definition of "officer who is in default" under Section 2(60) of the Act which deals with causing default through the board of directors. Therefore, the NCLT dismissed the allegation of the Petitioners on ground that advices and suggestions of Mr. Ratan Tata and Mr. Noshir Soonawala as shadow director deserves no merit to be treated as actions falling under Section 241 and 242 of the Act.

Further, NCLT stated that any advice and suggestions by shareholders of the company should be treated for the benefit of the company and not as interference, as long as it is not fraught/accompanied with a *mala fide* intention. Once the advice (solicited or unsolicited) is accomplished through the company's board of directors then, the board members privy to the approval cannot complain over the same. Thus, NCLT held no merit on the allegation on ground of interference of Mr. Ratan Tata, who is the Chairman of majority shareholders of the Company and Mr. Noshir Soonawala, who is one of the trustees of the Tata Trust.

2. ***Expulsion of Mr. Cyrus Mistry as executive chairman of the Company in violation of principle of justice, transparency and righteousness.***

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<sup>1</sup> Order dated 12.07.2018 passed in Company Petition No. 82(MB)/ 2016

The NCLT rejected the argument of Petitioners that Mr. Cyrus Mistry was removed as executive chairman of the Company as he was attempting to rectify irregularities and stop mis-governance of Tata group. The NCLT held that the removal of Mr. Cyrus Mistry was on ground that the board of directors and majority of shareholders of the Company had lost confidence in him. The Petitioners failed to prove the ground on which removal of Mr. Cyrus Mistry would become a grievance to minority shareholders since he was not appointed as the executive chairman on the basis of his minority shareholding in the Company. Moreover, directorial issues are not dealt under Section 241 of the Act which only addresses the shareholder grievances. The board of directors are competent and within their legal rights to remove Mr. Cyrus Mistry from his position as the executive chairman of the Company.

Further, the NCLT held that the contention of Petitioners regarding the violation of AOA of the Company or any provisions of the Act in removing Mr. Cyrus Mistry should be dealt by the court of civil law in order to possibly declare such action as invalid in the eye of law, if any.

3. ***Corporate governance lapses and breach of fiduciary duty by the board of directors of the Company.***

The NCLT relied on the UK law to deal with the contention of the Petitioners that the Company is not governed by corporate governance in conducting its affairs as there is no specific definition of corporate governance in the Act. Corporate governance essentially aims to have transparency of operations of a corporate, accountability towards its shareholders and fairness in dealings of the affairs of a company. Thus, the NCLT concluded that if in case there was no accountability towards the shareholders of the Company then, it is Mr. Cyrus Mistry himself, who was the executive chairman of the Company, who can be held liable for such lapse of corporate governance. The NCLT stated that principle of corporate governance is not defeated by the right of majority to take decisions on the board.

4. ***Conflict of interest in the nominated directors of Tata Trust in attending the meeting who brought motion for removal of Mr. Cyrus Mistry as executive chairman.***

The NCLT stated that if any of the shareholder or director gives any requisition for removal of director or executive chairman, it cannot be said that since they have interest in the removal they shall abstain from attending the board meeting and voting. The interest that has been mentioned in Section 166 and 184 of the Act should be taken in the spirit that it has been mentioned in respect to commercial transactions. Thus, the NCLT found no merit in the allegation of the Petitioners in this regard and dismissed the same.

5. ***Act of oppression and mismanagement in removal of Mr. Cyrus Mistry from position of director.***

The NCLT did not find any merit in the allegation of the Petitioners that the removal of Mr. Cyrus Mistry from the position of director falls within ambit of Section 241 of the Act and held that Mr. Cyrus Mistry was removed from his position as a director due to the fact that he had leaked the sensitive information of the Company to the media, admittedly sent the Company's information to income tax authorities and openly came out against the board of directors and the trusts of the Company.

6. ***Business of Nano car project continued to be undertaken by Tata Motors Limited ("TML") upon persistence of Mr. Ratan Tata, incurring huge loss to the Company and further divulging sensitive information of TML to Jayem Automotives Private Limited ("Jayem Auto"), by Mr. Ratan Tata in which he made a significant investment.***

The Petitioners failed to prove that Mr. Ratan Tata was resisting the closure of Nano car project. Further, the Petitioners also failed to provide any material evidence to show that the regular

meeting of Mr. Tata with Mr. Anand, who is managing director of Jayem Auto, was to do some harm to TML and that Jayem Auto profited at the cost of TML on account of Mr. Ratan Tata leaking commercially sensitive information of TML, if any. Thus, the NCLT dismissed the aforementioned allegation of the Petitioners.

The NCLT held that the Petitioners tried to make their grievance in subsidiary company as grievance of the holding company but failed to make TML (subsidiary company of the Company) as respondent in the case, thus, the people who actually dealt with the matter could not appear before the NCLT.

7. ***Breach of Securities Exchange Board of India (“SEBI”) regulations on prohibition of insider trading by actions of Mr. Ratan Tata.***

The Petitioners failed to provide any evidence to prove that Mr. Ratan Tata traded the securities of TML and made gains/avoided loss based on the leaking of Unpublished Price Sensitive Information (“UPSI”) of TML. Further, the Petitioners also failed to provide any material evidence proving that Mr. Ratan Tata himself asked for any information in this regard. The NCLT held that allegations of insider trading were raised at a pre-mature stage and should be dealt only by the SEBI. The NCLT stated that the person alleging insider trading must fulfil dual condition: (i) to prove that the alleged information is an UPSI, (ii) the person received such information has used/passed on/traded based on that UPSI to make profit or to avoid loss. Thus, the NCLT did not find any merit in the aforementioned allegation of the Petitioner.

8. ***Overpriced purchase of Corus Group Plc (“Corus”) and Mr. Ratan Tata acting as an obstacle for selling Corus despite its long bleeding of Tata Steel Limited (“TSL”) or entering into joint venture with ThyssenKrupp.***

The Petitioners failed to prove that Mr. Cyrus Mistry had raised any objection for the acquisition of Corus, when he was acting as a director of TSL, and the Petitioners also failed to provide any substantial evidence that would show that the price paid by TSL for the purchase of Corus was overpriced.

The NCLT dismissed the allegation of Petitioners as acquisition of Corus was a unanimous decision under due governance process without dissent from any of the shareholders of TSL.

The Petitioners also failed to provide any material documents or correspondence to prove that Mr. Ratan Tata had objected Mr. Cyrus Mistry from entering into a joint venture with ThyssenKrupp. Further, Petitioners failed to make TSL party to the suit. Therefore, the NCLT dismissed the allegation of the Petitioner in this regard.

9. ***Oppressive/prejudicial act of filing an application for conversion of the Company making it private from public, without altering its AOA.***

The Petitioners failed to prove any violation committed by the Company in filing an application to declare it as a private company from a public company. The Petitioners also failed to prove that such an act of conversion will amount to violation of AOA of the Company. The NCLT held that the Company has not altered any of the articles in the AOA to bring any new entrenchment to prejudice the right of the Petitioners. Thus, NCLT did not find any merit in the aforementioned allegation of the Petitioners.

The NCLT also relied on the case cited by the Petitioners, *Dr. M.A.M. Ramaswamy Chettiar of Chettinad Charitable Trust v. M/s. Chettinad Cement Corporation Ltd*<sup>2</sup>, in this case the National Company Law Appellate Tribunal dismissed the plea of the appellant (who was ousted

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<sup>2</sup> 2017 SCC OnLine NCLAT 403

from the respondent company) and held that conversion proceedings of the respondent company cannot be stayed or stalled on the ground that the appellant would initiate a proceeding under Section 241 of the Act against the respondent company. Thus, the NCLT held that citing this case by the Petitioners proved to be against them.

10. ***Oppressiveness of the AOA of the Company against the Petitioners and abuse of the same by Mr. Ratan Tata.***

The Petitioners alleged that certain articles under the AOA of the Company including articles 104B, 121, 121A are not exercised in a judicious manner and ensure that Sir Ratan Tata Trust and Sir Dorabji Tata Trust control the affairs of the Company. However, the Petitioners failed to prove that they dissented or voted against the resolution to the modifications to the AOA of the Company at any time in the past. Thus, the NCLT held that complaints cannot be raised by the parties having acquiesced to an action.

Further, the Petitioners also alleged that article 75 of the AOA is oppressive against them. Article 75 of the AOA of the Company states that the Company may at any time transfer the ordinary shares of any shareholder (including minority shareholders) by passing a special resolution in the general meeting of the ordinary shareholders of the Company. The NCLT held that the article 75 has been existing in the AOA of the Company since its incorporation. The article has been there by the time the Petitioners have acquired shareholding in the Company and was alleged by Mr. Cyrus Mistry only after removal of him as the executive chairman.

Thus, NCLT did not find any merit in the allegation of the Petitioners that the AOA of the Company are oppressive against the Petitioners and dismissed the same.

11. ***Entering into the joint venture between AirAsia (India) Limited and Telstra Trade Place Private Limited (“Joint Venture”) was thrust upon Mr. Cyrus Mistry as fait accompli. Fraudulent hawala transaction as indicated in Deloitte Forensic Report pertaining to the Joint Venture and funding of a terrorist by Mr. Ratan Tata from the funds raised by the fraudulent transaction.***

The Petitioners failed to provide any material evidence present in the minutes of the meeting (for entering into Joint Venture), disclosing objection raised by Mr. Cyrus Mistry for starting the Joint Venture. Moreover, Mr. Cyrus Mistry also previously agreed to enhance investment in AirAsia (India) Limited and just before he was removed from the chairmanship of the Company in that following month, he approved release of funds to AirAsia (India) Limited. Thus, the NCLT dismissed the allegation of the Petitioners that the Joint Venture was thrust upon Mr. Cyrus Mistry, leaving him with no option but to accept it.

The Deloitte Forensic Report had reported that the former chief executive officer of AirAsia (India) Limited had committed fraud. The Petitioners failed to prove the connection of the fraud committed by former chief executive officer with any of the directors of AirAsia (India) Limited. The NCLT stated that any fraud committed by a chief executive officer of a company cannot be recognised as fraud committed by the directors of that company. Thus, the NCLT dismissed the aforementioned allegation of the Petitioners.

Further, the Petitioners had alleged that Mr. Ratan Tata had been funding a terrorist, through hawala transaction with diversion of AirAsia India funds, however, they failed to provide any evidence for the same.

12. ***Conferring contracts upon Mr. Mehli Mistry and enriching him at cost of the Tata Power Limited.***

The Petitioners failed to provide any evidence to prove that the transaction with Mr. Mehli Mistry had caused any financial loss to Tata Power Limited and in turn a financial loss to the Company which is likely to cause difference to the dividend. The NCLT held that the allegation of the Petitioners in this regard are not maintainable under Section 241 of the Act and found no cause of action in the issue.

13. ***Illegal sale of the immovable property of the Company by Mr. Ratan Tata.***

The transaction in question of illegal sale of immovable property of the Company by Mr. Ratan Tata took place almost sixteen years back and Mr. Ratan Tata has not been in the management of the Company since 2012. Hence, the NCLT concluded that allegations do not fall within parameters of Section 241 of the Act.

14. ***Proximity of Mr. Ratan Tata with Mr. Siva and conducting affairs in a manner prejudicial / oppressive to the interest of Petitioners.***

The Petitioners failed to prove that Mr. Ratan Tata helped in providing loan to Siva Group company over pledging of shares of Tata Tele Services Limited (“TTSL”) as security. The NCLT held that giving loan by one of the group companies to an entity, after conducting due diligence and regular audit of its account cannot be smeared as undue advantage. Further, the NCLT held that acquisition of Dishnet DSL from the Siva Group, when it had the highest revenue amongst its peers, cannot be an act prejudice to the Company and the Petitioners failed to prove that Mr. Ratan Tata had made any illicit gains out of it. The Petitioners also failed to make TTSL a party to the proceedings. Thus, the Petitioners allegations against Mr. Ratan Tata also failed on ground of basic principle of non-joinder of parties.

The NCLT dismissed the allegation made by the Petitioners that there was leaking of information regarding the board meeting discussions by the directors nominated by Tata Trusts, as the Petitioners failed to place any material evidence supporting this contention. The resolution to initiate action against Mr. Siva was proposed by Mr. Nitin Noria, who is the trust nominee director and not by Mr. Cyrus Mistry and furthermore, the same was never objected by Mr. Ratan Tata.

**Analysis of the case:**

Under the Act, oppression and mismanagement have been compiled under one section making the requirement of ‘just and equitable grounds for winding up of a company’ applicable to both the cases. Thus, under the Act, a petitioner approaching the National Company Law Tribunal under Section 241 of the Act contending mismanagement and oppression, will now have to satisfy the following twin conditions of: (i) mismanagement and (ii) the existence of just and equitable ground for winding up the company.

In the present case, the Petitioners had raised various allegation against the Respondents. The NCLT has carefully analysed each and every contention and dissected them. The NCLT dismissed the company petition on finding the issues raised by the Petitioners to be vague and without any merit. The bone of contention, due to which the case was filed, was in regard to the ousting of Mr. Cyrus Mistry from his position as the executive chairman, which was alleged by the Petitioners to be done on *mala fide* grounds, however the Petitioners were unable to produce any evidence reflecting the same and the NCLT had rightfully held that the board of directors of a company have the right to remove a director in case he/she loses confidence of board of directors and shareholders. Further, the other allegation raised by the Petitioners, were all without merits as the Petitioners failed to produce any material evidence to back their allegations and to satisfy the tribunal.

The NCLT's judgment made sure that the majority shareholders have an absolute control over a company's affairs and minority shareholders will have to prove that the conduct of majority shareholders were oppressive and illegal in order to constitute mismanagement and oppression. As seen in the case at hand, the Petitioners had gravely failed to make a case of oppression of the minority shareholders and the mismanagement regarding the conduct of affairs of the Company.

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