'Corporate Governance' Vis-À-Vis 'Oppression and Mismanagement': A Case Study of Mr. Ratan Tata and Mr. Cyrus Mistry Dispute

Keshav Kaushik[1]

Abstract

'Corporate Governance', from just being a concept in books, has today become a revered practice among corporates around the world. For a company to flourish and at the same time maintain ethical business standards, 'governance' is a vital link but 'oppression and mismanagement' is a factor that unsettles it. This notion of 'governance' has witnessed significant developments recently and the biggest reason has been the court dispute between Mr. Ratan Tata and Mr. Cyrus Mistry. The Tata Group, which only had seven chairmen in its 150 year of existence, abruptly removed Mr. Mistry from its chairmanship in 2016 and it was not a happy farewell at all. This unusual step taken by the Tata Board of Directors ultimately culminated into one the most infamous and talked about legal battles of the corporate world. This article has been an attempt to understand as to how the relations between two of the biggest corporate houses, with almost five decades of relationship, deteriorated. How the words, 'Charisma vs. Competency', fares in this on-going legal battle. And why, the legal battle which Mr. Cyrus ensued, was not to get back the chair but to prove the point that the minority shareholders interest is co-extensive with majority shareholders. Moreover, the former's interest cannot be marred by latter as and when they are not in agreement with each other.

I. INTRODUCTION

"Power and Wealth are not two of my main stakes."

This statement is by a personality who doesn't need any introduction. He is one of the most successful businessman India has ever produced; none other than Mr. Ratan Tata (hereinafter referred as 'Mr. Tata'). However, this statement seems to be quite ironical in the current scenario when the Tata's find themselves in one of the biggest corporate court room battle. Being the Former Chairman and erstwhile majority shareholder of Tata Group's holding company, 'Tata Sons', Mr. Tata held the reign of the Company for about 21 years and at last handed down his legacy to Mr. Cyrus Mistry (hereinafter referred as 'Mr. Mistry') who has been the managing director of Shapoorji Pallonji & Company which is part of the Shapoorji Pallonji Group (hereinafter referred as 'SP Group'). The Tata group in itself is a honey comb maze and in this context very unique. It comprises of Trust, Family and Group Companies of Tata's on one hand and SP Group on the other. Both have conducted the affairs of the Company with mutual trust and assurance for more than five decades.[2] This SP Group holds around 18.37% share in Tata Sons which waters down to an investment of around ₹1,00,000Crores.

In the year 2013, Mr. Tata bid adieu to the chairmanship of Tata Group with a belief that his successor, Mr. Mistry will take the company to new heights and this belief was rightly placed as he was handpicked by Mr. Tata himself. Mr. Mistry was privileged enough because not many people have received such recognition. He was the man who was accredited by the Economist as

[1] Keshav Kaushik, Himachal Pradesh National Law University.
[2] Cyrus Investment Pvt. Ltd. v. Tata Sons Ltd. & Ors., Company Appeal (AT) No. 254 (2018).

the most important industrialist in both India & Britain[3] but astoundingly found himself being ousted from the prestigious Tata group in a span of 4 years and it was not a happy farewell after all. This abrupt expulsion culminated into an all-out war between these two major Indian Corporate houses and this war struck at the very core of the corporate governance principles.

'Governance', a relatively familiar term in the corporate world, stipulates parameters of accountability, control and reporting function of the Board of Directors (BOD) of corporate entities. It also calls for establishing a proper and viable relationship among the various stakeholders of different companies. On the other hand, to manage a company in such a manner that the different stakeholders and their interest is protected, 'Corporate Governance' provides the institutional setup. Total transparency, accountability and integrity in management, which also include non-executive directors and their role in the corporate structure, are the most important attributes of corporate governance. [4] Successful business enterprises and sound corporate governance practices followed by them are evidence of the fact that there is a high correlation between business prosperity and corporate governance. [5] In the recent decades, corporate governance has become a very important tool for the protection of shareholders and also to maximize long term values of their investment.[6]

Through the course of this article, the author, with this background, will try to find an answer to an impeding question i.e. whether the unfolding of the corporate struggle between Mr. Tata and Mr. Mistry struck at the very core of corporate governance principle and whether this dispute is a classic example of 'Oppression and Mismanagement'?

II. Clash of Tycoons: The Battle between Mr. Ratan Tata And Mr. Cyrus Mistry.

'Kingship knows no kinship.*'* The infamous 1st Turkish Sultan of Delhi, Alauddin Khilji, used this phrase for the first time and the interpretation of the same is important to understand as to why these two leading business houses of India *i.e*. Tata camp & Mistry camp are locked up in a long drawn legal battle.[7]When we refer to the word 'kinship' it basically denotes a sense of relationship and also a similar orientation in understanding. Therefore, the use of these words by Khilji points towards the fact that the ruler should be fair, should have a sense of belonging, should be just, dispassionate and should treat all his subjects equally.[8]However, both the protagonists of this dramatis personae i.e. Mr. Tata and Mr. Mistry have made different inferences of the words spoken by a ruler who lived in 13th Century to justify their own interests and actions in the corporate legal dispute taking place at the Tata Group(which has a market capitalisation of around ₹6,00,000 lac crores).[9]

---

[3] *The Odd Couple*, THE ECONOMIST (Oct. 3, 2013, 11:00AM), https://www.Economist.Com/Britain/2013/10/03/The-Odd-Couple.

[4] Chapter 1- Overview of Corporate Governance, SHODHGANGA (May 3, 2020, 10:04AM), https://docplayer.Net/104009211-Chapter-1-Overview-Of-Corporate-Governance.html.

[5] *Ibid*.

[6] S. K. BHATIA, BUSINESS ETHICS AND CORPORATE GOVERNANCE (1t ed. 2007).

[7] Aveek Datta, *Tata v. Mistry: The Inside Story*, FORBES INDIA (Nov. 7, 2016, 01:00PM), http://www.forbesindia.Com/Article/Battle-At-Bombay-House/Tata-Vs-Mistry-The-Inside-Story/44721/1.

[8] *Ibid*.

[9] *Ibid*.

With the removal of Mr. Mistry from his post which can rightly be termed as 'coup' and the reinstatement of former chairman Mr. Tata, it all seemed quite obvious that Mr. Mistry, along with his faithful, will protect their interest and thus, a prolonged legal battle seemed quite inevitable. Not to the surprise of many, the swords were finally drawn and Mr. Mistry approached the National Company Law Tribunal (NCLT) and contested against the decision of the board which resulted in his ouster. This battle has been a see-saw affair as both the sides have tasted success and defeat, and it is not yet over as it has reached to its final destination, the Honourable Supreme Court.

The burning question that has taken everyone by surprise is the fact that 'Tata' which is considered not only one of the most successful brands ever, but also a name which boasts of keeping ethical standards of business practices on a very high pedestrian, has found itself on the receiving end of all such allegations. The report on corporate governance published by Tata Motors is a suitable model to exemplify upon the governance standards which the company has set for itself. It states, "*As a Tata Company, the Company's philosophy on Corporate Governance is founded upon a rich legacy of fair, ethical and transparent governance practices, many of which were in place even before they were mandated by adopting the highest standards of professionalism, honesty, integrity and ethical behaviour.*"[10]

Surprisingly, these ethical standards were also being practiced when it came to the relationship between the two groups as well. This was evident from the fact that even though the Articles of Association never reflected in a formal manner the relationship that these two business houses shared with each other but such a long-term relationship spanning for more than five decades had resulted in a legitimate expectation to treat each other in an honest, unbiased and fair manner which was based on the collective faith and assurance.[11]

However, this relationship of trust received a big jolt when Mr. Mistry was abruptly removed as chairman by Board of Directors. These turns of events took everyone by surprise, including those who were following the Tata's closely. At the time of removal, the group did not cite any official reason for this step but later on, in the letter sent to the stakeholders before EGM, the Tata group tried to elaborate upon such sudden axing of Mr. Mistry from the post of Chairman.

The letter did not just give the reasons for the ouster but also made some serious allegations against Mr. Mistry. It went on to say that the selection committee was misled by Mr. Mistry in 2011 as he made various promises and came up with new management structure which was not brought into action. The letter alleged that on being asked by Mr. Mistry to disconnect himself from his family enterprises, the same was agreed but later he retracted from this position, thus, hitting at the very core of governance. The group alleged that even when it faced downfall during Mr. Mistry's tenure, he showed no concern and instead, increased the dependence on Tata Consultancy Services (TCS). The group labelled Mr. Mistry to be authoritative and one who took central control of all major Tata operating companies, thus, diluting the Tata Sons representation, which was against the past practices. After removal, Mr. Mistry was asked to step down from other posts too; however, he retorted to media leaks which further damaged company's reputation. A repeated allegation was also made that for every failure of the group, Mr. Mistry blamed everything on the

[10] Tata Motors, *71st Annual Report on Corporate Governance*, TATA MOTORS (Mar. 14, 2020, 10:04AM), http://www.Tatamotors.Com/Investors/Financials/71-Ar-html/Report-Corp-Gov.html.
[11] *Supra* note 2.

past, terming it to be legacy issues. Therefore, basing their arguments on the above stated facts, the Tata Group made the abrupt removal of Mr. Mistry as he failed to live up to the 'True Sense of Tata Philosophy'.[12]

However, after the removal, Mr. Mistry in his epistle written to Tata Sons showed the 'hidden side of the moon' and rightly stated that all such allegations cannot be blindly trusted. Mr. Mistry said that his shocking removal was a business of invalidity and illegality. He alleged that changes in decision making process created 'alternate power centres' in Tata Group. He further resisted that his position as chairman was nothing short of a 'lame duck'.[13] These power centres' were rightly pointed out by the NCLAT by analysing the interplay between various Articles of Association. Mr. Mistry stated that at the time of his appointment he was promised a free hand but later on the rules of engagement between the Tata family Trusts and the Board of Tata Sons were changed by modifying the Articles of Association. He raised corporate governance issues that the family trust's representatives were acting as 'mere postmen' and left meetings of the board in between to receive instructions by Mr. Tata. Here it is important to note that two-third shares of Tata Sons are being held by the family trust.[14]

It was further alleged by Mr. Mistry that the group was pushed to venture into the aviation sector by Mr. Tata and in lieu of the same, Mr. Mistry had to partner with Singapore Airlines and Air Asia as well. Moreover, it was stated that the group had to make higher infusion of capital than what was earlier committed to these airlines. He also flagged the issue relating fraudulent transactions amounting to 22 Crores which involved parties from Singapore and India, which were non-existent.[15]These are some of the instances which were handpicked to throw some light upon the fact as to how deep the problem had penetrated between two groups, that shared a bond of mutual trust and confidence for more than four decades. The biggest reason as to why this bond eroded was the lack of governance, or rather, ethical governance.

III. CORPORATE GOVERNANCE

'Corporate Governance' is the current buzzword in India as well as all over the world.[16] The expression, corporate governance, started appearing in Law Journals of America during 1970's. Later during 1980's the same expression was imported into U.K.[17]This term gained momentum when a lot of scandals (Maxwell, Polly Peck, Barings), which hit the City of London and the UK financial market during the late 1980's. This led to the birth of the Cadbury Committee on the

[12] BS Web Team, *Full Text: Why Tata Sons Lost Confidence In Cyrus Mistry*, BUSINESS STANDARD (Mar. 10, 2020, 02:00PM), https://www.Business-Standard.Com/Article/Companies/Full-Text-Why-Tata-Sons-Lost-Confidence-In-Cyrus-Mistry-116121200056_1.html.

[13] Dev Chatterjee & Raghavendra Kamath, *I Was Made A Lame Duck Chairman: Cyrus Mistry*, BUSINESS STANDARD (Mar. 14, 2020, 11:00AM), https://www.BusinessStandard.Com/Article/Companies/I-Was-Made-A-Lame-Duck-Chairman-Cyrus-Mistry 116102700005_1.html.

[14] *Cyrus Mistry's Letter Bomb: The Original Letter He Sent to Tata Sons Board*, THE ECONOMIC TIMES (Jan. 31, 2016, 10:00AM), https://Economictimes.Indiatimes.Com/News/Company/Corporate-Trends/Cyrus-Mistrys-Letter-Bomb-The-Original-Letter-He-Sent-To-Tata-SonsBoard/Articleshow/55072360.cms.

[15] Reuters, *Tata Group Could See $18 Billion In Writedowns*, THE TIMES OF INDIA BUSINESS (Jan. 31, 2020, 02:00PM), https://Timesofindia.Indiatimes.Com/Business/India-Business/Cyrus-Mistry-Says-Tata-Group-Could-See-18-Billion-InWritedowns/Articleshow/55070624.cms.

[16] DR. K.R. CHANDRATRE, CORPORATE GOVERNANCE- A PRACTICAL HANDBOOK (1t ed. 2010).

[17] RICHARD SMERDON, A PRACTICAL GUIDE TO CORPORATE GOVERNANCE (4h ed. 2010).

Corporate Governance in 1981 setup by Financial Reporting Council of the London Stock Exchange and the Accounting Profession.

Various thinkers, experts and committees from both India and around have tried defining corporate governance and some important definitions are as follows: Cadbury committee (UK), 1992 has defined corporate governance as:

> 'Corporate Governance is the system by which companies are directed and controlled. It encompasses the entire mechanics of the functioning of a company and attempts to put in place a system of checks and balances between the Shareholders, Directors, Employees, Auditor and the Management.'[18]

Late Shri Atal Bihari Vajpayee, our former Prime Minister expressed his views on corporate governance as:

> 'International business experiences over the few years have clearly brought corporate governance in the limelight. However, the issue still couldn't get an appropriate and conclusive answer. Numerous debates, discussion, discourses and documentation, have broadly projected corporate governance as multifaceted as well as multidisciplinary phenomena. And it involves BOD, shareholders, stakeholders, customers, employees and society at large. To build up, an environment of trust and confidence among all the components, though having competing as well as conflicting interest is a celebrated manifesto of corporate governance. On a tree, one may visualize fruits of more than one variety and he finds himself in wonderland.'[19]

The contribution that corporate governance made to businesses both in terms of their accountability and prosperity shows its importance in the present-day context.[20] While ensuring fairness in dealings among all the stakeholders of a company and the society at large, corporate governance plays a major role in shareholders' value maximisation in the corporation. Transparency, a factor on which corporate governance hinges as it helps in raising the level of confidence and trust between the management and other stakeholders as to how a company is being run. The owners and managers of a company act as every shareholders' trustees and it is their responsibility to protect the investment.[21]

For a business to prosper a lot of hard work and sweat is invested, it is not something which can be commanded. Prosperity is a unique blend of different stakeholders; leadership of top brass, teamwork of management, enterprise and experience of people working in the company and their skill set. There is no such straight jacket formula that can guarantee prosperity and it is only when all these pieces work in perfect sync that a business prospers. One of the most important aspects that lead to this perfect synchronisation is 'accountability' and it requires proper rules and regulation, in which disclosure is the top most elements.[22]

---

[18] Adrian Cadbury, *The Financial Aspects of Corporate Governance*, UNIVERSITY OF CAMBRIDGE JUDGE BUSINESS SCHOOL (Feb. 5, 2020, 01:00PM), https://Ecgi.Global/Sites/Default/Files//Codes/Documents/Cadbury.pdf.
[19] *Supra* note 3.
[20] Ronnie Hampel, *Committee On Corporate Governance: Final Report 1998*, EUROPEAN CORPORATE GOVERNANCE INSTITUTE (Feb. 5, 2020, 02:00PM), http://www.Ecgi.Org/Codes/Documents/Hampel.pdf.
[21] Shri N.R. Narayana Murthy, National Foundation for Corporate Governance (Feb. 6, 2020, 12:00 PM), http://www.Nfcg.In/Introduction-Page-10.
[22] *Ibid*.

In the Indian context the notion of Corporate Governance is fairly new. CII (Confederation of Indian Industry) set up a task force under the chairmanship of Mr. Rahul Bajaj in the year 1995 and released a code by the name "*Desirable Corporate Governance*" in 1998 which was voluntary in nature. Various committees were setup by SEBI as well, among them, Kumar Mangalam Birla Committee (2000) dealing with mandatory and non-mandatory disclosure requirements, Narayana Murthy Committee (2002) focussing on disclosure of business risk, responsibility of audit committee etc. and also Naresh Chandra Committee (2002) covering auditor-company relationship are the notable ones.

The 'Kumar Mangalam Birla Committee on Corporate Governance' and the recommendation given by them were implemented by the regulator SEBI in the form of 'Listing Agreement'. One of the most important clauses i.e. clause 49 of the 'Listing Agreement' directly relates to corporate governance as it requires the companies that are listed in the stock exchanges to comply with various disclosure requirements which are essential for transparency and accountability. SEBI by its 'Press Release No. PR 49, dated 21st February, 2000' introduced Clause 49 for the first time. It was later amended in 2005 and then in 2014.[23]

The revised clause 49 lays down overall framework or objectives of requirements of Clause 49 and companies are expected to interpret and apply those provisions in alignment with the principles.[24]Some of the key changes that were made in 2014 amendment were, (i) Independent Directors and there tenure; (ii)Independent Directors and there formal letter of appointment; (iii)Succession Plan for Board/Sr.Management; (iv)Compulsory whistle-blower mechanism; (v)Related Party Transactions; and (vi) Compulsory Electronic voting for all shareholders resolutions (new Clause 35B).[25]

The latest report in this series is of Uday Kotak Committee on Corporate Governance. This report, in the words of Mr. Uday Kotak himself, "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."[26]

The entire dispute of the Tata-Mistry has revolved around the interplay of these principles and how these principles have not been followed in true sense, thus, leading to 'oppression and mismanagement'. Now the question that was asked initially in the article will be dealt as under.

IV. Oppression And Mismanagement

'The nascent debate on corporate governance in India has tended to draw heavily on the large

[23] SEBI, "Circular No. cfd/Policy Cell/2/2014" (2014).
[24] *Supra* note 14.
[25] *Supra* note 20.
[26] Uday Kotak, R*eport Of The Committee On Corporate Governance 2017*, SEBI (Feb. 12, 2020, 03:00PM), https://www.Sebi.Gov.In/Reports/Reports/Oct-2017/Report-Of-The-Committee-On-Corporate-Governance_36177.html.

Anglo-American literature on the subject. However, the governance issue in the US or the UK is essentially that of disciplining the management who have ceased to be effectively accountable to the owners. The primary problem in the Indian corporate sector is that of disciplining the dominant shareholder and protecting the minority shareholders.'[27]

If we refer to the corporate model followed in some of the developed countries like USA, United Kingdom and Canada, we find a clear distinction between the owners of the company and those who manages it. The board in these companies only act as a bridge between both the parties and this scheme is known as 'The Outsider Model'.

However, when we talk of the Indian Perspective, the model that is followed is 'The Insider Model.' In the entire governance setup of a company, the board plays the central role. It is generally perceived that corporate governance is a struggle between owners of the company and the management. However, in India, the bone of contention is between the shareholders holding majority of shares and those holding shares in minority. The board here cannot even resolve any conflict that might prop up because it consists of those members who hold the majority shares of the company concerned and only the control is needed to be exercised by these majority shareholders.

The situation that has been presented in the previous paragraph is the focal point of this article.
In the Tata-Mistry dispute as well, the applicant, Mr. Cyrus Mistry (who at that time was the chairman of Tata Sons Ltd.) alleged before the NCLT that his removal was not in a democratic manner, instead the board of Tata Sons used oppressive tactics to remove him and it was without any due cause. As a result, an application was moved by Mr. Mistry under Section 241 of the Companies Act, 2013, alleging the oppressional and prejudicial acts of the majority shareholders.[28]

It was alleged that Mr. Tata orchestrated the entire proceeding along with Tata Trust (the majority shareholder), thus, leading to 'oppression and mismanagement' by the majority against the minority shareholders. This board room battle brought about an important aspect of Corporate Governance into foray i.e. what are the safeguards for the protection of minority shareholders' interest(herein, Cyrus Investments Pvt. Ltd. & Sterling Investment Corporation Pvt. Ltd, who holds 18.37 per cent equity shareholding*)* against the majority.

When we talk about minority interest and their position to bring a case against the majority, the first rule that is to be looked into is the Foss v. Harbottle *Rule*.[29] It states that, "Once a resolution is passed by the requisite majority then it is binding on all the members of the company. As a resultant corollary, the court will not ordinarily intervene to protect the minority interest affected by the resolution, as on becoming a member, each person impliedly consents to submit to the will of the majority of the members".[30]

---

[27] Neerjagurnani, *Oppression & Mismanagement – Corporate Law*, ACADEMIKE (Feb. 14, 2020, 3:00PM),https://www.Lawctopus.Com/Academike/Oppression-Mismanagement-Corporate-Law/.
[28] *Supra* note 1.
[29] Foss v. Harbottle, (1843) 67 ER 189.
[30] DR. G. K. KAPOOR & DR. SANJAY DHAMIJA, COMPANY LAW AND PRACTICE: A COMPREHENSIVE TEXT BOOK ON COMPANIES ACT, 2013 (22d ed. 2019).

This rule, thus, indicates that minority cannot go to the court against the decision of the majority even if they are not happy or the decision is affecting their interest. However, there is an exception to this rule i.e. 'where the members holding majority position try to defraud or oppress those who are in minority by the use their clout, then in such case even a single shareholder holds a superseding power to impeach such a conduct by the majority'.[31] Here, oppression does not simply means the failure on the part of majority to take decisions or act in a manner which is in the interest of the company as a whole, rather it should be an act which indicates an inconceivable use of power by the majority and such undemocratic use of power has resulted or might result in discriminatory as well as unfair treatment of minority and also financial loss to them.[32]

The Companies Act, 2013 has also provided specific provision for minority protection and the same were relied upon by Mr. Mistry in his petition to NCLT. The principle of 'majority rule' as stated in Foss vs. Harbottle does not apply in cases where Section 241 to 244 is applicable, for prevention of oppression and mismanagement. A member can file an application under Section 241 if he feels that the affairs of the company are oppressive to some of the members including him, thus bringing a 'representative action'.

Though, the word oppression has been used many times but the same has nowhere been defined in the Companies Act, 2013. In the Scottish case of Elder vs. Elder & Watson Ltd., the meaning of word 'oppression' was given by Lord Cooper.,[33]and the same was cited in approval by J. Wanchoo in Shanti Prasad Jain vs. Kalinga Tubes. It defined oppression as 'the conduct complained of should, at the lowest level, involve a visible departure from the standards of their dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely'.[34]

However, all these judgments will hold relevance only when the petitioner would be able to meet the threshold provided under Section 244 of Companies Act, 2013 to present an application to the NCLT. This threshold was one of the key points on which maintainability of Mr. Mistry's petition was dependent. If one-tenth of the issued share capital of the company is being held by the shareholder/s and the all the calls have been paid, only then an application to NCLT will be maintainable.[35] The Mistry camp argued that they hold 18.37% Equity shareholding in Tata Sons but the same was rebutted by the Tata camp stating that the Pallonji group held a mix of equity and preference share capital and thus, the figure comes down around 3% as to holding share capital.[36]The NCLT tilted in the favour of the Tata Sons and the case fell on a mere technical fallacy even when the Act empowers the Tribunal to grant waiver to the applicant. Moreover, considering the gravity of the issue involved in this dispute, the same should have been granted.
Now, as Mr. Mistry went in appeal to NCLAT, the same technical fallacy was rightly waived off because the Mistry group had investment amounting to ₹1, 00,000 Crores out of the total

[31] Edward v. Halliwell, AII ER (1950) 2 1064.
[32] *Supra* note 5, at p. 733.
[33] Elder v. Elder & Watson Ltd., (1952) SC 49 Scotland.
[34] Shanti Prasad Jain v. Kalinga Tubes, AIR 1965 SC 1535.
[35] § 244, Companies Act, 2013 (India).
[36] *Cyrus Mistry's NCLT Petition Against Tata Sons Dismissed*, LIVEMINT (Feb. 20, 2020, 1:00 PM), http://www.Livemint.Com/Companies/6fpejrvtvjsi0rjb5sc0vo/Nclt-Dismisses-Cyrus-Mistry-Petitions-Against-Tata-Sons.html.

investment of ₹6,00,000 Crores in 'Tata Sons Ltd.'.[37]This waiver has marked the beginning of the twilight saga between the two. The approach adopted by the NCLAT is plausible because it is such a case that if decided in its entirety, it will set benchmark guidelines and principles of corporate governance, especially in light of 'Oppression & Mismanagement'.

A. How the Act is Oppressive?

An answer to this question lies in the analysis of the Article of Association (AOA) of Tata Sons Ltd., especially Articles 118, 121 and 75. Article 118 of AOA clearly stipulates that for the appointment of chairman, a select committee is to be constituted and the same process is to be followed when the removal of the chairman is in consideration. Only the constituted committee is empowered to give its recommendation to the board to remove the chairman.[38] But the same provision was given a go by and Mr. Mistry was removed without any committee being formed.[39] Interestingly, Tata Sons is a Non-Banking Financial Institution (NBFC) registered with RBI and any change in the management of the company requires prior approval of RBI.[40]

Another important Article that went on to become highly oppressive in its usage was Article 121. Even though Mr. Ratan Tata resigned from the chairmanship and he was given the status of Chairman Emeritus, the same was declined by him and he stated that he would be available only for advice. Article 121 gave 'veto power' to the trustee nominated directors but interestingly, these directors worked on the advice of Mr. Tata and this led to an active involvement and interference of Mr. Tata in the decision making.[41] Many a times, Mr. Tata demanded pre-consultation from Mr. Mistry before any decision making under the threat of violating the AOA but it went far beyond solicited advice or guidance.[42]

Another abuse was of Article 75, which gives power to the Company through its board and by a special resolution in shareholders' general meeting, to transfer 'ordinary shares' of any shareholder without any notice. But such meeting requires the affirmative vote of the nominated directors which were appointed by 'Tata Trust'. Affirmative vote means that without the approval of directors no resolution can be passed (veto). The Nominated Directors of 'Tata Trusts' may not allow the reduction of the ordinary share capital (paid up) below 40% aggregate, even if the majority has approved of the same, if such a reduction is contrary to their interest, i.e., which may ultimately result in their exit.[43]

A careful analysis of these Articles provided a bigger picture about the various tactics that were devised by the Tata Camp to overpower the decision making of the minority SP Group. These tactics hit on the core of corporate governance and were seem to be oppressive in nature. Also, the way the decisions were halted by the interference of Tata camp led to mismanagement of the affairs

[37] *Supra* note 2.
[38] PTI, *Tata Sons, TCS Violated Rules In Sacking Cyrus Mistry*, THE ECONOMIC TIMES (Feb. 25, 2020, 03:00PM), https://Economictimes.Indiatimes.Com/News/Company/Corporate-Trends/Tatas-Tcs-Violated-Rules-In-Sacking-Cyrus-Mistry-Says-RTIReply/Articleshow/66446042.Cms?From=Mdr.
[39] *Supra* note 2.
[40] *Supra* note 35.
[41] *Supra* note 2.
[42] *Ibid* at 20.
[43] *Ibid* at 118.

of the company.

V. Conclusion

This article primarily focused upon the dispute between Mr. Ratan Tata and Mr. Cyrus Mistry and it dealt with one important question of 'oppression and mismanagement' in relation to corporate governance.

This dispute is the best example of the most common issue that the corporations in our country are facing, i.e., "*competency vs. charisma*". Mr. Tata should still hold the same authority which he once held in 'Tata Group' but once he passed the baton to his successor, then the said successor should have been allowed to function freely. The most compelling argument favouring the exclusion of central control is that The Tata Group of Companies cater huge investment from the general public and therefore, it should not be made to run as a one man show. There is no denying the fact that Mr. Tata has been quintessential in making the Tata Group as one of the biggest brands of the world but no one can be ignorant of the fact that this 'Group' at last is a public company where thousands of crores of the general public is invested. Therefore, the denial of the interest of these shareholders hits at the very heart of the 'Corporate Governance' and since corporations are the power houses of our economy, this principle should be followed in its most ethical sense.

This dispute has given us the best example of what 'legacy issues' are and how tactics are being devised to protect the same. The recent attempt of 'Tata Sons' to convert itself from public to private was also an attempt in this direction, since a Private Ltd. Company is not subjected to such rigid norms of corporate governance as compared to what public company adheres. However, this attempt has also been thwarted by the NCLAT.

The word 'Corporate Governance' is not new; this principle has been a subject of various academic research and policy discourses, not only in India, but also in countries around the world. In India, the jurisprudence behind corporate governance has been developed by various committees like Mr Kumar Mangalam Birla committee, Mr Narayan Murthy committee, Mr Naresh Chandra committee and the latest being Mr Uday Kotak committee.

It has been proved time and again that companies which have exhibited a sound corporate governance mechanism have been able to generate significantly higher amount of profits than the companies that have not exhibited or have exhibited poor corporate governance. The governance system also influences the output and investment decision of firms through several channels that include ownership.[44]

Coming back to Tata, it is one such name that has remained attached to us since our country's inception. It is a company that has been a constant source of power in building the nation. It is a company that has grown from "salt to software". The governance of Tata has always been praised not only because of their business decisions and new ventures but also because of their huge inclination towards charity and welfare work that they have done.

[44] Maria Maher And Thomas Andersson, *Corporate Governance: Effects On Firm Performance And Economic Growth*, OECD (Feb. 25, 2020, 03:00PM), https://www.oecd.org/Sti/Ind/2090569.pdf.

However, because of this dispute between Mr. Tata and Mr. Mistry, an unwanted blot in the name of Tata Group has come up. The Tata Group kept on blaming Mr. Mistry for any loss that the Tata Enterprises suffered but at the same time they forgot that any decision of the Board of Directors required an affirmative vote of the nominated directors of the Trust.

Therefore, it won't be wrong in asserting that if the company performed not up to the expectations or even went into losses, then it was not only Mr. Mistry who could be held solely responsible. Moreover, the 'nomination and appraisal' committee, whose task is to evaluate the performance of senior management had representation from the Trust since their Nominee Directors were the members of this committee. This committee surprisingly appraised Mr. Mistry's leadership in its report on 28th June, 2016 (i.e. just a few months before he was removed) under Section 178 of the Companies Act, 2013.

The follow-up of this dispute has led to various amendments in the companies Act, 2013. It will not be apt to say that this dispute is the reason for so many amendments under Section 241 to 244 of Act of 2013. But it is definitely the inspiration behind the development in the jurisprudence of Corporate Governance. Moreover, this dispute also involved other issues, like the role of independent directors in the decision making of Board Meetings, which was also questioned in this case.

As the matter is now *sub-judice* in the Honourable Supreme Court, it can rightly be expected that a lot of developments in this regard will take place and the roles of each and every stakeholder in the company will be more clearly defined, so that in the future, such a situation does not arise. Two groups that had always stuck together with each other for the past 50 years through thick and thin are now fighting a battle in the court of law.

At last it can be assumed that sound business relations are not just for the groups involved but they have an impact on a large scale. When these relations are strained, then the ripples are felt in every corner of the corporate world. Even after the NCLAT ordered the reinstatement of Mr. Mistry as the Executive Chairman of the group, the latter himself refused to join because of the present state of relations between the Tata's and Pallonji Groups. Therefore, with a thorough analysis of this dispute, one can better understand 'Corporate Governance' and what are the deleterious effects when the same is neglected. Henceforth, the question asked in the beginning is answered in affirmative as this struggle struck at the very core of corporate governance and it was a classic example of 'Oppression and Mismanagement'.