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Tata Consultancy Service Limited V Cyrus Investment Private Limited & Ors

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ABSTRACT

Recently, Supreme Court gave a landmark judgement in a battle that started in October 2016 between TATA group and its chairman Mr. Cyrus This case Tata Consultancy Service Limited V. Cyrus Investments Private Limited, and Others highlighted the doctrine of “Oppression and Management” under Section 241,242 and 244 of The Companies Act, 2013. This case commentary encapsulates the facts, issue and judgement of the case under which the validity of dismissal of Chairman of TATA group, Mr. Cyrus Mistry and the decision taken by NCLAT in favour of Mr. Mistry was challenged.

I. PROVISIONS

The provisions which are highlighted during this case are sections 241, 242, and 244 of the Companies Act, 2013. The right has been provided to any member of the company for relief in case of prejudice against himself or any other member or in the public or company interest under section 241. Section 244 provides that within the case of a company having a share capital, minimum of one hundred members or members constituting one-tenth of the total number of its members are required to make an application. Section 242 states that if from any report filed under section 241, it seems to the Central Government that any person has been guilty of any offence for which he is criminally liable, the Central Government may, after taking such legal recommendation as it thinks fit, prosecute such person for the offence.

II. FACTS OF THE CASE

On March 16,2012 Cyrus Mistry was appointed as Executive Deputy Chairman for five years. He was redesignated as Executive Chairman with effect from December 29, 2012. In 2016, by a Board resolution dated October 24, 2016 he was replaced with Ratan Tata as interim Non-Executive Chairman. Afterward by-passing resolutions at general meetings he was removed from the directorship of the various operating companies. Afterwards, he came to know about the impending resolution to remove him from the directorship of Tata Sons. Therefore, SP

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Group in which Cyrus has controlling interest filed a company petition before NCLT under section 241 and 242 read with section 244 of Companies Act, 2013 on the grounds of unfair prejudice, oppression, and mismanagement. The petition was dismissed on March 06, 2017 because the petitioners hold only 2% of the issued share capital whereas statutory limit for filing petition is 10%. On dismissal of petition, SP Group filed two applications one for waiver of the requirement of holding 10% of issued share capital and another for the stay of EGM of Tata Sons in which proposal for removal of Cyrus as director had been moved.

On April 17, 2017 NCLT dismissed the applications. Thus, Petitioners filed the appeals before NCLAT against the orders of NCLT. NCLAT allowed waiver of requirement of 10% holding and the matter was remanded back to NCLT.

NCLT heard the parties and gave decision in favor of Tata. SP group filed an appeal against the order of NCLT. NCLAT gave the decision in favor of appellants. Thus, Tata filed appeal against the order of NCLAT.

III. CONTENTIONS OF TATA SONS, GROUP COMPANIES AND TRUSTEES

- SP group and Cyrus never demanded reinstatement, NCLAT went completely overboard by reinstating Cyrus.
- His reinstatement as director in operating company was wrong as subject matter concerned is only the management of affairs of Tata Sons.
- Tata sons was not a two-group company, there was no pre-existing partnership between Tata Group and the S.P. Group. S.P. Group became shareholders after 48 years of Tata sons incorporation. Therefore, SP group never had right of management nor a right that could emanate from a pre-existing relationship.
- Removal of Cyrus was on account of loss of confidence and complete breakdown of trust between him and other members of board.
- There was no proof regarding illegality of Article 75 of Article of Association even then the NCLAT whittled down it.
- The directions issued to Tata Group to consult SP group for all future appointments of Executive Chairman is unsustainable in law and by doing so NCLAT had undermined the role of majority.
- Finding of NCLAT that affirmative voting rights conferred upon nominee directors undermines the role of Board of directors is completely perverse.
- Erroneous test was employed by appellate tribunal to determine oppression under section 241 of Companies Act, 2013.

- Unwise and loss-making business cannot be construed as acts of mismanagement to justify winding up on just and equitable ground.
- Reliefs which were not prayed were also granted.

IV. CONTENTIONS OF REGISTRAR OF COMPANIES

Certain provisions of Articles of association of Tata sons were within the parameters of definition of private company as provided in clause 68 of section 2. Thus, issue of amended certificate of incorporation was justified.

V. CONTENTIONS OF SP GROUP AND CYRUS MISTRY

- Tata Sons should be treated as two group company because the nature of relationship between the groups is quasi partnership.
- Articles of association was misused by trustees to undermine Board of directors and to affect their ability to make independent decisions.
- Tata Sons was a public company as it accepts deposit from public therefore, conversion of company from public to private by a handwritten order of ROC was shocking.
- The removal of Cyrus Mistry was contrary to the provisions of Article 118. Article 121B contemplates a 15 days' notice, but the same was also not complied. Therefore, his removal was carried out without there being any agenda for the same.
- Removal of Cyrus from the Directorship showed lack of probity.
- NCLAT had found series of acts of oppression, misuse of Articles.
- Article 104B, 121 and 121A has been misinterpreted and misapplied to provide right to the majority shareholders to seek pre consultation before the matter could be placed before Board.
- Just and equitable ground cannot be invoked only on the ground of financial probity but also on the ground of infraction of legal and proprietary rights.
- Nomination and remuneration had expressly demanded clarity on the functioning of board in one of its meeting dated June 28, 2016.
- NCLAT found that 3 attempts were made by Cyrus to place before the Board of Tata Sons, a governance structure and that this became the principal cause for his removal.

VI. ISSUES

1. Whether the formation of opinion by NCLAT that the company's affairs 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?

2. Whether reinstatement of Cyrus Mistry into the Board of Tata Sons and other Tata companies is in consonance with the pleadings made?
3. Whether NCLAT should have muted the power of the Company under Article 75 of the Articles of Association which demand any member to transfer his shares, by injuncting the company from exercising such 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?
5. Whether the re-conversion of Tata Sons from a public company into a private company, required the necessary approval under section 14 of the Companies Act, 2013?

VII. JUDGMENT

Apex Court observed that, NCLAT did not deal with all allegations and nor did render opinion on the findings of NCLT. NCLAT simply summarized its conclusion on some of the allegations without any reasoning.

Reliefs granted by NCLAT revolved mostly around removal of Cyrus Mistry, affirmative voting rights, inference by nominee directors and conversion of Tata sons from public to private. Therefore, to decide the first issue court kept its focus on these four allegations.

First Issue

The court observed that NCLAT should have raised the question whether it would be equitable to wind up the company especially on the basis of uncharitable allegation of oppression and prejudicial conduct. Court ends up concluding that solely removal of a person from his post of executive chairman cannot come under section 421 which states oppressive and prejudicial. It noticed that the removal of Mr. Mistry from the position of Directorship was valid and justified as it was only the consequences of Mr. Mistry himself. A test was adopted by Privy Council in *Loch v John Blackwood* to determine when it would be just and equitable for court to wind up the company. The test contains three conditions viz.

- i. Company must be limited to certain objects.
- ii. Objects must be carried out by the management.

- iii. Business must be conducted in accordance with principles of commercial administration.

Apex court adopted the same test in deciding first issue.

Second Issue

The litigation was not filed to reinstate Cyrus either as Executive Chairman or Director even then NCALT directed his restoration. NCLAT failed to notice an important thing that Cyrus was appointed as executive deputy chairman for a period of five years that is from April 1, 2012 to March 31, 2017 and was redesignated as Executive chairman by a resolution dated December 18, 2012. Whereas NCLAT passed the judgment on December 18, 2019 that is nearly after 7 years from appointment of Cyrus. Apex Court failed to understand why NCLAT granted the relief which was not sought and what NCLAT meant by reinstatement for remaining period when 5 years has elapsed from the date of appointment. Cyrus was also reinstated on the Board Tata Group Companies which were not even party to the proceedings. Thus, NCLAT appears to have granted the relief of reinstatement without any foundation in pleadings. NCLAT has found the dismissal of Cyrus Mistry to be illegal and not a nullity. Section 242 do not provide to Tribunal implied power directing reinstatement. Thus, Court held that NCLAT should not have reinstated Cyrus.

Third Issue

NCLAT neutralized Article 75 on the basis of misuse, though it has no jurisdiction to declare any of the Article illegal. Section 241(1)(a) provides remedy in respect of past and present conduct and not for future bad conduct. But, NCLAT had stretched its provisions to future conduct as well. Further Cyrus was himself party to the amendment of Article 75 and consented to its amendment too. Thus, a party who has consented to the amendment cannot challenge it later. Therefore, Apex court declares the decision of NCLAT wholly unsustainable.

Fourth Issue

Apex court observed that if affirmative rights are too bad then how they may become good if conferred to S.P Group. Articles of Association of the company contains prescribe restrictions which make it a Private company. Provisions of section 135, 149, 151, 166 and 177 do not advance the case of SP group relating to corporate governance. Therefore, the challenge to the affirmative voting rights and the allegations revolving around pre-consultation by the Trusts of all items in the agenda and Ratan Tata's indirect or direct influence over the Board are rejected.

Fifth Issue

Apex court inferred that by virtue of Section 465(3), Section 2(68) prevails over Section 3(1)(iii), thereby validating the company's transition to add Private to its name. Furthermore, it concluded that Tata Sons was well within its rights to manage its status.

VIII. CONCLUSION

This is a landmark decision that will be remembered for years to come, and it will be often cited in cases involving oppression and mismanagement. It is clearly unquestionable that the fall of Mr. Cyrus Mistry was due to his own actions. Cyrus Mistry had a poor legal argument, but a stronger compassionate, emotional case. It is a well-known fact that judicial system all across the globe weighs evidence and facts lot more than emotions. This lack of factual evidence proved as a deadlock for Mr. Mistry, leading to his easy dismissal. However, it cannot be ignored that, it was very easy to make a villain out of Mr. Mistry, as the public support to Tata Company has been immense, because the company has a popular image of a philanthropist rather than an industrialist. However, we cannot draw a conclusion about how influenced the judicial procedures are from the public opinion, but we cannot deny the fact that, even if Mr. Mistry would have decided to whistleblower against the company publicly, he wouldn't have had a chance to shake a tad bit of the company's long made reputation, because of the huge respect the company has among the masses. Although, some people do believe that he should've been provided with some maintenance.
