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Research

The Tata-Mistry Saga

Supreme Court says Tata to India Inc's Biggest Corporate Mystery

August 2021

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Contents

1. Introduction

The legal battle between Mr. Ratan Tata-led Tata Sons Limited and the Shapoorji-Pallonji Group (**"Tata-Mistry case"**) has made headlines across the country and is a landmark ruling as regards the corporate world settling the issues on oppression and mis-management. The legal drama unfolded across all forums, starting from the National Company Law Tribunal Mumbai to the apex court, which delivered a detailed judgment as recently as March 26, 2021. The importance of the Tata-Mistry case is not restricted only to the prominent parties involved, rather extends to its contributions to key aspects of Indian corporate law jurisprudence. Notably, it happens to be one of the first cases under the Companies Act, 2013 dealing with shareholder 'oppression' and 'mismanagement' contested all the way up to the Supreme Court of India.[1] It also addresses the origin and purpose of numerous other aspects of company law provisions, namely the role of directors, the fiduciary nature of their duties, the allegiance of nominated directors, the nature of affirmative voting rights, and the scope of 'prejudice' against specific classes of shareholders.

While the dispute arose owing to a myriad of factual occurrences and considerations leading to mistrust between the parties, the crux of the dispute boiled down to the validity of removal of Mr. Cyrus Mistry from the post of Executive Chairman of Tata Sons and as a director from some group companies. Shapoorji Pallonji Group had 18% of the paid-up share capital of Tata Sons. However, in 2016, Tata Sons and their group companies removed Mr. Cyrus Mistry due to an almost unanimous loss of confidence in his leadership, stemming from multiple factors such as his conversation with the Income Tax authorities and a purported attempt to leak confidential emails to the media. On the other hand, Mr. Cyrus Mistry believed that this was an oppressive act undertaken by Mr. Ratan Tata and other key persons within the company as a ploy to regain control of the company because of his staunch views on the low standards of corporate governance. Additionally, it was believed that maligning Mr. Cyrus Mistry's reputation was potentially a step towards reducing the influence of the SP Group's shareholding rights within the companies, thus undermining minority shareholder rights generally. All the forums including the National Company Law Tribunal (**"NCLT"**), National Company Law Appellate Tribunal (**"NCLAT"**) and Supreme Court have delivered detailed judgments that prominently rule in favour of one of the two groups on most counts. While the NCLT dismissed all allegations against Tata Sons and stated that there was an absence of oppression and mismanagement, the NCLAT effectively reversed the decision in appeal and re-appointed Mr. Cyrus Mistry to Chairmanship of Tata Sons. Finally, the Supreme Court set aside the NCLAT's order of re-appointment of Mr. Cyrus Mistry, equivalent to restoring the original NCLT order, and ruled in favour of Tata Sons on other counts pertaining to 'oppression' and 'mismanagement'.

In this M&A Lab, we provide a detailed analysis of the legal considerations that arose throughout the trajectory of this case. The SP group has filed a review petition against the Supreme Court's March 26, 2021 judgment. Although the final outcome of this petition remains pending, it becomes important to contextualize the facts and surrounding legal arguments to obtain a holistic picture as a prerequisite to understanding the final verdict. This M&A Lab is an endeavor to be of assistance in this respect.

1. https://www.bloombergquint.com/opinion/tata-vs-mistry-supreme-courts-deference-to-decision-making-in-tata-sons

2. Description of Parties

1. **Tata Sons Limited** (or Tata Sons Private Limited)[2] (**"Tata Sons"/ "Company"**) is a company incorporated as a private limited company under the Companies Act, 1913. It is the principal investment holding company and promoter of Tata companies.[3] The shareholding pattern of the company is divided amongst the two Tata Trusts (Sir Ratan Tata Trust and Sir Dorabji Tata Trust), the Shapoorji Pallonji Group and its operating companies (in this case, for example – Tata Consultancy Services Limited, Tata Teleservices Limited and Tata Industries Limited).

2. **Shri Ratan Tata** (**"Mr. Tata"**) served as the Executive Chairman prior to his retirement in 2012 and was succeeded by Mr. Cyrus Mistry (**"Mr. Mistry"**). After the removal of Mr. Mistry, Mr. Tata was appointed as the interim Non-Executive Chairman of Tata Sons.

3. **Tata Trusts**

   - Sir Ratan Tata Trust is a trust established in 1919 to advance education, learning and industry in all its functions.[4]

   - Sir Dorabji Tata Trust is a trust established in 1932 to mobilise development in the nation by adopting contemporary measures.[5]

4. **Operating Companies**

   - Tata Consultancy Services Limited (**"TCS"**)– TCS is a company driven towards inculcating partnerships with global IT service, digital and business solution providers to strengthen businesses of clients.[6]

   - Tata Teleservices Limited (**"TSL"**)– TSL is a company founded in 1996 spearheading the Tata Group's involvement in the telecommunications sector. It provides telecom services comprising of mobile connectivity and allied services.[7]

   - Tata Industries Limited (**"TIL"**) – TIL is a company founded in 1868 which advances Tata ventures into varied sectors.[8]

5. **Cyrus Pallonji Mistry,** son of erstwhile Non-Executive Director Shri Pallonji S. Mistry, was elected as the Executive Deputy Chairman for a period of five years from April 1, 2012 to March 31, 2017. He was later re-designated as the Executive Chairman and served in this position for a period of 4 years (2012 to 2016), while Mr. Tata was appointed as Chairman Emeritus. In 2016, he was removed by the Board of Directors and majority shareholders on grounds of non-satisfaction and loss of confidence. He was subsequently removed from directorship from the Tata Sons and thereafter resigned from the other operating companies.

6. **Shapoorji Pallonji Group,** (**"SP Group"**) group includes two companies namely Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited. These companies initially owned 48 preference shares and 40 equity shares respectively of Tata Sons, which has now grown to a total of 18.37% of the total paid-up share capital of Tata Sons. Mr. Mistry holds a controlling interest in these companies.

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2. A controversy existed with respect to the usage of the word "Private" before the word "Limited" in the instant case.
3. https://www.tata.com/business/tata-sons
4. https://www.tatatrusts.org/about-tatatrusts
5. https://www.tatatrusts.org/about-tatatrusts
6. https://www.tcs.com/about-us
7. https://corporate.tatateleservices.com/en-in/aboutus
8. https://www.tata.com/business/tata-industries

3. Sequence of Events

DATE	PARTICULARS
1868	The Tata Group was founded as a global enterprise with hundred operating companies having operations across jurisdictions.
08.11.1917	Tata Sons Limited was incorporated as a private limited company under the Companies Act, 1913. It comprises of Tata Trusts, Tata Family and Tata Group companies. Tata Trust was set up in 1919.
1965	Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited, part of the SP Group acquired shares in Tata Sons after 50 years. They hold 18.37% of total paid-up share capital of Tata Sons. The SP Group entered based on a personal relationship between the parties.
25.06.1980 – 15.12.2004	Shri Pallonji Mistry was a Non-Executive Director on the Board of Tata Sons.
	Articles of Association of Tata Sons underwent several rounds of amendments over the last century. Relevant Articles of Association are: ▪ **Article 75:** Power to transfer ordinary shares of the Company by Special Resolution without providing Notice. ▪ **Article 86:** As long as Tata trusts collectively hold at least 40% of the paid-up capital of the company, no quorum shall be constituted in the General meeting of the company unless one authorized representative jointly nominated by Tata Trusts is present in such meeting. ▪ **Article 104:** Trustees of the Tata Trust are entitled to nominate three Trustee Nominated Directors. ▪ **Article 118:** As long as Tata Trust collectively holds at least 40% of the paid-up equity capital, for selecting Executive Chairman, Selection Committee shall be constituted to recommend the appointment of Chairman on the Board and the Board may appoint such recommended person as Chairman to the Board. ▪ **Article 121:** All decisions of the Board of Directors of the company would need affirmative consent of majority of the Trusts Nominated Directors. ▪ **Article 121-A:** Such decisions have to be mandatorily brought to the Board of Directors of the company, once it comes to the company board, the Trusts Nominated Directors being majority.
13.09.2000	The final amendment to Article 75 was unanimously approved by the Board and consented to by Mr. Mistry. Introduction of Article 104B and 121. Shri. Pallonji Mistry was present in the meeting.
10.08.2006	Mr. Mistry was appointed as Non-Executive Director on the Board of Tata Sons.
16.03.2012	Mr. Mistry was appointed as Executive Deputy Chairman of Tata Sons for a period of five years from 1.04.2012 to 31.03.2017 subject to shareholders approval.
01.08.2012	The shareholders approved Mr. Mistry's appointment as Executive Deputy Chairman in the General Meeting.
18.12.2012	Board of Tata Sons re-designated Mr. Mistry as Executive Chairman from 29.12.2012 and designated Mr. Tata as Chairman Emeritus.
09.04.2014	Article 121 amended. Mr. Mistry party to the resolution introducing Articles 121 A and 121B.
24.10.2016	Board of Tata Sons replaced Mr. Mistry with Mr. Tata as Interim Non-Executive Chairman. Mr. Mistry was replaced only as Executive Chairman and not as Non-Executive Director.
25.10.2016	Mr. Mistry emailed the directors of Tata Sons about lack of corporate governance and failure on the part of the directors to discharge fiduciary duties. The email was confidential, however a copy landed up with the media creating 'sensation'.
10.11.2016	Clarificatory Press Statement issued by Tata Sons highlighting drop in returns under Mr. Mistry's tenure.
12.12.2016 - 14.12.2016	Mr. Mistry was removed as a director by shareholders of Tata Industries Limited, Tata Consultancy Services Limited and Tata Teleservices Limited.

3.Sequence of Events

19.12.2016	Mr. Mistry resigned as Director from Board of Indian Hotels Company Limited, Tata Steel Limited, Tata Motors Limited, Tata Chemicals Limited and Tata Power Company Limited due to impending resolutions of his removal.
20.12.2016	Company petition filed by Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited before the National Company Law Tribunal (**"NCLT"**) Mumbai under Sections 241 and 242 read with Section 244 of Companies Act, 2013.
17.01.2017	Appointment of Mr. Chandrasekaran as Chief Executive Officer (**"CEO"**) and Managing Director (**"MD"**) of TCS and Chairman of Tata Sons.
06.02.2017	Removal of Mr. Mistry as director from the Board of Tata Sons
6.03.2017	NCLT held company petition to be non-maintainable and rejected plea of Mr. Mistry seeking waiver from the eligibility criteria to maintain a case of oppression and mis-management; NCLT held no requisite qualification to maintain petition and waiver should be granted only in rare, compelling and exceptional circumstances; Failure to fulfill the cause of action test to maintain oppression and mis-management allegations.
17.04.2017	NCLT dismissed application for waiver by shareholders holding just around 2% of issued share capital- leading to filing of appeal before NCLAT.
27.04.2017	Appeal to NCLAT challenging the NCLT decision rejecting the company petition and the waiver application.
21.09.2017	NCLAT allowed the appeal in favour of Cyrus Investments due to investment of INR 1,00,000 crore out of INR 6,00,000 crore in Tata Sons. Waiver under Section 244 (1) (a) was granted and the matter was remanded back to NCLT Mumbai for disposal.
05.10.2017- 06.10.2017	Transfer petition filed to transfer the matter to NCLT-Delhi Bench, which was dismissed, and a cost of INR 10 lakhs was imposed.
09.07.2018	NCLT ordered in favour of Tata Sons: ▪ Removal of Mr. Mistry as Executive Chairman was due to loss of trust in him; ▪ Recommendation from Selection Committee not required for removal as Executive Chairman; ▪ Removal of Mr. Mistry as Director was due to leakage of company information to media, Income Tax authorities; (It falls outside purview of Section 241 of Companies Act, 2013) ▪ Proportional representation on Board proportionate to shareholding is not possible as long as not mandated in the Articles of Association; ▪ Articles 75, 104B, 118, 121 are not per se oppressive; ▪ Mr. Tata and Mr. Noshir Soonawala have not acted as Shadow Directors; ▪ Conversion of company from public to private does not fall within the jurisdiction of the Tribunal.
03.08. 2018	Appeal before National Company Law Appellate Tribunal ("NCLAT") by Cyrus Investments and Sterling Investments against NCLT decision dismissing the company petition.
29.08.2019	NCLAT admitted petition filed by Mr. Mistry in his personal capacity and heard along with the main petitions.
18.12.2019	NCLAT allowed the appeal in favour of Cyrus Investments and Sterling Investments: ▪ Tribunal has no jurisdiction to hold Articles as illegal or arbitrary; ▪ Resolution for removal of Mr. Mistry as Executive Chairman is illegal and subsequent decisions of removal as director are illegal; ▪ Reinstated Mr. Mistry as Executive Chairman of Tata Sons Limited and consequently as Director of the Tata Group of Companies for the remainder of his tenure. ▪ Decision of the Registrar of Companies (**"ROC"**) changing the Company from 'Public Company' to 'Private Company' was illegal and the same was set aside. ▪ Restrained nominee directors and Mr. Tata for taking any decisions in advance and restrained invocation of Article 75. The NCLAT Decision was challenged by Tata Sons before Supreme Court.
10.01.2020	The NCLAT decision stayed by the Supreme Court
26.03.2021	The Supreme Court delivered its verdict in a joint hearing of all 15 appeals filed before it, in favour of Tata Group and thereby, upheld the decision of the NCLT.

4. NCLT Decision

CYRUS INVESTMENTS (P) LTD AND ORS. V. TATA SONS LTD AND ORS
Company Petition No. 82(MB)/2016
Decided On: 09.07.2018

I. Background

Tata Sons, on October 24, 2016 conducted board meeting with several agenda items. One of these was discussing removal of the Chairman of the Company, Mr. Mistry under the head of agenda of 'any other item'. This was done without providing prescribed fifteen (15) days' notice to him. This led to the filing of the present company petition by the Pallonji family companies (**"Petitioners"**), having more than 18% equity against the Company, Mr. Tata, Mr. Noshir Soonawala, the Trustees of Tata Trusts and various other persons (**"Respondents"**) alleging oppression and mismanagement. It was also alleged that the Respondents were conducting affairs of the Company in a manner prejudicial against the interest of the Petitioners, the Company and the public at large.

Issues

The NCLT considered the arguments advanced by the parties and the facts in the company petition in relation to the following issues:

1. Whether Articles of Association of the Company (**"Articles"**) including Articles 86, 104(8), 118, 121 and 121(A) and 124 are per se oppressive allowing Sir Ratan Tata Trust and Sir Dorabji Tata Trust to control the affairs of the Company? Whether the Articles have been abused and misused by Mr. Tata?

2. Whether Tata Steel acquiring Corus Group Plc in the year 2006 resulted into conducting the affairs of the Company prejudicial to the interest of the Company/Petitioners?

3. Whether or not, the loss, if any, still incurred by Tata Motors (including Nano project) can be related back to the affairs of the Company conducted by Mr. Tata as Executive Chairman in the past relating to Tata Motors and if so, incurring such loss by Tata Motors can be attributed to Mr. Tata, still discharging his duties as chairman of Tata Trusts holding majority shareholding in the Company; continuing as chairman Emeritus to the Company on being asked, and giving advices to the Company?

4. Whether removal of Mr. Mistry as Executive Chairman of the Company in the Board Meeting followed by his removal as Director of the Company is oppressive/prejudicial to the Petitioners/ Company?

5. Whether the various transactions and dealings between the Siva Group Companies and Tata Group were conducted in a manner prejudicial to the interest of the company or oppressive/prejudicial to the interest of the Petitioners?

6. Whether occurrence of some acts in Air Asia India (P) Ltd. amounts to conducting the affairs of the Company prejudicial to the interest of the Company/Petitioners or public interest?

7. Whether the business transactions between Mr. Mehli Mistry and Tata Power Co. Ltd., taken place when Mr. Tata was chairman of the company amount to continuation of conducting the affairs of the company in a manner prejudicial to the interest of the company or in a manner oppressive/prejudicial to the interest of the Petitioners as stated by the Petitioners and Mr. Mistry? Will other issues such as the sale of the Bakthawar

flat and purchase of the Alibaug land have any bearing to link them as issues relating to the interest of the Company?

8. Whether the action of passing a special resolution and filing an application for conversion of the Company, without altering any of the Articles of the Company so as make it private from public under Section 14 of Companies Act, 2013 and continuation of Article 75 amounts to conducting the affairs of the company in a manner oppressive/prejudicial to the interest of the Petitioners or not?

ISSUE 1

Whether the Articles of Association of the Company (**"Articles"**) including Articles 86, 104(8), 118, 121 and 121(A) and 124 are **per se** oppressive against the Petitioners and have been abused and misused as tools of oppression and mismanagement by the Respondents?

We have dealt with each of the Articles and their amendments in detail in **Annexure I** of this paper.

a. Arguments advanced by the Petitioners

- The Petitioners contended that the Articles contained a right in favour of the Trustees of Tata Trust to nominate 1/3rd of Directors on the board of the company. The Articles were soon amended to ensure that certain decisions relating to operating companies of Tata Group were mandatorily to be placed before the board of the Company, allowing Mr. Tata and Mr. Noshir Soonawala to use the Articles for superintendence and control of the Company.

- The Petitioners contended that the Tata Trusts directors have become handmaiden of Mr. Tata and Mr. Noshir Soonawala, making them a **"super board".** The recent conduct of Mr. Tata, Trustees and its nominee directors, reflected usage of the Articles to suit Mr. Tata's requirements. The Petitioners submitted that the unbridled powers of the nominee directors posed serious concerns for every stakeholder of the Company. Thus, it is imperative that Articles 86, 104(8), 118, 121 and 121(A) be struck off in entirety. With respect to Article 124, Petitioners sought deletion of the following portion: **'any committee empowered to decide on matters which otherwise the board is authorized to decide shall have as its member at least one director appointed pursuant to Article 104(8). The provision relating to quorum and the manner in which matters will be decided included Articles 115 and 121 to apply mutatis mutandis to the proceedings of the committee'.**

- Under Article 104, the trustees of the Trust are entitled to nominate three trustee nominated directors; under Article 121, all decisions of the board of directors of the company would need affirmative consent of majority of the trusts nominated directors. Under Article 121-A, such decisions have to be mandatorily brought to the board of directors of the Company. It was contended that 'trusts' nominated directors, being majority, started overruling the entire board of directors.

- There is another restriction under Article 86 which states that so long as the Tata Trusts collectively hold at least 40% of the paid-up capital of the Company, the Tata Trusts have the right to nominate 1/3rd of the prevailing members of the Board and no quorum shall be constituted in the general meeting of the Company unless one authorized representative jointly nominated by Tata Trusts is present in such meeting.

- The Petitioners submitted that these trustee nominee directors are beholden to the trustees of the Tata Trusts and not to the Company, not in the interests of the Company or the Petitioners or lakhs of public shareholders of various other Tata companies, whose actions continue to be affected by the actions and inactions of the trustees

of the Tata Trusts and the nominee directors of the Tata Trusts. The Petitioners contended that the unbridled power in the hands of these nominee directors has become a big concern to every stakeholder of the Company.

b. Arguments advanced by the Respondents

- Articles including 104B, 121, 86 and 118 were unanimously approved by the shareholders including Mr. Shapoorji Pallonji Mistry. With respect to Article 75, it was present since incorporation, and with no objections being raised for the last five decades by the Petitioners, it suddenly became unacceptable only when Mr. Mistry was removed as Executive Chairman of Tata Sons. Arguments for striking off an article in existence from the outset, only due to future possibility of oppression and mismanagement are unheard of.

- With respect to interference by Mr. Noshir Soonawala, the Petitioners contended that, he held various positions on financial side in the Company. It was unanimously resolved that Mr. Noshir Soonawala would be available as an advisor to the company and as such Mr. Mistry himself and other persons from the company approached him on various occasions seeking his guidance and advice. Therefore, Mr. Noshir Soonawala interfering with the affairs of the Company did not have any merit.

- Affirmative voting powers provided to the Tata Trust nominee directors cannot be equated to them having power to pass unilateral resolutions or take decisions without the support and consent of the other directors. The notion that such affirmative voting power was the tool of oppression and mismanagement used against the Petitioners is unacceptable. There is no legal restriction on inclusion of protective covenants in the Articles of the Company and the Articles stand to the scrutiny of time. No objection regarding these provisions had ever been raised by either the petitioners or Mr. Mistry before filing the petition.

- After several rounds of discussion between Mr. Tata and Mr. Mistry, the Articles were amended by unanimous resolution passed by the shareholders on April 9, 2014, pursuant to which articles 121A and 121B were introduced. Article 121A specified certain items which were required to be resolved upon by the board of directors of the company. Mr. Mistry was present in the extraordinary general meeting not only in the capacity of director of the Company but also as an authorized representative of several Tata group companies who are shareholders of the Company, when Article 121A was unanimously resolved to be included in the Articles and no objection was raised by the Petitioners.

c. NCLT Holding

NCLT observed that the following amendments to the Articles of the Company were made in the presence of and with consent of either Mr. Cyrus or of Mr. Shapoorji Pallonji Mistry during the annual general meetings and extra ordinary general meetings of the Company:

- In 2000, the Company, including Mr. Shapoorji Pallonji Mistry, approved modifications to the Articles, including:

  i. Article 104B - A right to the two Tata Trusts to jointly nominate one-third of the prevailing Board members, as long as Tata Trusts owns and holds at least 40% of the share capital of Tata Sons; and

  ii. Article 121 - This Article stated that all matters which required to be decided by a majority of the directors shall require the affirmative vote of the all the directors appointed pursuant to Article 104B. In 2014, this was amended to require an affirmative vote from a majority of the directors appointed under Article 104B.

- On December 6, 2012, Article 118 was modified to state that the person recommended by the Selection Committee may be appointed as the Chairman of the Board, subject to Article 121, which requires the affirmative vote of the directors appointed under Article 104B. The Tribunal noted that this resolution was passed unanimously when Mr. Mistry was the Chairman of the Company.

4.NCLT Decision

- Under the aegis of Mr. Mistry, Article 104B, 111B, 121/121A and 121B were altered conferring certain rights, which were beneficial to the influence of the Tata Trusts in the matters of the Company. The amendments were made to provide a right to the two Trusts to nominate 1/3rd of the prevailing number of directors on the Board and such directors were provided with an affirmative vote right in the matters which required majority of votes for the directors. The NCLT noted that the minutes of this meeting were signed by Mr. Mistry.

- Article 75 was present in the Articles ever since the Company was incorporated. Thus, it was in place even prior to the Petitioners subscribing or becoming members of the Company. The Petitioners became shareholders in the year 1965 and over a period of time acquired 18.34%, with full knowledge about the restriction on transfer of shares in the mode mentioned in Article 75 and its binding effect.

- Tata Trusts, through the Articles, have a negative vote in the form of affirmative voting rights. They did not opt for having a majority of the directors nominated by Tata Trusts, instead they nominated 1/3rd of the directors with an affirmative vote. Nothing in relation to this has been found to be oppressive against the Petitioners.

- Article 121A was not found to be oppressive. The purpose of the Article was to enable collective decision-making on the Board, whenever money was to be invested in the group companies. This Article was also approved by Mr. Mistry in 2014.

- The concept of shadow directors cannot be equated to the advices and suggestions of Mr. Tata and Mr. Noshir Soonawala in the present facts and circumstances. The contentions were made by cherry-picking aspects from different sections under the applicable law to further an argument that such advice and suggestions have led the directors to take actions against the best interests of the Company and cannot be understood to sufficiently prove oppression and mismanagement under Sections 241 and 242 of the Companies Act, 2013.

- The Petitioners failed to pass the various tests under Sections 241 and 242 and resorted to abstract arguments without any proof of oppression or unfairness and prejudice against them. The NCLT did not find any merit in saying that that existence of these articles in the Articles is per se oppressive against the Petitioners.

ISSUE 2

Mr. Tata led the purchase of Corus Group PLC (**"Corus"**) by Tata Steel Ltd. for a sum in excess of USD 12 billion, more than 33% of its original offer price. The acquisition of Corus in 2006, led by Mr Tata, was questioned on grounds of payment of substantial premium as consideration amount leading to the reduction in the share value of the company on the Indian stock exchanges and thereby not in the best interest of Tata Steel Ltd. (**"TSL"**). In light of the above, the issue that was considered by the NCLT was as follows:

Whether TSL acquiring Corus in the year 2006 resulted into conducting the affairs of the Company prejudicial to the interest of the Company/Petitioners or not?

a. Arguments advanced by the Petitioner

- The Petitioners submitted that they have consistently highlighted the overpriced acquisition of Corus, not due to its oppressive nature but to reflect the persistent refusal and frustration of any attempt to resolve the issue and significant losses suffered by TSL, despite having more than a decade to turn it into a profitable venture, thereby constituting oppressive conduct and mismanagement.

- Mr. Mistry made efforts to save the transaction and initiated discussion with United Kingdom (**"UK"**) government, the pension trustees, the pension regulators and the labour unions to restructure the operations of TSL UK and suggested merging Tata Steel Europe with ThyssenKrupp.

- Mr. Tata remained adamant in opposing any decision to restructure Tata Steel UK operations. In fact, Mr. Tata was instrumental in jeopardizing the talks to merge Tata Steel Europe with ThyssenKrupp, even though TSL was suffering staggering losses that warranted urgent action. This was one of the contributing factors which led to his removal from the Board of Tata Sons.

b. Arguments advanced by the Respondents

- Acquisition of Corus was a collective decision of Tata Steel and was placed before the Board for consideration on the proposal to be submitted. It was competitively priced and the increased price per share was decided as it was part of bidding process and their final price was the same as their competitors during the bidding process. This proposal was approved by Mr. Mistry, as part of the Board of TSL. The dismal performance of Corus was due to 'black swan' event of the global financial crisis and its impact on the steel industry.
- Mr. Tata did not ever interfere in the decision to sell Tata Steel UK or its merger with ThyssenKrupp and no material was placed on record to prove anything to contrary.

c. NCLT Holding

- All allegations regarding the investment in Corus and proposed merger with ThyssenKrupp were held untenable under law against Mr. Tata. NCLT did not find any merit in any of these allegations raised by the Petitioners and were dismissed.
- NCLT held that acquisition of Corus was a collective decision of TSL which was periodically approved by Mr. Mistry as a Director on the Board of TSL. This entire acquisition was undertaken in compliance with due governance process under the supervision of the Board of Directors of TSL without any dissent from any of the shareholders of TSL. Mr. Mistry was present as Director and approved every resolution of TSL from entering into the auction to thereafter confirming the acquisition share price. Further, no material evidence was produced to show that Mr. Tata objected to the merger with ThyssenKrupp or that there was any correspondence from Mr. Tata on not proceeding with merger with ThyssenKrupp.
- Mr. Mistry or the Petitioners failed to place any letter or email whereby Mr. Mistry made any persistent demand for divesting or fundamentally restructuring Corus or any material reflecting obstruction or opposition to the stand of Mr. Mistry by Tatas. Absent any relevant evidence, there exists no case of oppressive conduct or mismanagement qua Corus' acquisition. TSL was not made a party to the proceedings, which was unusual, as the standard practice would mandate such company to being made a party to the proceedings.

ISSUE 3

The Nano Car project, depicted as the dream project for Mr Tata, was introduced as the cheapest car in the Indian market to penetrate the demand for an affordable "every person" car. However, due to the failure in execution of this dream, Tata Motors incurred significant losses over the years, which affected the dividend pay out to the shareholders as well. The Petitioners contended that despite such significant losses, it is due to the influence and control of Mr. Tata that the project has not yet been stopped. In addition, the Petitioners pointed out that there was a conflict of interest for Mr. Tata, in the dealings with Jayem Autos to procure Nano gliders, as part of the mission to boost up the sales of Tata Motors.

In light of the above, the issue raised before the NCLT was as follows:

4.NCLT Decision

Whether or not, the loss, if any, still incurred by Tata Motors (including Nano project) can be related back to the affairs of the Company conducted by Mr. Tata as Executive Chairman in the past relating to Tata Motors and if so, incurring such loss by Tata Motors can be attributed to Mr. Tata?

a. Arguments advanced by the Petitioner

- Due to the launch of the Nano Project, the once profitable Tata Motors has slipped into losses hitting the dividend pay-out, thereby affecting the Petitioners. As the Nano project has become a liability and caused losses of more than 1000 crores, the Petitioners contended that it should be shut down but due to emotional reasons involving Mr. Tata's involvement in respect to this project, the decision to shut down this project has not yet been taken. Nano Gliders were planned to be supplied to an entity namely Jayem Auto that makes electric cars. However, since Mr. Tata in his personal capacity holds financial stake in this entity, it amounts to a conflict of interest.

b. Arguments advanced by the Respondent

- The project was approved by the board of directors of Tata Motors after carefully analyzing the commercial prospect of the project, even though the project was conceived by Mr. Tata and he promoted its launch. This by itself cannot mean the decision to launch Nano was the sole decision of Mr. Tata.
- In respect to dividends, Tata Motors has continued to pay healthy dividend even post launch of the Nano project, it was only skipped in the FY ended 31.03.2015 under the chairmanship of Mr. Mistry.
- The decision to procure nano gliders from Jayem Auto was a prudent decision with the aim to fill in the gap in the products of Tata Motors and to capitalise on the elective vehicles market, which could boost the operations of Tata Motors.
- Mr Tata had immediately disclosed its interest in Jayem Auto by writing to Mr. Mistry. Further, Tata Motors has not concluded any arrangement or contract with Jayem Auto for supply of Nano gliders, not even a memorandum of understanding was executed, no monetary consideration was exchanged except for certain testing and trial expenses.

c. NCLT Decision

- Tata Motors has not been made as party to the petition, therefore, it had not found any merit either to say that the petition is maintainable or to say that there is material proving that actions of Mr. Tata are prejudicial to the interest of either the Company or the Petitioners.
- It is inconceivable to understand how the Petitioners could attribute everything that has been done in Tata Motors to Mr. Tata. Tata Motors is a listed company, having its own board and the decisions are put to the scrutiny of Tata Sons in view of Article 121A.
- The deal/action contended in the present case has not been proved as unfair and prejudicial either to the interest of the Company or oppressive against or prejudicial to the members of the Company and the interest of the public and no material has been furnished to substantiate the same.

ISSUE 4

Whether or not the removal of Mr. Mistry as Executive Chairman of the Company on October 24, 2016 and his subsequent removal as director of the Company is oppressive/prejudicial to the Petitioners/the Company?

a. Arguments advanced by Petitioner

- The Petitioners submitted that the removal of Mr. Mistry was undertaken due to his constant attempts at stopping the acts of mismanagement and restoring transparency and integrity in the functioning of Tata Sons and its group companies. The removal was against the board resolutions, shareholders resolutions and the Articles of Tata Sons.
- The removal was in complete violation of the norms of corporate governance. The limited authority and mandate given by the shareholders to the Board of Directors was designating Mr. Mistry as Executive Chairman during his tenure and any removal of Mr. Mistry by the board during his tenure would on the face of it be a breach of the resolution of shareholders and would logically have to be approved by the shareholders.
- The Petitioners further contended that to protect the intent of law, there should be proportionate representation provided to the Petitioners, owing to the fact that their shareholding was in excess of 15%. Such representation should provide them with the right to nominate at least two directors so that the Tata Trust nominated directors are not in control of the decisions and hence, cannot misuse their power in relation to the decisions of the Company.
- The Petitioners also submitted instances of glowing recommendation and feedback of the performance of the Company from various Company committees and functionaries. The Petitioners contended that these issues fall within the ambit of Sections 241-242 of the Companies Act, 2013 as Mr. Mistry's removal was not part of the agenda, nor discussed in the meeting, the legal opinion upon which the nominee directors relied upon was not placed before the meeting, and in violation of the Articles and secretarial standards mandate.

b. Arguments advanced by the Respondent

- A directorial complaint cannot be raised in a petition filed under Section 241 as a directorial dispute will not have nexus with the shareholders' proprietary rights. Therefore, the same cannot be agitated or entertained in a petition under Sections 397/398 of the Companies Act, 1956 or Section 241 of the Companies Act, 2013. The provisions of the chapter on oppression and mismanagement cannot be used to agitate complaints regarding loss of office or directorship.
- Respondents further contended that the removal of director could become a grievance under Section 241 only when a vested right is conferred upon the minority shareholders to participate in the management of the company. It is also to be noted that the power of re-designation was given in the shareholders meeting to the board of directors, while the power for appointment as well as removal of the deputy executive chairman has already been conferred upon the board under Article 119.

c. NCLT Holding

- The NCLT did not find any merit to say that inclusion of agenda item for removal would become grievance under Section 241. Any complaint assailing the removal of director cannot become a grievance to the Petitioners under Section 241 of the Companies Act, 2013 and the NCLT did not find any merit that removal of Mr. Mistry as Director is prejudicial or oppressive to the interest of the Petitioners.

4. NCLT Decision

- NCLT noted that it is not appropriate to measure out his removal based on achievements and figures given by either side. It is evident that Mr. Mistry became part of the Company as an employee, and while the position may be that of an Executive Chairman, it is still 'employment'. Moreover, this will not become a ground under Section 241 primarily because it is not in relation to managing the affairs of the Company, rather, it is in relation to the removal of a man managing the affairs of the Company on being appointed by the directors. It has been said time and again that the removal of an employee from the Company could not become a ground under Section 241 because removal of a person appointed on remuneration is not an act of 'conducting the affairs of the Company'. At best, it can be called an employment dispute. Although the Executive Chairman was appointed by Board of Directors, it is not a position elected by the shareholders. The Executive Chairman takes a lead in taking decisions but every such policy decision or an issue that requires board of directors' approval, has to go through them. The Executive Chairman post is not an elected post; therefore, every action of the Executive Chairman is amenable to the board of directors. Mr. Mistry did not have a free hand to run the Company as he wishes as he was accountable to the Board of Directors, who are elected by the majority shareholders.

- No director has a vested right to stay in office and is amenable to removal under Section 169 of the Companies Act, 2013 The only director that cannot be removed as per law by the shareholders is the director appointed by the NCLT under Section 242.

- A right to proportional representation could be asserted only when such right has been incorporated in the Articles. In this company, no such Article is incorporated to provide any seat to the Petitioners, hence this cannot become a ground to set aside the removal of Mr. Mistry as director of the Company.

- Further, NCLT did not find any merit in allegations that since Mr. Mistry was appointed on the recommendation made by the Selection Committee; he could not be removed unless the Selection Committee is constituted. It was held that if such is the case, it cannot be called as the Selection Committee in the first place. NCLT held that the language of the Article 118 is very clear, without any ambiguity, and any layman reading it could only understand that the procedure for appointing alone is applicable to removal and not the selection process. Asking for the recommendation of the Selection Committee for removal is an anathema to the doctrine of reasonableness.

- • With respect to non-inclusion of his removal as an agenda item to the Board Meeting, NCLT held that including an agenda item within short notice is not new. Merely holding a meeting at short notice or inclusion of an agenda item on the date of the meeting cannot be ascribed as a transaction afflicted by fraud. Mr. Mistry's removal cannot ipso facto become a grievance under Section 241 unless its ingredients of have been fulfilled.

- On the aspect of alleged conflict of interest, the NCLT held that every act by a Director cannot be deemed to be a conflict of interest under Sections 166 and 184 of the Companies Act, 2013, as the spirit of these provisions pertains to commercial transactions. Thus, an allegation that shareholders who were required for appointment could not vote for removal, does not have any merit.

- Further, it cannot be said that Mr. Tata and Mr. Noshir Soonawala interfered with the affairs of the Company. They have been committed to the growth of the company and its group companies for the last several decades and looking into every aspect upon which an advice is sought. At times when they felt that a situation is alarming, they used to apprise the situation to Mr. Mistry so that he could take the company in the right direction.

- On the aspect of removal of Mr. Mistry from directorship, the NCLT held that there is no proportional representation to the shareholders of the company to have a seat on the board, no special rights to the Petitioners to have their man on the board, and no court order providing a seat to the Petitioners on the Board of Directors. The Respondents have taken every precaution and procedural step in compliance with the Companies Act, 2013 for removal of Mr. Mistry. A complaint assailing the removal of director cannot become

a grievance to the Petitioners under Section 241 of the Companies Act, 2013. Further, the NCLT did not find anything oppressive or prejudicial to the interests of the Petitioners in the removal of Mr. Mistry as Director.

ISSUE 5

Whether the various transactions and dealings between the Siva Group Companies and Tata Group were conducted by Mr. Tata in a manner prejudicial to the interest of the company or oppressive/prejudicial to the interest of the Petitioners?

Tata Teleservices Limited (**"TTSL"**) is an Indian broadband and telecom communications service provider based in Mumbai and part of the Tata Group. Mr. Tata was the Executive Chairman and Mr. Mistry was part of the Board of the Directors of Tata Sons when Siva Group made an investment in TTSL. In February 2006, Sterling Infotech Ltd. acquired 520 million shares of TTSL at INR 17 per share aggregating to INR 884 crores through a share purchase agreement, out of which, Siva Group paid INR 102 crores, and took loan of INR 650 crores from Standard Chartered Bank for financing the share purchase. In return, Siva Group had pledged TTSL shares as security and also ensured that the pledged shares were not sold to an undesirable third party in the event the pledge was invoked on Siva's default. Tata Sons had only undertaken to purchase the pledged shares at a pre-determined fixed price; it did not guarantee to make good the Sterling principal loan liability of INR 650 crores. The undertaking was withdrawn and substituted by collateral from the Siva Group as security. Thereafter in March 2006, Temasek Holdings (a Japanese Company) was issued TTSL shares at INR 26 per share. The acquisition price of TTSL shares for both Siva and Temasek was within the price band of INR 17-40 per share as approved by the TTSL Board and unanimously by the shareholders.

a. Arguments advanced by the Petitioner

- After Mr. Mistry became the executive chairman of the Company, he gradually learnt that Siva Group, who owned Sterling Infotech Ltd. (**"Sterling"**), had entered into various dealings with the Company because of the patronage he had from the erstwhile chairman Mr. Tata, causing huge losses not only to the Company but also to some of its group companies.

- DoCoMo initiated arbitral proceedings against TTSL by exercising the put option, and an award was passed for an amount of Rs. 8,450 crores against TTSL. Upon execution of the arbitral award before the Delhi High Court, the Company was directed to deposit the entire award sum on behalf of all the parties including Siva Group, whose proportionate share is around Rs. 694 crores. Mr. Mistry apprised the board that Sterling was unwilling to contribute its proportionate share in the award amount and obtained approval of the board to initiate legal proceedings against Siva Group and Sterling for recovery of the said amounts. However, TTSL and DoCoMo received a legal notice from Siva Group as a counter blast to the decision taken in the Board meeting. The Petitioners argued that if Siva Group would not have come to know of the board decision had they not have been informed about the same by an insider.

- Additionally, the Petitioners argued that an amount of approx. Rs. 600 crores have been paid to Siva's companies by TTSL and its subsidiaries under various contracts purportedly for procuring services and vendor management for TTSL and its subsidiaries.

- Mr. Mistry contended that the loan which was given to Siva Group by Tata Capital was given on pledge over the shares of TTSL on arm's length basis and at the time of default by Siva Group, Tata Capital pledged over the shared and acquired TTSL's shares pledged to it. Post this, the shares were transferred back to Siva Group on the minimum threshold price.

- The Petitioners contended that the letter dated November 27, 2005 can be seen as definitive proof of the close contacts and relations of Mr. Tata and Mr. Siva. The letter depicts the suggestions being provided by Mr. Siva to Mr. Tata to further its own interests and leverage the good relationship with Mr. Tata for its own benefit.
- Further, the Petitioners supported the contention of a continued relationship between Mr. Tata and Mr. Siva, by citing the loan provided by a group company of Tata i.e. Kalamati and guarantee provided by company for a loan taken by Siva.
- In view of Mr. Tata's close relationship with Mr. Siva, Mr. Tata was determined enough to go to any extent including removing of Mr. Mistry as the Executive Chairman so as to ensure that no legal action is taken against Mr. Siva.

b. Arguments advanced by the Respondent

- The dealings made with Siva were undertaken by the Company and Mr. Tata himself did not deal with Siva and decisions regarding their dealing had been taken by TTSL and the board. Siva Group is a consultant to TTSL as an equity investor. The correspondences between Mr. Siva and Mr. Tata have been incorrectly cited on a selective basis to impute intentions on Mr. Tata when none existed.
- The Company argued that the allegation on pricing of shares issued to Sterling was 'highly discounted' or at a 'throwaway price' is without merit, as TTSL approved the decision to raise funds within the share price band of 17 to 40. The decision for allotment to both Sterling and Aranda (an affiliate of Temasek) within the price range mentioned above happened almost six months before the shares were allotted to Temasek. Tata Sons reasoned that Temasek was willing to pay higher premium as compared to Sterling and this is a mailer of commercial negotiation depending on the expectations of each of the investors.
- With respect to the DoCoMo arbitration, the Company argued that the Petitioners have no basis to allege that the legal notice from Siva Group was backdated. This assertion has been made in order to paint a picture of Siva Group having some access to the decision taken at the board of directors of the company. On the board meeting of September 15, 2016, Dr. Nohria (Trust nominee director) proposed to initiate legal action against Siva Industries and Holding Ltd. making it further clear that the Company had not waived any of its rights and remedies under the law to proceed against Siva Group. Further, to the legal notice from the Siva Group dated September 15, 2016 making baseless claims, the Company instructed its lawyer to send a strong rebuttal on November 16, 2016.
- The Company further stated that no undue benefit was paid to the Siva Group (of INR 600 crores). Inducting a service provider like Siva Group as a significant shareholder is a commercial strategy to ensure that the vendor's interests are aligned with the company and its shareholders to keep the cost of acquisition of assets/ services low. This is beneficial not only to TTSL but also to the Company, as the party affected more by Siva Group's non-payment was Tata Trust and the group companies. It is not the Petitioners in their personal capacity who were most affected. Therefore, using the same to further its own cause of claiming oppression should not be considered.
- With respect to the loans provided by Tata Capital to Siva Group, Mr. Mistry was in total correspondence with Tata Capital over the mechanics of recovery of the loan, once Siva Group was unable to repay the same back. The loan was provided after due diligence being conducted like any other transaction. The conversion of the loan to acquire the shares pledged was done to recover portion of the losses incurred due to such default by Siva Group. None of the correspondence referred to Mr. Tata exercising his influence and there was no material placed on record to show any personal involvement by Mr. Tata.

- With respect to the acquisition of Dishnet DSL, no issues were raised since 2004 until the current petition over the transaction had taken place. It was purely a commercial decision, as in terms of revenue Dishnet had the highest revenue amongst its contemporaries. It is standard for a group of Tata's size to deal with crores of rupees on a daily basis. It cannot be reasonably expected for every such deal to only be profitable and not cause any losses.

c. NCLT Holding

- The basic requisite in an oppression and mismanagement case is unfairness of the management against the members who are not in a position to take a call with respect to the management of the company. These allegations do not constitute any case under Section 241, and even assuming they fall under Section 241, no case is made out to invoke Sections 241 and 242 of Companies Act, 2013. Further, the Petitioners have not made TTSL or Kalamaty or Tata Capital or their management as parties to these proceedings.
- TTSL shares were acquired in the year 2006 with the approval of the Board and the shareholders of TTSL. After almost 10 years, such a grievance cannot be raised to attribute mala fides against Mr. Tata in respect to acquisition of shares by Sterling.
- As regards the TTSL acquisition, it was held that this decision was taken long ago, based on the valuation of that company and the fact that TTSL was getting the highest revenue from amongst its peers at that point of time. It could therefore not be said that it was a careless decision taken by the management.
- No material has been placed either by the Petitioners or by Mr. Mistry to state that the Petitioners moved some action against Mr. Siva for recovery of the monies to which Mr. Tata raised an objection. As no money has been paid by any of the Tata group companies for the acquisition of TTSL shares by Siva Group, it cannot be said that the Company incurred loss by acquisition of shareholding of TTSL by Sterling (Siva group company).
- Mr. Siva's letter to Mr. Tata was much before the DoCoMo issue, and thus, the two cannot be linked. The NCLT did not find any merit in the argument that Tata Capital giving loan of Rs. 200 crores on the pledge of TTSL shares acquired by Siva Group was an affair conducted by Mr. Tata to prejudice the interest of the Petitioners or prejudice to the interest of the Company. Mr. Tata's involvement has not been seen anywhere in the loan given to Siva Group, rather everything has been properly audited and accounted from time to time.
- With regard to the allegation on the acquisition of Dishnet DSL, the NCLT found that it is a commercial decision taken in 2004. However, the Petitioners did not raise any issue pertaining to it until the company petition was filed.
- Further, it was pointed out by the NCLT that the basic element of any case filed under Section 241 is to reflect the unfairness of the management of a company against the members who do not possess the power to take management decisions. The contentions against oppression and mismanagement cannot be taken only when the company is undergoing losses, especially when no issues were raised when the same management decisions were reaping profits for such shareholders. The entirety of actions must be considered instead of a narrow view being taken, in lieu of the fact that profit and loss-making are often cyclical phenomenon for business entities.

ISSUE 6

The issue pertained to occurrence of some acts in Air Asia India (P) Ltd. amounting to conducting the affairs of the Company in a prejudicial manner and against the interest of the Company/Petitioners or public interest.

Air Asia India (P) Limited is a joint venture with the Malaysian company Air Asia Ltd., and the management is run by the latter, which was not made a party to the present petition.

4. NCLT Decision

a. Arguments advanced by the Petitioner

- The Petitioners submitted that partnership with Air Asia and Telstra Tradeplace (P) Ltd. had already been concluded before Mr. Mistry became Executive Chairman, and since he incidentally became chairman of the Company much later, it was thrust upon Mr. Mistry as fait accompli. The Petitioner alleged that Mr. Venkat at the behest of Mr. Tata indulged in the diversion of funds from Air Asia India.
- The Petitioners submitted that when forensic investigation was carried out by Deloitte, it was revealed that fraudulent transactions up to Rs. 22 crores were carried out involving non-existent parties in India and Singapore by way of hawala transactions.
- The Petitioners accused Mr. Tata of indirectly financing terrorism and causing irreparable harm to the Tata Group image in addition to the breach of trust of both shareholders and employees. They relied on correspondence from Mr. Vasani to say that Air Asia India completely ignored their corporate governance and related compliances, making it full of regulatory infractions without him being a party.

b. Arguments advanced by the Respondent

- The Respondents contended that the argument of the Petitioners that the decision of entering into a joint venture was forced upon Mr. Mistry is devoid of any merit. It was evident from the minutes of the board meeting that he was present in the meeting and signed the minutes himself without any material or indication of any objections for the said decision. If the decision was agreed upon by Mr. Mistry back then, it cannot be said that as soon as he was removed as Chairman the aforesaid decision became fait and was forced upon him.
- Mr. Mistry was actively involved and instrumental in all board meetings where it was unanimously resolved to set up Vistara Airlines. Further, for his role in the Air Asia joint venture, it was pointed out that as late as just before his removal as Chairman, he himself approved the release of funds to Air Asia India to meet the requirements. Mr. Mistry himself admitted in the minutes of the same meeting, that owing to his lack of understanding of the aviation industry, he would confer with Mr. Tata to seek his views. The same views and advice were being labelled as being 'oppressive' in the current petition.
- With respect to the fraudulent transaction worth Rs. 22 crores, it was evident from the forensic investigation conducted by Deloitte that the ex-CEO of Air Asia India was involved, but none of the directors of Air Asia India have been connected to prove that a fraud committed by a CEO could be attributed as fraud committed by the directors of that company.
- The Petitioners and Mr. Mistry cannot claim no privity to the decisions of the joint venture company, as it was within the tenure of Mr. Mistry as the executive Chairman that the decision to increase the Company's investment in Air Asia India was taken.

c. NCLT Decision

- The NCLT held that on the grounds of non-joinder of parties to the current petition, it cannot determine the dealings, or the role played by the Respondents and the Company nominated directors. It is a simple fact that since Air Asia India (P) Ltd. and its management have not been made party to the proceedings, the issues raised in relation to their conduct cannot be determined or considered by the Tribunal.
- Further, since it was a joint venture with the Malaysian partner company Air Asia Ltd., the management of the company is also in the hands of the Malaysian partner company and not in the unilateral control of Mr. Tata. Therefore, the decisions only of the Company nominated directors cannot be scrutinized as being detrimental to the interest of the Company and its shareholders.

- Mr. Mistry did not raise any objection for such approval of transaction with Air Asia to start a domestic airline operation in India in the Board Meeting and subsequently also there was never any objection for either continuing in the joint venture or in infusing funds in Air Asia India until after Mr. Mistry was removed as chairman of the Company.

- Mr. Mistry was also instrumental in all Board meetings including the meeting where it was unanimously resolved to set up Vistara, the joint venture with Singapore Airlines. Air Asia India (P) Ltd. is a joint venture company, in which the Company's shareholding has significantly reduced from 49% to 30%. The fact that neither the joint venture company, nor its directors are made party to the current proceedings, limits the scope of ascertainment and consideration of the Tribunal. Further, the allegations levelled are based on email correspondences from a person who also has not been made party to the current proceedings. To put a nail in these allegations made basis the emails, an affidavit disputing the emails was also filed and considered by the NCLT.

ISSUE 7

The business transactions between Mr. Mehli Mistry and Tata Power Company Ltd. during the chairmanship of Mr. Tata were alleged to be conducted in a manner prejudicial to the interest of the company or oppressive/ prejudicial to the interest of the Petitioners. The transactions in questions are as follows:

- Awarding of dredging and shipping contracts to Mr. Mehli's companies by Tata Power for a long period of time, with renewals being made without any competitive bidding on multiple occasions;

- Mr. Tata's purchase of agricultural land in Alibaug, Maharashtra in 1993, wherein Mr. Mehli was the conforming party to the sale deed;

- Sale of the apartment in a building called "Bakhtawar" at Colaba, Mumbai to MPPCL, which allegedly belonged to Forbes Gokak Ltd. (Successors to Forbes Forbes Campbell and Co. (**"FFC"**).

a. Arguments advanced by the Petitioner

- Mr. Tata, who resided in the Colaba flat since 1968, had no ownership rights over the said flat. However, he sold away tenancy rights of the residential apartment in a building called Bakhtawar at Colaba for Rs. 3 crores in the year 2000 to a company called M. Pallonji and Co. (P) Ltd. (MPCPL), owned by Mr. Mehli. The Petitioners contended that such consideration for the said flat belongs to FFC and not Mr. Tata. The said act of sale of flat was alleged to have enriched Mr. Tata at the cost of FFC, ultimately causing loss to the Petitioners.

- Due to the closeness between Mr. Mehli and Mr. Tata, Mr. Mehli in the year 1993 helped Mr. Tata to buy an agriculture land at Alibaug, Maharashtra. In view of the relationship between them, Tata Power Company Ltd. (Tata Power/TPC) from the year 1993 onwards awarded long term contracts spanning across over 20 years to Mr. Mehli's companies which ranged from painting works to dredging, barging and international shipment of coal from TPC. Most of them were done without tenders.

b. Arguments advanced by the Respondents

- As to allegations of making favours to Mr. Mehli and its associates, the Company denied them as being purely speculative. Further, those allegations pertained to the affairs of Tata Power, therefore the Company contended that it is not in a position to address the same.

- Based on the response received from Tata Power, all contracts awarded to Mr. Mehli are pursuant to following the requisite process in awarding of the contracts. Necessary approval from the board/committee/

management was also taken as required by the schedule of authority prevailing at various times. Many times, these contained details as to how the painting contracts were awarded to Mr. Mehli's company. This entire procedure entailed competitive bidding and was therefore fair and just.

c. NCLT Holding

- NCLT did not find any evidence indicating that Mr. Tata was getting enriched at the cost of the Company. Moreover, the Petitioners failed to make Forbes Golak as a Party, and had not disclosed all details as to how the transaction happened. The allegations were raised after 14 years. The Petitioners did not ever say how much shareholding the Company has in Forbes Golak. Further, since Mr. Tata retired from the Company in 2012, the said act could not be called as an affair related to the Company, as Mr. Tata has not been in the management since then.
- With respect to the Alibaug land, it was held that it is evident that this sale deed was executed in the year 1993 and Mr. Mehli was conforming party to it. However, this was a regular transfer and thus had no relevance to this petition.
- The Petitioners and Mr. Mistry had made allegations that were not supported by any kind of documents, whereas the Respondents dealt with each issue by stating that no contract has been given to Mr. Mehli companies without having requisite approvals and compliances.
- NCLT held that whenever any allegations are made stating that particular actions have caused loss to the members of the company, it has to be shown that the actions of the persons taking the decision/executing the action are unfair and are solely aimed at inviting complaints from the members. In the present cases, the allegations made against the Respondent were not supported by any material. Furthermore, they did not fall under the scope of Section 241. Therefore, there was no merit in the allegation raised by the Petitioners.

ISSUE 8

The act of Tata Sons Board (i) passing a special resolution; (ii) filing an application for conversion of the company, without altering any of the Articles of the Company, from a private to public company under Section 14 of Companies Act, 2013 and (iii) Operation of Article 75 in conducting the affairs of the Company in a manner that is oppressive/prejudicial to the interest of the Petitioners.

a. Arguments advanced by the Petitioner

- The Petitioners contended that the Company should be deemed as a public company not having characteristics of a private company, since it was declared as a public company due to operation of Section 43A of the Companies Act, 1956 and the same stands repealed by the Amendment Act of 2000 with effect from December 13, 2000.
- The present action seeking conversion of public company into private company has occurred solely to invoke Article 75 against the Petitioners and prevent them for raising issues of corporate governance. Such invocation would undoubtedly cause prejudice to the Petitioners and be against the interests of the Company.
- It is immaterial whether application of Section 465 of the Companies Act, 2013 dealing with repeals and savings is notified or not, more so when such provisions related to public and private companies have already been notified. Since the new provisions have dealt with repealed provisions which are analogous to the new provisions, there cannot be any argument to say that the old provisions would remain in force because Section 465 of the Companies Act, 2013 has not been notified.

- The Petitioners relied on circulars issued by the Ministry of Corporate Affairs to state that if any company did not adhere to the time limits stated in the circular to reverse the status to the original status, whether public or private, the companies shall be deemed to have chosen to remain as public companies, which is the case herein with respect to the Company.
- The Petitioner contended that the Company should have applied for conversion of its status from public to private basing on the then existing provision, i.e., 43A(2A) by virtue of insertion of Section 43A (11) of the Companies Act, 1956, but Tata Sons deliberately remained quiet until before notification of Companies Act, 2013 without seeking any conversion of its status from public to private.

b. Arguments advanced by the Respondents

- The Respondents contended that there is no provision analogous to Section 43A of the Companies Act, 1956 in the Companies Act, 2013, and since the section dealing with the repealing has not been notified, it cannot be contended that erstwhile Section 43A(2A) has not been in force.
- The Respondents relied on the argument that if there is a repeal of statute, either expressly or impliedly accompanied by re-enactment of a law, Section 6 of the General Clauses Act shall follow unless a reading of the legislation itself indicates that a contrary view. If no contrary intention can be determined by the re-enacted legislation, then section does not stand repealed.
- Status of a company must be determined by checking whether the company falls within definition of a private company or a public company under the Companies Act, and the register of companies cannot be taken as the single indicator.
- Therefore, on the basis of the above, it was argued that Section 43A(2A) is still applicable to say that the companies are at a liberty to inform the Registrar of Companies that it has become a private company and the change of the title from a public company to a private company should be made in the register of companies.

c. NCLT Holding

- The NCLT held that no merit was found in the contentions raised that the application under Section 14 of the Companies Act, 2013 for conversion from public to a private company falls for consideration under the ambit of Sections 241 and 242 of the Companies Act, 2013.
- There is no analogous provision incompatible to Section 43A(1A) and (2A), and the Company is still entitled to inform the Registrar of Companies to make it private. Such an action can never become oppressive against the Petitioners because law itself directs the Company to become private as per Section 43A(2A) of the Companies Act, 1956.
- The NCLT observed that there exists an interface between the earlier provisions of the Companies Act, 1956 and the new provisions of the Companies Act, 2013. The repeal provision under Section 465 has not been notified with respect to Section 43A. Merely due to the fact that the Company has been deemed as a public company by operation of law and that there is an absence of any other definition to 'private company' under the Companies Act, 2013, it cannot be treated as a public company.
- There is no deemed public company provision under 2013 Act, only two classes, one is public company, and another is private company. If the Articles of the Company are looked into, it clearly falls within the definition of 'private company' under the new regime as well, and therefore it is quite obvious that it will continue as private company. To ensure that it continues to remain a 'private company', it has to restore its original position, and has thus applied to the Registrar of Companies to become a private company.

II. Summary

In light of the above arguments and contention raised before the NCLT, the NCLT pronounced its judgements which is as follows:

- Removal of Mr. Mistry as executive chairman was due to the loss of confidence in his leadership by the board of directors and majority of shareholders i.e. Tata Trusts, and not because of any discomfort caused to Mr. Tata, Mr. Noshir Soonawala and other answering Respondents. No Selection Committee recommendation is required before removing Mr. Mistry as executive chairman.

- The removal of Mr. Mistry from position of director was due to him sending Company information to the Income Tax Authorities, the media and due to his open comments against the Tata Trusts, which adversely affected the smooth functioning of the Company.

- No merit was found by the NCLT in the contention that Mr. Mistry's removal as director falls within the ambit of Section 241 of the Companies Act, 2013.

- No merit was found by the NCLT to hold that proportionate representation on the board proportionate to the shareholding of the Petitioners is possible so long as the Articles do not have such mandate as envisaged under Section 163 of the Companies Act, 2013.

- No merit was found by the NCLT in the contended legacy issues as alleged by the Petitioners in relation to the Siva Group issue, TTSL issue, Nano car issue, Corus issue, Mr. Mehli issue and the Air Asia issue to state that such issues fall within the ambit of Section 241 and Section 242 of the Companies Act, 2013.

- No merit was found by the NCLT to say that the application under Section 14 of the Companies Act, 2013 for conversion from public to a private company falls for consideration under the ambit of Section 241 and Section 242 of the Companies Act, 2013.

- No merit was found by the NCLT to say that the advices and guidance given by Mr. Tata and Mr. Noshir Soonawala amounted to interference in administering the affairs of the Company and that they acted as shadow directors to superimpose their wishes upon the Company.

- No merit was found by the NCLT in the contention that Articles 75, 104B, 118 and 121 of the Articles were oppressive against the Petitioners.

- No merit was found by the NCLT in the contention that the majority rule had taken a back seat with the introduction of corporate governance in the Companies Act, 2013. It was held that corporate democracy is the 'genesis' and corporate governance is a 'species', indicating that the two can never be in conflict with each other.

5. NCLAT Decision

CYRUS INVESTMENTS (P) LTD AND ORS. V. TATA SONS LTD AND ORS.
Company Appeal (AT) No. 254 of 2018
Decided on: December 18, 2019

I. Background

As discussed in the preceding chapter, the NCLT vide judgment dated July 09, 2018 decided against the Mistry Group and held that the removal of Mr. Mistry as Executive Chairman cannot be attributed to acts of oppression and mismanagement under Section 241 of the Companies Act, 2013. Mr. Mistry and other petitioners appealed against the said judgement to the NCLAT (**"Appellants"**).

Issues

The NCLAT considered the arguments advanced by the parties and the facts in the company petition in relation to the following issues:

1. Whether Articles of the Company including Articles 75, 104(B), 118, 121 and 121(A) and 124 are per se oppressive, allowing Sir Ratan Tata Trust and Sir Dorabji Tata Trust to control the affairs of the Company? Whether the Articles have been abused and misused by Mr. Tata?

2. Whether the removal of Mr. Mistry as executive chairman of the Company in the board meeting followed by his removal as Director of the Company is oppressive/prejudicial to the Appellants/the Company?

Issue 1

Whether Articles of the Company including Articles 75, 104(B), 118, 121 and 121(A) are per se oppressive allowing Sir Ratan Tata Trust and Sir Dorabji Tata Trust to control the affairs of the Company? and,

Whether the Articles have been abused and misused by Mr. Tata, or are unlawful or illegal due to the prejudicial acts being taken by way of these Articles?

a. Arguments Advanced by the Appellants

- The Appellants submitted that Article 121 and Article 121A were introduced in the years 2000 and 2014 respectively to safeguard company interests— however, contrary to their intention, they became a means to require prior consent and affirmation for matters which could be brought before the Board of Directors of Tata Sons Limited and the Tata Group Companies. This had resulted in the entire process becoming completely oppressive. Veto powers were never meant to be formally used; and the existence of the articles was only meant to ensure conduct of the board of the Company was in the best interests of the Company. Article 121 was contrary to scheme of the Companies Act, 2013, as it necessitated that the Board was to appoint independent directors even in case of unlisted public companies.

- Article 75 was also contended to be a tool of potential abuse and oppression against minority shareholders. Article 75 allows Tata Sons, through passage of a special resolution, to ask any shareholder to sell his shareholdings either to existing shareholders or to outsiders chosen by the board. Article 75 was part of the

Articles for several years to ensure that the affairs of the company were conducted as an intrinsically two-group company with the involvement of both groups working towards a mutual benefit. The Appellants contended that the in contrast, recent events reflected that attempts were made at oppressing the minority shareholders by way of this Article and by marginalising and eliminating the rights of the minority shareholders from the Company.

- With respect to the transfer of shares of the Company under Article 75, reliance was placed on the decision of the Hon'ble Supreme Court in **V.B. Rangaraj v. V.B. Gopalakrishnan and Ors.**[9], which held that the Articles of Association are the regulations of the Company and therefore create binding obligations on the shareholders of the Company.

- Additionally, with respect to Article 118, the Appellants contended that the process of obtaining the affirmative vote of all directors appointed under Article 104B (i.e. the Trusts Nominee Directors) in a board meeting, should be applicable even in the case of removal of the Chairman. The Appellants further contended that these Articles although not unlawful in nature, act as a mechanism for oppression and enforcing the will of the majority shareholders on the minority shareholder, leading to the current dispute.

b. Arguments Advanced by the Respondents

- As per the **'Secretarial Standard on Meetings of the Board of Directors',** if any special majority or affirmative vote of any particular Director/Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote. Article 121, if read with Article 104A of the Articles of Tata Sons, cannot be held as arbitrary.

- Article 121 of the Articles of 'Tata Sons' merely suggests affirmative vote is permissible under the law, therefore, the right to exercise affirmative vote vests with nominee directors and not the trusts. The affirmative rights / veto rights do not grant any special rights to the holders of such rights to ensure that any particular business is necessarily decided as per their wish and/or that any particular Board Resolutions are passed.

- With respect to Article 75, it was submitted that the apprehension on part of the minority shareholders, with respect to the possibility of misuse of Article 75, was unfounded and that it was clearly indicated that if the Appellant minority shareholders were dissatisfied with the affairs of the company, they had the option of selling out their shares in the company.

- With respect to Article 118 requiring a 'Selection Committee', the Respondents argued that the role of the aforementioned Selection Committee was a limited one, and it was only to recommend candidates for the appointment as Chairman of the board, and by no means it could be interpreted that the Committee would take decisions regarding the removal of the Chairman.

c. NCLAT Holding

- The usage of Article 75 was held as being prejudicial to shareholder interests. In view of the prejudicial and oppressive decisions taken the Company, which never exercised the power under Article 75 before, the NCLAT held that they should also not exercise this power against the Appellants or any other minority member. This power can and should only be exercised in exceptional circumstances and should be recorded in writing, along with adequate intimation to the concerned shareholders whose rights might be affected.

9. (1992) 1 SCC 160

- Article 121 was held to oppressive, since it was made clear that the nominated Director of 'Tata Trusts' was in direct control of the Company and the group companies or its subsidiaries. Aforesaid provisions contributed to the fact that in the general meeting of the shareholders of 'Tata Sons Limited' or the Board of Directors, the majority decision was fully dependent upon the affirmative vote of nominated Directors of 'Tata Trusts'. Independently, no majority decision can be taken either in the general meeting of the shareholders or by majority decision of the Board of Directors.

- The standard procedure prescribed under Article 118 was not followed and thus, the minority group (the Appellants) and others had no choice but to raise a motion of 'no confidence'. Further, the NCLT or the NCLAT has no jurisdiction to hold any of the Articles as illegal or arbitrary. Furthermore, in accordance with the wordings of Section 242 of the Companies Act, 2013, if any action is taken in accordance with law but is 'prejudicial' or 'oppressive' to any member or to the Company or to public interest, the Tribunal can deliberate as to whether the facts in question justified the winding up of the Company.

Issue 2

Whether removal of Mr. Mistry as executive chairman of the Company in the Board Meeting followed by his removal as Director of the Company is oppressive/prejudicial to the Petitioners/the Company?

a. Arguments Advanced by the Appellants

- Tata Sons had a controlling interest over 100 operating companies, of which 29 are listed. Therefore, it is imperative that Tata Sons should operate as a two-group company to provide checks and balances in its conduct of business, as opposed to applying a simple majority rule that vests only one group with the power to unilaterally determine the business of the Company. 'Tata Trusts' and 'Tata Group Companies' along with the 'Tata Family Members' collectively represent over 81% shareholding, while the SP Group i.e. the Appellant Company holds only an 18% equity share.

- The Appellants submitted there was and has always been constructive participation by the nominees of the SP Group at the Board level as well as active support of the SP Group as shareholders in the conduct of the business of Tata Sons, including at a time when the voting rights of the Tata Trusts were by law vested in a public trustee.

- Mr. Mistry was expressly referred to as a significant shareholder, and yet, none of the purported reasons provided for removing him from the position of 'Executive Chairman' had been adequately deliberated prior to his removal. This led to the break-down of mutual trust and confidence.

- Mr. Mistry was suddenly and hastily removed in the context of: (i) his efforts to remedy past acts of mismanagement in the Company that had been inherited by him, and thus opening up issues detrimental to the goodwill of the Company; (ii) being respectful in resisting the interference from Mr. Tata and Mr. Noshir Soonawala in the affairs of Tata Sons; and (iii) his institution of a formal governance framework to regulate the existing role of Tata Trusts and thereby specifying the matters over which adequate/prior consultation would henceforth be required to prevent further mismanagement.

- There was widespread abuse and interference by Mr. Tata and Mr. Noshir Soonawala in the affairs of Tata Sons, leading to misuse of powers granted to them as trustees of the Company. This interference was evident from the records which showcased a varied range of topics over which pre-consultation of the two trustees was demanded, claiming this was required under the Articles of the Company. This degree of interference went beyond 'solicited advice or guidance'.

- Further, no Committee was formed for the removal of Mr. Mistry as Executive Chairman as is required under Article 118 of the Articles of Tata Sons. No legal opinion was taken by the Board of Directors to determine whether the removal of the 'Executive Chairman' in such a hasty manner was in accordance with the Articles. The Board of Tata Sons committed several prejudicial and oppressive acts using the affirmative voting rights of the nominated directors of Tata Sons, causing major losses for the Company.

b. Arguments Advanced by the Respondents

- The Respondents submitted that a claim under Sections 241-242 of the Companies Act, 2013 is maintainable only if there are continuous acts of oppression on the part of the majority shareholders. Additionally, such conduct must be burdensome, harsh and wrongful. Mere illegal termination of Directors cannot give rise to a grievance so grave as to amount to oppression. Further, Mr. Mistry was appointed as a Director in the year 2006, not in the capacity of a nominee of the SP Group or to recognize any right of representation of the SP Group on the board of Tata Sons. Thus, his subsequent removal from the position could not be held as a case of oppression/prejudice to any proprietary rights of the SP Group since there was never any recognition of the entrenched rights in the first place.

- The Respondents highlighted that there was no such provision in the Articles of Tata Sons or any other shareholders' agreement that entitled the Appellant group to participate in the management of the Company or nominate any directors to the Board of Directors. Therefore, the Appellant Group is not permitted to raise objections regarding the removal of Mr. Mistry either as Chairman or as a director of Tata Sons.

- With respect to the Appellant's contention under Article 118 requiring a 'Selection Committee', the Respondents argued that the role of the aforementioned Committee was a limited one, and that it was only to recommend candidates for the appointment as Chairman of the Board. By no means could it therefore be interpreted to mean that the Committee would take decisions regarding the removal of the Chairman. The appointment of Mr. Mistry as the Executive Chairman with substantial powers of management was akin to that of a Managing Director and thus he was a Key Managerial Personnel of Tata Sons in terms of Section 251 of the Companies Act, 2013. Rule 8 of the Companies (Meeting of the Board and its Powers) Rules, 2014 **inter alia** provides that in addition to the powers specified under Section 179(3), the Board of Directors shall have the power to appoint or remove the Key Managerial Personal.

- Removal of Mr. Mistry was due to the loss of trust and confidence of Tata Trusts, since he failed to deliver on promises made at the time of selection and failed to lead Tata Group in a cohesive manner. There were 'lapses of governance' observed even during his tenure, such as the acquisition of Welspun Renewable Energy Ltd. Mr. Mistry was not removed simply via the votes of the three directors nominated by Tata Trusts. The decision for his removal was approved by 7 out of the 9 Directors. Therefore, clearly apart from the three nominated directors, four other independent directors saw fit to approve the removal of Mr. Mistry.

c. NCLAT Holding

The NCLAT held that removal of Mr. Mistry as Executive Chairman of the Company in the Board Meeting followed by his removal as Director of the Company is oppressive/prejudicial to the Petitioners and the Company. NCLAT held that the removal of Mr. Mistry from his post was neither discussed nor expected as the records show the company under his leadership flourished and hence a case of lack of performance cannot be built. Hence, NCLAT directed that Mr. Mistry be restored as Director of various companies and even as Executive Chairman of Tata Sons after four weeks of the judgment.

II. Summary

In light of the above arguments and contention raised before the NCLAT, the NCLAT pronounced its judgements stating:

- Tata Trusts did not exercise direct control over the decisions of the Company, which led to actions of oppression/mismanagement being undertaken. The Articles of Tata Sons provided for powers such as:

  i. No quorum at a general meeting of the shareholders can be complete in the absence of the authorised representative of 'Tata Trust' which holds aggregate of at least 40% of the paid-up ordinary share capital.

  ii. Article 121 mandated that the majority decision of the Board requires affirmative vote of the nominated Directors of 'Tata Trusts', without which majority decision cannot come to effect. This clearly demonstrated the pre-eminent power that the Directors nominated by 'Tata Trusts' held over the Board of Directors.

  iii. Power of Tata Sons to transfer ordinary shares of any shareholders including and especially the shares of Mr. Mistry without notice can be exercised through a special resolution passed in the general meeting which requires presence of nominated Directors of the 'Tata Trusts', having affirmative voting rights.

- NCLAT further held that courts ordinarily do not have jurisdiction to hold any of the Articles illegal or arbitrary, if terms and conditions are agreed upon by the shareholders. However, it was also held that if any action is taken which is 'prejudicial' or 'oppressive' to any member or to the Company or public interest, the NCLT can examine the facts to determine whether they would justify the winding up of the Company even if the action is in accordance with law.

- NCLAT held that there was continuing oppression against Mr. Mistry and the interests of the other minority shareholding due to actions of mismanagement of the affairs of the Company. The very fact that the nominated Directors did not use their 'affirmative voting rights' over the majority decisions of the Board or in allowing the 'Tata Companies' to function in a manner which caused losses was itself an unfair abuse of powers on the part of the Respondents and cannot be burdened upon Mr. Mistry.

- The failure of business of Tata Group Companies was not the sole responsibility of Mr. Mistry and therefore his removal cannot be based only on his performance. If there was any failure or any loss caused to the Tata Group Company, the 'Tata Sons', the 'Tata Trusts' or the Board of Directors could not be absolved of their responsibility, particularly when the nominee Directors of the Tata Trusts have affirmative voting power and could have reversed the majority decisions at all points of time. Therefore, Mr. Mistry alone could not and should not be held liable or removed from the board.

- The NCLAT took on record the minutes of the meeting of Nomination and Remuneration Committee, convened on June 28, 2016 which was just few months before Mr. Mistry was removed. In this his performance was highly appreciated and the members unanimously recorded their recognition of hisW significant contributions across Tata Group companies. They also expressed their appreciation of his multifaceted initiatives aimed at preserving and promoting cohesive functioning of the Tata Group in accordance with its distinctive values.

- NCLAT held that the decision to remove Mr. Mistry was predetermined, as no agenda for the meeting was circulated amongst the Board before taking the said decision was taken and no reasons were discussed or recorded in the minutes of the meeting during which he was removed.

- NCLAT further observed that out of nine, three of the Directors who voted for the removal of Mr. Mistry had been inducted into the Board of Tata Sons merely 2 months before the meeting in which Mr. Mistry was removed and two of the other Directors were appointed just 4 months prior to the removal.

6. Decision of The Supreme Court of India

TATA CONSULTANCY SERVICES LTD. V. CYRUS INVESTMENTS PVT. LTD. & ORS.
Civil Appeal No.440441 oF 2020
March 26, 2021

It is not surprising that the NCLAT's order was appealed before the Supreme Court. The Supreme Court was faced with 15 Civil Appeals against the order of the NCLAT. 14 of these appeals were filed assailing the order of the NCLAT, whereas 1 appeal was filed by the SP Group seeking more reliefs than what was granted by the NCLAT. In a judgment running over 280 pages, the Supreme Court attempted to resolve the issues once and for all. In hindsight, the issues have still not been 'resolved', as on April 25, 2021, the SP Group filed a review petition before the Supreme Court. As further developments are awaited, we highlight the issues and the conclusions of the Supreme Court through its judgment dated March 26, 2021.

Issues

The Supreme Court considered the contentions in all the appeals and set out the below mentioned five questions of law for consideration:

1. Whether the formation of opinion by the NCLAT 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 NCLAT, including the reinstatement of Mr. Mistry 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 of the Companies Act, 2013?

3. Whether the NCLAT 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 Mr. Tata and the Nominee Directors, thereby 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?

The Supreme Court analysed the law on oppression and mismanagement in detail from the United Kingdom perspective and traced its development in the Indian context. Subsequently, the Court addressed each issue as set out below.

Issue 1

Whether the formation of opinion by the NCLAT 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?

a. NCLAT's Holding

- The NCLAT held that the Company's affairs were conducted in a manner that was prejudicial and oppressive to some members, and the facts would justify the winding up of the company on just and equitable grounds. The Supreme Court assessed the validity of the NCLAT's findings.

b. Arguments of the Parties

The specific allegations of the SP Group in support of oppression and prejudice before the NCLT were:

- Abuse of the Articles, viz., Articles 121, 121A, 86, 104B and 118, and control exercised by the Tata Trust and its nominee directors over Tata Sons' Board;
- Removal of Mr. Mistry as the Executive Chairman;
- Transactions with Mr. Sivasankaran of Sterlite Infotech involving Tata Teleservices;
- Acquisition of Corus Group of UK;
- The failure of the Nano Car project;
- The grant of inter-corporate bridge loan to Sterling Computers;
- Dealings with NTT Docomo, which resulted in an arbitration award for a large sum of money;
- Sale of a flat to Mehli Mistry and the grant of personal favours to companies owned and controlled by Mehli Mistry.

The Tata Group denied each of the above allegations and provided detailed factual justifications, where required, before the NCLT.

c. Scope of Ascertainment

- The Supreme Court noted that the NCLT had dealt with each of the aforementioned allegations. However, the only allegation which was specifically overturned by the NCLAT was allegation (ii) above, i.e., the removal of Mr. Mistry.
- The Supreme Court noted that the final decisions on facts can be made at the NCLT and NCLAT level. Only questions of law are raised before the Supreme Court. Further, the SP Group has not assailed the failure of the NCLAT to overturn the findings of fact recorded by the NCLT. Thus, the NCLT's finding of fact on the issues, which are not dealt by the NCLAT, were sustained.
- The Supreme Court evaluated the following questions of law: (i) whether the removal of Mr. Mistry could have been the basis for the allegation that the company's affairs have been or are being conducted in a manner

oppressive or prejudicial to the interests of some of the members, and (ii) whether the findings recorded by NCLAT about the existence of the 'just and equitable' clause was in accordance with well-established principles of law.

Issue 2

Whether the reliefs granted and the directions issued by the NCLAT, including the reinstatement of Mr. Mistry 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 of the Companies Act, 2013?

a. NCLAT holding

- The NCLAT held that the removal of Mr. Mistry on October 24, 2016 was illegal.
- Mr. Mistry was to be restored to his original position as Executive Chairman of Tata Sons, and as Director of the Tata Companies for the rest of the tenure.

b. Arguments of the Parties

- The Tata Group argued that the NCLAT reinstated Mr. Mistry, despite the fact that the SP Group was not seeking reinstatement. Further, removal cannot be termed as oppression and mismanagement. The NCLAT failed to appreciate that the removal of Mr. Mistry was on account of the loss of confidence of the Board in him and a complete breakdown of trust. Further, the removal did not require the approval of the Selection Committee.
- The Tata Group further argued that Tata Sons was not a "two-group" company, with one being a majority and the other being a minority. The SP Group joined Tata Sons much after its incorporation, and did not acquire any privilege, prerogative or right. The SP group accepted the rights and obligations as per the Articles, as well as the amendments made to it.
- The SP Group argued that the removal of Mr. Mistry was contrary to the provisions of Article 118, which required the setting up of a Selection Committee for appointment as well as removal. Further, Article 121B contemplates a 15 days' notice, which was not complied with. Thus, Mr. Mistry's removal, which was carried out without there being any agenda or any deliberation, was illegal.
- The SP Group further argued that Tata Sons could be considered a "two-group" company where the relationship was in the nature of a quasi-partnership, creating equitable obligations. The relationship between the family of Mr. Mistry and the Tata family spans over decades and is one of trust and mutual confidence. The SP Group alleged that it had acted as guardian of the Tata Group's interests, when the Trust did not have affirmative voting rights.
- The counsel for Mr. Mistry argued that the 'just and equitable' clause can be invoked for an infraction of legal and/or proprietary rights. The proprietary rights include the right to be governed by the Articles and the Companies Act, 2013. However, interference by the majority shareholders, which encroaches upon the Board's independence, is a breach of proprietary rights of the minority shareholders.
- he Mistry Group argued that Articles 104B, 121, 121A have been misinterpreted, misconstrued and misapplied to mean that majority shareholders can seek pre-consultation before the matter is even placed before the Board of Tata Sons or Tata Operating Companies. However, even the nominee directors have fiduciary duty to exercise their powers in the interests of the company alone.

- Tata Trusts argued that the NCLAT judgment did not deal with the detailed findings of fact rendered by the NCLT and the arguments on behalf of the Tata Trusts. Further, the NCLAT's judgment misattributed the replacement of Mr. Mistry to Mr. Tata and granted reliefs that were not prayed for.
- Further, they argued that merely unwise, loss-making decisions cannot be construed as mismanagement to justify winding up on just and equitable grounds.
- Tata Sons is not a case of a quasi-partnership.
- Tata Consultancy Services (**"TCS"**) argued that the NCLAT lacked jurisdiction to direct Mr. Mistry's reinstatement to the Board of TCS as it was not prayed for. Further, TCS argued that due process was followed in the removal of Mr. Mistry from the Board of TCS.

c. Supreme Court's holding

- The Supreme Court noted that Mr. Mistry was first removed from the post of 'Executive Chairman' by the Board on October 24, 2016. The next day, Mr. Mistry wrote an email to them alleging lack of corporate governance and failure of the directors to discharge their fiduciary duties, which was subsequently leaked to the media although it was labelled 'confidential'.
- The NCLT had noted that Mr. Mistry has the duty to explain the leak, and it noted that he could not provide a satisfactory response to the same. Thus, the leak was traced to Mr. Mistry and this finding was not overruled by the NCLAT.
- Subsequently, Tata Sons issued a Press Statement and removed Mr. Mistry from directorship at Tata Industries Limited, Tata Consultancy Services Limited and Tata Teleservices Limited. Mr. Mistry resigned from other operating companies of the Tatas. Mr. Mistry also wrote to the Income Tax Department upon receipt of a notice by Tata Sons. Following this, Mr. Mistry was removed as director of Tata Sons.
- The Supreme Court noted that as on the date of filing of the petition, it was only contended that Mr. Mistry had been removed from Executive Chairmanship, and not the Directorship of the company. The post of Executive Chairman is not statutorily recognized or regulated, although the post of a Director is. In law, even the removal from Directorship can never be held to be an oppressive or prejudicial conduct. Further, the NCLAT chose not to interfere with the findings of fact on certain business decisions.
- Mr. Mistry's subsequent conduct, while continuing as a Director, justified his removal from the Directorship of Tata Sons and other group companies.
- The Supreme Court also addressed further allegations that the Company was doing well under the leadership of Mr. Mistry and that the Nomination and Remuneration Committee had recommended a pay hike and bonus. The Court noted these allegations were directly contrary to the other allegations pertaining to oppression and mismanagement, where it was argued that the company's affairs were being conducted in an oppressive and prejudicial manner.
- The Court interpreted Article 118 of the Articles, which pertains to 'Appointment of a Chairman', to conclude that a Selection Committee need not be constituted for the removal of a Chairman. The Supreme Court held that the phrase "the same process shall be followed for the removal of the incumbent Chairman" in Article 118 does not refer to the fact that a Selection Committee should be constituted for the removal of a director. It pertains to the immediately preceding sentence, i.e., that in order to appoint a Chairman, it is necessary to take recourse to the affirmative voting right under Article 121.

- Article 121B states that the Director should give at least fifteen days advance notice to the Company or the Board of any matter or resolution to be placed for deliberation by the Board. The Supreme Court held that this Article is not relevant to the removal of Mr. Mistry, as it deals with a situation where a Director wants to bring up any matter or resolution before the Board. The Supreme Court concluded that it does not deal with the agenda that the Board had taken up.

Just and Equitable Clause

- The Supreme Court traced the origins of the 'just and equitable' clause and held that for invoking the just and equitable standard, the underlying principle is that the Court should be satisfied either that the partners cannot carry on together or that one of them cannot certainly carry on with the other.
- However, in the present case, there was no quasi partnership between the Tata Group and the SP Group, which in fact was onboarded halfway through the journey of Tata Sons.
- Further, the NCLAT did not consider the Tata Sons to be a principal holding company, where majority of the investors are philanthropic trusts. Thus, an equitable winding up of Tata Sons would result in starving these Trusts of funding.

Reinstatement of Mr. Mistry on Tata Sons' Board and other Tata Companies

a. NCLAT holding

- Setting aside the removal of Mr. Mistry and directing his reinstatement both as Executive Chairman of Tata Sons and as Director of other Tata Companies for the rest of the tenure.
- Restraining Mr. Tata and the nominees of the Tata Trust from taking any advance decisions.

b. Supreme Court's holding on Reinstatement of Mr. Mistry

- Although there was no prayer for reinstatement of Mr. Mistry as either the Director or Executive Chairman of Tata Sons, the NCLAT directed the restoration of Mr. Mistry as Executive Chairman of Tata Sons and as Director of Tata Companies for the rest of the tenure. The NCLAT had therefore granted a relief which was not sought.
- Further, while the NCLAT granted reinstatement for the "rest of the tenure" on December 18, 2019, as per the resolutions of Tata Sons, the appointment of Mr. Mistry as the Executive Chairman had elapsed, because as per the resolutions, the same was only until March 31, 2017.
- As per well-settled law, the question of reinstatement does not arise after the tenure of the office has run its course. The Supreme Court held that the NCLAT granted this relief **"without any foundation in pleadings, without any prayer and without any basis in law."**[10]
- The Supreme Court further observed that when Mr. Mistry was appointed as the Executive Chairman in December 2012, there was acknowledgment that his past year has been a **"great learning experience he had under the direct guidance of Mr. Tata",** which was not considered by the NCLAT.
- Further, Sections 241 and 242 of the Companies Act, 2013 do not specifically confer the power of reinstatement to courts. The architecture of the provisions does not permit the Tribunal to read into the Sections a power to make a reinstatement which is expressly barred by the Specific Relief Act, 1963. The

10. Paragraph 17.15, **Tata Consultancy Services Ltd. v. Cyrus Investments Pvt. Ltd. & Ors.**, Civil Appeal No. 4404411 oF 2020.

Supreme Court noted the well-established principle that a contract which is dependent on personal qualifications cannot be specifically enforced. Thus, this finding of the NCLAT was set aside.

Issue 3

Whether the NCLAT 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?

a. NCLAT holding

- The NCLAT restrained Tata Sons from exercising its power under Article 75 against the Appellants and other minority members, except in exceptional circumstances and in the interest of the Company, after recording reasons and informing the affected parties.
- In view of 'prejudicial' and 'oppressive' decisions taken during last few years, the Company, its Board of Directors and shareholders that have not exercised its power under Article 75 since inception would continue to do so and ensure that they do not exercise the power under Article 75 against SP Group or other minority members. However, NCLAT also held that it has no jurisdiction to decide on the legality of the Articles.
- Such power can be exercised only in exceptional circumstances and in the interest of the company, but before exercising such power, reasons should be recorded in writing and intimated to the concerned shareholders whose rights will be affected.

This question before the Supreme Court was whether the NCLAT could have muted the power of the Company under Article 75 of the Articles, while refusing to set aside the Article.

b. Arguments of the Parties

- The Tata Group argued that Article 75 was always in existence, and neither Cyrus Mistry, his father, nor the SP Group ever raised a complaint or averred about its misuse which led to oppressive or prejudicial conduct against interest of certain members. The NCLAT committed a serious error in whittling down Article 75 specifically when it noted that it did not have the power to declare it as being illegal.
- The SP Group contended that Article 75 is a tool in the hands of the majority shareholders to oppress the minority shareholders.

c. Supreme Court holding

Relief related to Article 75

- The question before the Court was whether the NCLAT could have granted a relief which limited the applicability of Article 75 of the Articles.
- The Supreme Court held that it should not have been granted by the NCLAT as in the original petition, there was no prayer challenging Article 75. Further, Article 75 merely provides an exit option for an unwilling partner.

- Section 242(1) of the Companies Act, 2013 provides that **"the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit".**[11] The Supreme Court noted that the objective is to bring to an end the matters complained of by petitioners, and not to make matters worse or consider issues that were not raised by either party. As the NCLAT did not consider the purpose of the remedy when granting it, this finding of the NCLAT was set aside.

Misuse of Article 75

- SP Group did not allege misuse of Article 75 in the original company petition, which resulted in oppressive conduct or prejudice to the interests of some members. Further, even in the application for amendment, even a single instance of invocation of Article 75 or its misuse was not averred. Thus, the NCLAT should not have passed an order of restraint and rendered Article 75 ineffective.

- The Supreme Court further held that the Section 241(1)(a) of the Companies Act, 2013[12] provides for a remedy only in respect of present conduct or past and present continuous conduct. It is impermissible in law to stretch the interpretation to cover a likelihood of future bad conduct.

- Further, when the Company was incorporated in 1917, and when the SP Group acquired shares in Tata Sons in 1965, Article 75 was in existence in a different form. The Article was amended several times to which the SP Group, Mr. Mistry's father and Mr. Mistry were parties. They had also given their consent to these amendments. Furthermore, even when the Article took its present form in 2000, Mr. Mistry consented to it.

- Pertinently, the Supreme Court held that a person who willingly subscribed to the Articles of Association and was a willing and consenting party to the amendments cannot later challenge the same Articles. Thus, the relief granted by the NCLAT is contrary to law.

Issue 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 Mr. Tata and the Nominee Directors virtually nullifying the effect of these Articles?

There was a significant modification in position by the SP Group from what was initially sought in the Company Petition and what was sought in the petition before the Supreme Court.

As per Article 104B of the Article, Sir Dorabjee Tata Trust and Sir Rata Tata Trust jointly have a right to nominate 1/3rd of the directors on the board, so long as the Trusts held at least 40% of the paid-up share capital. Article 121 provides that the matters that require to be decided by a majority of the directors would require the affirmative vote of the majority of the directors appointed under Article 104B, i.e., the nominee directors. Article 121A contains the list of matters to be resolved by the Board of Directors.

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11. Section 242(1) - Powers of Tribunal
(1) If, on any application made under section 241, the Tribunal is of the opinion—
(a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

12. Section 241(1)(a) - Application to Tribunal for relief in cases of oppression, etc. —
(1) Any member of a company who complains that—
(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or

6. Decision of The Supreme Court of India

In the initial Company Petition, the SP Group sought to strike down Articles 86, 104B, 118, 121 and 121A and one portion of Article 124. However, subsequently, through a memo dated January 12, 2018, the prayers were limited to:

- the requirement of necessity of affirmative voting of the majority of the Directors nominated by the Trusts, which are majority of shareholders, should be deleted;
- the petitioners should be entitled to proportionate representation on the Board of Directors of Respondent No.1;
- the petitioners should be entitled to a representation on all committees formed by the Board of Directors of Tata Sons; and
- the Articles should be amended accordingly.

The aforementioned reliefs relate to restriction of the affirmative voting rights of the nominated directors. There was no specific prayer for restraining Mr. Tata and the nominee directors from taking any decision in advance. However, the SP Group interestingly did not seek to scrap the affirmative voting rights before the Supreme Court. Rather, it sought that the applicability of the affirmative voting rights should be restricted to the matters covered under Article 121A. Further, it was requested that a similar affirmative voting right be conferred to the SP Group's nominee directors.

a. NCLAT holding

- The NCLAT found that the affirmative voting rights under Article 121 (available to the Directors nominated by the Trust under Article 104B) was oppressive and prejudicial.

b. Arguments of the Parties

- The Tata Group argued that the NCLAT's interpretation of affirmative rights is conceptually and legally wrong. NCLAT took the affirmative right to mean unilateral power to implement decisions. Further, the NCLAT's direction is tantamount to striking down Articles 104B and 118, even though they had already been given up.
- The SP Group argued for restricting the affirmative voting rights to matters covered by Article 121A to grant a similar affirmative right to the nominee Directors of the SP Group. The SP Group claimed that proportionate representation was statutorily recognized under Section 163 of the Companies Act, 2013.[13]
- The SP Group also argued that there has been a shift from 'corporate majority/democracy' to 'corporate governance', and that each action of the Board should pass the test of fairness. Further, directors have a fiduciary responsibility and they owe their allegiance only to the company, and not their nominators.
- The SP Group contended that the affirmative voting rights disabled the nominee Directors from acting independently and in the best interests of the company. It was argued that the loyalty of the nominee Directors should be to the Company, and not to their appointing Trusts.
- The pre-consultation requirement disabled the Directors from effectively discharging their fiduciary duties.
- It was further contended that the protective rights under Article 121 were intended to take care of the interests of the Tata Trust, in case they became a minority.

13. Section 163 - Option to Adopt Principle of Proportional Representation for Appointment of Directors.
Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of section 161.

- It was also alleged that Mr. Tata vets the minutes of meetings post-facto and acts as a shadow director.

c. Supreme Court holding

- The Supreme Court considered the validity of this finding, considering that the challenge to these Articles had been given up expressly.
- Further, the Supreme Court considered whether the NCLAT could have granted such a direction to Mr. Tata and the Nominee Directors, which had the effect of nullifying the scope and impact of these Articles.

Scope of the Prayers

- The complainant companies sought 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 Mr. Tata and the nominee Directors of the Trusts from taking any decision in advance;
- In fact, in the appeal, the complainants themselves sought modification of this finding;
- Thus, as there was no such prayer, the order of restraint passed by the NCLAT was set aside by the Supreme Court. The Supreme Court restricted itself to considering the appeal by the SP Group, seeking an amplification or modification of the relief.

Affirmative Voting Rights

- The challenges pertained to Article 104B, which grants the Trusts the right to jointly nominate 1/3rd of the Directors on the Board so long as the Trusts hold at least 40% of the paid-up share capital. Further, Article 121 was challenged, which provides that the matters required to be decided by majority of the Directors would require the affirmative vote of the majority of the Directors appointed pursuant to Article 104B. Article 121A contains the list of matters to be resolved by the Directors, which includes matters affecting the shareholding of the Tata Trusts in the Company.
- It was doubtful that the SP Group was fighting on principles, and the Supreme Court noted that, **"If affirmative voting rights are bad in principle, we do not know how they may become good, if conferred on S.P. Group also."**
- The Supreme Court further noted that restrictions on the composition of the board of directors, which are applicable to listed companies, do not apply to Tata Sons. Despite that, the Board comprises of many people who are outsiders to the Tata family. If it was the intention to run Tata Sons as a family business, Mr. Tata need not have stepped down from Chairmanship.
- Arguments pertaining to poor corporate governance were dismissed by the Supreme Court by considering the nature of Cyrus Mistry's appointment. It was held that Mr. Mistry was an outsider to the family, and that his appointment was done by the Selection Committee of two Tata Trusts themselves.
- The next allegation considered by the Supreme Court was that of fiduciary duties of the directors. The Supreme Court held that these allegations are devoid of any substance. Further, the Court emphasized that Tata Sons is a Principal Investment Holding Company which is not engaged in direct business activity. Further, majority of its shareholders are charitable Trusts. Thus, the Directors nominated by the Trusts are unlike other directors who get appointed in the general meeting of the company. The directors also hold a fiduciary role with the Trusts and the beneficiaries of those Trusts.

6. Decision of The Supreme Court of India

- Particularly, the Supreme Court held that a balance must be struck between (i) the duties of a director under Section 166(2) of the Companies Act, 2013[14] which requires a director to act in the best interest of the company, its employees, the shareholders, the community and the protection of the environment; and (ii) the duties of a director nominated by an institution including a charitable trust. The directors have a fiduciary responsibility towards 2 companies, the nominating company and company on whose Board they are nominated.

- The history of evolution of the corporate world has moved from a regime of 'familial' to 'contractual and managerial' to a regime of 'social accountability and responsibility'.

- The Supreme Court held that affirmative voting rights for the nominees of institutions which hold majority of the shares in companies is accepted as a global norm. Under law, a shareholder or a group of shareholders who constitute the majority can have affirmative voting rights.

- With regard to the duty of a Director, the Supreme Court held that Section 166(2) of the Companies Act, 2013 contemplates a combination of private and public interest. A charitable trust would require pure public interest, which does not affect the validity of the affirmative voting rights.

- With regard to the pre-consultation meetings with the Trustees, the Supreme Court held that it is normal for an institution to want to have an idea about the stand to be taken by them in a forthcoming meeting.

- With regard to the allegation of interference by Mr. Tata, the Supreme Court noted that Mr. Mistry himself sought the continued guidance of Mr. Tata at the time of his appointment as Chairman. Further, the Board of which Mr. Mistry was Chairman, themselves appointed Mr. Tata as Chairman Emeritus. Thus, the Court held that it cannot be argued that Mr. Tata was playing the role of a 'shadow director'.

The Supreme Court rejected all the aforementioned allegations and upheld the affirmative rights under the Articles of Associations.

Claim for Proportionate Representation

- The Supreme Court noted that while the statute (the Companies Act, 2013) confers the right for proportionate voting to shareholders, there is no right of proportionate representation on the Board of a company. The right to claim proportionate representation is not available to a minority shareholder statutorily, neither under the Companies Act, 1956 not under the Companies Act, 2013. It is available only to a 'small shareholder', which works out to 0.04% of the shareholding. The SP Group holds 18.37% in Tata Sons and thus they do not qualify as a 'small shareholder'.

- Particularly, the Supreme Court held that the reliance upon Section 163 of the Companies Act, 2013[15] by the SP Group was misplaced. Section 163 enables a company to provide, in its Articles of Association, for the appointment of not less than 2/3rd of the total number of directors in accordance with the principle of proportionate representation by means of a single, transferable vote. The Supreme Court noted that this does not pertain to representation on the Board for a group of minority shareholders in proportion to their percentage shareholding.

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14. Section 166(1) - (3) – Duties of Directors
(1) Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company.
(2) A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
(3) A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

15. Id at 5.

- Further, the Articles do not contain any stipulation for proportionate representation for the SP Group. The Supreme Court held that it is not available to the SP Group or Mr. Mistry to ask the NCLT to rewrite the Articles which they are bound by.

- With respect to existence of a 'quasi-partnership' between SP Group and Tata Sons, and there being a personal relationship of trust and mutual confidence, the Supreme Court held that there was no pleading or proof to show that (i) there was a pre-existing relationship before the incorporation of the company; or (ii) there is no relationship by entering into an agreement in the nature of a partnership. The Court noted that Tata Sons, in fact, granted more than a proportionate share by nominating Mr. Mistry as Mr. Tata's successor, although the SP Group held a little over 18% of the shareholding.

- Thus, the claim for proportionate representation on the Board was dismissed as not being statutorily, contractually or factually justified.

Issue 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, also called the Amendment Act 2000, came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT?

Tata Sons was incorporated as a private company but became a deemed public company from February 1, 1975 as per Section 43A(1A) of the Companies Act, 1956.[16] However, the Articles of Association were not amended and certain provisions applicable to private companies continued to exist. The concept of private companies becoming public companies was removed in 2000[17] and no such provisions were inserted in the Companies Act, 2013.

Tata Sons passed a Resolution dated September 21, 2017 for amending the Memorandum and Articles for insertion of the word **'private'.** This was followed by approaching the Registrar of Companies in July 2018 to amend the Certificate of Incorporation, which was objected to by the SP Group. The Registrar of Companies issued an amended certificate on August 6, 2018 lead to the filing of additional affidavits before NCLAT challenging this conversion.

a. NCLAT holding

- NCLAT held that the action of the Registrar of Companies in amending the certificate of incorporation was illegal, directed the Registrar of Companies to make necessary corrections to show the company as a public company. The NCLAT set aside the decision of the Registrar of Companies recognising Tata Sons conversion into a Private Company.

16. Section 43-A (1A), Companies Act, 1956 - Private company to become public company in certain cases.
(1A) Without prejudice to the provisions of sub- section (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1974 , (41 of 1974) or incorporated thereafter, is not, during the relevant period 1 less than such amount as may be prescribed] the private company shall, irrespective of its paid- up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this sub- section: Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

17. **Companies (Amendment) Act, 2000 (53 of 2000)**

6. Decision of The Supreme Court of India

- The Registrar of Companies moved an application under Sections 420(2)[18] and 424(1)[19] of Companies Act, 2013 read with Rule 11 of NCLAT Rules, 2016 before the NCLAT to remove these findings, which was dismissed by the NCLAT on January 6, 2020. It was also stated that no review/clarification was warranted.

Legislative History of Section 43A(1A)

- Section 43A was inserted under Companies (Amendment) Act 65 of 1960 with effect from December 28, 2012. This Section underwent two amendments, one under Act 41 of 1974 with effect from February 1, 1975 and another under Act 31 of 1988 with effect from June 15, 1988. Finally, by Act 53 of 2000,[20] Section 43A was made inapplicable with effect from December 13, 2000. The legislative history is traced below:

  i. When Section 43A was inserted, it stated that a private company in which not less than 25% of the paid-up share capital was held by one or more bodies corporate shall become a public company.

  ii. Through Act 41 of 1974 with effect from February 1, 1975, two further stipulations were inserted - (i) that a private company whose average turnover during the relevant period is not less than an amount prescribed, shall become a public company, irrespective of its paid-up share capital; and (ii) that a private company which holds not less than 25% of the paid-up share capital of a public company, shall become a public company.

  iii. Through Act 31 of 1988 with effect from June 15, 1988, the benchmark of the average annual turnover that would determine the applicability of Section 43A was prescribed as not less than Rs. 1 crore. Further, it stipulated that a private company which accepts deposits from the public, other than its members or directors, would be a public company.

  iv. Until Act 53 of 2000 came into force, Sections 43A (2) and (4) were valid. Subsection (2) imposed an obligation upon a private company which became a public company by virtue of Section 43A, to inform the Registrar of Companies of the change in status. Upon receipt of such information, the Registrar was to delete the word "private" in the name of the company and also to make necessary alterations in the Certificate of Incorporation and its Memorandum of Association. Sub-section (4) stated that the status of such a company as a public company would continue until such time it becomes a private company (i) with the approval of the Central Government; and (ii) in accordance with the provisions of the Act.

  v. Through Act 53 of 2000, which came into force from December 13, 2000, two subsections were inserted:

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18. Sections 420, Companies Act, 2013 – Orders of Tribunal
(1) The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit.
(2) The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties:
Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act.
(3) The Tribunal shall send a copy of every order passed under this section to all the parties concerned.

19. Sections 424(1), Companies Act, 2013 – Procedure Before Tribunal and Appellate Tribunal
(1) The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act 1["or of the Insolvency and Bankruptcy Code, 2016] and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure.

20. Section 12 (Act 53 of 2000) – Amendment of Section 43A
(a) after sub- section (2), the following sub- section shall be inserted, namely:-' (2A) Where a public company referred to in sub- section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000 , such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the words "private company" for the words" public company" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company.';
(b) after sub- section (10), the following sub- section shall be inserted, namely -" (11) Nothing contained in this section, except sub- section (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000."

- Sub-section 2A, which prescribed the procedure to be followed by a company, which has earlier become a public company by virtue of Section 43A, but which has later become a private company after the commencement of Act 53 of 2000, to have necessary changes effected; and
- Sub-section 11, which made all the provisions under Section 43A inapplicable after the commencement of Act 53 of 2000, except sub-section 2A.

vi. Act 53 of 2000 also inserted Section 3(1)(iii)(d), which required the Articles of Association of a private company to contain a prohibition on any invitation or acceptance of deposits from persons other than its members, directors or their relatives. This reiterated the position under Section 43(A)(1C) of the earlier regime.

vii. However, Act 53 of 2000 omitted making any changes to Section 27(3) of the Companies Act, 1956, which stated that **"In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in subclauses (a), (b) and (c) of clause (iii) of subsection (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said subclauses (b) and (c)"**[21]

viii. This created an incongruence between the amended Section 3(1)(iii) and the unamended Section 27(3), which contained three requirements, as opposed to the four requirements under Section 3(1)(iii).

ix. The consequence of Act 53 of 2000, however, was that in order to take advantage of Section 43A(2A), the Articles of Association should contain all the 4 prescriptions viz., (i) restriction on the right to transfer shares; (ii) limitation on the number of members; (iii) prohibition of any invitation to the public to subscribe for shares/debentures; and (iv) prohibition of any invitation or acceptance of deposits from persons other than members/Directors or their relatives.

x. The Companies Act, 2013 put an end to the concept of deemed public company and restored the definition of 'private company' to the position prior to the Act 53 of 2000 by way of Section 2(68) of the Companies Act, 2013.[22] The definition of private company was restricted to the three stipulations of Section 3(1)(iii)(a) – (c), thereby deleting the requirement under Section 3(1)(iii)(d), which was inserted by Act 53 of 2000.

xi. Section 2(68) of the Companies Act, 2013 came into force on September 12, 2013, which was prior to the date on which Companies Act, 1956 was repealed, i.e., January 30, 2019. Thus, the criteria for private company under the erstwhile Section 3(1)(iii)(a) – (d) were valid until January 30, 2019. Meanwhile, as Section 2(68) of the Companies Act, 2013 had been notified in September 2019, for a brief period, both the definitions of a private company were in existence.

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21. Section 27(3), Companies Act, 1956 –
(3) In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in sub-clauses (a), (b) and (c) of clause (iii) of sub- section (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub- clauses (b) and (c).

22. Section 2(68), Companies Act, 2013
(68) "private company" means a 8[company having a minimum paid-up share capital 4[Omitted] as may be prescribed, and which by its articles],—
(i) restricts the right to transfer its shares;
(ii) except in case of One Person Company, limits the number of its members to two hundred:
Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:
Provided further that—
(A) persons who are in the employment of the company; and
(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased,
shall not be included in the number of members; and
(iii) prohibits any invitation to the public to subscribe for any securities of the company;

However, through an interpretation suggested by Section 465(3) of the Companies Act, 2013, it can be concluded that Section 2(68) of the Companies Act 2013 would prevail over Section 3(1)(iii) of the Companies Act, 1956. Thus, from September 12, 2013, the definition of private company under the Companies Act, 2013 would be applicable.

b. Arguments of the Parties

- The Tata Group argued that the NCLAT failed to appreciate the effects of the Amendment Act 53 of 2000 on a 'deemed to be public company' under Section 43A and the provisions of the 2013 Act, while dealing with the question of whether Tata Sons would be a private company or a public company. NCLAT, without any justification, made uncharitable remarks against the Registrar of Companies for issuing an amended certificate of incorporation after the judgment of NCLT, though the Registrar was not even a party. When the Registrar sought the expunction of those remarks by filing an application, NCLAT entertained the same, only for the purpose of improving upon the reasons already provided, showing thereby the mindset with which, the case had been approached.
- The SP Group argued that Tata Sons was a public company in form and conduct, as they accepted public deposits till September 2002. Hence, the conversion of the company into a private company by a hand-written order of the ROC, effected at night just before NCLAT was to hear the appeals, was completely shocking. The conversion of the company into a private company lacked probity and prejudiced the proprietary rights of minority shareholders.

c. Supreme Court's Ruling

- After recording the factual observations and tracing the statutory history of Section 43A of the Companies Act, 1956, the Supreme Court observed that the Companies Act, 2013 put an end to the concept of a 'deemed public company' and restored the definition of a 'private company' to the position prior to 2000.
- The question whether a company is a private company or not, will be determined only by the definition of the expression "private company" found in Section 2(68) of the Companies Act, 2013 from September 12, 2013. The Articles of Tata Sons satisfied the requirements of Section 2(68) of the Companies Act, 2013.
- The Supreme Court considered the question of the legal validity of the re-conversion of Tata Sons from a public company to a private company and held:

  i. Tata Sons was a private company till January 31, 1975;

  ii. Tata Sons was a deemed public company under Section 43A from February 1, 1975 – December 12, 2000;

  iii. Tata Sons continued to be a deemed to be public company from December 13, 2000 – September 11, 2013 by virtue of Section 3(1)(iii) of the Companies Act, 1956 as amended by Act 53 of 2000 with effect from December 13, 2000; and

  iv. Tata Sons was a private company with effect from September 12, 2013 within the meaning of Section 2(68) of the Companies Act, 2013.

- The Supreme Court held that it is undisputed that Tata Sons satisfy the parameters of Section 2(68) of the Companies Act, 2013.
- The NCLAT was incorrect to hold that Tata Sons ought to have followed the procedure prescribed in Section 14(1)(b) read with Subsections (2) and (3) of Section 14 of the Companies Act, 2013 for getting an amended certificate of incorporation when it became a public company operation and not choice.

6. Decision of The Supreme Court of India

- The NCLAT mixed up the attempt of Tata Sons to have the Certificate of Incorporation amended with an attempt to have the Articles amended.
- Tata Sons satisfied the requirements of Section 2(68) of the Companies Act, 2013 and requested the Registrar of Companies for an amendment of the certificate, which is a mere recognition of the status of the company and not a creation of this status. This action was perfectly in order.
- The Supreme Court further held that the NCLAT was incorrect in stating that Tata Sons should have taken action in the period between 2000 and 2013 to obtain approval of the Central Government to become a private company under Section 43A (4) of the Companies Act, 1956. Section 43A(11), which was inserted in Companies (Amendment) Act, 2000 (Act 53 of 2000), made all the sub-sections of Section 43(A), except the sub-section 2(A) inapplicable after the commencement of the Act. The requirement under Section 43A(4) ceased to exist from December 13, 2000. Considering this, the question of Tata Sons seeking Central Government approval under Section 43A(4) for the period between 2000 and 2013 does not arise.
- Thus, the NCLAT's finding on this issue was set aside.

In conclusion, the Supreme Court held all the five questions of law in favour of the Tata Group (14 appeals), and rejected the appeal filed by the SP Group.

7. Legal Position on Oppression and Mismanagement

I. Legislative History

Oppression and mismanagement are presently covered under the Indian Companies Act, 2013 under Sections 241 and 242:

A. Application to Tribunal for Relief in Cases of Oppression, etc.

241.

1. **Any member of a company who complains that—**

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

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

2. **The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.**

3. **Where in the opinion of the Central Government there exist circumstances suggesting that—**

   a. **any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;**

   b. **the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;**

   c. **a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or**

   d. **the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case**

and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

4. The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

5. Every application under sub-section (3) —

   a. shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

   b. shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

B. Powers of Tribunal

242.

1. If, on any application made under Section 241, the Tribunal is of the opinion—

   a. that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

   *b. that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

2. Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

   a. the regulation of conduct of affairs of the company in future;

   b. the purchase of shares or interests of any members of the company by other members thereof or by the company;

   *c. in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

   d. restrictions on the transfer or allotment of the shares of the company;

   e. the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

   f. the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e):
   Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

*g. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

h. removal of the managing director, manager or any of the directors of the company;

i. recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

j. the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);

k. appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;

l. imposition of costs as may be deemed fit by the Tribunal;

m. any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

3. A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

4. The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

1[(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.]

5. Where an order of the Tribunal under sub-section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

6. Subject to the provisions of sub-section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.

7. A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

8. If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every

officer of the company who is in default shall be punishable 2[Omitted] with fine which shall not be less than twenty-five thousand rupees but which may extend to 3[one lakh rupees].

C. Evolution of oppression and mismanagement in company law:

To understand the concept of oppression and mismanagement better, it is important to trace its evolution and historical origins in company law:

The Indian Companies Act, 1913 (enacted after Amendment Act 52 of 1951) contained Section 153C, which provided powers to the court when the company acts in a prejudicial manner or oppresses any part of its members. This provision was similar to Section 210 contained in the English Companies Act, 1948.

Subsequently, the Companies Act, 1956 came into force. This notably contained Sections 397, 398 and 402. Section 397 provided for an application to the court for relief in cases of oppression, Section 398 referred to mismanagement and Section 402 referred to the powers of the court on an application under Sections 397 and 398.

The next major development in company law came in 2013, with the enactment of the much-awaited Companies Act, 2013. This legislation also had provisions pertaining to oppression and mismanagement. The Statement of Objects and Reasons of the Companies Act, 2013 discussed the protection of minority shareholders as below:

> *"5. (ix) Protection for Minority Shareholders:*
> *(a) Exit option to shareholders in case of dissent to change the object for which public issue was made;*
> *(b) Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement.*
> *(c) The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules."*

Sections 241 and 242 (as extracted above) were then introduced to the Companies Act, 2013 (**"CA 2013"**). The Supreme Court, in its judgment dated March 26, 2021, crisply summarised the change in the legislation as below:

1913 Act (After the Amendment Act 52 of 1951)	**1956 Act (with the amendment made under Act 53 of 1963)**	**2013 Act**
(1) Company's affairs **are being conducted** in a manner - (a) Prejudicial to the company interest; Or (b) oppressive to some part of the members; And (2) Winding up will unfairly **and material prejudice the interests of the company's or any part of its members.** (3) The object should be to bring to an end the matters complained of.	(1) Company's affairs **are being conducted** in a manner - (a) Prejudicial to the public interest; Or (b) oppressive to any member or members; Or (c) Prejudicial to the interests of the company; And (2) Winding up will unfairly prejudice **such member or members**	(1) Company's affairs **have been or are being conducted** in a manner - (a) Prejudicial to any member or members; Or (b) Prejudicial to the public interest; Or (c) Prejudicial to the interests of the company; Or (d) oppressive to any member or members; And (2) Winding up will unfairly prejudice **such member or members**

II. Interpretation

From the above statutory modifications, it is evident that the Companies Act, 2013, in comparison to the earlier statutes, provides for the following:

- The Companies Act, 2013 recognises both **past, or present and continuous** conduct of the company's affairs due to the language **'Company's affairs have been or are being conducted in a manner…"** which is present under Section 241.
- The Companies Act, 2013 has also added the ground of **'prejudice to public interest',** to determine the occurrence of oppression.
- The Companies Act, 1956 and Companies Act, 2013 have removed the earlier specification of being materially prejudiced.
- Further, the Companies Act, 1956 and the Companies Act, 2013 have specified that focus of the provision pertains to the affected members by including the phrase **"such member or members".**

Thus, from the above, it is clear that to prove a case of oppression and mismanagement, the following thresholds must be met:

The company's affairs have been or are being conducted in a manner that is:

- Prejudicial to any member or members; or
- Prejudicial to public interest; or
- Prejudicial to the interests of the company; or
- Oppressive to any member or members; and
- That though the facts would justify the making of a winding up order on the basis of just and equitable clause, such a winding up would unfairly prejudice such member or members.

III. Case Law

With respect to the present case, the Supreme Court interpreted the meaning of **'oppression'** and **'mismanagement',** and the **'just and equitable clause',** by referring to the following case laws, **inter alia:**

- **Loch v. John Blackwood**[23] - 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 not spring from dissatisfaction at being outvoted on the business affairs or on the 'domestic policy' of the company. 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.
- **Ebrahimi v. Westbourne Galleries Ltd.**[24] - The Court of Appeal applied the tests of (i) bonafide exercise of power in the interest of the company; and (ii) whether a reasonable man could think that the removal was in the interest of the Company. The Could held, that **"the formula 'bonafide interest of the company' should not become**

23. [1924] AC 783
24. [1972] 2 WLR 1289

little more than an alibi for a refusal to consider the merits of the case." Holding that, "equity always does enable the Court to subject the exercise of legal rights to equitable considerations, namely considerations that is of a personal character", the House of Lords added some caution in the following words: "The superimposition of equitable considerations requires something more, which typically may include one, or probably more, of the following elements: (i) an association formed or continued on the basis of a personal relationship, involving mutual confidence – this element will often be found where a pre-existing partnership has been converted into a limited company; (ii) an agreement, or understanding, that all, or some (for there may be "sleeping" members), of the shareholders shall participate in the conduct of the business; (iii) restriction upon the transfer of the members' interest in the company – so that if confidence is lost, or one member is removed from management, he cannot take out his stake and go elsewhere."

- **Lau v. Chu**[25] - In this judgment by the House of Lords, it was held that a just and equitable winding up can be ordered where the company's members have fallen out in two related but distinct situations that may or may not overlap. The first of these is labelled as "functional dead lock", where the inability of members to cooperate in the management of the company's affairs leads to an inability of the company to function at Board or shareholder level. The second of these is where a company is a corporate quasi-partnership and there is an irretrievable breakdown in trust and confidence between the participating members. In the first type of these cases, where there is a complete functional dead lock, winding up may be ordered regardless of whether the company is a quasi-partnership or not. But in the second type of cases, a breakdown of trust and confidence is enough even if there is not a complete functional dead lock.

- **Rajahmundry Electric Supply Corpn. Ltd. v. Nageshwara Rao**[26] - For the invocation of just and equitable clause, there must be a justifiable lack of confidence on the conduct of the directors. A mere lack of confidence between the majority shareholders and minority shareholders would not be sufficient.

- **Needle Industries (India) Ltd. and Ors. v. Needle Industries Newey (India) Ltd. and Ors.**[27] – On a true construction of Section 397 of the Companies Act, 1956, an unwise, inefficient or careless conduct of a Director in the performance of his duties cannot give rise to a claim for relief under that section. The person complaining of oppression must show that he has been constrained to submit to conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as shareholder.

25. [2020] 1 WLR 4656
26. (1955) 2 SCR 1066
27. (1981) 3 SCC 333

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Relevant Provisions to the Dispute

ARTICLES OF ASSOCIATION

ARTICLE	PROVISION
Article 75	**"75. Company's Power of Transfer** The Company may at any time by Special Resolution resolve that any holder of Ordinary shares do transfer his ordinary shares. Such member would thereupon be deemed to have served the Company with a sale ¬notice in respect of his Ordinary shares in accordance with Article 58 hereof, and all the ancillary and consequential provisions of these Articles shall apply with respect to the completion of the sale of the said shares. Notice in writing of such resolution shall be given to the member affected thereby. For the purpose of this Article any person entitled to transfer an Ordinary share under Article 69 hereof shall be deemed the holder of such share."
Article 86	**"86. Quorum at General Meetings** No quorum at a general meeting of the holders of the Ordinary Shares of the Company shall be constituted unless the members who are personally present are not less than five in number including at least one authorised representative jointly nominated by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust so long as the Tata Trusts hold in aggregate at least 40% of the paid--up Ordinary share capital, for the time being, of the Company. Explanation: the words "jointly nominated" used in this Article shall mean that the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall together nominate the authorized representative. In the case of any difference, the decision of the majority of the Trustees in the aggregate of the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall prevail."
Article 104	**"104. General Provisions** 104B. Nomination of Directors So long as the Tata Trusts own and hold in the aggregate at least 40% of the paid-up Ordinary share capital, for the time being, of the company, the Sir Dorabji Tata Trust and Sir Ratan Tata Trust, acting jointly, shall have the right to nominate one third of the prevailing number of Directors on the Board and in like manner to remove any such person so appointed and in place of the person so removed, appoint another person as Director. The Directors so nominated by the Sir Dorabji Tata Trust and Sir Ratan Tata Trust shall be appointed as Directors of the Company. Explanation: the words 'acting jointly' used in this Article shall mean that the Sir Dorabji Tata Trust and Sir Ratan Tata Trust shall together nominate such Directors. In the case of any difference, the decision of the majority of the Trustees in the aggregate of the Sir Dorabji Tata Trust and Sir Ratan Tata Trust shall prevail."
Article 118	**"118. Appointment of Chairman** For the purpose of selecting a new Chairman of the Board of Directors and so long as the Tata Trusts own and hold in the aggregate at least 40% of the paid up Ordinary Share Capital of the Company for the time being, a Selection Committee shall be constituted in accordance with the provisions of this Article to recommend the appointment of a person as the Chairman of the Board of Directors and the Board may appoint the person so recommended as the Chairman of the Board of Directors, subject to Article 121 which requires the affirmative vote of all Directors appointed pursuant to Article 104B. The same process shall be followed for the removal of the incumbent Chairman. The Selection Committee shall comprise – (a) Three (3) persons nominated jointly by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust who may or may not be Directors of the Company, (b) one (1) person nominated by and from amongst the Board of Directors of the Company and (c) one (1) independent outside person selected by the Board for this purpose.

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	The Chairman of the Committee will be selected by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust from amongst the nominees nominated by the Trusts. The quorum for a meeting of the Selection Committee shall be the presence of a majority of members nominated jointly by the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust. Explanation: The words "nominated jointly' used in this Article shall mean that the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall together decide the nominees. In the case of any difference, the decision of the majority of the Trustees in the aggregate of the Sir Dorabji Tata Trust and the Sir Ratan Tata Trust shall prevail."
Article 121	**"121. Matters How Decided.** Matters before any meeting of the Board which are required to be decided by a majority of the directors shall require *the affirmative vote of a majority of the Directors appointed pursuant to Article 104B present at the meeting and in the case of an equality of vote's the Chairman shall have a casting vote." 121A. The following matters shall be resolved upon by the Board of Directors: a. a five¬ year strategic plan that should include an assessment of the proposed strategic path of the Company, business and investment opportunities, proposed business and investment initiatives and a comparative analysis of similarly situated holding companies, and any alterations to such strategic Plan. b. an annual business plan structured to form part of the strategic plan, that should include proposed investments, incurring of debts, debt to equity ratio, debt service coverage ratio, projected cash flow of the Company and any alterations to such annual business plan" c. The incurring or renewal of any debt or other borrowing by the Company, which debt or borrowing causes the cumulative outstanding debt of the Company, to exceed twice its net worth or which debt/borrowing is incurred/renewed at a time when the cumulative outstanding debt of the Company has already exceeded twice its net worth, if not already approved as part of the annual business plan; d. any proposed investment by the Company in securities, shares, stocks, bonds, debentures, financial instruments, of any sort or immovable property of a value exceeding Rs. 100 Crores if not already approved as part of the annual business plan; e. Any increase in the authorized, subscribed, issued or paid up capital of the Company and any issue or allotment of shares by the Company (whether on a rights basis or otherwise); f. Any sale or pledge, mortgage or other encumbrance or creation of any right or interest by the Company of or over its shareholding in any Tata Company or of or over any part thereof, if not already approved as part of the annual business plan; g. any matter affecting the shareholding of the Tata Trusts in the company or the rights conferred upon the Tata Trusts by the Articles of the Company or the shareholding of the Company in any Tata Company if not already approved as part of the annual business plan; h. Exercise of the voting rights of the Company at the general meetings of any Tata Company, including the appointment of a representative of the Company under Section 113(1)(a) of the Companies Act, 2013 in respect of a general meeting of any Tata Company and, in any matter concerning the raising of capital, incurring of debt and divesting or acquisition of any undertaking or business of such Tata Company, instructions to such representative on how to exercise the Company's voting rights. Explanation: the term "Tata Company" used in this article shall, as the context requires, mean each or any of the 4 following companies"

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	Tata Consultancy Services ltd., Tata Steel Limited, Tata Motors Limited, Tata Capital Ltd., Tata Chemicals Ltd., Tata Power Company Ltd., Tata Global Beverages Ltd., The Indian Hotels Company Ltd., Trent Limited, Tata Teleservices (Maharashtra) Limited, Tata Industries Limited, Tata Teleservices Limited, Tata Communications Limited, Titan Company Limited and Infiniti Retail Limited and any other Company in which the Company (or its subsidiaries) holds twenty percent or more of the paid up share capital and whose name is notified in writing to the Company by the Directors nominated under Article 104B. 121B. Any Director of the Company will be entitled to give at least fifteen days' notice to the Company or to the Board that any matter or resolution be placed for deliberation by the Board and if such notice is received it shall be mandatory for the Board to take up such matter or resolution for consideration and vote, at the Board meeting next held after the period of such notice, before considering any other matter or resolution."

COMPANIES ACT, 2013

SECTION	PROVISION
Paragraph 5(ix) of the Statement of Objects and Reasons	**"5.** (ix) Protection for Minority Shareholders: a. Exit option to shareholders in case of dissent to change in object for which public issue was made. b. Specific disclosure regarding effect of merger on creditors, key managerial personnel, promoters and non¬-promoter shareholders is being provided. The Tribunal is being empowered to provide for exit offer to dissenting shareholders in case of compromise or arrangement. c. The Board may have a director representing small shareholders who may be elected in such manner as may be prescribed by rules."
Section 2(68)	**"Sec 2 (68).** "Private company" means a company having a minimum paid-¬up share capital of one lakh rupees or such higher paid-¬up share capital as may be prescribed, and which by its articles, i. restricts the right to transfer its shares; ii. except in case of One Person Company, limits the number of its members to two hundred: Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a Provided further that— a. persons who are in the employment of the company; and b. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and prohibits any invitation to the public to subscribe for any securities of the company;"
Section 14	**"14. Alteration of Articles** 1. Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution, alter its articles including alterations having the effect of conversion of— a. a private company into a public company; or b. a public company into a private company: Provided that where a company being a private company alters its articles in such a manner that they no longer include the restrictions and limitations which are required to be included in the articles of a private company under this Act, the company shall, as from the date of such alteration, cease to be a private company: Provided further that any alteration having the effect of conversion of a public company into a private company shall not be valid unless it is approved by an order of the Central Government on an application made in such form and manner as may be prescribed:

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	Provided also that any application pending before the Tribunal, as on the date of commencement of the Companies (Amendment) Ordinance, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. 2. Every alteration of the articles under this section and a copy of the order of the [Central Government]] approving the alteration as per sub-section (1) shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same. 3. Any alteration of the articles registered under sub-section (2) shall, subject to the provisions of this Act, be valid as if it were originally in the articles."
Section 118	**"118. Minutes of Proceedings of General Meeting, Meeting of Board of Directors and Other Meeting and Resolutions Passed by Postal Ballot.** 1. Every company shall cause minutes of the proceedings of every general meeting of any class of shareholders or creditors, and every resolution passed by postal ballot and every meeting of its Board of Directors or of every committee of the Board, to be prepared and signed in such manner as may be prescribed and kept within thirty days of the conclusion of every such meeting concerned, or passing of resolution by postal ballot in books kept for that purpose with their pages consecutively numbered. 2. The minutes of each meeting shall contain a fair and correct summary of the proceedings thereat. 3. All appointments made at any of the meetings aforesaid shall be included in the minutes of the meeting. 4. In the case of a meeting of the Board of Directors or of a committee of the Board, the minutes shall also contain— a. the names of the directors present at the meeting; and b. in the case of each resolution passed at the meeting, the names of the directors, if any, dissenting from, or not concurring with the resolution. 5. There shall not be included in the minutes, any matter which, in the opinion of the Chairman of the meeting, — a. is or could reasonably be regarded as defamatory of any person; or b. is irrelevant or immaterial to the proceedings; or c. is detrimental to the interests of the company. 6. The Chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in sub-section (5). 7. The minutes kept in accordance with the provisions of this section shall be evidence of the proceedings recorded therein. 8. Where the minutes have been kept in accordance with sub-section (1) then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and the resolutions passed by postal ballot to have been duly passed and in particular, all appointments of directors, key managerial personnel, auditors or company secretary in practice, shall be deemed to be valid. 9. No document purporting to be a report of the proceedings of any general meeting of a company shall be circulated or advertised at the expense of the company, unless it includes the matters required by this section to be contained in the minutes of the proceedings of such meeting. 10. Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

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	11. If any default is made in complying with the provisions of this section in respect of any meeting, the company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees. 12. If a person is found guilty of tampering with the minutes of the proceedings of meeting, he shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees."
Section 151	**"Section 151. Appointment of director elected by small shareholders. ¬** A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed. Explanation. — For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed."
Section 163	**"163. Option to Adopt Principle of Proportional Representation for Appointment of Directors.** Notwithstanding anything contained in this Act, the articles of a company may provide for the appointment of not less than two-thirds of the total number of the directors of a company in accordance with the principle of proportional representation, whether by the single transferable vote or by a system of cumulative voting or otherwise and such appointments may be made once in every three years and casual vacancies of such directors shall be filled as provided in sub-section (4) of Section 161."
Section 166	**"Duties of Directors.** 1. Subject to the provisions of this Act, a director of a company shall act in accordance with the articles of the company. 2. A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment. 3. A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment. 4. A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company. 5. A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company. 6. A director of a company shall not assign his office and any assignment so made shall be void. 7. If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees."
Section 169	**"169. Removal of Directors.** 1. A company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard: Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard: Provided further that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two thirds of the total number of directors according to the principle of proportional representation.

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	2. A special notice shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed. 3. On receipt of notice of a resolution to remove a director under this section, the company shall forthwith send a copy thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to be heard on the resolution at the meeting. 4. Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,— a. in any notice of the resolution given to members of the company, state the fact of the representation having been made; and b. send a copy of the representation to every member of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it. 5. A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place at the meeting at which he is removed, provided special notice of the intended appointment has been given under sub-section (2). 6. A director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. 7. If the vacancy is not filled under sub-section (5), it may be filled as a casual vacancy in accordance with the provisions of this Act: Provided that the director who was removed from office shall not be re-appointed as a director by the Board of Directors. 8. Nothing in this section shall be taken— a. as depriving a person removed under this section of any compensation or damages payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or b. as derogating from any power to remove a director under other provisions of this Act."
Section 184	**"184. Disclosure of Interest by Director.** 1. Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed. 2. Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into— a. with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

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	b. with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting: Provided that where any director who is not so concerned or interested at the time of entering into such contract or arrangement, he shall, if he becomes concerned or interested after the contract or arrangement is entered into, disclose his concern or interest forthwith when he becomes concerned or interested or at the first meeting of the Board held after he becomes so concerned or interested. 3. A contract or arrangement entered into by the company without disclosure under sub-section (2) or with participation by a director who is concerned or interested in any way, directly or indirectly, in the contract or arrangement, shall be voidable at the option of the company. 4. If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be liable to a penalty of one lakh rupees. 5. Nothing in this section— a. shall be taken to prejudice the operation of any rule of law restricting a director of a company from having any concern or interest in any contract or arrangement with the company; b. shall apply to any contract or arrangement entered into or to be entered into between two companies or between one or more companies and one or more bodies corporate where any of the directors of the one company or body corporate or two or more of them together holds or hold not more than two per cent. of the paid-up share capital in the other company or the body corporate."
Section 241	**"241. Application to Tribunal for relief in cases of oppression, etc. —** 1. Any member of a company who complains that— a. the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or b. the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors, or manager, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter. 2. The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter. 3. Where in the opinion of the Central Government there exist circumstances suggesting that–– a. any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust; b. the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; c. a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or d. the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

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	4. The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application. 5. Every application under sub-section (3) –– a. shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and b. shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government."
Section 242	**"242. Powers of Tribunal** 1. If, on any application made under section 241, the Tribunal is of the opinion— a. that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and b. that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit. 2. Without prejudice to the generality of the powers under sub¬section (1), an order under that subsection may provide for— a. the regulation of conduct of affairs of the company in future; b. the purchase of shares or interests of any members of the company by other members thereof or by the company; c. in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital; d. restrictions on the transfer or allotment of the shares of the company; e. the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case; f. the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause I: Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned; g. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; h. removal of the managing director, manager or any of the directors of the company; i. recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims; j. the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h); k. appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; l. imposition of costs as may be deemed fit by the Tribunal; m. any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made. 3. A certified copy of the order of the Tribunal under sub¬section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal. 4. The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

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	5. Where an order of the Tribunal under sub¬section (1) makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any, permitted in the order, to make, without the leave of the Tribunal, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. 6. Subject to the provisions of sub¬section (1), the alterations made by the order in the memorandum or articles of a company shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered. 7. A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the marking thereof, be filed by the company with the Registrar who shall register the same. 8. If a company contravenes the provisions of sub¬ section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty¬ five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than twenty¬ five thousand rupees but which may extend to one lakh rupees, or with both."
Section 420	**"420. Orders of Tribunal** 1. The Tribunal may, after giving the parties to any proceeding before it, a reasonable opportunity of being heard, pass such orders thereon as it thinks fit. 2. The Tribunal may, at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it, and shall make such amendment, if the mistake is brought to its notice by the parties: Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under this Act. 3. The Tribunal shall send a copy of every order passed under this section to all the parties concerned."
Section 424	**"424. Procedure Before Tribunal and Appellate Tribunal** 1. The Tribunal and the Appellate Tribunal shall not, while disposing of any proceeding before it or, as the case may be, an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice, and, subject to the other provisions of this Act "or of the Insolvency and Bankruptcy Code, 2016 and of any rules made thereunder, the Tribunal and the Appellate Tribunal shall have power to regulate their own procedure. 2. The Tribunal and the Appellate Tribunal shall have, for the purposes of discharging their functions under this Act "or under the Insolvency and Bankruptcy Code, 2016", the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely: — a. summoning and enforcing the attendance of any person and examining him on oath; b. requiring the discovery and production of documents; c. receiving evidence on affidavits; d. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office; e. issuing commissions for the examination of witnesses or documents; f. dismissing a representation for default or deciding it ex parte; g. setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and h. any other matter which may be prescribed. 3. Any order made by the Tribunal or the Appellate Tribunal may be enforced by that Tribunal in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Tribunal or the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction, —

	a. in the case of an order against a company, the registered office of the company is situated; or b. in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain. 4. All proceedings before the Tribunal or the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Tribunal and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973."
Section 465	**"465. Repeal of Certain Enactments and Savings** 1. The Companies Act, 1956 and the Registration of Companies (Sikkim) Act, 1961 (hereafter in this section referred to as the repealed enactments) shall stand repealed: Provided that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and court shall continue to apply as if the Companies Act, 1956 has not been repealed: Provided further that also that provisions of the Companies Act, 1956 referred in the notification issued under section 67 of the Limited Liability Partnership Act, 2008 shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 has not been repealed. 2. Notwithstanding the repeal under sub-section (1) of the repealed enactments, — a. anything done or any action taken or purported to have been done or taken, including any rule, notification, inspection, order or notice made or issued or any appointment or declaration made or any operation undertaken or any direction given or any proceeding taken or any penalty, punishment, forfeiture or fine imposed under the repealed enactments shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act; b. subject to the provisions of clause (a), any order, rule, notification, regulation, appointment, conveyance, mortgage, deed, document or agreement made, fee directed, resolution passed, direction given, proceeding taken, instrument executed or issued, or thing done under or in pursuance of any repealed enactment shall, if in force at the commencement of this Act, continue to be in force, and shall have effect as if made, directed, passed, given, taken, executed, issued or done under or in pursuance of this Act; c. any principle or rule of law, or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction or exemption shall not be affected, notwithstanding that the same respectively may have been in any manner affirmed or recognised or derived by, in, or from, the repealed enactments; d. any person appointed to any office under or by virtue of any repealed enactment shall be deemed to have been appointed to that office under or by virtue of this Act; e. any jurisdiction, custom, liability, right, title, privilege, restriction, exemption, usage, practice, procedure or other matter or thing not in existence or in force shall not be revised or restored; f. the offices existing on the commencement of this Act for the registration of companies shall continue as if they have been established under the provisions of this Act; g. the incorporation of companies registered under the repealed enactments shall continue to be valid and the provisions of this Act shall apply to such companies as if they were registered under this Act; h. all registers and all funds constituted and established under the repealed enactments shall be deemed to be registers and funds constituted or established under the corresponding provisions of this Act; i. any prosecution instituted under the repealed enactments and pending immediately before the commencement of this Act before any Court shall, subject to the provisions of this Act, continue to be heard and disposed of by the said Court; j. any inspection, investigation or inquiry ordered to be done under the Companies Act, 1956 shall continue to be proceeded with as if such inspection, investigation or inquiry has been ordered under the corresponding provisions of this Act; and

	k. any matter filed with the Registrar, Regional Director or the Central Government under the Companies Act, 1956 before the commencement of this Act and not fully addressed at that time shall be concluded by the Registrar, Regional Director or the Central Government, as the case may be, in terms of that Act, despite its repeal. 3. The mention of particular matters in sub-section (2) shall not be held to prejudice the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal of the repealed enactments as if the Registration of Companies (Sikkim) Act, 1961 were also a Central Act."

COMPANIES ACT, 1956

SECTION	PROVISION
Section 3	**"2.** (iii) "private company" means a company which, by its articles, - a. Restricts the right to transfer its shares, if any; b. Limits the number of its members to fifty not including – i. Persons who are in the employment of the company, and ii. persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased; and c. prohibits any invitation to the public to subscribe for any shares in, or debentures of, the company: Provided that where two or more persons hold one or more shares, in a company jointly, they shall, for the purposes of this definition, be treated as a single member; iii. "Public company" means a company which is not a private company"
Section 27	**"27.** Regulations required in case of Unlimited Company, Company Limited by Guarantee or Private Company Limited by Shares 1. In the case of an unlimited company, the articles shall state the number of members with which the company is to be registered and, if the company has a share capital, the amount of share capital with which the company is to be registered. 2. In the case of a company limited by guarantee, the articles shall state the number of members with which the company is to be registered. 3. In the case of a private company having a share capital, the articles shall contain provisions relating to the matters specified in subclauses (a), (b) and (c) of clause (iii) of subsection (1) of section 3; and in the case of any other private company, the articles shall contain provisions relating to the matters specified in the said sub-clauses (b) and (c)."
Section 43A	**"43A.** Private Company to become a public company in certain cases. 1. Save as otherwise provided in this section, where not less than twenty-five per cent of the paid-up share capital of a private company having a share capital is held by one or more bodies corporate, the private company shall, a. on and from the date on which the aforesaid percentage is first held by such body or bodies corporate, or b. where the aforesaid percentage has been first so held before the commencement of the Companies (Amendment) Act, 1960 (65 of 1960), on and from the expiry of the period of three months from the date of such commencement unless within that period the aforesaid percentage is reduced below twenty-five per cent of the paid up share capital of the private company, become by virtue of this section a public company: Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of subsection (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven:

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Provided further that in computing the aforesaid percentage, account shall not be taken of any share in the private company held by a banking company if, but only if, the following conditions are satisfied in respect of such share, namely:¬

a. that the share
   i. forms part of the subject matter of a trust,
   ii. has not been set apart for the benefit of any body corporate, and
   iii. is held by the banking company either as a trustee of that trust or in its own name on behalf of a trustee of that trust;
   or

b. that the share
   i. forms part of the estate of a deceased person,
   ii. has not been bequeathed by the deceased person by his will to any body corporate, and
   iii. is held by the banking company either as an executor or

   administrator of the deceased person or in its own name on behalf of an executor or administrator of the deceased person,

   and the registrar may, for the purpose of satisfying himself that any share is held in the private company by a banking company as aforesaid, call for at any time from the banking company such books and papers as he considers necessary.

Explanation For the purposes of this subsection, "bodies corporate" means public companies, or private companies which had become public companies by virtue of this section.

1A. Without prejudice to the provisions of subsection (1), where the average annual turnover of a private company, whether in existence at the commencement of the Companies (Amendment) Act, 1974, or incorporated thereafter, is not, during the relevant period, less than 2 [such amount as may be prescribed], the private company shall, irrespective of its paid-up share capital, become, on and from the expiry of a period of three months from the last day of the relevant period during which the private company had the said average annual turnover, a public company by virtue of this subsection:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of subsection (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

1B. Where not less than twenty-five per cent of the paid-up share capital of a public company, having share capital, is held by a private company, the private company shall

a. on and from the date on which the aforesaid percentage is first held by it after the commencement of the Companies (Amendment) Act, 1974, or
b. where the aforesaid percentage has been first so held before the commencement of he Companies (Amendment) Act, 1974 on and from the expiry of the period of three months from the date of such commencement, unless within that period the aforesaid percentage is reduced below twenty-five per cent of the paid-up share capital of the public company, become, by virtue of this subsection, a public company, and thereupon all other provisions of this section shall apply thereto:

Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of subsection (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven.

1C. Where, after the commencement of the Companies (Amendment) Act, 1988, a private company accepts, after an invitation is made by an advertisement, or renews, deposits from the public other than its members, directors or their relatives, such private company shall, on and from the date on which such acceptance or renewal, as the case may be, is first made after such commencement, become a public company and thereupon all the provisions of this section shall apply thereto:

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Provided that even after the private company has so become a public company, its articles of association may include provisions relating to the matters specified in clause (iii) of subsection (1) of section 3 and the number of its members may be, or may at any time be, reduced below seven.

2. Within three months from the date on which a private company becomes a public company by virtue of this section, the company shall inform the Registrar that it has become a public company as aforesaid, and thereupon the Registrar shall delete the word "Private" before the word "Limited" in the name of the company upon the register and shall also make the necessary alterations in the Certificate of Incorporation issued to the company and in its memorandum of association.

2A. Where a public company referred to in subsection (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the word `private company' for the word `public company' in the name of the company upon the register and shall also make the necessary alterations in the Certificate of Incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company.

3. Subsection (3) of section 23 shall apply to a change of name under subsection (2) as it applies to a change of name under section 21.

4. A private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.

5. If a company makes default in complying with subsection (2), the company and every officer of the company who is in default, shall be punishable with fine which may extend to five hundred rupees for every day during which the default continues.

6. omitted by Act 31 of 1988

7. omitted by Act 31 of 1988

8. Every private company having a share capital shall, in addition to the certificate referred to in subsection (2) of section 161, file with the Registrar along with the annual return a second certificate signed by both the signatories of the return, stating either

   a. that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, no body or bodies corporate has or have held twenty-five per cent or more of its paid-up share capital,
   b. ...
   c. that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average annual turnover of such amount as is referred to in subsection (1A) or more,
   d. that the private company did not accept or renew deposits from the public.

9. Every private company, having share capital, shall file with the Registrar along with the annual return a certificate signed by both the signatories of the return, stating that since the date of the annual general meeting with reference to which the last return was submitted, or in the case of a first return, since the date of the incorporation of the private company, it did not hold twenty-five per cent or more of the paid up share capital of one or more public companies.

Explanation. For the purposes of this section,

a. "relevant period" means the period of three consecutive financial years.

   i. immediately preceding the commencement of the Companies (Amendment) Act, 1974, or
   ii. a part of which is immediately preceded such commencement and the other part of which immediately, followed such commencement, or
   iii. immediately following such commencement or at any time thereafter;

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	b. "turnover", of a company, means the aggregate value of the realization made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year; c. "deposit has the same meaning as in section 58A 10. Subject to the other provisions of this Act, any reference in this section to accepting, after an invitation is made by an advertisement, or renewing deposits from the public shall be construed as including a reference to accepting, after an invitation is made by an advertisement, or renewing deposits from any section of the public and the provisions of section 67 shall, so far as may be, apply, as if the reference to invitation to the public to subscribe for shares or debentures occurring in that section, includes a reference to invitation from the public for acceptance of deposits. 11. Nothing contained in this section, except subsection (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000."
Section 397	**"397.** Application to Court for relief in cases of oppression. 1. Any members of a company who complain that the affairs of the company are being conducted in a manner oppressive to any member or members (including any one or more of themselves) may apply to the Court for an order under this section, provided such members have a right so to apply in virtue of section 399. 2. If, on any application under subsection (1), the Court is of opinion a. that the company's affairs are being conducted in a manner oppressive to any member or members; and b. that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up; the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit."
Section 398	**"398.** Application to Court for relief in cases of mismanagement. 1. Any members of a company who complain a. that the affairs of the company are being conducted in a manner prejudicial to the interests of the company; or b. that a material change (not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its board of Directors, or of its managing agent or secretaries and treasurers, or in the constitution or control of the firm or body corporate acting as its managing agent or secretaries and treasurers, or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests of the company; may apply to the Court for an orde under this section, provided such members have a right so to apply in virtue of section 399. 2. If, on any application under sub-section (1), the Court is of the opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the Court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit."
Section 402	**"402.** ¬ Powers of Court on application under section 397 or 398. – Without prejudice to the generality of the powers of the Court under section 397 or 298, any order under either section may provide for a. the regulation of the conduct of the company's affairs in future; b. the purchase of the shares or interests of any members of the company by other members thereof or by the company; c. in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;

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	d. the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other, namely: i. the managing director, ii. any other director, iii. the managing agent, iv. the secretaries and treasurers, and v. the manager. Upon such terms and conditions as may, in the opinion of the Court, be just and equitable in all the circumstances of the case. e. the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned f. the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference; g. any other matter for which in the opinion of the Court it is just and equitable that provision should be made."

COMPANIES (AMENDMENT) ACT, 2000

SECTION	PROVISION
Section 3	**"3.** Amendment of section 3. – In section 3 of the principal Act, - (a) in sub-section (1), - i. in clause (iii), - A. in the opening portion, for the words" means a company which, by its articles, - "the words" means a company which has a minimum paid-up capital of one lakh rupees or such higher paid-up capital as may be prescribed, and by its articles, - "shall be substituted; B. after sub- clause (c), before the proviso, the following clause shall be inserted, namely: - " (d) prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives:"; ii. for clause (iv), the following clause shall be substituted, namely: -' (iv)" public company" means a company which - a. is not a private company; b. has a minimum paid- up capital of five lakh rupees or such higher paid-up capital, as may be prescribed; c. is a private company which is a subsidiary of a company which is not a private company;'; d. after sub- section (2), the following sub-sections shall be inserted, namely: - " (3) Every private company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than one lakh rupees shall, within a period of two years from such commencement, enhance its paid- up capital to one lakh rupees. 4. Every public company, existing on the commencement of the Companies (Amendment) Act, 2000, with a paid-up capital of less than five lakh rupees shall, within a period of two years from such commencement, enhance its paid-up capital to five lakh rupees. 5. Where a private company or a public company fails to enhance its paid- up capital in the manner specified in sub-section (3) or sub-section (4), such company shall be deemed to be a defunct company within the meaning of section 560 and its name shall be struck off from the register by the Registrar. 6. A company registered under section 25 before or after the commencement of the Companies (Amendment) Act, 2000, shall not be required to have minimum paid- up capital specified in this section.".

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Section 12	**"12.** Amendment of Section 43A In section 43A of the principal Act, - a. after sub-section (2), the following sub-section shall be inserted, namely:- '(2A) Where a public company referred to in sub- section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000 , such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the words" private company" for the words" public company" in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company.'; b. after sub- section (10), the following sub- section shall be inserted, namely: -" (11) Nothing contained in this section, except sub- section (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000."

Annexure II

Comparison Table- Allegations Where NCLAT Did Not Make A Specific Finding

ALLEGATION	FINDINGS OF NCLT	WHETHER NCLAT DEALT WITH IT SPECIFICALLY
Siva Group Co. – 1. Non-payment of due amount by Siva Group (Sterling) as per arbitral award in TTSL-NTT DoCoMo deal (para 218-234) 2. Acquisition of shares in TTSL by Siva Group and Temasek 3. Info leak pertaining to initiation of action against Siva Group 4. Acquisition of Dishnet DSL (DDSL) from Siva Group	1. On 03.10.2013, Siva Group wrote a letter to Mr. Mistry seeking an exit from TTSL in lieu of the financial strain it was facing. On 08.10.2013, Mr. Tata wrote to Mr. Mistry requesting him to meet Mr. Siva to discuss the predicament, in lieu of latter's previous contributions in the history of TTSL. However, this was three years before the Docomo issue, which cropped up in 2016. (**Para 222, 233**) 2. The loan given by one of the Tata Group Companies (Kalimati) to Siva Company was paid back and undertaking given by the company was released. Mr. Siva himself provided personal guarantee for the loan taken from Standard Chartered Bank. Moreover, no Tata Group company paid any money for acquisition of TTSL shares by Siva Group. (**Para 228**) 3. Ultimately, Siva Group had to pay its group pro-rata share of the Docomo award. Siva Group, on 19.09.2016, then sought damages from Tata Sons for the alleged mismanagement of TTSL, for the ensuing losses incurred by it. However, this did not prove any special relationship with Mr. Tata. (**Para 221, 230, 233,234**) 4. Acquisition price of TTSL by both Siva and Temasek had unanimous approval of the shareholders. (**Para 230**) 5. Transaction was not done behind the back of Mr. Mistry and connected parties. (**Para 230**) 6. The reason for the difference in the acquisition prices between Temasek (Rs.26/ share) and Siva Group (Rs.17/share) was owing to more shareholding rights with Temasek. (**Para 230**) 7. Mr. Mistry made more profits from the acquisition of shares of TTSL than Siva Group. (the latter had sold its shares to NTT-Docomo in 2008). Complainant companies also acquired shares of Tata Teleservices Ltd. at Rs. 15/ per share. (**Para 230**)	No specific finding.

	8. NTT-DoCoMo also acquired shares from brother and father of Mr. Mistry. Mr. Mistry was also a beneficiary like Siva but this was not disclosed by the complainant companies. The rate at which the petitioners acquired the shares of TTSL is less than the rate at which Siva acquired them and the gain made by the petitioners by selling shares of NTT DoCoMo was more than the gain made by the Siva Group. (**Para 230**) 9. The acquisition happened in 2006 and it is sought to raise after 10 years, during which period Mr. Mistry was part of that board and also the Executive Chairman for a period. 10. No proof on record to show leakage of information. 11. It was Mr. Nitin Nohria (Trust Nominee director) and not Mr. Mistry, who proposed to initiate legal action against Siva Group. (**Para 231**) 12. With respect to Tata Capital giving a loan to Mr. Siva, due diligence carried out on the same, and no role in the grant of this loan can be attributed to Mr. Tata. (**Para 234**) 13. The acquisition of Dishnet DSL (DDSL) from Siva group took place in 2004. Mr. Mistry has not argued that he was unaware of this acquisition. Nor has it been argued that Mr. Tata made any illicit gain out of it. In fact, it was commercial decision of TTSL. This issue was brought to the notice of Mr. Mistry way back in October, 2013, but he never complained earlier. (**Para 235**) Neither TTSL nor Kalimati nor Tata Capital were arrayed as party to the proceeding.	
Air Asia India Ltd. & Vistara: There is a diversion of funds through a Global terrorist.	Air Asia not made a party. At the time when resolution for Joint Venture was placed on 06.12.2012, Mr. Mistry was active in discussions and was a consenting party to the same. The said Joint Venture was incorporated on 28.03.2013 and Mr. Mistry did not raise any issue till his removal in 2016. (**Para 242- 244**) Mr. Mistry contends that the deal was struck with Mr. Hamid Reza Malakotipour who was classified as a Global terrorist by the United Nations. However, the allegation of indirectly financing terrorism through the involvement of such third parties, is serious and demeaning. (**Para 241**)	No specific finding.

Annexure II

	After claiming that he has no say in the AirAsia transactions, Mr. Mistry claims to have protected the interest of the company by limiting its exposure and ensuring no fallback liability. These two claims conflict with each other. (**Para 242**) With respect to the Joint Venture with Singapore Airlines to set up Vistara, all Air Asia decision are fait accompli upon him, and thus, he is estopped from denying knowledge regarding these transactions. (**Para 244**) It would be preposterous to allege that Mr. Tata funded a terrorist through hawala with diversion of Air Asia India funds. (**Para 245**)	
Mehli Mistry:- 1. Awarding of dredging and Shipping contracts (without tenders) to Mehli's Companies by Tata Power. 2. Purchase of agricultural land by Mr. Tata at Alibaug in 1993 where Aqua Farms (in which Mr. Mehli was a partner) was a confirming party to the sale deed. 3. Sale of Bakhtawar Apartment at Colaba to MPCPL (which belongs to Forbes Gokak Ltd.).	The contract for dredging at Trombay was awarded in 1993 and renewed for various tenures (5 times) from 2002 – 2014. Mr. Mistry held directorship of Tata Power from 1996-2006 & 2011- 2016, but never raised any objection. (**Para 258**) 2004 barging cum dredging contract – with regard to the award of contract by Tata Power to MPCL, there is nothing on material to prove that this caused loss to TPC. (**Para 259**) 2006 Shipping Contract awarded by Tata Power to a consortium (comprising of MPSPL and Mercator Lines Ltd.) – Letter written by Mr. Mehli to Tata Power dated 04.05.2013 pertained to issue of coal storage, which does not prove any expropriation or bullying by him. Since the company of Mr. Mehli was the contractor, he only wrote to Tata Power to ensure proper coordination and joint decision making to sustain a smooth supply chain to Trombay Power house. (**Para 263**) This (Alibaug) was a regular transfer that took place in 1993. Previously, Aqua Farms had made payments to the original landowner for purchase, but the sale deed did not fructify. Aqua Farms was made a confirming party, as Mr. Tata reimbursed Aqua Farms for the original payment that it had made to the original land owners. Simply put, the moment Mr. Tata reimbursed Aqua Farms, the vendors of the land would execute the sale deed in favour of Mr. Tata. This was a mere sale transaction between two parties, which cannot be used to argue that contracts were bestowed to Mr. Mehli (**Para 253**) No unjust enrichment of Mr. Tata at the cost of Company – Forbes Gokak Ltd. not arrayed as a party – Allegation raised in 2016 of the events which can be traced back to 2002 – This was not a company related affair, as Mr. Tata retired from the company and has not been in management since 2012 – Not a case falling under 241. (**Para 252**)	No specific finding.

Annexure II

Corus acquisition	The allegation that Tata Steel acquired Corus at an inflated price is without basis. (**Para 301**) The price quoted by Tata Steel was GBP 608 Pence per share, while their competitors' final bid was GBP 603 Pence per share. (**Para 301**) Acquisition of Corus was a collective decision by Tata Steel. Mr. Mistry (Director at Tata Steel) approved every resolution of Tata Steel, for entering into auction and for confirming the final acquisition share price. Acquisition was undertaken following due governance process under the supervision of the Board, without any dissent of shareholders of Tata Steel. (**Para 300**) To salvage the company from the losses incurred from the Corus acquisition, TSL entered into a merger with ThyssenKrupp. There is no material to prove that Mr. Tata had any role in preventing the same. (**Para 303**) Moreover, Mr. Mistry never raised this issue before the board when he was chairman. (**Para 305**) TSL has not been made a party.	No specific finding.
Tata Motors – Nano Project:	It is well established that Mr. Tata was not in the management of either Tata Motors or the company after retirement. There is not a single instance where the advice of Mr. Tata was directly implemented without consideration by the respective Board. (**Para 267**) Tata Motors and Jayem Auto incorporated a Joint Venture. This happened under the stewardship of Mr. Mistry. (**Para 275**) Mr. Mistry never objected over any visit, correspondence or investment by Mr. Tata in Jayem Auto. (**Para 272**) Merely because Tata Motors Finance (TMF) had a loss of Rs. 392 Crores (towards Nano out of Rs.2000 Crores) for financing Nano, it cannot be used to make a case of mismanagement against Mr. Tata. (**Para 280**) With regard to personal visits of Mr. Tata to the Jayem Auto factory and about the enquiries sought apropos to the projects, no personal benefit to Mr. Tata or harm to Tata Motors has been proved. (**Para 281-282**) No evidence of the UPSI causing prejudice to the interest of Tata Motors has been placed by Mr. Mistry, upon whom the burden of proof was. (**Para 284**)	No specific finding.

Annexure II

	Seeking information does not amount to conducting affairs of the company. (**Para 285**) The correspondences of Mr. Tata to Mr. Mistry regarding the supply of cars to Ola/ Uber, were done to try to get into business with either of the two. (**Para 290-293**)	
Wellspun Acquisition by Tata Power.	Since the acquisition of Welspun was not put up to the Board of Tata Sons for prior approval and it came up only after Tata Power had signed the papers for acquisition, making Tata Sons a fait accompli, the nominee directors had to indulge in consultations and the same did not tantamount to interference by the Trusts. (**Para 384, 385, 543**)	No specific finding.
The oppressive nature of Articles 104B, 121, 121A and 75.	Mr. Mistry's father was a director at the time when amendments were made to the Articles of Association on 13/09/2000. (**Para 371**) Article 118 was amended on 06/12/2012 when Mr. Mistry was chairman. (**Para 372**) Mr. Mistry was also a party to the resolution passed on 09/04/2014, amending the articles so as to confer affirmative rights in favour of the Trust-Nominated directors. (**Para 373**) Article 75 was always in existence and neither Mr. Mistry nor his father nor the complainant companies ever made a complaint. (**Para 393**)	No specific finding.
The provision in the Articles of Association entitling the two trusts to have 1/3rd of the directors with affirmative vote, is prejudicial to the interests of the members and the interests of the company.	The two Trusts, if they really wished, could have had the Board of Directors entirely with their nominees. But they allowed the Articles of Association only to have the minimum requirement and hence the same cannot be termed as oppressive of the minority. (**Para 419**)	No specific finding.

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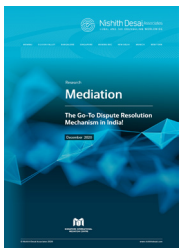

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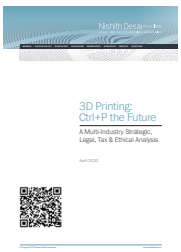

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