Tata-Mistry Case: A Bittersweet Victory for the Tata Group

On March 26, the Supreme Court delivered its verdict in a matter that has grabbed headlines for more than four years. Two prominent business groups, historically inter-connected with each other in multiple ways, have engaged in a no-holds-barred battle that by all accounts will be a significant marker in the history of corporate India. It started at a board meeting of Tata Sons on Oct. 24, 2016, when Cyrus Mistry was removed by the board of directors from his position as executive chairman. This led to a series of cascading events that ultimately ended up in the courts.

In March 2017, the National Company Law Tribunal dismissed the SP Group's petition, ruling in favour of the Tata Group on all counts. In December 2019, the National Company Law Appellate Tribunal set aside the NCLT order and decided in favour of the SP Group on all counts, in the process granting reliefs which even the SP Group had not asked for (such as the reinstatement of Mistry as executive chairman of Tata Sons). Now, the pendulum has swung (perhaps for the final time) hard the other way. The Supreme Court has set aside the NCLAT order, and the petition alleging oppression and mismanagement has been dismissed, with the apex court also categorically ruling in favour of the Tata Group on all counts.

THE THREE VERDICTS

The NCLT, the NCLAT, and the Supreme Court all delivered sweeping verdicts. Each of them ruled in favour of one of the groups on all counts. While none of the three left any room for ambiguity in their conclusions, it is worth considering if this matter lent itself to such black and white interpretations as the three courts tended to adopt?

The matter now rests (for the present) with the Supreme Court judgment.

In a well-reasoned judgment, the court notes as a technical matter that the NCLT made certain findings of fact in relation to specific allegations of oppression and mismanagement which have not been controverted by the NCLAT. In this background, the findings of fact on key issues by the NCLT (such as transactions with C Sivasankaran and the Sterling Group

companies, Air Asia, transactions with Mehli Mistry, the Nano car project, and the acquisition of Corus) should be taken to have reached finality.

The court further held that certain affirmative rights available under the articles of association of Tata Sons to directors nominated by certain shareholders belonging to the Tata Group (charitable trusts who hold 66% of the equity share capital of Tata Sons or the Trusts) could not be considered prejudicial or oppressive to the minority shareholders. On the (in)famous Article 75, which permits Tata Sons to direct a transfer of shares by special resolution, the court disagreed with the NCLAT's order of restraint on the basis that the statutory remedy is for past or present conduct that is prejudicial or oppressive to the minority shareholders, it cannot be stretched to cover a possibility of future bad conduct.

While the court has, in my view, reached the correct overall conclusion on finding the SP Group's petition to be unsustainable, I highlight two points below which perhaps required greater attention. A more nuanced view of the peculiar facts presented by this matter was perhaps the order of the day rather than the 'winner takes all' approach which has been adopted by each of the courts that have considered this matter so far.

The events of Oct. 24, 2016

The Supreme Court does not adequately address the point that the removal of Cyrus Mistry as executive chairman was taken up by the board of directors of Tata Sons under the residuary "any other matters" agenda item. The evidence indicates that Mistry's removal was a planned exercise, although the Supreme Court did not consider it to be so despite it being a matter of record that the board had procured legal opinions prior to the board meeting.

While the court has deftly dealt with the arguments made by the SP Group on this point, the question remains – has a precedent been set for future boardroom battles that sensitive significant matters can be dealt with under the residuary "any other matters" category? Does this strike at the heart of a basic rule of corporate governance?

The Supreme Court has deflected this by distinguishing precedents on facts and ultimately concluding that *"in any event the removal of a person from the post of executive chairman cannot be termed as oppressive or prejudicial."*

The conversion of Tata Sons into a private company

The SP Group alleged that Tata Sons was converted into a private company with the intention of prejudicing the interests of the minority group. It was further alleged that the manner and timing of such conversion in 2017 lacked probity.

The Supreme Court rejected such arguments on the basis that the reconversion into a private company was *"a mere amendment of the Certificate of Incorporation"*. The Supreme Court relied on the fact that Tata Sons became a public company by operation of law (and not by

choice) in the first place and therefore the provisions of the Companies Act in respect of reconversion should not apply.

However, the fact remains that reconversion to a private company required an amendment to the articles of association of Tata Sons to reflect such reconversion, howsoever technical such an amendment may be.

The timing of such reconversion in 2017 lends credence to such reconversion being actuated by extraneous reasons.

Whether or not Tata Sons is a public or a private company would of course be relevant to the broader context of how the provisions of the articles of association of Tata Sons should be interpreted. For example, the SP Group had argued that Article 75 restricts free transferability of shares as required for a public company under the Companies Act. This argument was rejected by the court on the basis that the relevant provision of the Companies Act applies only to public companies.

As a general matter, a public limited company status for Tata Sons would have afforded greater protection to the SP Group under the Companies Act as compared to a private limited company status.

A BITTERSWEET VICTORY

Although the Tata Group has received a 'knockout' verdict in its favour from the Supreme Court, given the serious allegations and counter-allegations leveled by each group against the other, it is irrefutable that from a reputational perspective both groups have suffered damage.

The SP Group's petition alleging oppression and mismanagement was liable to be dismissed because it was not able to sustain the serious charges it made. Equally the Tata Group's conduct suggests errors of judgment. Perhaps, in hindsight, this matter could have been approached differently on Oct. 24, 2016. Further exploration was and continues to be required to achieve an honorable parting of ways for the two groups which have had a long and illustrious shared history, beyond business interests.

THE WAY AHEAD

An immediate short-term question that arises is whether the SP Group can pledge its shares in Tata Sons and raise funds to address their financial situation. The Supreme Court does not expressly opine on this point. In its conclusion, it states in a valuation-related context that the *"valuation of the shares of the SP Group depends upon the value of the stake of Tata Sons in listed equities, unlisted equities, immovable assets etc, and* ***also perhaps the funds raised by SP Group on the security/pledge of these shares.****"* Does this statement implicitly recognise that the SP Group can indeed pledge its shares in Tata Sons? The Tata Group will argue that any such pledge will be subject to the provisions of the articles of association of Tata Sons.

In the longer term, given how much water has flown under the bridge, an exit of the SP Group from Tata Sons seems inevitable.

The SP Group had filed an application in the Supreme Court seeking separation of ownership interests through a scheme of reduction of capital pursuant to which the SP Group receives shares of the underlying listed companies in lieu of its equity interest in Tata Sons. However, the Supreme Court declined to consider such an application on the basis that they were concerned only with questions of law arising out of the NCLAT order, and that the SP Group's application for separation of ownership interests required an adjudication on facts.

In the normal course, a valuation could be undertaken by an independent party acceptable to both groups. Alternatively, there could be a mechanism where each party appoints a valuer, with the two party-appointed valuers to appoint a third valuer if they arrive at results that are at a significant variance.

However, in the present case, with the categorical verdict in favour of the Tata Group, there will be little incentive, if any, for the group to go down this path.

It will be up to the SP Group to do the hard yards to create any incentive for the Tata Group to participate in such an exercise culminating in the SP Group's exit from Tata Sons.

Further courtroom skirmishes seem inevitable for the moment.

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