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# **CORPORATE GOVERNANCE NORMS: AN INSIGHT INTO THE CYRUS MISTRY FIASCO**

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## **ABSTRACT**

The removal of Cyrus mistry as chairman of Tata group in an unceremonious way goes down in the annals of corporate governance of India as one of the few cases that highlights the murky internal squabbles inside our large family owned businesses. There are several corporate governance principles and norms that were comprised in the entire fiasco at the top management level that includes fairness, transparency, succession planning in family owned companies, undue influence of promoters in company affairs, role of independent directors and committees etc. This paper is a critical analysis of the major issue involved in the entire fiasco and tries to bring about positive recommendations that could be learned from this fiasco so that the same scenario could be abated in the future.

Keywords: Cyrus Mistry, Tata Group, Promoters, Minority shareholders, Independent directors, board committees and corporate values.

## Introduction

*“Corporate Governance should be done more by principles than rules”*

-Adi Godrej

Tata Group is the largest business conglomerate in India with 29 public listed subsidiary companies and a market capitalization of 311 billion USD. It is a household name in India with products ranging from Tata salt to jaguar land rover. It has more than 10 lakh employees and millions of shareholders, institutional investors. Due to their wide range of participation in different of products, market and industries any interruptions in the group has serious impact on the economy, markets, employees and various other stakeholders of the company. Tata group is owned by the Tata sons with 66% ownership in the form of various trusts called the Ratan Tata trust and Dorabji Tata trust. As it is a family owed business it has been successively headed by members from Tata family except for once by Nowroji Saklatwala (1932-1938).<sup>1</sup>

The second occasion for the Tata group to have a chairman outside the family came in the form of Cyrus Mistry when Ratan Tata decided to step down in 2012 to make way for him. But the tenure ship of Cyrus mistry has generated a serious trust deficit between Ratan Tata and Cyrus mistry which eventually lead to his removal. The entire episode went really murkier due to court battles and personal allegations between both the camps which has serious implication on various aspects of corporate governance like business ethics, leadership, role of promoters, family owned businesses, independence of directors, nomination committee, minority shareholders etc. This article is a critical analysis of the Tata-mistry fiasco in light of the corporate governance norms which has been compromised during the entire fiasco.<sup>2</sup>

Chapter I of this research paper discusses in brief the facts of the case and the chronological events that lead to the removal of Cyrus Mistry which was mainly due to some key decision which was not liked by the promoters. Further this chapter identifies the key corporate governance issues which would be critically analysed in the forthcoming chapters. Chapter II of this article critically analyses the corporate governance principles and norms which was

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<sup>1</sup> Shital Jhunjhunwala, *Tata Sons and the Mystery of Mistry*, 45 *The Journal for Decision Makers* 170, 170–182, 2020

<sup>2</sup> Id.

raised in chapter I of this article. And finally, Chapter III makes suggestions/recommendations which could be brought about to improve corporate governance in family owned companies.

## **Chapter I: Facts and key issues of the case**

### **Brief Facts and Accusations**

Cyrus Mistry was removed from the Tata Group in October 2016, from his position as the Chairman of Tata Sons, the holding company of the Tata Group. The decision to remove him was made by the board of Tata Sons, and it sparked a highly publicized corporate dispute. The exact reasons for Cyrus Mistry's removal are complex and controversial, with differing perspectives from both sides. According to Tata Sons, Mistry was removed due to several factors, including a loss of confidence and trust in his leadership, alleged poor performance, and a divergence in his management approach from the Tata Group's long-term strategy. The board expressed concerns about Mistry's focus on financial performance at the expense of the values and ethos of the Tata Group.<sup>3</sup>

On the other hand, Cyrus Mistry claimed that his removal was a result of his attempts to reform the Tata Group's governance structure and address long-standing issues within the company. He alleged that there were various irregularities and governance lapses within the group, including certain questionable decisions made prior to his appointment.

The dispute between Mistry and the Tata Group subsequently played out in the legal and corporate arenas. Multiple legal cases were filed by both parties, with allegations and counter-allegations made regarding the reasons for Mistry's removal and the governance practices of the Tata Group.

Cyrus mistry camp has knocked the NCLT doors under oppression and mismanagement provisions of the companies act. But he failed to get any remedy from NCLT which ruled in favour of Tata group. Then in an appeal to the NCLAT, the appellate tribunal ordered restoration of Cyrus mistry as the chairman. Subsequently, this was challenged by Tata group in Supreme Court which upheld his removal. The court's decision and its reasoning would be discussed in the upcoming chapters.

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<sup>3</sup> Manas Paul & Parijat Upadhyay, "*Tata Sons Vs Cyrus Mistry: A Corporate Governance Tale*", 12 GMJ 39, 39-48 (2018).

## Corporate Governance issues raised in the fiasco

The entire fiasco has given rise to the following **corporate governance issues** which will be critically analyzed in the following chapters:<sup>4</sup>

1. Is there a compromise of corporate values/ethics at top management level?
2. Does the promoter's excessive control over the affairs of the company and board violate the corporate governance principle of separation of control and ownership?
3. Whether the independent directors and other committees were able to act in an independent and objective manner in the best interest of the company and shareholders?
4. Whether there was a failure of balance of interests of family owned business vis-à-vis other stakeholders of the company?
5. Whether the non-promoter shareholders including retail investors and institutional investors were able voice their concerns in the entire fiasco?
6. Whether in a large conglomerate group, the BOD and subsidiaries are dependent on other group companies, that they were not able to take independent decisions?
7. Whether excessive limitations were put on minority shareholders to prove oppression and mismanagement by majority as decided by NCLT, NCLAT and SC?

## Chapter II: critical analysis of issues

The Cyrus mistry fiasco goes down in the history as one of the few case studies where the Board has lost confidence in its own chairman. Several Corporate governance issues are involved in this case which include the basic ethical principles that are expected from the top management of the board like Transparency, accountability and fairness of the top management. Starting from the Cadbury committee to the OECD and World bank committees these CG norms have been emphasized as the core values that need to be followed by the management. The unceremonious way in which he was removed without giving notice of

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<sup>4</sup> Agrata Pandey, "Tata Sons and the Mystery of Mistry", 45(3) The Journal for Decision Makers 183, 183–185 (2021).

removal, opportunities of being heard and the not providing adequate reasons for his removal clearly is against these well-established norms.<sup>5</sup>

### **Separation of Ownership and control**

Today it is well established that one of the core norms of corporate governance is the separation of ownership of the company from control. It essentially means that the ownership of the company which lies with the shareholders should not interfere with the affairs of the company which is essentially the responsibility of the management or Board. The key decisions are taken by the board keeping in view of the best interests of the company. In this case the ownership of the company lies with the shareholders, which essentially lies with Tata Sons do not have the right to interfere in the decision of the Board, while they can act against the board in the respective general meeting.

### **Role of Promoters**

It has been long criticized in corporate governance of the excessive influence of promoters on the BODs. As the promoters essentially tries to influence the Board in their own self-interest to protect their legacy, financial interest of the family and to influence their decisions to bring them under their control. In India most of the large companies are owned by families like Tata's, Ambanis and Birlas etc. even after their departure from the board they try to influence the board to protect their legacy and their family interest as visible in the case of Narayana Murthy vs. Vishal Sikka,<sup>6</sup> where Narayana openly critic the decision of then chairman of Infosys Vishal Sikka stating that the later has deviated from the core values of the company. This lead to the tussle between the promoters and the board and ultimately lead to the resignation of Vishal Sikka as chairman of the board, despite of the fact that the board has supported Vishal Sikka decisions. This episode shows the excessive influence of the promoters over the company even after their departure without keeping in mind the best interests of the company. The same thing happened in this case too as Ratan Tata being the dominant promoter of the company has put excessive influence over the board by calling in EGOM and being present personally to explain his decision to remove Cyrus Mistry despite being fact that he is no more the part of management of the board and many directors who initially supported Cyrus

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<sup>5</sup> Jayati Sarkar, "Ownership and Corporate Governance in Indian Firms", 4 Indian Corporate Law Journal 135, 135-144 (2020).

<sup>6</sup> Kokardekar, Gaurav. "Mr. Big Money'at Infosys: The Entry and Exit of Vishal Sikka." *Journal of Case Research* 9.1 (2018).

mistry has later shifted their stand in favor of Tata which is nothing but an undue influence over the BOD.<sup>7</sup>

### **Role of Independent Directors**

Another important corporate governance issue that is this case is the role of Independent directors in a public listed company, particularly a company with large market capitalization like Tata Group with significant minority shareholders. It is generally laid principle by various CG committees like Cadbury, narayanaya murthy and Birla committees as well section 149 of the Companies act that the IDs have to take decisions in an independent manner keeping in view of the various stakeholders involved in the company. In Municipality of *Bhiwandi & Nizampur v. Kailas Sizing Works*,<sup>8</sup> the SC has upheld this view that the decision of IDs should be to bring in independent decisions into the board which were ignored by the executive or whole time directors for various reasons keeping in mind the best interests of the company. In this case initially some of the board of directors like Nusli Wadia openly supported Cyrus mistry and his decisions as being profitable to the company. This lead to the division of the board as Tata and mistry camp, where the Tata camp accused IDs as being part of mistry camp and intimated proceeding to remove them from the board which eventually lead to his removal. As a result many of later IDs took a U-turn and started supporting Ratan Tata and his group. This shows that there is lack of protection to IDs as a result they are not able to make independent decisions and even if they made they were not able to stand with their decisions due to fear of removal or alienation.<sup>9</sup>

### **Role of Nomination and Remuneration committee**

The role of Nomination and Remuneration committee (NRC) in selection and removal of board of directors has also been highlighted in the case analysis. The NRC committee is expected to lay down certain objective performance standards for selection, performance evaluation and removal of board member. It is interesting to note that the NRC has met in June 2016 and commended the work of Cyrus mistry and recommended an increase in 6% raise. But the same

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<sup>7</sup> Koninica & others, “*Possibility of Abuse of Corporate Governance in Promoter Driven Companies and its Treatment in Present Law*”, <https://taxguru.in/company-law/possibility-abuse-corporate-governance-promoter-driven-companies-treatment-present-law.html>

<sup>8</sup> AIR 1975 SC 529.

<sup>9</sup> Deepali gupta, “*Cyrus Mistry (1968-2022): How the outsider was chosen to lead the Tata Group when Rata Tata retired*”, available at <https://scroll.in/article/1032026/cyrus-mistry-1968-2022-how-the-outsider-was-chosen-to-lead-the-tata-group-when-rata-tata-retired>

board which met later recommended his removal. It was not disclosed the reason for this recommendation but only said that it took the decision due to trust deficit between board and Cyrus mistry. This definitely sends a wrong message as within a three months period it changed its stand deviating from the objective standards of performance evaluation laid by the company.

### **Problems in family owned Companies**

In a family owned companies the main challenge is that the company is expected to work mainly in the interest of the family and whatever small other stakeholders are neglected in case there is any threat to family interest or legacy. Even though it could be argued that since the family owns the company and the image of the company depends on the image of the family but it shows poor governance in companies. In the present case as the Tata family owns 66% of the stake it was felt that the actions of Cyrus mistry in selling British steel and Nano companies it was against family legacy. Rattan Tata is known for standing up for values more than money among the Indian companies. But then the decision of Cyrus mistry was supported by the then board as nano and British steel were making heavy losses and it is best to sell them in the overall interest of the conglomerate. This was felt by rattan tat as an attack on his legacy which does not confirm to the actual financial statistics of the company.<sup>10</sup>

### **Role of Non-Promoter shareholders**

Non-promoter shareholders like financial institution and banks have substantial shares in large companies but they do not actively participate in the voting pattern or management of the company. In this case it was criticized that LIC having one of the largest stakeholders did not participate in the voting which led to the removal of Cyrus mistry. It was argued that the non-promoting shareholders vote of 15% could have sent a strong message to the top management regarding Cyrus mistry credentials, but their failure to participate could be regarded as a lost opportunity and poor corporate governance.

### **Critical analysis of SC verdict**

The SC decision to uphold the removal puts finality on the issue even though it might be irking for the minority shareholders. The SC observed that Article 75 of the AOA of Tata sons was

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<sup>10</sup> Ujjwal Sheth, "Oppression & Mismanagement: Taking Snippets from the Tata Mistry Saga", 5 International Journal of Law Management & Humanities 1290, 1290-1297 (2022).

changed which was there even before Cyrus mistry group joined Tata. It held that removal of chairman could not be considered as oppression or mismanagement under chapter 16 of the Act. It could be argued based on SC reasoning that his removal could not be considered as oppression and mismanagement, but the manner in which he was removed in an unceremonious way, without giving him an opportunity to defend himself being a representative of the minority shareholders and having previously appreciated his working and within 2 months he was ousted without and objective criteria certainly put the minority shareholders at the mercy of the majority.

### **Chapter 3: Recommendations/suggestions**

#### **Values in Corporate Governance, role of promoters and separation of powers**

It is expected that corporate luminaries like rattan Tata, narayana murthy etc adhere to high corporate governance norms including fairness, transparency and principles of justice. But what we have seen in the entire fiasco is compromise of corporate values almost by all the top management as Cyrus mistry was supposed to retire in December 2016 they could have waited for another 2-3 months for their departure. It is important that a proper set of norms should be issued by the company and strictly adhered to for following corporate governance values to build trust of the investors.<sup>11</sup>

As the promoters are the key personnel in a company success their influence cannot be overlooked in the affairs of the company be it Infosys or Tata. But it is important for a better corporate governance the respective players follow their respective roles without trying to impede each other function. This model could be equated to the separation of powers in America where the judiciary, executive and legislature perform their respective function without interfering into each other functions along with a system of checks and balances. In the company law the executive consists of CEO, management and executive directors, the other two bodies include the investors and independent board. The executive makes decision in its own power but the other two bodies do not intervene in their powers but only can proceed through the legal mechanism provided under the law like scrutiny of reports by shareholders, removal of directors at AGM etc.

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<sup>11</sup> Shital Jhunjhunwala, “Tata Sons and the Mystery of Mistry”, 45(3) The Journal for Decision Makers 170, 170–182, 2020.



## **Performance Evaluation of Key Management Personnel**

Another suggestion is that the removal of Key management personnel like MD, CEO or whole time or independent directors could be done only at AGM by giving sufficient notice to the shareholders and the accused, placing before the shareholders all the reports and performance evaluation review of the directors which could lead to a better transition of power in corporates and will not unnecessarily damage the reputation of the companies and the board.<sup>12</sup>

In large family owned business which are run by the board headed by other than family members they should not try to influence strategic decisions and business decisions which were taken by the board in the larger interest of the company, the AOA should clearly have the bylaws put in place to reduce the external influence in company affairs.

## **Protection of Independent directors and Role of NRC**

As regards the independent directors, as observed above even though some IDs tried to defend Cyrus mistry they were either removed or silenced by the board on the pretext of removal from the board. This rather puts the IDs in a precarious position and would prevent them to fulfill their obligations as a an independent advisor to the board. There is a need that the IDs need to be protected in terms of security of tenure for the entire term which should be expressly laid down under the companies act, 2013.

The NRC by shifting its position and not having an objective criteria for performance evaluation was definitely against recommendations of several committees like Cadbury committee, which clearly stated that NRC should evolve an objective criteria for performance evaluation which include self-evaluation, peer assessment, director reports and investors interview. These reports should be placed before the AGM and shareholders in a transparent manner so that there could be objective and fair evaluation of the directors performance.

## **Need a better Scrutiny of Minority Rights**

The judicial shifting of the positions in NCLT, NCLAT and finally the SC shows that there is compromise of certain core corporate values in this entire fiasco. The SC might have felt that since Cyrus mistry has already resigned from his job and does not have an intention to come

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<sup>12</sup> Bhardwaj Abhishek "*Independent Directors vis-a-vis Corporate Governance*", 2 *Jus Corpus L.J.* 114, 114-126 (2022).

back as chairman, there is no point of reinstating him. But this does not resolve various issues involved in this case particularly with respect to minority shareholders. The fact that a minority shareholder was removed in an unceremonious manner and a resolution to acquire the shares of the company was passed certainly needs a thorough investigation by the SC and it is a lost opportunity by the SC to stand for the minority shareholders.

## **Conclusion**

**Mahatma Gandhi** famously said that “**business without morality will destroy us**”. There is no doubt that it is the right of Tata group being the largest shareholder to replace the chairman of its choice. But the problem is the manner in which it is done clearly send a bad message and there is compromise of individual morality and corporate values as suggested by Gandhi.

As in India there are still large number of family owned businesses with powerful promoters these issues keep happening on a regular basis. What is at stake is the investor confidence, wastage of judiciary's valuable time and reputation of the company. All these could be avoided by putting in place a proper succession planning and adhering to the core norms and rules under the company law.

There is a need to bring about more clarity in the norms followed by NRC in performance evaluation of top management of the company and decisions needs to be taken based on material facts rather than extraneous considerations, despite of the differences of personalities of the individuals which will benefit overall stakeholders of the company. At the same time mechanisms should be put in place to protect the voices of dissenting IDs, in the form of security of tenure during the said period.

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