NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) No. 254 of 2018

IN THE MATTER OF:

Cyrus Investments Pvt. Ltd. ....Appellant

Vs.

Tata Sons Ltd. & Ors. ....Respondents

Present:

For Appellant: **Mr. C. A. Sundaram, Mr. Arun Kathpalia and Mr. K.G. Raghavan, Sr. Advocates with Mr. Somashekhar Sundresan, Mr. Manik Dogra, Mr. Rohan Jaitley, Ms. Rohini Musa, Mr. Abhishek Venkatraman, Mrs. Sonal Jaitley Bakshi, Mr. Jaiyesh Bakhshi, Mr. Apurva Diwanji, Mr. Ravi Tyagi, Mr. Shubhanshu Gupta, Ms. Sanya Kapoor, Ms. Rini Badoni, Mr. Akshay Doctor, Mr. Devashish, Mr. Parag Sawant and Mr. Gunjan Shah, Advocates.**

For Respondents: **Dr. A.M. Singhvi and Mr. Rajiv Nayyar, Sr. Advocates with Mr. Prateek Seksaria, Ms. Ruby Singh Ahuja, Ms. Tahira Karanjawala, Mr. Anupm Prakash, Mr. Avishkar Singhvi, Mr. Arjun Sharma, Mr. Sahil Monga, Mr. Utkarsh Maria, Mr. L. Nidhiram Sharma and Mr. Baij Nath Patel, Advocates for R-1.**

Mr. Harish N. Salve, Sr. Advocate with Mr. Dhruv Dewan, Mr. Nitesh Jain, Mr. Rohan Batra, Ms. Reena Choudhary, Ms. Yashna Mehta and Mr. Nitesh Jain, Advocates for R-2.

Mr. Amit Sibal, Senior Advocate with Ms. Ruby Singh Ahuja, Ms. Tahira Karanjawala, Mr. Arjun Sharma, Mr. Sahil Monga, Mr. Utkarsh Maria, Advocates for R-3, 5 & 7.

Mr. Mohan Parasaran, Sr. Advocate with Mr. ZalAndyarujina, Mr. J.N. Mistry, Ms. Namrata Parikh, Mr. Ashwin Kumar D.S, Mr. Sidharth Sharma, Mr. Saswat Pattnaik, Mr. Aditya

Panda, Mr. Kartik Anand and Ms. Aditi Dani, Advocates for R-6, 16 to 22.

Mr. Janak Dwarkadas, Sr. Advocate with Mr. Akshay Makhija, Mr. SharanJagtiani, and Ms. Kriti Awasthi, Advocates for R-11.

Mr. Sidharth Sharma, Mr. Saswat Pattnaik, Mr. Aditya Panda, Mr. Kartik Anand, Advocates for R-21 & 22.

Mr. S. N. Mookherjee, Sr. Advocate, Mr. Sidharth Sharma, Mr. Saswat Pattnaik, Mr. Kartik Anand, Ms. Namrata Parikh, Mr. J.N. Mistry and Mr. Aditya Panda, Advocates for R-14.

With

Company Appeal (AT) No. 268 of 2018

IN THE MATTER OF:

Cyrus Pallonji Mistry ....Appellant

Vs.

Tata Sons Ltd. & Ors. ....Respondents

Present:

For Appellant: **Mr. Janak Dwarkadas, Sr. Advocate with Mr. Sharan Jagtiani, Mr. Akshay Makhija and Ms. Kriti Awasthi, Advocates.**

For Respondents: **Dr. A.M. Singhvi and Mr. Rajiv Nayar, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Prateek Seksaria, Ms. Tahira Karanjawala, Mr. Anupm Prakash, Mr. Avishkar Singhvi, Mr. Arjun Sharma, Mr. Sahil Monga, Mr. Utkarsh Maria, Mr. L. Nidhiram Sharma and Mr. Baij Nath Patel, Advocates for R-1.**

Mr. Harish N. Salve, Sr. Advocate with Mr. Dhruv Dewan, Mr. Nitesh Jain, Mr. Rohan

Batra, Ms. Reena Choudhary, Ms. Yashna Mehta and Mr. Nitesh Jain, Advocates for R-2.

Mr. Mohan Parasaran, Sr. Advocate with Mr. Sidharth Sharma, Mr. J.N. Mistry, Mr. ZalAndyarujina, Ms. Namrata Parikh, Mr. Ashwin Kumar D.S., Mr. Saswat Pattnaik, Mr. Aditya Panda, Mr. Kartik Anand and Ms. Aditi Dani, Advocates for R-6, 13, 15 to 21.

Mr. C. A. Sundaram, Mr. Arun Kathpalia and Mr. K.G. Raghavan, Sr. Advocates with Mr. Somashekhar Sundresan, Mr. Manik Dogra, Mr. Rohan Jaitley, Ms. Rohini Musa, Mr. Abhishek Venkatraman, Mrs. Sonal Jaitley Bakshi, Mr. Jaiyesh Bakhshi, Mr. Apurva Diwanji, Mr. Ravi Tyagi, Mr. Shubhanshu Gupta, Ms. Sanya Kapoor, Ms. Rini Badoni, Mr. Akshay Doctor and Mr. Gunjan Shah, Advocates for R-23 & 24.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

Pursuant to decision of Board of Directors' of the 'Tata Sons Limited'-(1st Respondent Company) dated 24th October, 2016, just few months prior to the completion of the period, Mr. Cyrus Pallonji Mistry-(11th Respondent) was suddenly removed as 'Executive Chairman' from the 'Tata Sons Limited'-(1st Respondent Company). Since before his removal for more than one year, a number of correspondences had taken place between Mr. Cyrus Pallonji Mistry- (11th Respondent) ('Executive Chairman') and other members, including Mr. Ratan N. Tata (2nd Respondent) about the performances of different Group Companies.

2. Because of sudden removal of Mr. Cyrus Pallonji Mistry- (11th Respondent) from the post of 'Executive Chairman', the Appellants- 'Cyrus Investments Private Limited' and 'Sterling Investment Corporation Pvt. Ltd.', the minority group of shareholders/ 'Shapoorji Pallonji Group' ("SP Group" for short) moved an application under Sections 241-242 of the Companies Act, 2013 alleging prejudicial and oppressional acts of the majority shareholders (Tata Groups).

3. There being a doubt as to whether the Appellants had more than 10% of the equity of shareholding of the Company, the Appellants- 'Cyrus Investments Private Limited & Anr.' also filed a petition for waiver under Section 244 of the Companies Act, 2013. The National Company Law Tribunal ("Tribunal" for short), Mumbai Bench, initially dismissed the petition under Sections 241-242 of the Companies Act, 2013 being not maintainable, also dismissed the petition for waiver.

4. On challenge, this Appellate Tribunal by its judgment dated 21st September, 2017 taking into consideration the exceptional circumstances including the fact that out of Rs. 6,00,000 crores of total investment in 'Tata Sons Limited', the Appellants- 'Cyrus Investments Private Limited & Anr.' had invested approximately Rs.1,00,000 crore held that it was a fit case for waiver and remitted petition under Sections 241-242 to the Tribunal for decision on merit.

5. The Tribunal by impugned Judgment dated 9th July, 2018 while highlighted the past and products of the 'Tata Sons Limited' observed *"The petitioners have petitioned to this Tribunal asking to seasoning of Tata Sons functioning, which keeps seasoning our daily food with Tata Salt. Irony is salt also at times needs salt to be seasoned....."* and passed stricture and derogatory observations against the Appellants and dismissed the petition.

Case of the Appellants: -

6. 'Tata Sons Limited' (1st Respondent Company) is a group company comprising of 'Tata Trusts', 'Tata Family' and 'Tata Group Cos.' and other group is the 'Shapoorji Pallonji Group' ("SP Group" for short) which for over five decades jointly conducted the affairs of 1st Respondent Company in an environment of mutual trust and confidence.

7. According to Appellants, the structure of 'Tata Sons Limited' itself indicates on the very face of it, the nature of relationship between the 'Tata Group' and the 'SP Group'. 'Tata Sons Limited' (1st Respondent Company) has 51 shareholders, but even a cursory glance at the qualities of shareholders will indicate that 'Tata Sons Limited' (1st Respondent Company) is in effect is a quasi-partnership-company, a concept well recognised in company law jurisprudence.

8. It is stated that the 'Tata Trusts' and 'Tata Group Companies' along with 'Tata family members' collectively hold over 81% of total

shareholding while the 'SP Group' holds over 18% of the equity share capital of 'Tata Sons Limited' (1st Respondent Company).

9. Further, according to learned counsel, the relationship between the 2 groups though not formally reflected in the Articles of Association but is based on the mutual trust and confidence which has given rise to a legitimate expectation of being treated in a mutually just, honest and fair manner. After sudden removal of Mr. Cyrus Pallonji Mistry (11th Respondent), the mutual trust and confidence has broken down, which according to the Appellants is on account of the conduct of the contesting Respondents, which lacks in probity, is inequitable, unfair, unjust and against the fundamental notions that govern the relationship between partners.

10. According to Appellants, the 'SP Group' entered into the 'Tata Group' as business partners based upon the personal relationship that existed between the two families both in business and outside. The relationship was not based purely on commercial considerations but because of factors outside of pure economic factors. In fact, a few members of the 'Tata Group' divested their shareholding in 1st Respondent Company in favour of 'SP Group' which transfer was approved at the meeting of Board of Directors of 'Tata Sons Limited' (1st Respondent Company) which then comprised of Directors of Tata Group only.

11. The business relationship between the two groups as Shareholders of 'Tata Sons Limited' (1st Respondent Company) is culmination of pre-existing relationship between the 'SP Group' and 'Tata Family' over the last 50 years. There was no element of a formal business partnership between the two groups as envisaged in law inasmuch as in the matter of regulating the relationship between the 'SP Group' and the 'Tata Group', law and the other formalities took a backseat. Till the dispute started the relationship between the two groups has been driven primarily on the basis of mutual trust and confidence between two groups of friends' / family members.

12. Although a two-group company, 'Tata Sons Limited' (1st Respondent Company) has controlling interests in a wide range of Companies (the Tata Group) which operate in 160 countries across six continents and employs over 660,000 people. 'Tata Sons Limited' (1st Respondent Company) controls the destinies of a wide range of companies. The Tata Group comprises over a hundred operating companies of which 29 are listed companies with millions of shareholders. Albeit a two group company, in effect, the affairs of 'Tata Sons Limited' (1st Respondent Company) entail exercising control over the affairs of over a 100 operating companies which is why it is imperative that 'Tata Sons Limited' (1st Respondent Company) should effectively operate as a two group company to provide checks and balances in its conduct of business rather than applying a simple

majority rule which would mean that one group can unilaterally determine the destiny of over a 100 operating companies including the 29 listed companies and millions of stakeholders.

13. Further, the case of the Appellants is that it is also for this reason there has always been constructive participation and engagement by the nominees of the 'SP Group' at the Board level and active support of the 'SP Group' as shareholders, in the conduct of the affairs of Tata Sons, including at a time when the voting rights of the Tata Trusts were by law vested in a public trustee. However, in recent times a systematic attempt to squeeze them out of every space in the affairs of Tata Sons has led to the present proceedings.

14. The record is replete with examples of serious consultations and consensus building between the two groups on vital matters. In this environment of mutual inter-dependence, Mr. Cyrus Mistry (11th Respondent) was selected after subjecting him to a professional selection process as 'Executive Chairman' on merits. When he was appointed, Mr. Cyrus Mistry (11th Respondent) was expressly referred to as a significant shareholder and both an insider and outsider, pointing to the nexus between his appointment and his status as a significant shareholder and in the same spirit of mutual confidence, Mr. Cyrus Pallonji Mistry (11th Respondent) availed of advice from time to time on matters of transition and historical legacy hotspots on which vital decisions were to be taken to cut losses or to restructure, in the interests of 'Tata Sons Limited' (1st

Respondent Company) and the Tata Group Companies. Mr. Cyrus Pallonji Mistry (11th Respondent) displayed due deference and respect to the past leadership of 'Tata Sons Limited (1st Respondent Company) and went out of his way to protect their legacy. Mr. Cyrus Pallonji Mistry (11th Respondent) addressed these legacy hotspots internally and 11th Respondent and his team did not comment on these issues in the public domain, during 11th Respondent's tenure as 'Executive Chairman'.

Removal of 'SP Group' from management and 11th Respondent as 'Executive Chairman'

15. Learned counsel for the Appellants submitted that an abiding theme of Respondents' conduct is the consistent and steady squeeze-out of the Appellants' rights and title to, and interest in, their ownership of 1st Respondent Company in a manner that is lacking in probity and is unfair.

16. It is submitted that Mr. Cyrus Pallonji Mistry's (11th Respondent) sudden and hasty removal as 'Executive Chairman' must be seen in the context of: (i) his efforts to remedy past acts of mismanagement inherited from the past management and opening up embarrassing issues; (ii) yet being respectful in resisting interference from Mr. Ratan N. Tata (2nd Respondent), and Mr. N.A. Soonawala (14th Respondent) in the affairs of 'Tata Sons Limited' (1st Respondent Company) and (iii) his

instituting a formal governance framework to regulate the role of the Tata Trusts and specify the matters over which prior consultation would be required to prevent interference and mismanagement.

17. The Respondents belatedly ascribed disingenuous reasons to justify the removal of Mr. Cyrus Pallonji Mistry (11th Respondent) by *inter alia* linking it to his alleged lack of performance. However, none of the purported reasons provided for removing 11th Respondent as 'Executive Chairman' had ever been discussed or deliberated prior to 11th Respondent's illegal removal. In any event, such fictitious reasons are clearly belied from the record.

18. It is alleged that Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) kept interfering in the affairs of 'Tata Sons Limited' (1st Respondent Company) and demonstrating their insecurity about their legacy being undermined instead of looking to what is in the best interests of 1st Respondent Company. Over a period of time this turned to insisting that it is the will of the majority shareholder i.e. the 'Tata Group' that should prevail. This became more pronounced as 11th Respondent as the 'Executive Chairman' began taking remedial steps in relation to past decisions which turned out to be against the interests of the Tata Group i.e. "legacy hotspots" and sought to effect a turnaround in the affairs of 1st Respondent Company.

19. Some vital areas included, shutting down the Nano project and cutting losses with expensive decisions in other Tata Group Companies such as 'Indian Hotels Company Limited' ("IHCL"), 'Tata Teleservices Limited' ("TTSL") etc. These became contentious. Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) justified interference under the guise of their legacy being undermined. However, even on new matters (not just decisions involving legacy hotspots), Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) demanded pre-consultation and pre-approval, undermining the concept of the institution of the Board of Directors and the consciously laid down retirement policy.

20. According to Appellants, the scale and depth of the involvement and interference of these two Trustees in the affairs of 1st Respondent Company and Tata Group Companies is evident from the record which shows a range of topics over which pre-consultation was demanded under the threat of alleging a violation of the Articles of Association and went far beyond offering solicited advice or guidance. The interference is evident from the numerous presentations and discussions held with Mr. Ratan N. Tata (2nd Respondent) and Mr. Cyrus Pallonji Mistry (11th Respondent) on a wide range of topics and these extended well beyond even legacy hotspots. Over 550 emails were exchanged between 11th Respondent and 2nd Respondent demonstrating the scale of interference. Such interference fostered a pattern of decision making that led to the Board of 1st

Respondent Company being undermined including: (i) 2nd Respondent dictating the contents of minutes and directly interacting with officials of the Tata Group Companies, (ii) Nominee Directors stepped out of a meeting to take instructions from 2nd Respondent and 14th Respondent on how to vote in a matter and (iii) 14th Respondent dictating the contents of the note to be placed before the Board of 1st Respondent Company.

21. Faced with having to deal with a formal institutionalizing of a governance framework involving Tata Trusts, 1st Respondent and Tata Group Cos., and indeed matters such as discussion on the Air Asia fraud, recoveries from Siva etc. an overnight coup coupled with a purge of the entire senior management was effected on 24th October, 2016 i.e. an action which as the record shows was surreptitiously planned in advance.

22. Just three months' prior, the Board of Directors of 1st Respondent Company had unanimously endorsed the recommendation of the 'Nomination Remuneration Committee' (a statutorily mandated committee under the Companies Act, 2013 to review the performance of directors), to laud the performance of 11th Respondent and others who were purged and accorded a pay hike for all of them. Not a whisper of a discussion on any factor warranting such purge took place at any Board meeting. This showed that these directors failed to exercise independent judgement and discharge their fiduciary duties.

23. The requisite compliance with Article 118 of the Articles of 1st Respondent was also given the go-by. No committee was formed for removal of the incumbent Chairman as required under Article 118, despite at least the relevant Respondents being aware of the need for such committee and were instrumental in adopting Article 118; Self-serving and materially misleading arguments, false to the knowledge of these Respondents were made on the absence of any need for a Committee on the removal of the Chairman. The Appellants then produced the Board minutes and the explanatory statement to the AGM when Article 118 was adopted, which clearly showed such a Committee was envisaged by the Respondents themselves for the removal of the Chairman, which destroys the credibility of these arguments. 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. Instead, the directors strangely, purported to act on opinions allegedly taken by the Trust shareholders. Yet, at the Board meeting, 11th Respondent was told that opinions have been taken and it was later stated that the opinions referred to were opinions taken by the Trusts and not by 1st Respondent Company, and therefore, would not be shared.

24. It was further submitted that as a retribution for these proceedings in an act of vengeance for various Tata Group Companies' independent directors objecting to 11th Respondent's ouster, notices

were issued by 1st Respondent Company at the behest of the Trustees of the Tata Trusts to the Tata Group Companies to remove 11th Respondent as a director of the Tata Group Companies. A few independent directors resigned. Others fell in line. Similarly, 11th Respondent who was the 'SP Group's' representative on the Board of Directors of 1st Respondent, was also removed as a director by requisitioning a special general meeting of 1st Respondent as retribution for these proceedings being initiated by the Appellants. The purported reasons such as compliance with a summons from the tax authorities being equated with a breach of confidentiality, were supplied later.

25. When these proceedings were *sub-judice,* an attempt to convert 1st Respondent into a Private Limited Company was made, in a marked departure from a long legacy of its being a public limited company having revenue in excess of USD 100 billion and involving control of over 100 operating companies including 29 listed and public companies. As a public company 1st Respondent would be subjected to a higher standard of governance and with a view to dilute these standards, an attempt was made to convert 1st Respondent into a Private Limited Company leading to an amendment to the Company Petition in these proceedings. Consistent conduct expropriating the rights and interests of the Appellants in every manner and form has given ground to a legitimate apprehension of expropriation of the Appellants' shareholding by abuse of Article 75.

Article 121– tool of prejudicial and oppressive interference and breaking down of corporate governance

26. Learned counsel for the Appellants submitted that Article 121 & Article 121A were introduced in the year 2000 and 2014 respectively in the Articles of Association of the company to safeguard the interest of the Company with regard to vital issues. However, it started being interpreted as a means of requiring prior consent and affirmation even as to whether matters could be brought before the Board of Directors not only on 'Tata Sons Limited'-(1st Respondent Company) but also of the 'Tata Group Companies', which was never the intention. The Appellants could never have imagined a situation that these Articles would be misused, which became apparent since 2014 and completely negated the entire purpose of having a strong Board of Directors to ensure proper management of 'Tata Sons Limited' which *ipso-facto* would be required for proper management of the Tata Group Companies. Therefore, such Articles became Articles of oppression only recently since they had not been previously misused and in fact had been viewed as nothing more than to ensure that the nominees of the majority shareholders applying their own independent judgement, would be required to affirm significant / important decisions.

27. According to Appellants, Article 121 provides a veto on every decision to be taken by the Board of 'Tata Sons Limited' to trustee

nominee directors- as opposed to conventional affirmative rights provisions being available to the minority on select matters. Article 121 is also repugnant to the scheme of the Companies Act which for the first time requires the Boards of certain large unlisted public companies (such as 1st Respondent Company), to comprise independent directors who are *inter-alia* duty bound to safeguard the interests of minority shareholders.

28. It was submitted that veto power is never meant to be formally used - its existence ensures conduct in line with expectation.

29. It was further submitted that Article 121B- with 15 days' notice for a director to introduce a matter is rendered redundant since decisions would be subject to Article 121. The effect of all this is that important matters which would rightly benefit from the deliberation by all members of the Board would be deprived of such inputs by not even being brought before the Board.

30. Article 121A specifies a list of matters which are to be brought before the Board of 1st Respondent Company. In fact, Article 121A would also be a clear indicator that important items ought to be considered by the Board which would be wholly negated should Article 121 be used in the manner that it was.

31. It was contended that Article 121 has been used as a tool of oppression whereby irrespective of the strength of the Board and

provisions as to the presence of independent directors on the Board, just two trustee nominee directors alone can decide what gets approved (even this was brought down from 3 to 2).

32. According to counsel for the Appellants, widespread abuse by Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) of Article 121 is amply demonstrated from the record. In fact, various instances of its abuse are on record to the extent of even reopening of matters already decided (as allegedly being in the interest of the company) and dictating what the minutes must contain. By vesting frill power of the Board to conclude any decision in the hands of two trustee nominee directors the authority and statutory role of Board of Directors whose composition is regulated by the Companies Act, stands undermined warranting intervention.

Interference and breakdown of corporate governance

33. Learned counsel for the Appellants submitted that Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) indulged in oppressive interference. Mr. N.A. Soonawala (14th Respondent) retired and did not even hold an "Emeritus" office- was to be available as advisor. However, over a period of time rather than advising when his advice was sought for, Mr. N.A. Soonawala (14th Respondent) began interfering including by dictating what the note to the Board of 1st Respondent Company should contain. In fact, when

this was not done there were repeated threats of the breach of Articles as prior consent of the majority shareholder was not obtained.

34. Learned counsel for the Appellants highlighted the instances of interference by Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent).

35. It is stated that Mr. Ratan N. Tata (2nd Respondent), the former 'Executive Chairman' at the last Board meeting of 1st Respondent Company chaired in December 2012 was designated a Chairman Emeritus by Mr. Cyrus Pallonji Mistry (11th Respondent), an honorary title for his contributions to the Tata Group. However, Mr. Ratan N. Tata (2nd Respondent) clearly and unequivocally stated that he would be available only for advice and there was to be no overhang from his previous role. Pertinently, Mr. N.A. Soonawala (14th Respondent) thereafter held no official position in 'Tata Sons Limited' (not even of an "*Emeritus")*. The 14th Respondent retired at the Board Meeting of June 15, 2010, even before 2nd Respondent retired in December 2012. An advisor's role is to provide advice when sought. In contrast, a person seeking to control would do more than provide advice when sought. Mr. Cyrus Pallonji Mistry (11th Respondent) indeed sought advice from Mr. N.A. Soonawala (14th Respondent) on areas where Mr. N.A. Soonawala (14th Respondent) could add value as an advisor.

36. The record demonstrates that far from providing advice when sought, Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) actively interfered in the affairs of 1st Respondent Company. Contrary to the claims being made now noteworthy feature of these "grievances" and breach of Articles are raised not by the Trust Nominee directors of the Trustees of the Tata Trusts or other members of the Board of Directors of 1st Respondent Company acting independently. These were all issues and grievances raised by Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent).

37. According to Appellants, Article 121 A(h) of the Articles requires matters relating to how 1st Respondent Company would vote as a shareholder of the Tata Group Companies to be decided at a meeting of the Board of 1st Respondent Company. The 'Welspun' transaction entailed 'Tata Power' acquiring certain business assets of 'Welspun'. The Articles of Tata Power do not confer any special rights on 1st Respondent Company to pre-approve transactions which were to be entered by the Board of Tata Power. The acquisition of 'Welspun's' business by Tata Power *per se* did not require any shareholder approval. Since Tata Power was required to raise debt for the 'Welspun' transaction, shareholder approval was required and sought. The 1st Respondent Company like any other shareholder could only have voted for or against the proposal.

38. According to Appellants, Mr. Cyrus Pallonji Mistry (11th Respondent) was a Director on the Board of Tata Power and owed a fiduciary duty to ensure that the Board of Tata Power takes decisions in the best interests of Tata Power. An 'Executive Chairman' of 1st Respondent Company wears two hats - he is a Director of 1st Respondent Company and a Director on the Board of the Tata Group Companies as a nominee of 1st Respondent Company. As a Director on the Board of the Tata Group Companies, he owes fiduciary duty to all shareholders and not just 'Tata Sons Limited' to ensure that the Board of the Tata Group Company exercises independent judgement and is not influenced by the views solely of its promoter and principal shareholder. Yet, in the case of Welspun, although the Trustee Nominee Directors had approved the transaction, once Mr. Ratan N. Tata (2nd Respondent) objected, they wanted to change their view, revise the minutes, took instructions on what the minutes may contain, and even left the Board meeting of 1st Respondent Company mid-course to take instructions on how to act in the Board meeting. The foregoing actions demonstrates how the majority shareholders are a Super Board and ignore well laid and statutorily recognized principles of law with regard to management of a company. This attitude was made further apparent and the situation was compounded by the stealthy and illegal removal of Mr. Cyrus Pallonji Mistry (11th Respondent), first as 'Executive Chairman' of 1st Respondent Company, and then as a Director of various Tata Group Companies and finally as a Director of 1st Respondent

Company itself. The chronology of events set out in the Annexure would show that these exclusionary actions were taken because Mr. Cyrus Pallonji Mistry (11th Respondent) insisted that 1st Respondent Company and the Tata Group Companies are run in a professional manner without interference from shareholders and bringing into place a clear demarcated system of corporate governance.

Conversion of Public Limited Company to Private Limited Company

39. Learned counsel for the Appellants submitted that to further ensure that such prejudicial and oppressive acts could proceed unchecked and to further the attempts at complete unilateral control of the company, *pendente lite* these proceedings, a sudden attempt has been made to convert the company from public limited to private limited, which is also under challenge. The entire background and manner in which such conversion was done would clearly indicate that the overhaul of Company law to ensure proper management of public limited companies and to ensure proper protection of minority shareholders, is sought to be undermined and avoided.

40. According to learned counsel for the Appellants, the manner of conversion was also wholly against the law and in fact, against the provisions of the Companies Act itself and contrary to the assurances made to shareholders that the same would be subject to approval by the Tribunal, after hearing all stakeholders. The only motivation of the

conversion was not the interest of the company but to marginalise and further oppress the only independent minority shareholder. 1st Respondent Company also withheld material facts relating to the conversion from the Registrar of Companies and the Tribunal on its conduct as a public company.

Potential abuse of Article 75

41. It was submitted by learned counsel for the Appellants that although Article 75 has remained in the Articles for several years, in view of the manner in which the affairs of the company was being conducted as an intrinsically two group company with involvement of both groups working towards a joint effort of mutual benefit to both and the company, the recent events have shown the attempts at oppressing the minority shareholders. Therefore, Article 75 which although remaining in the Articles, was never viewed by the minority shareholders as a possible tool of oppression (as in fact, Article 121 was also not viewed that way), the recent events have created a more than reasonable apprehension that Article 75 could be sought to use to marginalise and eliminate the minority shareholders from the company.

42. It was submitted that such apprehension is not unfounded and in fact, even before the Tribunal, it was clearly indicated that if the Appellant minority shareholders were unhappy with the affairs of the company they could sell out their shares in the company. Article 75 as it

stands (coupled with its propensity for misuse) would be wholly oppressive to the interests of the minority and would therefore, need to be deleted.

Mismanagement

43. Learned counsel for the Appellants submitted that apart from such prejudicial and oppressive acts, various instances of mismanagement qua numerous decisions with regard to various group companies have also arisen where such acts of mismanagement occurred due to the use of the majority shareholding group of their strength, including the misuse of the Articles, hitherto complained of. Such acts of mismanagement not only dealt with the investments by 1st Respondent Company, but also extended to decisions pertaining to various group companies. Inasmuch as 1st Respondent Company is a Core Investment Company and over 90% of its income is in the form of dividend from its investments in the various group companies that it controls.

44. It was submitted that the consequences of mismanagement of such group companies directly and substantially visits 1st Respondent Company and its shareholders. Insofar as the affairs of such group companies are concerned, decisions of such companies are dependent on the will of the 1st Respondent Company. 1st Respondent Company as the promoter, the single largest shareholder; is the owner of the Tata

brand; and by virtue of Article 121-A, in effect controls the management and policy decisions of such companies. Therefore, various instances of mismanagement in how decisions relating to such companies are taken against the interests of 1st Respondent Company and consequently its shareholders form part of the record.

45. The Appellants have provided 'Illustrative Instances of the Prejudice Occasioned by Undermining Governance', which we have noticed and discussed at appropriate stage.

Disparaging Remarks Against the Appellants by The Tribunal

46. While challenging the order, learned counsel for the Appellants highlighted the disparaging remarks against the Appellants and judicial bias in the impugned order by referring to certain observations made therein. It was submitted that the Appellant is aggrieved by certain observations and findings which deeply affect the reputation of Mr. Cyrus Pallonji Mistry- (11th Respondent) (Appellant in other case) and attack his integrity both professionally and personally.

47. It was submitted that the disparaging observations and findings, as highlighted and referred below, seen in juxtaposition with the manner in which the 'Tata Sons Limited' (1st Respondent Company), Mr. Ratan N. Tata (2nd Respondent) and the 'Tata Trusts' have been described.

48. An overwhelming awe in favour of *inter alia* 'Tata Sons Limited' (1st Respondent Company), Mr. Ratan N. Tata (2nd Respondent) and the 'Tata Trusts', apparent from the wholly irrelevant but excessively generous tributes and praise heaped by the Tribunal upon them.

49. It was submitted that inherent lack of judicial approach since the latter material, which has been extracted by the Tribunal, nor relied upon by the parties, but is sourced from extraneous materials such as the Tata's own website and *Wikipedia.*

50. According to the counsel for the Appellants, a denial of natural justice inasmuch as the parties, particularly the Appellants, never had the opportunity of dealing with any of the said extraneously sourced material. Therefore, the Appellants have sought expunction of the observations and remarks set out below which deeply impact his reputation and which may affect him in other pending proceedings.

Stand of Contesting Respondents

51. Mr. Harish Salve, learned Senior Counsel appearing on behalf of Mr. Ratan N. Tata (2nd Respondent) denied the allegations against Mr. Ratan N. Tata and submitted that the allegations pertaining to removal of Mr. Cyrus Pallonji Mistry (11th Respondent) are in the nature of directorial complaints which cannot be raised in a petition under Sections 241 of the Companies Act, 2013.

52. Referring to different Articles of Articles of Association including Article 121 etc., it was submitted that all actions have been taken as per the provisions of the 'Articles of Association', 'Companies Act, 2013' and the 'Secretarial Standard on Meetings of the Board of Directors (SS-1)', framed under Section 118(10) of the Companies Act, 2013, including particularly Clause 6.3, as quoted below:

> *"**6.3. Approval***
>
> ***6.3.1*** *The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a meeting.*
>
> ***Every such Resolution shall carry a serial number.***
>
> ***If any special majority or the affirmative vote of any particular Director or Directors is specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote.***
>
> *An Interested Director shall not be entitled to vote. For this purpose, a Director shall be treated as*

interested in a contract or arrangement entered or proposed to be entered into by the company:

(a) with the Director himself or his relative; or

(b) with any body corporate, if such Director, along with other Directors holds more than two percent of the paid-up share capital of that body corporate, or he is a promoter, or manager or chief executive officer of that body corporate; or

(c) with a firm or other entity, if such Director or his relative is a partner, owner or Member, as the case may be, of that firm or other entity."

53. It was submitted that even as per the 'Secretarial Standard on Meetings of the Board of Directors', is any special majority or the affirmative vote of any particular Director or Directors specified in the Articles, the Resolution shall be passed only with the assent of such special majority or such affirmative vote. Therefore, Article 121 if read with Article 104A of the Articles of Association, it cannot be held to be arbitrary.

54. It was further submitted that the Appellants cannot claim any 'legitimate expectations' as Indian Law do not permit any 'legitimate expectations' under Section 241 of the Companies Act, 2013.

55. It was submitted that the term 'legitimate expectations' is borrowed from public law, as a label for the 'correlative right' to which a relationship between company members may give rise in a case when, on equitable principles, it would be regarded as unfair for a majority to exercise a power conferred upon them.

56. It was also submitted that the term 'legitimate expectations' from public law cannot be made applicable for the purpose of Company Law.

57. According to learned counsel for the Respondents, the Articles of Association are the Regulations of the Company binding on the company and its shareholders and the shares being a movable property and their transfer is regulated by the Articles of Association of the Company.

58. With respect to the transfer of shares of the Company under Article 75 of Articles of Association, reliance has been placed on the decision of the Hon'ble Supreme Court in ***"V.B. Rangaraj v. V.B. Gopalakrishnan and Ors.– (1992) 1 SCC 160"*** to suggest that the Articles of Association are the regulations of the Company and binding on the Company and its shareholders.

59. For maintaining an appropriation under Sections 241-242, according to learned Counsel, it is important for a party to make out two essential points namely— (i) that the affairs of the company are being conducted in a manner prejudicial or oppressive to any member

or members of the company and; (ii) 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.

60. Mr. Harish Salve, learned Senior Counsel, also referred to the decision of the Hon'ble Supreme Court in ***"S.P. Jain v. Kalinga Tubes Ltd.– AIR 1965 SC 1535"***.

61. In the said case, similar observations have been made that the affairs of the company are being conducted in a manner prejudicial or oppressive to any member or members of the company and 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.

62. Mr. Harish Salve, learned Senior Counsel referred to the principles of 'Unfair Prejudice Remedy' i.e. principle 14 as applicable to English Law, but it is not necessary to highlight the same, as two of the decisions have already been referred to above.

63. Dr. Abhishek Singhvi, learned Senior Counsel submitted that the allegations pertaining to replacement/ removal of Mr. Cyrus Pallonji Mistry- (11th Respondent) are in the nature of directorial complaints

which cannot be raised in a petition under Section 241 of the Companies Act, 2013.

64. It was submitted that directorial dispute has no nexus with the shareholders' proprietary rights, therefore, the same cannot be agitated or entertained in a petition under Sections 241-242 of the Companies Act, 2013 (Sections 379-398 of the Companies Act, 1956). Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***"S.P. Jain v. Kalinga Tubes Ltd.– AIR 1965 SC 1535"*** wherein the Hon'ble Supreme Court held that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members and the conduct must be burdensome, harsh and wrongful and not mere lack of confidence.

65. Reliance has also been placed on the decision of the Hon'ble Supreme Court in ***"Hanuman Prasad Bagri and Ors. v. Bagress Cereals Pvt. Ltd. & Ors.– (2001) 4 SCC 420"***, wherein the Hon'ble Supreme Court held that mere illegal termination of Directors cannot bring his grievance as to termination to winding up the company for that single and isolated act, even if it was doing good business and even

if the Director could obtain each and every adequate relief in a suit in a court.

66. Mr. Cyrus Pallonji Mistry- (11th Respondent) as Chairman was a purely professional appointment, where Mr. Cyrus Pallonji Mistry- (11th Respondent) agreed to be a candidate to chair the board of Tate Sons at the request of Mr. Ratan N. Tata (2nd Respondent) and Lord Bhattacharya, and was selected as the Chairman after due selection process by the Selection Committee.

67. According to Contesting Respondents, Mr. Cyrus Pallonji Mistry- (11th Respondent) was appointed as Director of 'Tata Sons Limited' (1st Respondent Company) in the year 2006 was not in the capacity of a nominee of the 'Shapoorji Pallonji Group' ('S.P Group') nor in recognition of any such right of representation of the said 'S.P Group' on the board of 'Tata Sons Limited' (1st Respondent Company). Therefore, replacement of Mr. Cyrus Pallonji Mistry- (11th Respondent) as Chairman and removal as Director of 'Tata Sons Limited' (1st Respondent Company) cannot be canvassed as a case of oppression or prejudice to the proprietary rights of the Appellants since Mr. Cyrus Pallonji Mistry's- (11th Respondent) appointment (either as Deputy Chairman or Executive Chairman or as a Director of 'Tate Sons Limited') was never in recognition of any entrenched right of representation/management enjoyed by the Appellants as shareholders of 'Tata Sons Limited' (1st Respondent Company).

68. Further, according to him, Mr. Cyrus Pallonji Mistry's- (11th Respondent) removal would also not impinge on any right enjoyed by the Appellants as shareholders of Tata Sons Limited' (1st Respondent Company) which can be protected, executed or enforced in the present proceedings.

69. According to Dr. Abhishek Manu Singhvi, learned Senior Counsel, there is no provision in the Articles of Association of Tata Sons Limited' (1st Respondent Company) or any shareholders' agreement which entitles the Appellants to participate in the management of Tata Sons Limited' (1st Respondent Company) or nominate any directors to the board of Tata Sons Limited' (1st Respondent Company). Tata Sons Limited' (1st Respondent Company) is not quasi-partnership, by any stretch of imagination. Consequently, the Appellants are not permitted to make allegations regarding the removal of Mr. Cyrus Pallonji Mistry's- (11th Respondent) either as Chairman or as a director of the 'Tata Sons Limited' (1st Respondent Company).

70. It was submitted that the Appellants cannot allege that the removal of Mr. Cyrus Pallonji Mistry's- (11th Respondent) by the Board of Directors of 'Tata Sons Limited' (1st Respondent Company) on 24th October, 2016 as the 'Executive Chairman' of 'Tata Sons Limited' (1st Respondent Company) was contrary to and a blatant breach of Article 118 of Articles of Association in as much as no selection committee had been constituted for this purpose or the resolution passed by the Board of

Directors of 'Tata Sons Limited' (1st Respondent Company) on 24th October, 2016 usurps the authority of the shareholders to allege *ultra vires* Article 105 'Tata Sons Limited's Articles of Association.

71. Learned Senior Counsel further submitted that the proposal to seek a change of guard at 'Tata Sons Limited' (1st Respondent Company) was initiated by the majority shareholders of 'Tata Sons Limited' (1st Respondent Company), i.e. the Tata Trusts, the said proposal was not on account of some personal ill will or animosity against Mr. Cyrus Pallonji Mistry's- (11th Respondent) or as the Appellants allege, the need to quell certain reforms that Mr. Cyrus Pallonji Mistry's- (11th Respondent) was purportedly Initiating.

72. The fact of the matter was that in a span of around four years as the Chairman of 'Tata Sons Limited' (1st Respondent Company), Mr. Cyrus Pallonji Mistry- (11th Respondent) had completely lost the trust and confidence of Tata Trusts. It was the view of Tata Trusts that Mr. Cyrus Pallonji Mistry- (11th Respondent) had failed to deliver on the promises that he had made at the time of his selection as the Chairman of 'Tata Sons Limited' (1st Respondent Company), was unable to lead the Tata Group in a cohesive manner and failed in providing proper guidance and support to the Group. There was a lack of confidence in Mr. Cyrus Pallonji Mistry's- (11th Respondent) ability to sustain the growth objective of the Tata Group as he was too consumed by the so called legacy issues' rather than working towards resolving them. Furthermore, there were

lapses of governance observed during his tenure, including the acquisition of 'Welspun Renewable Energy Ltd.' by 'Tata Power Ltd.'. Thus, in short, there was a clear view that Mr. Cyrus Pallonji Mistry- (11th Respondent) lacked the ability and strategy for managing a large and complex group, such as the Tata Group. These issues, along with Mr. Cyrus Pallonji Mistry's- (11th Respondent) failure to establish a healthy and constructive governance relationship with Tata Trusts, caused an untenable trust deficit between Mr. Cyrus Pallonji Mistry- (11th Respondent) and the Tata Trusts.

73. It was submitted that prior to a board meeting on 24th October 2016, Mr. Ratan N. Tata (2nd Respondent) and 7th Respondent met Mr. Cyrus Pallonji Mistry- (11th Respondent) and requested him to step down from the position of the Chairman of 'Tata Sons Limited' (1st Respondent Company). This request was made in the hope that Mr. Cyrus Pallonji Mistry- (11th Respondent) would understand that his continuance as the Chairman of Tata Sons had become unacceptable to Tata Trusts and would accordingly, in a dignified manner, step down from the position. However, Mr. Cyrus Pallonji Mistry- (11th Respondent) refused to accede to this request, constraining the directors nominated by the Tata Trust to bring the motion of Mr. Cyrus Pallonji Mistry's- (11th Respondent) replacement in the board meeting held on 24th October 2016. It is important to state that on the said date, the Board of 'Tata Sons Limited' (1st Respondent

Company) comprised of 9 directors, including Mr. Cyrus Pallonji Mistry- (11th Respondent). Therefore, the 3 directors nominated by the Tata Trusts could not, on their own, pass the resolution to replace Mr. Cyrus Pallonji Mistry's- (11th Respondent) as the Chairman of 'Tata Sons Limited' (1st Respondent Company). However, as the record shows, this decision was approved by 7 out of the 9 Directors of 'Tata Sons Limited' (1st Respondent Company) (with 1 Director, Ms. Farida Khambata abstaining and Respondent No. 11 being ineligible to vote on this matter by virtue of being interested). Thus, what this clearly shows is that apart from the 3 trust nominated Directors, 4 other independent Directors saw merit in the resolution of the trust nominated directors and agreed that Mr. Cyrus Pallonji Mistry- (11th Respondent) should be replaced as the Chairman of 'Tata Sons Limited' (1st Respondent Company). Thus, the replacement of Mr. Cyrus Pallonji Mistry- (11th Respondent) was ultimately brought about, not by the Tata Trusts, but by the board of 'Tata Sons Limited' (1st Respondent Company), which by voting in support of the resolution, showed that it had collectively lost confidence in Mr. Cyrus Pallonji Mistry's- (11th Respondent) ability to lead the Tata Group as its Executive Chairman. However, as the record reflects the same Board which replaced him as the Executive Chairman did not resolve to take steps to remove him as a director. In fact, in the board meeting dated 24th October 2016, Mr. Ratan N. Tata (2nd Respondent) mentioned that there was a need to recognize what Mr. Cyrus Pallonji Mistry- (11th Respondent) had done over the last four years and that it was important

for the Group to move forward in as seamless a manner as one can. The choice of whether Mr. Cyrus Pallonji Mistry- (11th Respondent) would continue as the non-executive director of 'Tata Sons Limited' (1st Respondent Company) was left to Mr. Cyrus Pallonji Mistry- (11th Respondent), who stated that he would continue on the board of 'Tata Sons Limited' (1st Respondent Company).

74. While reiterated that the Board Resolution replacing Mr. Cyrus Pallonji Mistry- (11th Respondent) as the Chairman is not contrary to Article 118 of the Articles of Association of 'Tata Sons Limited' (1st Respondent Company), it was submitted that Article 118 deals with "Appointment of Chairman" and provides for constitution of a 'Selection Committee' for the purpose of selecting a new Chairman of the Board of Directors of 'Tata Sons'. The **Selection** Committee so constituted has to "recommend the appointment of a person as the Chairman of the Board of Directors". Therefore, according to him, the limited role of the 'Selection Committee' under Article 118 is to recommend a candidate for the appointment as the Chairman of the Board of Directors. It is absurd to interpret this Article to mean that the ***"Selection"*** Committee would also take decisions regarding the removal of the Chairman. Such an interpretation would be inherently contradictory to the purpose behind the constitution of a **Selection** Committee and entirely counterintuitive to the express words in the Article, which, were consciously chosen to

mean that a committee has to be constituted for the purposes of selection of Chairman (and not for its removal).

75. Therefore, Article 118 does not otherwise deal with the removal of the incumbent Chairman. On the other hand, it provides 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 followed even in the case of removal of the Chairman. It is in that context that the phrase *"the same process shall be followed for the* removal *of the incumbent Chairman"* appears in Article 118.

76. According to learned Counsel, the Board's Resolution dated 24th October, 2016 to remove Mr. Cyrus Pallonji Mistry- (11th Respondent) as Chairman is not *ultra vire*s Article 105 of Articles of Association of the 'Tata Sons Limited' (1st Respondent Company) nor can it be held that the authority of shareholders has been usurped.

77. It was submitted that the revocation of executive powers of Mr. Cyrus Pallonji Mistry- (11th Respondent) was not in breach of Article 105 of the Articles of Association.

78. Learned Counsel for 'Tata Sons Limited' submitted that Mr. Cyrus Pallonji Mistry- (11th Respondent) was first appointed as the 'Executive Deputy Chairman on 16th March 2012, with substantial powers of management for a period of 5 years with effect from 1st April, 2012 to 31st March, 2017 by the Board of Directors of Tata Sons subject to the

approval of the shareholders in a general meeting. The appointment of Mr. Cyrus Pallonji Mistry- (11th Respondent) was made pursuant to Article 105 of the Articles of Association of 'Tata Sons Limited' (1st Respondent Company). The appointment of Mr. Cyrus Pallonji Mistry- (11th Respondent) as the Executive Deputy Chairman of Tata Sons with substantial powers of management, was then approved by the shareholders of 'Tata Sons Limited' (1st Respondent Company) at the general meeting held on 1st August 2012, while leaving it to the Board of Directors of 'Tata Sons Limited' (1st Respondent Company) to re-designate Mr. Cyrus Pallonji Mistry- (11th Respondent) as the Board may deem fit.

79. In this background, by the Board resolution passed on 18th December, 2012, Mr. Cyrus Pallonji Mistry- (11th Respondent) was appointed as the Chairman by the Board of Directors of the 'Tata Sons Limited' (1st Respondent Company) and then designated as the Executive Chairman with effect from 29th December, 2012.

80. It was submitted that on 15th September, 2016, Mr. Cyrus Pallonji Mistry- (11th Respondent) had presented the latest annual business plan to the Board of Directors of Tata Sons which was found lacking in several respects by his fellow Board member. Critical feedback regarding the business plan has been recorded in the minutes of the board meeting. Therefore, it is clear that the concerns of the Board of Directors of Tata Sons with Mr. Cyrus Pallonji Mistry's- (11th Respondent) performance were communicated to Mr. Cyrus Pallonji Mistry (11th Respondent) and

his performance was not universally applauded as the Appellants are trying to contend.

81. According to him, all the Directors of 'Tata Sons Limited' (1st Respondent Company) who participated in the board meeting on 24th October 2016 are individuals with great experience and repute in either business or public life, who fully understood the implications and consequences of the vote they were called upon to cast in the matter of replacement of Mr. Cyrus Pallonji Mistry's- (11th Respondent) in the board meeting on 24th October 2016 and thereafter, exercised their best judgment in the interest of 'Tata Sons Limited' (1st Respondent Company), by voting to replace Mr. Cyrus Pallonji Mistry- (11th Respondent). While some of the reasons which led to a loss of confidence in the stewardship of Mr. Cyrus Pallonji Mistry- (11th Respondent) are detailed in the press statement dated 10th November 2016 issued by 'Tata Sons Limited' (1st Respondent Company), the past performance is not the only criteria for judging the performance of a leader but the Board and shareholders are also entitled to take into account the future prospects and the continued ability to lead the company. In the present case, not only was there a historical lack of performance but there was a complete loss of confidence regarding Mr. Cyrus Pallonji Mistry's- (11th Respondent) ability to lead the company in future.

82. It is alleged that subsequent to his replacement as the Executive Chairman of Tata Sons, Mr. Cyrus Pallonji Mistry- (11th Respondent)

made certain unsubstantiated allegations which cast aspersions on Tata Sons and other group companies. However, we are not concerned with the same.

83. So far as removal of Mr. Cyrus Pallonji Mistry- (11th Respondent) as Director of operating companies is concerned, learned Senior Counsel for 'Tata Sons Limited' (1st Respondent Company) submitted that while not required to do so under law, but the reasons for the removal of Mr. Cyrus Pallonji Mistry- (11th Respondent) as a Director were set out in the explanatory statements convening the general meetings of the companies. In a nutshell, Mr. Cyrus Pallonji Mistry's- (11th Respondent) removal was sought to avoid a situation where the operating companies in the Tata Group were led by a director and chairman in whom the Board of Directors of their promoter and controlling in shareholder had lost confidence and who had already acted in a manner prejudicial to the best interests of the Tata Group by making unfounded allegations against Tata Sons and other Tata Companies. Further, after Mr. Cyrus Mistry's employment as the Executive Chairman ceased on 24th October 2016, it was incumbent upon Mr. Cyrus Mistry to resign from the Board of Directors of all other companies in the Tata Group where he served as non-executive director and Chairman. However, in yet another demonstration of his disregard for governance and policies which he had approved himself, Mr. Cyrus Mistry failed to resign and

therefore, was removed as a Director. In this section, the Appellants/ Mr. Cyrus Pallonji Mistry- (11th Respondent) also makes certain sundry allegations and only those warranting a response are being dealt below.

84. With regard to conversion of the 'Tata Sons' from 'Public Limited Company' to 'Private Limited Company', it was submitted that the conversion from Public Limited Company to Private Limited Company has been made by the Registrar of Companies in view of the definition of 'Private Company', as defined under Section 2(68) of the Companies Act, 2013 and for such changing, according to learned counsel for the Respondents, no application is required to be filed under Section 14 of the Companies Act, 2013.

85. Mr. Mohan Parasaran, learned Senior Counsel appearing on behalf of Mr. Nitin Nohria (7th Respondent), Mr. Venu Srinivasan (6th Respondent), Mr. K.B. Dadiseth (16th Respondent), Mr. R.K. Krishna Kumar (17th Respondent), Mr. S.K. Bharucha (18th Respondent), Mr. N.M. Munjee (19th Respondent), Mr. R. Venkataramanan (20th Respondent), submitted that the nominee director do not prohibit the taking of the views of the nominator so long as the nominee director discharges his or her fiduciary duty to the company as a Director of that Company.

86. Reliance has been placed on Section 166 of the Companies Act, 2013 which outlines the duties of directors, and include the duty to

act in accordance with the Articles of Association of the Company; act in good faith in order to promote the objects of the company for the benefit of its members, its employees, etc; act with due and reasonable care and exercise independent judgment; avoid conflict of interest.

87. Section 166 serves as an inbuilt check or a safeguard to ensure that even a nominee director discharges his functions in a manner that best serves the interest of the company and allays the apprehension that a nominee director, will always be only a mouthpiece of his nominator.

88. According to learned Counsel, the appointment of Mr. Cyrus Pallonji Mistry (11th Respondent) as an Executive Chairman with substantial powers of management, was akin to that of a Managing Director. Accordingly, Mr. Cyrus Pallonji Mistry (11th Respondent) was a Key Managerial Personnel of Tata Sons in terms of Section 251 of the Companies Act 2013 which defines Key Managerial Personnel to include the Managing Director. Section 179 (Powers of the Board) of the Companies Act 2013 clearly and expressly provides that the Board of Directors of a company shall be entitled to exercise all such powers and to do all acts and things as the Company is authorised to exercise and do subject to the provisions of the Act or the Memorandum or Articles, etc.

89. 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 Key Managerial Personal (KMP).

90. Article 121 of the Articles of Association of 'Tata Sons' merely suggests affirmative vote which is permissible under the law, therefore, the right to exercise affirmative vote vests with nominee directors and not the trusts.

91. It was submitted that 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.

92. Learned Senior Counsel for 7th Respondent- (Mr. Nitin Nohria) denied the allegation that the Respondents have all been acting as 'puppets', 'handmaidens', 'poodles' and 'postmen' for Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A.Soonawala (14th Respondent) ('outsiders', 'super directors' and 'shadow directors') as they have been purportedly acting on the instructions of and in the interest of Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A.Soonawala (14th Respondent). It was contended that the allegation is sought to be supported on an entirely distorted narrative of facts.

93. Learned counsel submitted that 7th Respondent had joined the Board of 'Tata Sons Limited' in September, 2013 after Mr. Ratan N. Tata (2nd Respondent) retired from the Board of 1st Respondent Company (Tata Sons).

94. It was also informed that Mr. Nitin Nohria (7th Respondent) and Mr. Vijay Singh (9th Respondent) are two Trust Nominee Directors. It is stated that on the particular date of removal of Mr. Cyrus Pallonji Mistry (11th Respondent), they leave a Board meeting to seek instructions from Mr. Ratan N. Tata (2nd Respondent) on specific issues which were being discussed in the meeting.

95. The following lapses of Mr. Cyrus Pallonji Mistry (11th Respondent) have been pointed out by learned counsel for Mr. Nitin Nohria (7th Respondent):

a) A serious lapse of governance was witnessed in the context of the acquisition of 'Welspun Renewables Energy Limited' by 'Tata Power Renewable Energy Limited', a subsidiary of the 'Tata Power Company Limited' ('Welspun Acquisition'). This was a major acquisition and the purchase consideration for the transaction was estimated to be approximately in excess of USD 1 billion. The concern of 1st Respondent (Tata Sons) arose from the high level of debt in Tata

Power of Rs.40,000 crores and the non-resolution of the tariff issue of its Mundra Project. As a promoter of the 'Tata Power Company Limited' ('Tata Power'), 1st Respondent (Tata Sons) was practically left in the dark about such a significant transaction which was agreed by Tata Power while Mr. Cryus Pallonji Mistry (11th Respondent) was the Chairman of 'Tata Power'. On 31st May, 2016 a Note on the proposed Welspun Acquisition was Circulated to the directors of 'Tata Sons' that 'Tata Power' (through its subsidiary) was in advanced stages of finalization of the Welspun Acquisition and definitive agreements were to be signed imminently. Soon thereafter, on 12th June 2016, 'Tata Power' executed definitive documents and announced the Welspun Acquisition. Mr. Cryus Pallonji Mistry (11th Respondent) claimed that the Note circulated to the directors of 1st Respondent Company ('Tata Sons'), without any discussions or deliberations on the matter in a board meeting of 1st Respondent Company ('Tata Sons'), "appropriately *fulfilled all requirements under the Articles",* while being aware that the financing structure of Welspun Acquisition would necessitate 'Tata Power' to raise debt, approval for which would be required from the board of directors of 1st Respondent Company ('Tata Sons').

b) In the board meeting of 1st Respondent Company ('Tata Sons') held on 29th and 30th June, 2016, Mr. Nitin Nohria (7th Respondent) and Mr. Vijay Singh (9th Respondent) being Trust Nominee Directors repeatedly reiterated the view that the Welspun Acquisition should have been deliberated at the board meeting of 1st Respondent Company ('Tata Sons') at a much earlier stage, as Opposed to being presented as a *fait accompli.* Although the Trust nominee Directors approved the financing structure of the Welspun Acquisition, given that definitive agreements had already been executed and the deal had been announced in the public domain.

c) This led to a concern that proper process to seek approval for the Welspun transaction was not followed and this incapacitated the board of 1st Respondent Company ('Tata Sons') including the trust nominee directors from effectively deliberating on this issue. Mr. Vijay Singh (9th Respondent) wanted to formally note this concern in the minutes of the board meeting which in his view was in breach of the Articles of Association of 1st Respondent Company ('Tata Sons'). Since Mr. Cyrus Pallonji Mistry (11th Respondent) refused to permit such language being entered in the minutes, Mr. Nitin Nohria (7th

Respondent) and Mr. Vijay Singh (9th Respondent) requested for an opportunity to talk to Mr. Ratan N. Tata (2nd Respondent) so that they could find the language acceptable to both Mr. Cyrus Pallonji Mistry (11th Respondent) and the Trusts to be entered into minutes.

d) Mr. Nitin Nohria (7th Respondent) wanted to bring a consensus rather than act in a manner which would require the Chairman of the Board, i.e., Mr. Cyrus Pallonji Mistry (11th Respondent) to record an objection in the minutes. This has been twisted out of context by the Appellants for their self-serving ulterior motives. No instructions were sought from Mr. Ratan N. Tata (2nd Respondent). This is, a glaring example of irreparable trust deficit between Mr. Cyrus Pallonji Mistry (11th Respondent) and the majority shareholders, since even the minutes of meetings became contentious.

96. Though the aforesaid allegations have been made by 7th Respondent, no supporting document enclosed in support of such allegation or lapse on the part of 11th Respondent.

97. Similar plea has been taken by other Respondents.

Analysis of Facts and Law:-

98. Chapter XVI of the Companies Act, 2013 relates to "prevention of oppression and mismanagement". Section 241 deals with "application to Tribunal for relief in cases of oppression" etc. Section 242 is 'Powers of Tribunal', as under:

> *"**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."

*"**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 (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 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.

(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 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."

99. The aforesaid provisions make it clear that if any member of a company complains that 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 'prejudicial to the interests of the company' may file application under Section 241(1) of the Companies Act, 2013.

100. The test as to when the proposed measure can be subject of the proceedings under Sections 241 and 242 of the Companies Act, 2013 is dependant on two factors, namely— (i) whether the affairs of the company 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 (ii) 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.

101. Mr. Harish Salve, learned counsel for the 2nd Respondent placed reliance on ***"Re Saul D Harrison & Sons plc, Chancery Division (Companies Court), Court of Appeal (Civil Division)– [1994] B.C.C. 475"*** and ***"O'Neill and Anr. v. Phillips and Ors.– 1999 WL 477304"***

and submitted that in Indian Law, the word 'unfairly prejudicial' has not been used but the word 'prejudicial' used in Section 241, therefore, the Appellants cannot make out a case of 'unfairly prejudicial' on the ground that their rights got infringed due to breach of some promises or undertaking.

It is true that the word 'unfairly prejudicial' has not been used in Section 241. Unfairness may arise or may not arise from what the parties have agreed upon, but in the context of Indian Law, it is only to be seen whether the power exercised by majority in circumstances to which the minority can reasonably say that it is 'prejudicial' or 'oppressive' to their interest or interest of any member or interest of the Company or public interest.

102. The Indian Law (Sections 241 & 242 of the Companies Act, 2013) does not recognise the term 'legitimate expectations' to hold any act prejudicial or oppressive.

103. In ***"S.P. Jain v. Kalinga Tubes Ltd.– AIR 1965 SC 1535"***, the Hon'ble Supreme Court held that the Indian Companies Act, 1913 complies with Section 210 of the English Companies Act, 1948 and observed:

> *"13. We shall first take up the case under s. 397 of the Act and proceed on the assumption*

that a case has been made out to wind-up the Company on just and equitable grounds. This is a new provision which came for the first time in the Indian Companies Act, 1913 as Section 153-C. That section was based on Section 210 of the English Companies Act, 1948, which was introduced therein for the first time. The purpose of introducing Section 210 in the English Companies Act was to give an alternative remedy to winding up in case of mismanagement or oppression. The law always provided for winding up, in case it was just and equitable to wind up a company. However, it was being felt for sometime that though it might be just and equitable in view of the manner in which the affairs of a company were conducted to wind it up, it was not fair that the company should always be wound up for that reason, particularly when it was otherwise solvent. That is why Section 210 was introduced in the English Act to provide an alternative remedy where it was felt that though a case had been made out on the ground of just and equitable cause to wind up a company, it was not in the interest of

the shareholders that the company should be wound up and that it would be better if the company was allowed to continue under such directions as the court may consider proper to give. That is the genesis of the introduction of Section 153-C in the 1913-Act and Section 397 in the Act.

Section 397 reads thus :-

> *"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 mariner 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 sub-section (1), the Court is of opinion-*
>
> *(a) that the company 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 fit"

It gives a right to members of a company who comply with the conditions of Section 399 to apply to the court for relief under Section 402 of the Act or such other reliefs as may be suitable in the circumstances of the case, if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying. The court then has power to make such orders under Section 397 read with Section 402 as it thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that wind up the company would unfairly

prejudice such member or members, but that otherwise the facts might 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 law however has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression. as calls for action under this section.

14. We may in this connection refer to four cases where the new Section 210 of the English Act came up for consideration, namely, (1) Elder v. Elder and Watson, (2) George Meyer v. Scottish Cooperative Wholesale Society Ltd., (3) Scottish Co-operative Wholesale Society Ltd. v. Meyer and another, which was an appeal from Meyer's case, and (4) Re. H. R. Harmer Limited. Among the important considerations which have to be kept in view in determining the scope of Section 210, the following matters were stressed in Elder's case as summarised at p. 394 in Meyer's case :-

"(1) The oppression of which a petitioner complains must relate to the manner in which

the affairs of the company concerned are being conducted; and the conduct complained of must be such as to oppress a minority of the members (including the petitioners) qua shareholders.

(2) It follows that the oppression complained of must be shown to be brought about by a majority of members exercising as shareholders a predominant voting power in the conduct of the company's affairs.

(3) Although the facts relied on by the petitioner may appear to furnish grounds for the making of a winding up order under the 'just and equitable' rules, those facts must be relevant-to disclose also that the making of a winding up order would unfairly prejudice the minority members qua shareholders.

(4) Although the word 'oppressive' is not defined, it is possible, by way of illustration, to figure a situation in which majority shareholders, by an abuse of their predominant voting power, are 'treating the company and its affairs as if they were their own property' to the prejudice of the minority shareholders-and in which just and equitable grounds would exist for the making of

a winding up order.... but in which the 'alternative' remedy provided by Section 210 by way of an appropriate order might well be open to the minority shareholders with a view to bringing to an end the oppressive conduct of the majority.

(5) The power conferred on the Court to grant a remedy in an appropriate case appears to envisage a reasonably wide discretion vested in the Court in relation to be order sought by a complainer as the appropriate equitable alternative to a winding-up order."

17. In Harmer's case, it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that "the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression". It was also held that "the result of applications under Section 210 in different cases must depend on the particular facts of each case, the

circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision". The circumstances must be such as to warrant the inference that "there had been, at least, an unfair abuse of powers and an impairment of confidence in the _probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The phrase "oppressive to some part of the members" suggests that the conduct complained of "should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. ... But, apart from this, the question of absence of mutual confidence per se between partners or between two sets of shareholders, however relevant to a winding up seems to have no direct relevance to the remedy granted by S. 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being

conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within s. 210. It is not lack of confidence between shareholders per se that brings s. 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.

18. These observations from the four cases referred to above apply to Section 397 also which is almost in the same words as Section 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application

of Section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to Section 397."

104. The difference between the English Law and the Indian Law was also noticed by the Hon'ble Supreme Court in ***"Needle Industries (India) Ltd. & Ors. v. Needle Industries Newey (India) Holding Ltd. & Ors.— (1981) 3 SCC 333"***. In the said case, the Hon'ble Supreme Court while referred to its earlier decision in ***"S.P. Jain v. Kalinga Tubes Ltd.— AIR 1965 SC 1535"*** held:

> *"44. Coming to the law as to the concept of 'oppression' section 397 of our Companies Act follows closely the language of section 210 of the English Companies Act of 1948. Since the decisions on section 210 have been followed by our Court, the English decisions may be considered first. The leading case on 'oppression' under section 210 is the decision of the House of Lords in Scottish Co-op. Wholesale Society Ltd. v. Meyer. Taking the dictionary meaning of the word 'oppression', Viscount Simonds said at page 342 that the appellant society could justly be described as having behaved towards the minority shareholders in an 'oppressive' manner, that is to say, in a manner "burdensome, harsh and wrongful'. The learned Law Lord adopted, as difficult of being bettered, the words of Lord*

President Cooper at the first hearing of the case to the effect that section 210 "warrants the court in looking at the business realities of the situation and does not confine them to a narrow legalistic view". Dealing with the true character of the company, Lord Keith said at page 361 that the company was in substance, though not in law, a partnership, consisting of the society, Dr. Meyer and Mr. Lucas and whatever may be the other different legal consequences following on one or other of these forms of combination, one result followed from the method adopted, "which is common to partnership, that there should be the utmost good faith between the constituent members". Finally, it was held that the court ought not to allow technical pleas to defeat the beneficent provisions of section 210 (page 344 per Lord Keith; pages 368-369 per Lord Denning).

46. In an application under section 210 of the English Companies Act, as under section 397 of our Companies Act, before granting relief the court has to satisfy that to wind up the company will unfairly prejudice the members complaining of

oppression, but that otherwise the facts will justify the making of a winding up order on the ground that it is just and equitable that the company should be wound up. The rule as regards the duty of utmost good faith, on which stress was laid by Lord Keith in Meyer, (supra) received further and closer consideration in Ebrahimi v. Westbourne Galleries Ltd., wherein Lord Wilberforce considered the scope, nature and extent of the 'just and equitable' principle as a ground for winding up a company. The business of the respondent company was a very profitable one and profits used to be distributed among the directors in the shape of fees, no dividends being declared. On being removed as a director by the votes of two other directors, the appellant petitioned for an order under section 210. Allowing an appeal from the judgment of the Court of Appeal, it was held by the House of Lords that the words 'just and equitable' which occur in section 222 (f) of the English Act, corresponding to our section 433 (f), were not to be construed ejusdem generis with clauses (a) to (e) of section 222 corresponding to our clauses (a) to (e)

of section 433. Lord Wilberforce observed that the words 'just and equitable' are a recognition of the fact that a limited company is more than a mere legal entity, with a personality in law of its own; and that there is room in company law for recognition of the fact that behind it, or amongst it, there are individuals, with rights, expectations and obligations inter se which are not necessarily submerged in the company structure:

> *"The 'just and equitable' provision does not, as the respondents suggest, entitle one party to disregard the obligation he assumes by entering a company, nor the court to dispense him from it. It does, as equity always does, enable the court to subject the exercise of legal rights to equitable considerations; considerations, that is, of a personal character arising between one individual and another, which may make it unjust or inequitable, to insist on legal rights, or to exercise them in a particular way". (p379)*

Observing that the description of companies as "quasi- partnerships" or "in substance partnerships" is confusing, though convenient, Lord Wilberforce said:

> *"A company, however small, however domestic, is a company not a partnership or even a quasi-partnership and it is through the just and equitable clause that obligations, common to partnership relations, may come in". (p 380)*

Finally, it was held that it was wrong to confine the application of the just and equitable clause to proved cases of mala fides, because to do so would be to negative the generality of the words. As observed by the learned Law Lord in the same judgment, though in another context:

> *"Illustrations may be used, but general words should remain general and not be reduced to the sum of particular instances".*

51. In Kalinga Tubes, Wanchoo J. referred to certain decisions under section 210 of the English

Companies Act including Meyer (supra) and observed:

> *"These observations from the four cases referred to above apply to section 397 also which is almost in the same words as section 210 of the English Act, and the question in each is whether the conduct of the affairs of the company, by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority*

shareholders, continuing upto the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity of fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts.....with reference to section 397". (Page 737)

At pages 734-735 of the judgment in Kalinga Tubes, Wanchoo J. has reproduced from the judgment in Meyer, the five points which were stressed in Elder. The fifth point reads thus:

The power conferred on the Court to grant a remedy in an appropriate case appears to envisage a reasonably wide discretion vested in the Court in relation to the order sought by a complainer as the appropriate equitable alternative to a winding-up order.

52. It is clear from these various decisions that on a true construction of section 397, 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 a 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. It may be mentioned that the Jenkins Committee on Company Law Reform had suggested the substitution of the word 'Oppression' in section 210 of the English Act by the words 'unfairly prejudicial' in order to make it clear that it is not necessary to show that the act complained of is illegal or that it constitutes an invasion of legal

rights (see Gower's Company Law, 4th edn., page 668). But that recommendation was not accepted and the English Law remains the same as in Meyer and in Re H.R. Harmer Ltd., as modified in Re Jermyn St. Turkish Baths. (supra) We have not adopted that modification in India."

105. The questions that arise for consideration are:

(i) Whether 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;

(ii) If that be so, whether 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.

106. If both the aforesaid questions are answered in affirmative, the power can be exercised by the Tribunal under Section 242 of the Companies Act, 2013 with a view to bringing to an end the matters complained of, and make such order as it thinks fit.

107. To find out whether there is any direct control of 'Tata Trusts', the majority shareholders on the Company ('Tata Sons Limited'), as alleged,

we have noticed the relevant provisions of Articles of Association of the Company, as discussed below.

108. Article 86 of 'Tata Sons Limited' relates to *'Quorum at General Meetings'*, as follows:

> "***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."

The aforesaid provision shows that no quorum at a general meeting of the shareholders is complete in absence of authorised representative of 'Tata Trust' which holds aggregate of at least 40% of the paid-up ordinary share capital.

109. Article 104B relates to *'Nomination of Directors'*, as under:

"104. General Provisions

A. *Number of Directors*

.....

B. 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.

110. Article 121 mandates that the majority decision of the Board required affirmative vote of nominated Directors of 'Tata Trusts', otherwise majority decision cannot be given effect:-

*"**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."

Provision engrafted in this Article is unequivocal that affirmative vote of majority of Directors nominated by 'Tata Trusts' is indispensable for matters required to be decided by a majority of Directors. This amply demonstrates the pre-eminent position, the Directors nominated by 'Tata Trusts' hold on the Board of Directors. This is the reason, the Appellants have termed the power of the nominated Directors of the 'Tata Trusts' as 'veto power', over the majority decision of the Board of Directors'.

111. Article 121 is depended on aggregate paid up ordinary share capital of 'Tata Trust'. However, if it is read along with Article 121A, particularly clause (g), it will be evident that it is difficult to change the shareholding of 'Tata Trust' to make it less than 40%, as in the Board's meeting, the nominated Directors of 'Tata Trust' have affirmative vote (veto power): -

****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 the4 following companies"

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".

112. Article 121A (h) relates to voting rights of the Company at the general meeting of any 'Tata Company', including appointment of a representative of the Company ('Tata Company') under Section 113(1)

(a) of the Companies Act, 2013 in respect of a general meeting of any Tata Company named therein. In the meeting of the 'Tata Company', or the Group Companies in which the 'Tata Sons Limited' (Company) holds twenty percent or more of the paid up share capital, names of Director are to be notified in writing by the Directors nominated under Article 104B.

The aforesaid provision makes it clear that the nominated Director of 'Tata Trusts' are in the direct control of 'Tata Companies', Group Companies or its subsidiaries.

113. Article 121A (g) relates to shareholding of the 'Tata Trusts' in the company or the rights conferred upon the 'Tata Trusts' by the Articles of the Company, which are required to be resolved by the 'Board of Directors' in which nominated Directors of 'Tata Trusts' have affirmative vote (veto power).

114. Therefore, no decision can be taken to reduce the shares of the 'Tata Trusts', in terms of Article 75, as referred below, till 'Tata Trusts' decide to reduce its shares.

115. Aforesaid provisions show that in the general meeting of the shareholders of 'Tata Sons Limited' or the Board of Directors, the majority decision is fully dependant upon 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.

116. Article 121 B mandates advance notice of fifteen days to be given to the Company ('Tata Sons Limited'), its Directors and the Board about any matter/ resolution which is to be placed for deliberation by the Board. Decision of majority of Board on such matter/ resolution is dependant upon affirmative vote of the nominee Directors of the 'Tata Trust'.

117. Article 75 empowers the 'Tata Sons Limited' at any time to transfer 'ordinary shares' of any of the shareholders without following the normal procedure of transfer:-

> "***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."

118. Power of the Company ('Tata Sons Limited') to transfer 'ordinary shares' of any shareholders including the Appellant's without notice can be exercised through a special resolution in the general meeting of the holders of the ordinary shares of the company which requires presence of nominated Directors of the 'Tata Trusts', who have affirmative vote. The nominated Directors of 'Tata Trusts', to look into the interest of the 'Tata Trusts', may not allow majority decision of the Company ('Tata Sons Limited') to reduce the paid up ordinary share capital of 'Tata Trusts' below 40% aggregate, which otherwise will result into their exit (Exit of the nominated Directors).

119. The Tribunal or this Appellate Tribunal has no jurisdiction to hold any of the Articles illegal or arbitrary, the terms and conditions being agreed upon by the shareholders. However, if any action is taken even in accordance with law which is 'prejudicial' or 'oppressive' to any member or members or 'prejudicial' to the Company or 'prejudicial' to the public interest, the Tribunal can notice whether the facts would justify the winding up of the Company and in such case, if the Tribunal holds that it would unfairly prejudice member or members or public

interest or interest of the Company, may pass appropriate order in terms of Section 242.

120. According to the Appellants, nominated members of 'Tata Trusts' including Mr. Nitin Nohria (7th Respondent) who are empowered with affirmative vote, since 2012, have taken decisions which are 'prejudicial' to the interest of the Company adversely affecting the interest of the members, including the minority members (Appellants). Such acts are 'prejudicial' and 'oppressive' to the members, including the minority shareholders (Appellants).

121. In favour of such allegations, the following 'prejudicial' and 'oppressive' acts have been highlighted:

a. Board with the affirmative vote of nominated members of 'Tata Trusts' granted Rs.600 crores for procurement 'management consultancy contracts' without calling for bids in violation of normal procedure and standard expected of a large public company;

b. Board with the affirmative vote of nominated members of 'Tata Trusts' issued equity shares of 'Tata Teleservices Limited' (Tata Company) at a steep discount in comparison to the price at which shares were issued to other investors within few days. Such discounted

investment was substantially funded by the 'Tata Companies';

c. Loans of Rs. 200 Crores extended to one 'Siva's' companies by 'Tata Capital Limited' when Mr. Ratan N. Tata (2nd Respondent) was Chairman. Said 'Tata Capital Limited' subsequently suffered a loss of Rs. 200 crores, when 'Siva' defaulted to pay the loans and the shares of 'Tata Tele Services Limited' fully eroded in value;

d. 'Tata Tele Services Limited', an overvalued company was purchased from the 'Siva Group', which had to be written off; and

e. A penthouse apartment at 'IHCL's' apartment hotel was let out at a price significantly lower than market price; all of which caused objective, discernible and serious prejudice to the Company.

122. On the other hand, according to counsel for the Company ('Tata Sons Limited'), Mr. Ratan N. Tata (2nd Respondent), Mr. Nitin Nohria (7th Respondent) and others, the allegations are incorrect. In fact, the Company incurred loss due to failure and mismanagement by Mr. Cyrus Pallonji Mistry- (11th Respondent).

123. Before the Tribunal, Respondents- Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) took specific plea that Articles 121 and 121A mandated a 'prior consultation' and 'pre-clearance' from them.

124. The Appellants have highlighted wide range of topics which Mr. Ratan N. Tata (2nd Respondent), Mr. N.A. Soonawala (14th Respondent) and others brought up with Mr. Cyrus Pallonji Mistry- (11th Respondent) where their guidance was sought for. Written record of interventions by Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) and collateral correspondence from other Respondents, including the Group Legal Counsel of the 'Tata Group' and interactions between Mr. Cyrus Pallonji Mistry- (11th Respondent), Mr. Ratan N. Tata (2nd Respondent) and Mr. N.A. Soonawala (14th Respondent) has been highlighted.

125. Some of the documentary evidence of correspondence between Mr. Cyrus Pallonji Mistry- (11th Respondent), Mr. Ratan N. Tata (2nd Respondent), Mr. N.A. Soonawala (14th Respondent) and Mr. Nitin Nohria (7th Respondent), are set out hereunder:

(i) By e-mail dated 18th July, 2013, Mr. Ratan N. Tata (2nd Respondent) as CMO/TIL in reply to the request of Mr. Cyrus Pallonji Mistry- (11th Respondent) informed his view relating to cap ex-made to the

Board by the TME Management. In the said e-mail, he asked Mr. Cyrus Pallonji Mistry- (11th Respondent) as to how the matter to be dealt with relating to on-going product development expenses on a product over five years when Mr. Cyrus Pallonji Mistry- (11th Respondent) has not deflected but he went on to develop on that product. It was also stated that there are several justifications for expenditure which should be considered as unacceptable and no effort was made to show how product volume, product wise, on the basis of documentation alone would be difficult for a Board member to approve.

(ii) By an e-mail dated 28th February, 2014, Mr. Cyrus Pallonji Mistry- (11th Respondent) informed Mr. Ratan N. Tata (2nd Respondent) relating to affairs of 'Docomo' which have suddenly taken a very rigid stance with respect to the put option. In the said e-mail, Mr. Cyrus Pallonji Mistry- (11th Respondent) made it clear to Mr. Ratan N. Tata (2nd Respondent) that in 'Tata Chem', the Company- 'Tata Sons Limited' have a risk of further write down due to non-performance. At paragraph 5 of the said email, Mr. Cyrus Pallonji Mistry- (11th Respondent)

intimated Mr. Ratan N. Tata (2nd Respondent) that 'Tata Motors' will soon face a severe liquidity crunch. It was also informed that because of the bad results during the year of 'Tata Motors', the JLR Team has got very nervous.

(iii) By another e-mail dated 11th March, 2015, Mr. Cyrus Pallonji Mistry- (11th Respondent) informed Mr. Ratan N. Tata (2nd Respondent) about his (Mr. Ratan N. Tata) deep concern about the loss of sales and market share. While Mr. Cyrus Pallonji Mistry- (11th Respondent) also shown concern intimated that a few months ago, 'Tata Sons Ltd.' asked TBEM to go for deep dive into sales effectiveness and one Mr. Mayank was working on all those matters. Mr. Cyrus Pallonji Mistry- (11th Respondent) intimated that the matter requires more talent to do so.

(iv) There were discussion relating to association of the Company with 'Ola' and 'Uber'. In reply to e-mail dated 28th May, 2015, Mr. Ratan N. Tata (2nd Respondent) informed Mr. Cyrus Pallonji Mistry- (11th Respondent) that in his limited experience of having been associated with similar entities, companies like 'Uber' are interesting platform to

explore from a technology and service delivery perspective.

(v) Mr. Cyrus Pallonji Mistry- (11th Respondent) by e-mail dated 3rd November, 2015 intimated Mr. Ratan N. Tata (2nd Respondent) that there are a number of initiatives in multiple areas which can be taken to pull 'Tata Motors' out. The C.V of a potential Managing Director of the 'Tata Motors' was also forwarded with observation that unless Mr. Ratan N. Tata (2nd Respondent) has any objection he may be called for an interview.

(vi) E-mail from Mr. Cyrus Pallonji Mistry- (11th Respondent) to Mr. Nitin Nohria (7th Respondent) dated 29th January, 2015 shows that Mr. Cyrus Pallonji Mistry- (11th Respondent) expressed concern that if everything is to be presented to Mr. Ratan N. Tata (2nd Respondent) then what the Board of Directors of the Company will do, as an investment decision is to be taken by the 'Tata Sons Limited'. In response, Mr. Nitin Nohria (7th Respondent), a trustee Nominee Director vide emails dated 31st January, 2015 and 4th February, 2015 agreed to formulate a governance framework.

(vii) *E-mail dated 16th February, 2015 was sent by Mr. N.A. Soonawala (14th Respondent) to Mr. Cyrus Pallonji Mistry- (11th Respondent) wherein views expressed by Mr. Cyrus Pallonji Mistry- (11th Respondent) with respect to 'Tata Motors', Mr. N.A. Soonawala (14th Respondent) expressed the need for an appropriately structured mechanism or process for communication between the Company ('Tata Sons Limited') and the Trustees for consultation/ approval of all issues as required under the amended Articles of 'Tata Sons Limited'.*

(viii) *The letter from Mr. Cyrus Pallonji Mistry- (11th Respondent) dated 18th February, 2015 to Mr. N.A. Soonawala (14th Respondent) shows that Mr. Cyrus Pallonji Mistry- (11th Respondent) expressed the need to understand the process of consultation and stage at which the decision making the Trusts would be involved and asked as to who would convey the views of the 'Tata Trusts'.*

126. Aforesaid correspondences show that ***Mr. Cyrus Pallonji Mistry- (11th Respondent) was unaware and not in a position to understand as to how decisions are taken by the 'Tata Trusts' before the decision of the Board of Directors of 'Tata Sons***

Limited'. In this background, Mr. Cyrus Pallonji Mistry- (11th Respondent) reiterated the need for development of a governance framework and volunteered to assist with the document on which Mr. Nitin Nohria (7th Respondent) and Mr. Ratan N. Tata (2nd Respondent) were working on.

127. Emails dated 13th March, 2016; 30th April, 2016 and 10th May, 2016 between Mr. Cyrus Pallonji Mistry- (11th Respondent) and Mr. Nitin Nohria (7th Respondent) show that *Mr. Cyrus Pallonji Mistry- (11th Respondent) formulated a governance framework after obtaining the feedback from Mr. Nitin Nohria (7th Respondent) to clarify the role of the Trustees of 'Tata Trusts' in the decision making processes of 'Tata Sons Limited'*. It was followed by e-mail dated 15th May, 2016 *sent by Mr. Cyrus Pallonji Mistry- (11th Respondent) to Mr. Ratan N. Tata (2nd Respondent) forwarding a draft of the governance framework*.

128. Mr. Cyrus Pallonji Mistry- (11th Respondent) by *e-mail dated 27th June, 2016 to Mr. Nitin Nohria (7th Respondent) informed after learning that Mr. Ratan N. Tata (2nd Respondent) was upset as not being consulted about the 'Welspun' acquisition, and in the matter of 'Welspun' it would be difficult to move forward unless there are clear written instructions on how the Articles be operationalised*. Mr. Nitin Nohria (7th Respondent), stressed the importance of the governance framework that was shared by Mr. Cyrus Pallonji Mistry- (11th Respondent) with Mr. Ratan N. Tata (2nd Respondent).

129. The aforesaid communications between the Respondents from 2013 to 2016 show that there was complete confusion in the Board about the governance framework of the Company ('Tata Sons Ltd.') as before deciding any matter or for taking any resolution by the Board decision used to be taken by Mr. Ratan N. Tata (2nd Respondent) for 'Tata Trusts', in which Mr. Nitin Nohria (7th Respondent) and Mr. N.A. Soonawala (14th Respondent), were taking active part.

130. This is also apparent from the stand taken by Dr. Abhishek Singhvi, learned Senior Counsel appearing on behalf of the Company ('Tata Sons Limited') that prior to the Board's meeting held on 24th October, 2016 before removing Mr. Cyrus Pallonji Mistry (11th Respondent), on the same date decision had already been taken by Mr. Ratan N. Tata (2nd Respondent) in presence of Mr. Nitin Nohria (7th Respondent) to remove Mr. Cyrus Pallonji Mistry (11th Respondent), who asked him to step down from the post of the 'Executive Chairman' of the Company ('Tata Sons Limited'). However, Mr. Cyrus Pallonji Mistry (11th Respondent) in absence of any decision of Board or any ground refused to accede to such dictate.

131. Dr. Abhishek Manu Singhvi, learned Counsel appearing on behalf of 1st Respondent Company ('Tata Sons Limited') and Contesting Respondents submitted that the aforesaid refusal constrained the nominated directors to bring the motion to replace Mr. Cyrus

Pallonji Mistry- (11th Respondent) in the Board meeting held on 24th October 2016. It is accepted that there was no such agenda before the Board nor any document was circulated relating to performance of Mr. Cyrus Pallonji Mistry's- (11th Respondent) with any of the Directors, including the independent Directors. Even no intimation was given to Mr. Cyrus Pallonji Mistry's- (11th Respondent) and other Directors.

132. This is also apparent from the proceedings of the Board of Directors dated 24th October, 2016 held between 2.00 P.M to 3.00 P.M, which reads as follows:

> ***"MINUTES OF THE SIXTH MEETING OF THE BOARD OF DIRECTORS OF TATA SONS LTD. FOR F.Y. 2016-17 HELD ON MONDAY, OCTOBER 24, 2016 FROM 2.00 P.M TO 3.00 P.M IN THE BOARD ROOM, BOMBAY HOUSE, 24 HOMI MODY STREET, MUMBAI 400 001***
>
> *PRESENT*
> *Mr. R N Tata — Chairman Emeritus*
> *Mr. C P Mistry — Executive Chairman*
> *Mr. Ishaat Hussain*
> *Mr. Vijay Singh*
> *Dr. Nitin Nohria*
> *Mr. Ronen San*
> *Mrs. Farida Khambata*
> *Mr. Venu Srinivasan*
> *Mr. Ajay Piramal*
> *Mr. Amit Chandra*
> *Mr. F. N Subedar — Company Secretary*
>
> *The Chairman Mr. C. P Mistry was informed that Mr. R. N Tata will be joining the Board meeting. Before commencement of considerations of items in the agenda which was circulated to the directors on*

October 16, 2016. ***Dr. Nitin Nohria mentioned that the Tata Trusts has asked its nominees on the Board of Tata Sons to bring a motion to the Board of Tata Sons Ltd. Mr. Amit Chandra Mentioned that in a meeting of the trust Directors held earlier in the day it was agreed to move a motion to request Mr. C. P Mistry to step down from the position of executive chairman of Tata Sons Ltd. as the Trusts had lost confidence in him for a variety of reasons. Mr. Amit Chandra stated that given that Mr. R.N Tata had just met Mr. C.P Mistry and had requested him to step down, Mr. Amit Chandra requested Mr. C.P Mistry to reconsider his decisions not to step down as conveyed to Mr. Tata before the Board gets into a formal process in this regard. Mr. C.P Mistry first requested Mr. R.N Tata to say a few words. However, Mr. R.N Tata commented that he was an observer at this stage. Mr. Amit Chandra thereafter sought the views of Mr. C.P Mistry on the said motion. In response, Mr. Mistry sought 15 days' notice for taking up such an item for the consideration of the Board and stated that the present action was illegal. Mr. Amit Chandra mentioned that the Trusts had obtained legal advice stating the such a notice is not necessary Mr. C P Mistry also said he would like to obtain legal advice since the legal opinions were not made available to him and he did not agree with the legal***

opinions since Mr. C.P Mistry was an interested party in relation to the motion.

Mr. Amit Chandra requested Mr. Vijay Singh to act as the Chairman. Mr. Ishaat Hussain mentioned that he would like to abstain from the voting on this proposal. Mrs. Farida Khambata mentioned that she would also like to abstain from the voting on this proposal. All other directors (other than Mr. C.P. Mistry- interested, Mr. Ishaat Hussain and Mrs. Farida Khambata) supported the motion, Mr. Amit Chandra proposed that Mr. Vijay Singh be elected as the chairman for the Board meeting in place of Mr. C.P. Mistry. This proposal was seconded by Mr. Venu Srinivasan and the following resolution was put to vote:

1. Election of Mr. Vijay Singh as Chairman for the Board meeting.

"RESOLVED THAT Mr. Vijay Singh be and is hereby elected as the Chairman of the Board of Director of the Company for the purpose of this Board Meeting."

Mrs. Farida Khambata abstained from voting on this resolution. Mr. C.P Mistry recorded his objections by stating his view that it was not legal for the resolution to be taken up. All the other directions voted in favour of the resolution and the resolution was carried by the requisite majority.

2. Resolution to include additional matters on the Agenda

Mr. Vijay Singh (as chairman of the meeting) proposed inclusion of matters that were not on the Agenda Circulated to the Board of Director on October 15, 2016, and which Mr. Vijay Singh proposed should be taken up first. Accordingly, he moved the following resolution which was seconded by Mr. Ronen Sen.

"RESOLVED THAT the consent of the Board be and is hereby accorded to consider and resolve upon, in this meeting of the Board, the following matters which were not included in the agenda circulated for this meeting of the Board:

a. Replacement of Mr. Cyrus P. Mistry as the Chairman of the Board and from each committee of the Board;

b. While the Board has adopted and put in place certain age criteria for retirement of directors of the company, to approve the ceasation of applications of the age criteria for retirement of Directors in relation to the company;

c. Re-constitution of the nomination and remuneration committee to consist of the following directors (i) Mr. Ronen Sen (Independent Director); (ii) Mr. Ajay Piramal (Independent Director); (iii) Mrs. Farida Khambata (Independent Director); (iv) Mr. Vijay Singh; and (v) Mr. Venu Srinivasan;

d. Appointment of Mr. Ratan N. Tata as Additional Director;

e. Election of Mr. Ratan N. Tata as Interim Chairman of the Board until selection and appointment of a new Chairman of the Board in terms of the Companies act, 2013 and the articles of association of the company;

f. To take appropriate steps in terms of the companies act, 2013 and the article of association of the company to appoint a new chairman, including by formation of a selection committee comprising of (i) Mr. Ratan N. Tata (Nominee of Tata Trust); (ii) Mr. Amit Chandra (Nominee of Tata Trust); (iii) Mr. Venu Srinivasan (Nominee of Tata Trusts); (iv) Mr. Ronen Sen (Independent Director); and (v) Lord Kumar Bhatthcharya (Independent outside person); and

(g) Until selection and appointment of a new chairman of the Board in terms of the companies act, 2013 and the article of associations of the company to vest substantial powers of management of the company with Mr. F.N Subedar Chief Operating Officer, and /or one or more senior officials and / or directors of the company, subject to the overall supervisions and directions of the Board, in such manner as the Board may decide from time to time.

Mrs. Farida Khambata abstained from voting on this resolution. Mr. C.P Mistry recorded his objection by stating his view that it was not legal for the matter to be taken up. All the other directors voted in favour of the Resolution and the resolution and the Resolution was carried by the requisite

majority.

3. Replacement of Mr. Cyrus P. Mistry as Executive Chairman

Dr. Nitin Nohria proposed the following resolution for replacement of Mr. C.P Mistry as executive Chairman, which was seconded by Mr. Ajay Piramal.

"Resolved that in accordance with the applicable provisions of the companies act, 2013 as amended from time to time (the "act' the rules framed under the act, and the memorandum and article of association of the company, Mr. Cyrus P. Mistry be replaced and released with no residual executive powers or authority and with immediate effect, as Chairman of the Board and from every committee of the Board (including but not limited to the Nomination and Remunerations committee) for the reasons discussed at the meaning of the Board. However, it is clarified that the Board resolves that Mr. Cyrus P. Mistry shall notwithstanding his ceasing to be the chairman of the company continue to be a director of the company.

"RESOLVED FURTHER THAT any and all powers of attorney and / or other authorizations which permit or enable Mr. Cyrus P. Mistry to represent the company or to take any decisions or actions on behalf of the company are hereby revoked with immediate effect"

Mr. C.P Mistry recorded his objection to moving the

resolution by stating his view that it was not legal for the resolution to be taken up. Mrs. Farida Khambata abstained from voting on this resolution. The other directors voted in favour of the resolution and the resolution was carried by the requisite majority.

4. Retirement policy shall cease to apply

Mr. Amit Chandra proposed the following resolution, which was seconded by Dr. Nitin Nohria.

"RESOLVED THAT while the Board has adopted and put in place certain age criteria for retirement of Directors of the company, it is hereby approved that with immediate effect, the age criteria for retirement of Directors shall cease to apply in relation to the company.

Mr. C.P Mistry recorded his objection to moving the resolution by stating his view that it was not legal for the resolution to be taken up, Mrs. Farida Khambata abstained from voting on this resolution. The other director voted in favour of the resolution and the resolution was carried by the requisite majority.

5. Reconstitute of Nominations and Remuneration committee

Mr. Vijay Singh proposed the following resolution for reconstitution of the nomination and remuneration committee which was seconded by Mr. Ronen San.

"RESOLVED THAT the nomination and

remuneration committee of the company be re-constituted with immediate effect, with the following directors as Members (i) Mr. Ronen San (Independent Director); (ii) Mr. Ajay Piramal (Independent Director); (iii) Mrs. Farida Khambata (Independent Director); (iv) Mr. Vijay Singh and (v) Mr. Vanu Srinivasan."

Mr. C.P Mistry recorded his objection to moving the resolution by stating his view that it was not legal for the resolution to be taken up. Mrs. Farida Khambata abstained from voting on this resolution. The other Director voted in favour of the resolution and the resolution was carried by the requisite majority.

6. Appointment of Mr. Ratan N. Tata as Additional Director

Mr. Ronen San proposed the following resolution for appointment of Mr. Ratan N. Tata as additional director, which was seconded by Mr. Ajay Piramal

"RESOLVED THAT in accordance with Section 161 and other applicable provision of the companies act 2013 and the rules framed thereunder read with article 106 and other applicable provisions of the article of associations of the company Mr. Ratan N. Tata Director Identifications No.00000001) be and is hereby appointed as Additional Director on the Board of Director of the Company."

Mr. C.P Mistry recorded his objection to moving the resolution by stating his view that it was not legal

for the resolution to be taken up, Mrs. Farida Khambata abstained from voting on this resolution. The other director voted in favour of the resolution and the resolution was carried by the requisite majority.

7. Election of Mr. Ratan N. Tata as interim Chairman

Mr. Vijay Singh proposed the following resolution for appointment of Mr. Ratan N. Tata as interim Chairman which was seconded by Mr. Ajay Piramal.

"RESOLVED THAT Mr. Ratan N. Tata, Additional Director (Director Identifications Number 00000001) be and is hereby elected as Interim Chairman of the Board of Director of the Company and be appointed on all committees of the Board, with immediate effect and until a new Executive Chairman is selected and appointed in terms of the companies act, 2013 and the articles of association of the company.

Mr. C.P Mistry recorded his objections to moving the resolution by stating his view that it was not legal for the resolution to be taken Lip. Mrs. Farida Khambata abstained from voting on this resolution. The other directors voted in favour of the Resolution and the Resolution was carried by the requisite majority.

8. Constitution of a selection committee

Mr. Ronen San proposed the following resolution for constitution of a Selection Committee, which was seconded by Mr. Vijay Singh

"RESOLVED THAT appropriate steps be taken to appoint a new Chairman in terms of the companies act 2013 and the articles of association of the company including by formation of a selection committee comprising of (i) Mr. Ratan N. Tata (Nominee of Tata Trust); (ii) Mr. Anil Chandra (Nominee of Tata Trust); (iii) Mr. Venu Srinivasan (Nominee of Tata Trust); (iv) Mr. Ronen San (Independent Director); and (v) Lord Kumar Bhattacharya (independent outside person)

Mr. C.P Mistry recorded his objection to moving the resolution by stating his view that it was not legal for the resolution to be taken up Mrs. Farida Khambata abstained from voting on this resolution. The Other directors voted in favour of the Resolution and the resolution was carried by the requisite majority.

9. Vesting of substantial powers of management on Mr. F.N Subedar and/ or other senior official and/ or directors

Dr. Nitin Nohria proposed the following resolution which was seconded by Mr. Amit Chandra

"RESOLVED THAT until selection and appointment of a New Chairman of the company in terms of the companies act, 2013 and the articles of association of the Company, substantial powers of

management of the company may be vested with Mr. F.N. Subadar, chief operating officer of the company (who shall be a 'manager' of the company so long as substantial powers of management are vested with him) and /or one or more senior officials and / or directors of the company, subject to the overall supervision and direction of the Board in such form and manner as the board may decide from time to time."

Mr. C.P Mistry recorded his objection to moving the resolution by stating his view that it was not legal for the resolution to be taken up. Mrs. Farida Khambata abstained from voting on this resolution. The other directors voted in favour of the resolution and the resolution was carried by the requisite majority.

Mr. R.N Tata mentioned that there was a need to recognize what Mr. C.P Mistry had done over the last 4 years and that it was important for the group to move forward in a sameless manner as one can. He also said that Mr. C.P Mistry's choice on whether he would like to continue as Non Executive Director of Tata Sons Ltd. having been removed from his executive role.

Mr. C.P Mistry said he would continue on the Board.

Mr. Amit Chandra thereafter asked if the meeting should be adjourned to consider this, Mr. Cyrus P. Mistry enquired if anything was planned for issuing the press announcement.

Mr. Hussain queried about Mr. Mistry continuing in the role of the Chairman of other Tata Companies since, if not, it was stated that the matter had to be reported to the stock exchanges. As regard his directorship on Tata Sons Ltd. Mr. Tata said that to a great extent. It would be Mr. Mistry prerogative. As regard other Tata Companies, Mr. Mistry responded by saying that he shall decide on the same and revert.

Mrs. Khambata asked whether the decisions taken at the meeting could be announced immediately since Mr. C.P Mistry had said he should have been given advance notice of his removal. Mr. Amit Chandra said that he was not carrying the opinions which he said were given by eminent lawyers and ex - supreme court judge. Mr. C.P Mistry asked for copies of the written opinion and wondered how the rest of the Board could set without these opinions being made available to them, Mr. C.P Mistry asked for the opinions to be provided today. It was agreed to share these opinions with Mr. C.P Mistry after checking with the lawyers.

Mr. R. N Tata stated that the development at the meeting would need to be reported by way of a press conference as far as the company was concerned. The Board decided to move ahead with the press announcement. Since the development were material.

As regard the items in the agenda the Board agreed

that given the aforesaid developments, matters on the agenda including signing of the minutes of the Board meeting held on September 15, 2018, could be deliberated at the subsequent meeting.

2. Tata AIA Life Insurance Co. Ltd.

With the permission of the chairman and consent of all other directors Mr. Ishaat Hussain updated the Board on an opportunity which had been presented to Tata AIA Life Insurance Company Ltd. to acquire a stake in a life Insurance company, PNB metlife, for which a non binding bid was being sought.

The Board was informed that PNB Metlife was currently held by the following shareholders Punjab national Bank Ltd. 30%

Elpro 21%

M Pallonji and Company Pvt. Ltd. 18%

Jammu and Kashmir Bank Ltd. 5%

Met 28%

Mr. Hussain proposed the following deal structure

* *Tata Sons and AIA to buyout the existing stake of all the shareholder in PNB MetLife aggregating to 70% other than Punjab National Bank Ltd. followed by a merger of the two insurance entities.*

* *PNB to sell its stake in the merged entity*

through a "put" option within 3 years or Tata and AIA can exercise a "call" option in 4 to 5 years post-merger.

** Tata Sons initial outgo on the deal being Rs.1500 crores to Rs.2700 crores with Tata Son holding in Tata AIA Life Insurance Company Ltd. expected to dilute from 51% to 45%*

Mr Hussain took the board through the valuation related benchmarks

The Board noted that Tata AIA Life Insurance Company ltd. would be putting in the non binding bid on the above lines and Mr. Hussain informed the Board that Tata AIA would come back to the Board on further developments.

Mr. Amit Chandra provided to Mr. F.N Subedar the names of the persons who gave the legal opinion viz (i) Justice R.P Ravindran (ii) P. Chidambaram and (iii) Former Solicitor General Mohan Parasaran, for purpose of recording the name, in the minutes.

Mr. C.P Mistry requested that the press release proposed to be issued by the Company be discussed prior to release. This was agreed.

The meeting then concluded with a vote of thanks to the Chairman of the meeting at 3 pm.

Chairman

Mumbai

17.11.2016"

133. The proceedings of the meeting dated 24th October, 2016 and the facts as stated by Dr. A.M. Singhvi, learned counsel for the Company show:

(i) Mr. Ratan N. Tata (2nd Respondent) was determined to remove Mr. Cyrus Pallonji Mistry (11th Respondent) prior to the meeting of the Board and asked Mr. Cyrus Pallonji Mistry to step down.

(ii) Mr. Ratan N. Tata (2nd Respondent) during the course of the meeting mentioned that there was a need to recognize what Mr. Cyrus Pallonji Mistry (11th Respondent) had done over the last 4 years. He specifically stated that "it was important for the group to move forward in a seamless manner as one can".

(iii) The majority shareholders of 'Tata Trusts' represented by Mr. Ratan N. Tata (2nd Respondent) were knowing that advance notice was required for his removal, therefore, opinion had been obtained from eminent lawyers and the Hon'ble ex- Supreme Court Judge, as apparent from the proceedings of the meeting wherein "*Mr. Amit Chandra said that he was not carrying the opinions which he said were given by eminent lawyers and ex - supreme court judge. Mr. C.P Mistry asked for copies of the written opinion and*

wondered how the rest of the Board could sit without these opinions being made available to them, Mr. C.P Mistry asked for the opinions to be provided today. It was agreed to share these opinions with Mr. C.P Mistry after checking with the lawyers".

(iv) The development would have global ramification which was known to Mr. R. N Tata, therefore, in the said proceedings, Mr. Ratan N. Tata (2nd Respondent) stated that *"the development at the meeting would need to be reported by way of a press conference as far as the company was concerned. The Board decided to move ahead with the press announcement"*.

134. There is nothing on the record to suggest that the Board of Directors or any of the trusts, namely— Sir Dorabji Tata Trust or the Sir Ratan Tata Trust at any time expressed displeasure about the performance of Mr. Cyrus Pallonji Mistry (11th Respondent). On the other hand, the record suggests that on 24th October, 2016, Mr. Ratan N. Tata (2nd Respondent) wanted that Mr. Cyrus Pallonji Mistry (11th Respondent) should step down, so Mr. Cyrus Pallonji Mistry was called for and in presence of Dr. Nitin Nohria (7th Respondent) was asked to step down from the post of Executive Chairman.

135. The proceedings of the Board of Director's dated 24th October, 2016 also show that 'Tata Trusts' asked its nominee Directors to bring a

motion to request Mr. Cyrus Pallonji Mistry (11th Respondent) to step down from the post of the Executive Chairman on the ground that 'Tata Trusts' had lost confidence. Reasons have not been discussed or recorded in the proceeding of the meeting held in the afternoon of 24th October, 2016 between 2.00 p.m. to 3.00 p.m. for removal of Mr. Cyrus Pallonji Mistry (11th Respondent).

136. Statement of 'Tata Sons Limited' published in the Newspaper on 10th November, 2016 shows that the decision so taken had global effect, as is apparent from the said Statement:

"***A STATEMENT FROM TATA SONS***

Mumbai, November 10, 2016

We have received emails and calls from many across the globe since the board of Tata Sons decided to change its chairman.

Some have shared concerns following the decision, while many have asked questions about the future course of the group and its companies and operations. We understand and appreciate that a period of change like this can lead to a sense of uncertainly and would like to put

forward some facts so that the decision is seen in the desired perspective.

1. Tata Sons related matters

The Directors of Tata Sons are primarily concerned with the results of Tata Sons and their duty to all its shareholders, particularly, the Tata Trusts, who hold 66% of the equity capital. The following points are being made in this context –

a. Mr. Cyrus P. Mistry has been the Executive Vice Chairman (for one year) and Executive Chairman for nearly four years now a period long enough to show results in Tata Sons Itself, which was his primary executive responsibility.

b. For assessing the results during his tenure, it would indeed be appropriate to exclude the income (i.e dividend) from Tata Consultancy Services (TCS) because Mr. Mistry does not really contribute materially to TCS's management and TCS has needed no funds from Tata Sons for its growth. In this way, it will be seen what Tata Sons has been getting from all the other 40 companies (listed and unlisted) In its portfolio.

c. ***Dividends received from all the other 40 companies (many non-dividend paying) has continuously declined from Rs.1,000 crores in 2012-13 to Rs.780 crores in 2015-16 but the latter figure includes additional interim dividend of Rs.100 crores which would have been normally received in 2016-17 (due to budgetary changes). This surely reflects the decline in the total profits of those operating companies from which dividends are paid, during the last four years.***

d. ***While dividend income was declining, expenses (other than interest on debt) on staff increased from Rs.84 crores to Rs.180 crores and other expenses increased from Rs.220 crores in 2012-13 to Rs.290 crores in 2015 (excluding exceptional expenses).***

e. ***There was little or no profit on sale of investments during these years, i.e. no significant divestments from Tata Sons portfolio, despite a planned list of divestments indicated from time to time.***

e. ***Impairment provisions increased from Rs.200 crores in 2012-13 to Rs.2,400 crores in 2015-16 indicating inability to stem falling values and turn around the "hot spots' referred to by Mr. Mistry.***

f. *Thus, but for the TCS dividend and even before Impairment provisions, Tata Sons would have shown operating losses over the last 3 years (with a small surplus in between), showing the significant dependence on TCS. This dependence was indeed a source of concern for the Directors and its shareholders.*

2. *Selection of the Chairman*

It is also relevant to refer to the basis of selection of Mr. Mistry as Chairman in 2011 by the Selection Committee as provided under the Company Articles. Without going into the details, the Committee's original, objective was to look for a person with the experience of running large (and preferably diverse) businesses with considerable international exposure and other criteria. During the meetings, Mr. Mistry made any relevant comments and submitted a detailed note in October 2010 setting

out his views on how a large and complex group like Tatas should be managed and gave a comprehensive management structure with details of the composition and objectives of each component of the structure. This fitted with the views of the committee and having failed to find an alternative candidate, the Committee decided to recommend Mr. Mistry partly because of his recorded views and plans and also his associations with the group.

After four years, it is unfortunate that hardly any of his major views on the management structure (which had impressed the Committee favorably) have been implemented. In fact, even the then existing structure of the group which had stood the test of a long period of nearly 100 years by the visionary founders and generations of Tatas seem to have been consciously dismantled so that now the operating companies are drifting farther away from the promoter company and their major shareholder (except for periodic presentations) through systematically reducing the effective control and influence of the promoter. Tata Sons has historically exercised control over its group companies through its shareholding and commonality of senior Directors

(apart from the Chairman) which had acted as a binding force in the group for many years and which has enhanced the credibility and creditworthiness of the group companies. We now have an unacceptable new structure where the Chairman alone is the only common Director across several companies and this situation could not be allowed to go on.

In addition, there were some significant issues of conflict of interest in relation to the Shapoorji Pallonji Group which he did not fully address.

3. ***Mr. Mistry's role in the past four years***

Unlike in the past, Mr. Mistry constantly used the strong public relations network of Tata to emphasize the supposedly good work being done by and under the new leadership and particularly and repeatedly highlighting the major problem areas in the group inherited by him (commonly referred to by him as 'legacy' Issues and 'hot spots') from the previous Chairman, to account for any perceived lack of his performance.

The articles and Interviews are littered with text-bookish directives and objectives, e.g. growth with profits', 'target to be among the top 25 groups in the world' by market capitalization, 'cater to the lives of many millions' and other such nice-sounding phrases with no Indications on how these ambitious targets are to be achieved, is all this relevant when there are so many major problems which need urgent attention and action? Would it not be more appreciated if the reports talked specifically on these problem Issues and their solutions rather than continuously harping on the past versus the present?

Nobody will deny that there were some problem companies but surely Mr. Mistry was fully aware of them since he was associated with the parent company, Tata Sons Limited, as a Director on the Board for many years prior to his appointment as Executive Vice Chairman in 2011 and then as Executive Chairman in 2012. He voluntarily took this position, knowing the composition of the Tata group and its many strong companies as well

as the weaker and problem companies - which he presumably took on as a challenge for 'turning around' those difficult situations.

Yet, after four years of full-time Involvement and executive authority, we continue to be told how these 'legacy' problem areas are a major drag on Mr. Mistry's otherwise good performance. *How many more years would we be told this same story?*

The three major problem companies are Tata Steel Europe, Tata Teleservices/Docomo and the Indian operations of Tata Motors. The fact is that even after four years, there is no noticeable improvement in the operations of these companies and In fact they have got worse as shown by continuing huge losses, increasing high debt levels and declining share in their respective markets. There are a few other companies which are also having different problems- and are these also to be excused as legacy issues?

Even with no turn-around in these major problem areas, the only action taken was to write-off

huge amounts against these companies - which is no solution because the problem companies continue to exist with their continuing losses and high debt and only the shareholders suffer from these write-offs.

The media is fed with the total group figures over the past four years as evidence of the progress but it is not highlighted that these aggregate figures which show a good picture are largely (if not only) due to the excellent performance on all parameters of just two companies, namely; TCS and Jaguar and Land Rover (JLR) which is a wholly-owned U.K. subsidiary of Tata Motors. There is no-complaint about these good legacies. These two jewels in the Tata crown were also inherited by the new Chairman from the previous Chairman, Mr. R. N. Tata, who was also responsible for the acquisition of JLR by Tata Motors in 2008-09 and personally worked with the then management of Tata Motors to turn JLR around. These too companies probably account for around 50% of the total turnover and probably over 90% of the total profits of the whole group and have been performing successfully continuously over the past many years, for which Mr. Mistry cannot take credit.

It is evident that the group under Mr. Mistry's leadership was intolerant to critical reports about the actions taken under his aegis. Over the past four years, only a very law such partially negative reports have appeared in some parts of the media – the most recent one being by the highly respected 'Economist' magazine of the U.K., which was really a well-balanced and critical review of the Tata group's performance in recent years and which was reproduced by another respected Indian daily. Even this report was vociferously refuted in the strongest terms by the PR machinery of Tatas as being biased and incorrect. In short, those who analyze the overall position of the group in an unbiased and professional way which may differ from the version put out by Bombay House (the Tata headquarters) are uniformly wrong, even if they only seek to present an overall balanced picture which may (and rightly should) include the negative aspects. This attitude does not befit an old and venerable house like Tatas known for their fair play and transparency.

Insiders in Bombay House who have been with the group for many years silently and helplessly watched the conscious departure from old, proven

and successful structures within the group and the Induction of very senior executives from outside the group with little or no experience of running large companies and being paid amounts reportedly running to several crores for purely functional positions at the very top. Some changes always accompany a change at the top and some may even be considered necessary but the ultimate test is whether these changes have shown improvement and success which is not visible even after four long years.

The stellar performance of TCS and JLR have more than compensated for the drop in returns in the other operating companies under Mr. Mistry's tenure. Some strategic initiatives have been articulated repeatedly but the implementation is too slow to show results. Such of these Initiatives which are good and worthwhile need to be pursued more vigorously by the companies concerned.

From a recent, well-articulated interview with Mr. Mistry published on the Tata group website, one cannot help but feel that there is a very selective reference only to achievements and in the interest of

transparency and balance, one feels compelled to highlight some of the areas which emerged over the last four years, which have not keen mentioned at all.

4. Group Indebtedness and Return on Investment - Group Indebtedness has increased by Rs.69,877 crores to Rs.225,740 crores over the last four years. Despite huge investments by companies, the returns are not visible in increased profits, though, in all fairness, some major growth projects like the new steel plan at Kalinganagar will show results only in coming years.

5. Market share drop in Tata Motors- There has been a perilous drop in market share in both passenger cars and commercial vehicle areas over the past three years. In passenger cars, In the year ended March 2013, the market share was 13% which now stands at 5% It will be difficult if not impossible to retrieve the market share losses. However, even more concerning, is the market share in commercial vehicles which in March 2013 stood at 60% and now stands at 40+%- the lowest in the company's history as the market leader in commercial vehicles.

The two passenger car launches of good products like Bolt and Zest introduced as turnaround products for the company have both been lackluster in market acceptance - achieving current sales levels more or less equal to those of the Indica and Indigo which are around 15-year-old vehicles. The third launch of Tiago has been well received in the market but its sustained steady state volumes are yet to be determined.

These details are masked by the performance and profitability of JLR as most references to Tata Motors are in consolidated form.

6. Group write-offs/ write-downs/ provisions/ asset sale- During the past three years, the group has written down, written off or made provisions for impairment worth thousands of crores. Tata Steel alone, has written off a large part of its investment in its UK/Eurogean assets, it is interesting to not that the new buyers of some of the steel assets for £1. In the U.K have claimed a dramatic turnaround in the very first year of their take over. In our view these sub-par results cannot be blamed on the commodity cycle or economic conditions but on his leadership?

Mr. Mistry repeatedly talks of 'bad' acquisitions but he forgets that his own firm had acquired South India Viscose Limited and Special Steals Limited many years ago from which they walked away, while Tatas always standby their companies in difficulties.

7. Handling of critical issues - Critical reports have been received of the handling of the Tata Steel Europe problems in the U.K. and the negotiations with Docomo of Japan in the respective countries.

8. Other issues

a) ***The accusation of interference by the Trusts is not only wrong in reality but has been twisted to mislead people. One of the Important duties and obligations of the trusts and the Trustees is to protect the-assets of the Trusts, the most important and valuable being Investments in Tata Sons donated by the founders and their successors many decades ago and which is a major source of the income of the Trusts, it is only to fulfil this duty that Information relating to the operations of Tata Sons which is an unlisted investment holding company need to be kept track of The***

continuous decline In the income of Tata Sons from its large portfolio of Investments other than TCS during the last four years of Mr. Mistry's regime (as elaborated above), *reflected the corresponding decline in the many operating companies in which Tata Sons holds a significant shareholding. It also reflects a disturbing overdependence-on one single company, i.e. TCS, over a long period-of four years. This was not only disturbing but needed corrective action in the management of Tata Sons.* ***In fact, many practical suggestions made to Mr. Mistry for the benefit of Tata Sons vis-a-vis some of his major investments have often been Ignored.***

b) ***Mr. Mistry conveniently forgets that he was appointed as the Chairman of the Tata operating companies by virtue of and following his position as the Chairman of Tata Sons. Therefore, It was fair expectation of Tata Sons that Mr. Mistry would gracefully resign from the boards of other Tata companies on being replaced from the position of the Chairman of Tata Sons, This expectation was in line with convention, past practice as well as the Tata***

governance Guidelines that were approved and adopted by Tata Sons under the aegis of Mr. Mistry. However, his departure from these requirements and conduct since his replacement as Chairman of Tata Sons demonstrates his absolute disregard of longstanding Tata traditions, values and ethos."

c) ***The recent developments in the Indian Hotels Co. Ltd. (IHCL) now seems to reveal the true colours of Mr. Mistry and his ulterior objective.*** *Having been replaced as the Chairman of Tata Sons, where the majority of the Board and the major shareholders had expressed lack of confidence, Mr. Mistry is trying to gain control of IHCL with the support of the independent Directors of the Board.* ***He has cleverly ensured over these years that he would be the only Tata Sons representative on the Board of IHCL in order to frustrate Tata Sons ability to exercise influence and control on IHCL in hindsight, the trust reposed by Tata Sons in Mr. Mistry by appointing him as the Chairman four years ago has been betrayed by his desire to seek to control main operating***

companies of the Tata group to the exclusion of Tata Sons and other Tata representatives. Indeed, this strategy of being the only Tata Sons representative on the Boards of the operating Tata companies, seems to have been a clever strategy planned and systematically achieved over the last four years, it is unfortunate that Tata Sons, acting in good faith, did not anticipate such devious moves by Mr. Mistry and thereby did not inform the other Directors of the operating companies about its dissatisfaction with Mr. Mistry at the level of Tata Sons. *However, we will now do whatever is required to deal with this situation.*

Mr. Mistry has been consistently indicating that companies have performed well during his four-year term but the figure quoted by him always refers to the total of the group companies including TCS" and JLR which account for over 90% of the groups profits. Since he hardly contributed to the management of these two companies, it would be more important and relevant to look at the totals of the rest of the group which will show that while there has been an increase in turnover, the more telling figures are the

facts that the profits of the rest of the group in fact declined materially during his 'four year tenure and equally importantly the total borrowings of the group increased from Rs.158,863 crores in March 2012 to Rs.225,740 crores in March 2016. He continuously talks of the bad legacy issues but never mentions the two top performers of the group, viz TCS and JLR which were given to him when they were showing excellent results and which helped to cover up the deficiencies of the rest of the group.

In our capacity as the main promoter of the major listed Tata companies and as the largest shareholding group, we have to express our very serious concern on the personal email dated October 25, 2016, from Mr. Mistry, addressed to the Directors of Tata Sons and purportedly to the Trustees of the Tata Trusts and which simultaneously, appeared in full in various newspapers.

Here, we are only referring to the shocking statement of five or six major Tata companies having to take potential write downs of $18 billion in future in their assets investments and the following points/ queries need to be raised-

a. *Has Mr. Mistry, the Chairman, informed the Boards of these companies at any time in the past specifically of the above mentioned potential write-downs? if so, when was this done and why was it not made public as this is clearly a major item of information - apart from disclosing only the write-offs required to be made to date. Surety he could not have discovered' such a large potential liability only a day or two after he was replaced as the Chairman of Tata Sons. Therefore, he must have been aware of this potential large provision much earlier but did not disclose it. It presumably relates to possible future provisions to he made (with no firm basis) but only his own expectation, i.e. a forward-looking statement which is normally not permissible due to its uncertainty, it also suggests that he had no intention of or given up any attempt to revive the value of these companies. It is unfortunate that the BSE/NSE have asked the companies to explain this statement and not Mr. Mistry as the author of this statement.*

b. *On the same point, it has been widely reported that this statement of potential write-downs of this magnitude has been largely responsible for the loss in the total market value of these five or six companies of an amount of over Rs.25,000 crores and all the shareholders would naturally be unhappy at this loss in their own value for ho fault of theirs but mainly due to this shocking and sudden statement on the part of the Chairman of these companies which may or may not have been shared with the Board and certainly not publicly disclosed, earlier. Here again, it is unfortunate that the shareholders and regulatory authorities would put the onus on the companies and not Mr. Mistry as the author of the statement for being responsible for this large loss in market value.*

As a group, we are committed to upholding the highest standards of ethics and value systems which the founders and the subsequent leaders have always strived to uphold, it is the spirit of the employees which has made the group what it is today and we are committed to resolving the current situation by doing whatever it takes and in

a manner that ensures the protection of Interests of all stakeholders of the Tata group.

Issued by

Debasis Ray

Group Spokesperson

+919223386824"

137. From the opening sentence of 'Press Statement' dated 10th November, 2016, it is clear that sudden and hasty removal of Mr. Cyrus Pallonji Mistry (11th Respondent) as Executive Chairman of 'Tata Sons Limited' raised concern in the industrial group. Therefore, in the said 'Press Statement', it has been specifically mentioned that ***"some have shared concerns following the decision, while many have asked questions about the future course of the group and its companies and operations"***. The company in its turn has mentioned that "***we understand and appreciate that a period of change like this can lead to a sense of uncertainty and would like to put forward some facts so that the decision is seen in the desired perspective***".

138. If we accept the stand taken by the Contesting Respondents that the removal of Mr. Cyrus Pallonji Mistry (11th Respondent) is directorial in nature, in the interest of Company, in such case, there was no occasion to issue a 'Press Statement' where it is noticed that many across the globe have raised concern in the manner Mr. Cyrus Pallonji

Mistry (11th Respondent) was removed. The Company and its Board also understood that such removal may lead to a sense of uncertainty of 'Tata Sons Ltd.' and 'Group Companies' and result in winding up.

139. The allegations as made in the 'Press Statement' dated 10th November, 2016 appears to be an afterthought as the aforesaid matter was not discussed in any of the meeting of the Board of Directors. No records have been placed by the Respondents with regard to the aforesaid loss nor any discussion took place in the Board Meeting of the 'Tata Sons' and Mr. Cyrus Pallonji Mistry (11th Respondent) to suggest that it was of serious concern. The allegations in the 'Press Statement' as not supported by record cannot be accepted.

140. On the other hand, the correspondences between Mr. Cyrus Pallonji Mistry (11th Respondent), Mr. Ratan N. Tata (2nd Respondent), Mr. Nitin Nohria (7th Respondent) and Mr. N.A. Soonawala (14th Respondent) show that all the time Mr. Cyrus Pallonji Mistry (11th Respondent) had been pointing out that some of the 'Tata Companies' were suffering loss and if appropriate steps were not taken, it may aggravate in future. In spite of such communications made between the period of 2013 to 2016, there is nothing on the record to suggest that the Board of Directors which could take decision only with affirmative vote of nominee Directors of the 'Tata Trusts' had taken any decision for the revival or restructuring of Tata Companies which were facing losses.

141. If there was a failure and loss caused to one or other Tata Company which also affected the 'Tata Sons Limited', the 'Tata Trusts' or the Board of Directors could not be absolved of its responsibility, particularly when the nominee Directors of the Tata Trusts who have affirmative vote to reverse the majority decision.

142. Record show that the 'Tata Trusts' were required to be informed of all the matters, in advance, on the ground that it can take advance decision to counter any action which may jeopardise their dividend flow.

143. Mr. Cyrus Pallonji Mistry (11th Respondent) intimated the nominee Director that 'independent members' of the Board should not feel that they are irrelevant in any way. But, if all major decisions are taken in advance by the 'Tata Trusts' and for taking every decision, matters are to be placed before the 'Tata Trusts', in such case, independence of the Board of Directors of the Company becomes irrelevant. Mr. Cyrus Pallonji Mistry (11th Respondent) specifically informed the Respondent Nos. 2, 7 and others that the *"nominee Directors should use their judgment to add value to the discussions at the Board's Meeting and not to operate like telegraphic relays"*. He requested not to change the fundamental character of 1st Respondent Company the 'Tata Sons Limited' that enables it to manage the diversity it had.

144. The aforesaid suggestions made by Mr. Cyrus Pallonji Mistry (11th Respondent) for good governance by the Board and to take care of Tata

Companies, including 'Tata Motors', 'Docomo' etc., were not taken in its letter and spirit by Mr. Ratan N. Tata (2nd Respondent) of 'Tata Trusts' which resulted in no confidence on Mr. Cyrus Pallonji Mistry (11th Respondent)

145. Apart from the e-mails, as discussed earlier, with regard to Tata Companies, following facts emerge from other e-mail:

> *"**Bidding for spectrum by Tata Teleservices Limited ("TTSL") and editing the Board note***
>
> *(i). In **Email dated 23rd May, 2016 from 11th Respondent to 2nd Respondent with a copy marked to 14th Respondent** it is recorded that because the Trustees were not convinced on the strategy of TTSL going forward, 11th Respondent had to change an item that was to be placed for approval before the Board of 1st Respondent, into an item that was noted to be "only for Information".*
>
> *(ii). **Email dated 7th June, 2016 marked to 11th Respondent** is from the company secretary of 1st Respondent, wherein it is recorded that 2nd Respondent had objections to any investment proposal for TTSL being taken to the Board of 1st Respondent. The email also documents that the Trustees particularly 2nd Respondent and 14th Respondent even made changes to the Board Agenda Item and note to the Board regarding*

investment in spectrum for TTSL. ***This clearly shows that without the pre-clearance of 2nd Respondent and of 14th Respondent nothing could be taken to the board of 1st Respondent.***

Banking License

(iii). ***Letter dated 24th June, 2013 from 2nd Respondent to 11th Respondent****–In Connection with the baking application to be filed with the RBI by 1st Respondent for a proposed banking license, 2nd Respondent claims that he cannot add anything at this late stage on a decision already taken, but states that he has asked 20th Respondent, Executive Trustee of the Tata Trusts, to raise issues "which have repercussions on the trusts or any other company".*

(iv). ***Email dated 26th June, 2013 from 2nd Respondent to 11th Respondent–*** *2nd Respondent sets specific conditions for 1st Respondent to submit an application or a banking license. 2nd Respondent states that "the approval would be on the clear understanding that the* ***Trusts would have the opportunity*** *to have a full presentation on the pros and cons of the proposed bank as also the alternative options on the basis of which the Trusts could debate and decide on their position in the matter". This was after two rounds of discussions were already held with 2nd Respondent.*

IPO of Tata Sky

(v). ***Email dated 30th March, 2016, form 2nd Respondent to 11th Respondent–*** *2nd Respondent states that he has reservations on a proposal for an IPO of Tata Sky that was to be brought before an upcoming Board meeting of 1st Respondent. In a follow-on email dated 4th April 2016, 2nd Respondent seeks to table his views* ***prior to the Board meeting*** *and seeks a note with all options and the recommendations that is proposed to be put up to the Board of 1st Respondent. 11th Respondent adheres to the request for prior consultation so that the matter may be cleared to be taken up at the upcoming Board meeting.*

Rights issue of Tata Motors

(vi). ***Letter dated 30th Jan 2015 from 2nd Respondent to 11th Respondent*** *stating that the rights issue of Tata Motors Ltd (a listed company) had not been explicitly discussed with the Trusts and hence could be seen as a breach of the amended articles of 1st Respondent. 2nd Respondent insisted that "****before*** *such an issue is cleared by the underlying operating company", approval of the Board of 1st Respondent would have to be taken, thereby insisting on prior consultation.*

14. According to Appellants, the letter was issued despite:-

a. The Board of 1st Respondent (in the presence of Trustee Nominee Directors) had discussed and approved funding requirements of Tata Motors on 30th September, 2013 and the same was reflected in the cash plan of 1st Respondent;

b. A presentation on the need for a rights issue by Tata Motors was also presented to the Board of 1st Respondent, where the Trust Nominee Directors were present;

c. Agenda and minutes of meetings of 1st Respondent were sent to the 2nd Respondent as "Chairman Emeritus";

d. 14th Respondent (a Trustee) views were also sought by senior officials, of Tata Motors and thereafter the matter was taken to the Board of Tata Motors.

(vii) ***Email dated 31st January 2015 from 11th Respondent to a Trust Nominee Director 7th Respondent*** *wherein 11th Respondent raises concerns about maintaining the integrity of the Board decision making process. 11th Respondent asked: "the question one will have to ask is then are we going to present all of this to RNT or the Trusts? As an investment company, then what will the Board of Tata Sons take decisions on?".*

146. The record suggests that the removal of Mr. Cyrus Pallonji Mistry (11th Respondent) had nothing to do with any lack of performance. On

the other hand, the material on record shows that the Company under the leadership of Mr. Cyrus Pallonji Mistry (11th Respondent) performed well which was appraised by the 'Nomination and Remuneration Committee' a Statutory Committee under Section 178, on 28th June, 2016 i.e. just few months before he was removed.

147. The 'Nomination and Remuneration Committee' is required to appraise performance of senior management and also deals with remuneration. The 'Nomination and Remuneration Committee' comprised of Mr. Cyrus Pallonji Mistry (11th Respondent), two Independent Directors, namely— Mrs. Farida Khambhata (10th Respondent) and Mr. Ranendra Sen (8th Respondent) and one Director, Mr. Vijay Singh (9th Respondent), a nominee Director of 'Tata Trust'. The 'Nomination and Remuneration Committee' consisting of aforesaid members in its meeting held on 28th June, 2016, appreciated the performance of Mr. Cyrus Pallonji Mistry (11th Respondent) and observed:

> *"Mr. Vijay Singh mentioned that Tata Motors have come up with some of their best models in recent years. Mrs. Khambata and Mr. Sen complimented Mr. Mistry on his role as Group Chairman. Mr. Sen added from his experience from site visits that Mr. Mistry had earned the respect not only of CEOs and senior management but operational personnel.*

> *After reviewing the performance of the Executive Chairman, the Members unanimously recorded their recognition of his significant contributions across Group companies and expressed their appreciation of his multifaceted initiatives aimed at preserving and promoting cohesive functioning of the Group in accordance with its distinctive values."* ***(Emphasis Supplied)***

148. *The members of the 'Nomination and Remuneration Committee' also stressed the need for clarity on the functioning of the Board of 'Tata Sons Limited' and the role of the 'Tata Trusts' in relation to 'Tata Sons Limited' and the 'Tata Group Companies'.*

149. *The aforesaid fact shows that Nominee Director Mr. Vijay Singh (9th Respondent) on behalf of 'Tata Trusts' was well aware that performance of Mr. Cyrus Pallonji Mistry was satisfactory and there was need for a framework for operationalizing the Articles.*

150. The annual performance review of the 'Nomination and Remuneration Committee' was unanimously approved by the Board of Directors of 'Tata Sons' in its meeting held on the next day i.e. on 29th June, 2016. Besides, at the level of the Board of Directors of 'Tata Group Companies', the performance of Mr. Cyrus Pallonji Mistry (11th

Respondent) has been endorsed and praised by nearly 50 Independent Directors of Group Companies.

151. It is relevant to note that three Directors who also voted for removal of Mr. Cyrus Pallonji Mistry (11th Respondent), including Mr. Amit Chandra (3rd Respondent), who spearheaded the removal proceedings and Mr. Ajay Piramal (5th Respondent) and Mr. Venu Srinivasan (6th Respondent), had been inducted into the Board of 'Tata Sons Ltd.' only on 8th August, 2016 i.e. after the appraisal report of 'Nomination and Remuneration Committee'. They attended just one Board meeting prior to the meeting held on 24th October, 2016.

152. Two of the Directors, Mr. Ranendra Sen (8th Respondent) and Mr. Vijay Singh (9th Respondent), a Trust Nominee Director, who voted for the removal of Mr. Cyrus Pallonji Mistry (11th Respondent), were members of the 'Nomination and Remuneration Committee' which just four months' prior to his removal on 28th June, 2016 praised the performance of Mr. Cyrus Pallonji Mistry (11th Respondent) as Executive Chairman. These two Directors also voted against Mr. Cyrus Pallonji Mistry just four months thereafter which has not been explained by Mr. Ranendra Sen (Respondents No. 8) and Mr. Vijay Singh (Respondent No. 9). Further, what is accepted is that prior to the meeting held on 24th October, 2016 between 2.00 p.m. to 3.00 p.m., in the forenoon, the 'Tata Trusts' in a separate meeting decided to remove Mr. Cyrus Pallonji Mistry (11th Respondent). Even before decision of 'Tata Trusts', Mr.

Ratan N. Tata (2nd Respondent) in presence of Mr. Nitin Nohria (7th Respondent) called Mr. Cyrus Pallonji Mistry (11th Respondent) and asked him to resign.

153. There are various examples and instances cited by the Appellants and records enclosed, but they are not required to be discussed as certain relevant instances have already been noticed.

154. As per Articles of Association (Article 121) the nominated Directors of the 'Tata Trusts' have affirmative voting rights over the majority decision. The voting rights of the Company ('Tata Sons Limited') at a general meeting of any Tata Companies i.e., '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' etc. is also vested with the Board of Directors (Article 121A (h)). Therefore, for any policy decision of the 'Tata Companies', including appointment of representatives of the Company ('Tata Sons Limited') under Section 113(1) (a) of the Companies Act, 2013, affirmative vote of the nominated Directors is must (Article 121A r/w Article 121). The affirmative vote of the Directors nominated by 'Tata Trusts' has an overriding effect and renders the majority decision subservient to it.

155. In view of the aforesaid provisions, it is not open to the Respondents to state or allege that loss in different 'Tata Companies' was due to mismanagement of Mr. Cyrus Pallonji Mistry (11th Respondent). If that be so, why the nominated Directors who have affirmative voting right over the majority decision of the Board or in the Annual General Meeting of the shareholders allowed the 'Tata Companies' to function in a manner which caused loss, as accepted in the press release dated 10th November, 2016. The consecutive chain of events coming to fore from the correspondence referred elsewhere in this Judgment amply demonstrates that impairment of confidence with reference to conduct of affairs of company was not attributable to probity qua Mr. Cyrus Pallonji Mistry but to unfair abuse of powers on the part of other Respondents.

156. The 'Press Statement' of 'Tata Sons Limited' dated 10th November, 2016 facts of which were never discussed by Board is an afterthought of Respondents to put all blame on Mr. Cyrus Pallonji Mistry (11th Respondent). The Board of Directors' majority decision of which is guided by the affirmative vote of the nominated members, have failed to explain as to why the Board failed in its duties and not noticed the loss of any of the 'Tata Companies'.

157. It is not in dispute that 'Shapoorji Pallonji Group' ('Appellants' herein) are the minority shareholders. They are in business with Tata

Group i.e.— 'Sir Dorabji Tata Trust' and 'Sir Ratan Tata Trust' for more than four decades. There is mutual understanding and good relationship between them. For the said reason, earlier for a number of years' Mr. Pallonji Shapoorji Mistry, father of Mr. Cyrus Pallonji Mistry (11th Respondent) was appointed as the Executive Chairman of the 'Tata Sons Limited'.

158. Earlier when the matter fell for consideration before this Appellate Tribunal in Company Appeal (AT) Nos. 133 & 139 of 2017, the order of waiver was allowed in favour of the Appellants having noticed that out of Rs. 6,00,000 crores of total investment in the Company ('Tata Sons Limited'), 'Shapoorji Pallonji Group' had invested approximately Rs.1,00,000 crores. It was noticed that except Mr. Ratan N. Tata (2nd Respondent) and two other members all the other members have less than 10% shareholding and the allegations were serious, therefore, the order of waiver was passed by this Appellate Tribunal on 21st September, 2017.

159. In the present case, we have noticed the aforesaid fact of investment of Rs.1,00,000 Crores out of Rs.6,00,000 Crores by 'Shapoorji Pallonji Group' to consider the effect of absence of a nominee Director of minority group ('Shapoorji Pallonji Group') or a Director who can take care of minority members (group). On the other hand, in terms of Article 104B read with Article 121 and 121A, the nominee Directors of the 'Tata Trusts' have control over the meeting of the Board of

Directors, having power to annul the majority decision by refraining from exercise of affirmative vote.

160. Even in absence of such right of minority members ('Shapoorji Pallonji Group'), because of healthy atmosphere and clear understanding between two groups i.e. 'Tata Group' and 'Shapoorji Pallonji Group' for last 40 years, except for few years in between thereof, one of the persons of 'Shapoorji Pallonji Group' was made as the Executive Chairman or Director, which includes Mr. Cyrus Pallonji Mistry (11th Respondent) and his father Mr. Pallonji Shapoorji Mistry.

161. In the aforesaid background, 'Shapoorji Pallonji Group', minority shareholders, all the time had confidence on the decision making power of the Board of Directors of the 'Tata Sons Ltd.' as amity and goodwill prevailed *inter se* the two groups.

162. However, because of recent actions of 'Tata Trusts', its nominee Directors, and Mr. Ratan N. Tata (2nd Respondent) and Mr. Nitin Nohria (7th Respondent) taken since the year 2013, as noticed and discussed above, and sudden and hasty removal of Mr. Cyrus Pallonji Mistry (11th Respondent) on 24th October, 2016, without any basis, and without following the normal procedure under Article 118, the minority group ('Shapoorji Pallonji Group') (the Appellants), and others have raised no confidence and sense of uncertainty which was the reason for the 'Tata Sons Ltd.' to issue a 'Press Statement'.

163. In the opening sentence of the 'Press Statement' dated 10th November, 2016, it has been accepted that "*some have shared concerns following the decision, while many have asked questions about the future course of the group and its companies and operations*". The company in its turn has mentioned that "***we understand and appreciate that a period of change like this can lead to a sense of uncertainty and would like to put forward some facts so that the decision is seen in the desired perspective***".

164. The language of the Company ('Tata Sons Ltd.') in its 'Press Statement' show that the Company and Contesting Respondents also know that the action taken is 'prejudicial' and 'oppressive' to the interest of the members of the Company and a large number of members, investors and interested parties have raised concern. The 'Tata Sons Ltd.' has accepted that there is sense of uncertainty at the global level.

165. The prejudicial action, as noticed, did not come to an end, after 24th October, 2016, when Mr. Cyrus Pallonji Mistry (11th Respondent) was removed as Executive Chairman and Director of the Company ('Tata Sons Limited'). It continued even thereafter, as detailed below:

a) On 12th December, 2016, Mr. Cyrus Pallonji Mistry (11th Respondent) was removed from the post of Director of 'Tata Industries' (a Group Company). Next day, on 13th

December, 2016, he was removed from the post of Director 'Tata Consultancy Services', another Group Company. The third day i.e. 14th December, 2016, Mr. Cyrus Pallonji Mistry (11th Respondent) was also removed from the post of Director of 'Tata Tele Services'.

b) Because of the aforesaid consecutives orders of sudden removal from one after another 'Tata Company' (Group Companies) as Mr. Cyrus Pallonji Mistry (11th Respondent) had no option, resigned from the posts of Director(s) of rest of the Group Companies.

c) It further proceeded with certain unexplained actions taken thereafter converting 'Tata Sons Limited' from 'Public Company' to 'Private Company', after the decision of the Tribunal and discussed below.

Conversion of 'Tata Sons Limited' from 'Public Company' to 'Private Company'

166. 'Tata Sons Limited' was initially a 'Private Company' but after insertion of Section 43A (1A) in the Companies Act, 1956 on the basis of average annual turnover, it assumed the character of a deemed 'Public Company' w.e.f. 1st February, 1975, as follows:

*"**43A. Private company to become 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

sub-section (1) of section 3 and the number of its members may be, or may at any time be reduced, below seven:

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 sub-section, "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 sub-section (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 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.

(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 the 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 sub-section, 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 sub-section (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:

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.]

(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 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 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) Sub-section (3) of section 23 shall apply to a change of name under sub-section (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 sub-section (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.

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(8) Every private company having a share capital shall, in addition to the certificate referred to in sub-section (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,

***

(c) that the private company, irrespective of its paid-up share capital, did not have, during the relevant period, an average

annual turnover of 6 [such amount as is referred to in sub-section (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 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;

(b) "turnover" of a company, means the aggregate value of the realisation 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 sub-section (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000.]"

167. As per sub-section (2) of Section 43A, within three months from the date on which a 'Private Company' becomes a 'Public Company', the Company informed the Registrar that it has become a public company and ***thereupon the Registrar deleted the word "Private" before the word "Limited" in the name of the company upon the register*** and made the necessary alteration in the Certificate of Incorporation issued to the company and its 'Memorandum of Association'.

As per sub-section (4) of Section 43A, a 'private company' which became a 'public company' by virtue of the aforesaid provisions, is to continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of the Act, again becomes a 'private company'.

168. Pursuant to Section 43A (1A), the Company ('Tata Sons Limited') which was a 'Private Company', due to its annual turnover, irrespective of its paid-up share capital became 'Public Company'.

169. Part of the Companies Act, 1956 was repealed by the Companies Act, 2013, from the date of its notification, except those covered in Part IX A of the Companies Act, 1956. Though the Companies Act, 1956 has

not been repealed in totality in absence of any Notification issued by the Central Government under Section 465 giving it effect, but Section 31 of the Companies Act, 1956 which relates to *"Alteration of articles by special resolution"* has been repealed and substituted by Section 14 of the Companies Act, 2013 which relates to *"Alteration of articles"* and reads as follows:

> ***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 take effect except with the approval of the Tribunal which shall make such order as it may deem fit.

(2) Every alteration of the articles under this section and a copy of the order of the Tribunal 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."

170. As per Section 14 of the Companies Act, 2013, if any Company decides to alter its articles having the effect of conversion of a 'Private Company' into a 'Public Company' or a 'Public Company' into a 'Private Company'; it is required to pass a special resolution and as per sub-section (2) of Section 14, it requires approval by the Tribunal. Only after order of approval by the Tribunal, the Company can request the Registrar together with a printed copy of the altered articles, to register the Company as 'Private Company' or 'Public Company' as the case may be.

171. 'Private Company' is defined under Section 2(68) of the Companies Act, 2013, as follows:

> ***"2. Definitions.—*** *.....(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 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"

172. On the other hand, 'Public Company' is defined under Section 2(71) of the Companies Act, 2013, as follows:

*"**2. Definition.—**.....(71) "public company" means a company which—*

(a) is not a private company;

(b) has a minimum paid-up share capital of five lakh rupees or such higher paid-up capital, as may be prescribed:

Provided that a company which is subsidiary of a company, not being a private company, shall be deemed to be public company for the purposes of this Act even where such subsidiary company continues to be a private company in its articles"

173. Like Section 43A (1A) of the Companies (Amendment) Act, 2000, there is no provision under the Companies Act, 2013 for automatic

conversion of 'Public Company' to 'Private Company' or a 'Private Company' to 'Public Company'. Therefore, on the basis of definition of 'Private Company' as defined under Section 2(68) of the Companies Act, 2013, there cannot be automatic conversion of a 'Public Company' to 'Private Company'. Similarly, on the basis of definition of 'Public Company' as defined under Section 2(71) of the Companies Act, 2013, there cannot be automatic conversion of Private Company' to 'Public Company'.

174. For alteration of articles including alteration of the Company from a 'Private Company' to a 'Public Company' or 'Public Company' to 'Private Company', steps are contemplated to be taken under Section 14 of the Companies Act, 2013.

175. The Company ('Tata Sons Limited') having become 'Public Company' since long, for altering its Articles as a 'Public Company' into a 'Private Company', it is required to follow Section 14(1) (b) r/w Section 14 (2) (3) of the Companies Act, 2013.

176. Learned counsel for the contesting Respondents relied on General Circular No. 15/2013 dated 13th September, 2013 and Notification dated 12th September, 2013 issued by the Central Government to submit that a Company comes within the meaning of 'Private Company' under Section 2(68) and can take direct permission from the Registrar

of Companies to change the Articles of Association and to record it as 'Private Company'.

177. However, aforesaid General Circular No. 15/2013 dated 13th September, 2013 and Notification dated 12th September, 2013 cannot override the substantive provisions of Section 14 of the Companies Act, 2013 which is mandatory for conversion of a 'Public Company' to a 'Private Company'.

178. Curiously, the 'Tata Sons Limited' remained silent for more than 13 years and never took any step for conversion in terms of Section 43A (4) of the Companies Act, 1956. Even after enactment of the Companies Act, 2013 which came into force since 1st April, 2014, for more than three years, it had not taken any step under Section 14. Till date, no application has been filed before the Tribunal under Section 14(2) of the Companies Act, 2013 for its conversion from 'Public Company' to 'Private Company'.

In absence of any such approval by the Tribunal under Section 14, we hold that 'Tata Sons Limited' cannot be treated or converted as a 'Private Company' on the basis of definition under Section 2(68) of the Companies Act, 2013.

179. At the stage of hearing of the appeals, it was brought to our notice that the Registrar of Companies in the Certificate has struck down the word 'Public' and shown 'Tata Sons Limited' as 'Private' Company even

in absence of any order passed by the Tribunal under Section 14 of the Companies Act, 2013.

180. The aforesaid fact show that even after the removal of Mr. Cyrus Pallonji Mistry (11th Respondent) on 24th October, 2016 from the post of Executive Chairman of the Company ('Tata Sons Limited') and the post of Directors of 'Tata Companies', during the pendency of the cases, in a hurried manner, the Company ('Tata Sons Ltd.') and its Board moved before the Registrar of Companies for conversion of Company from 'Public Company' to 'Private Company' to give it colour of 'deemed conversion' which is against the law and unsustainable.

181. The aforesaid action on the part of the Company, its Board of Directors to take action to hurriedly change the Company ('Tata Sons Limited') from 'Public Company' to a 'Private Company' without following the procedure under law (Section 14), with the help of the Registrar of Companies just before filing of the appeal, suggests that the nominated members of 'Tata Trusts' who have affirmative voting right over the majority decision of the Board of Directors and other Directors/ members, acted in a manner 'prejudicial' to the members, including minority members ('Shapoorji Pallonji Group') and others as also 'prejudicial' to the Company ('Tata Sons Limited').

182. In this background, the Appellants have raised no confidence on the majority shareholders particularly the 'Tata Trusts' which have

nominated Directors having affirmative right over the majority decision of the Board and have raised doubt on the Respondents that they may now act in a manner 'prejudicial' and 'oppressive' against the minority shareholders by exercising powers conferred under Article 75 and without any notice or reason, may take over their shares.

183. The facts, as noticed above, including the affirmative voting power of the nominated Directors of the 'Tata Trusts' over majority decision of the Board; actions taken by Mr. Ratan N. Tata (2nd Respondent), Mr. Nitin Nohria (7th Respondent) and Mr. N.A.Soonawala (14th Respondent) and others as discussed above; the fact that the Company ('Tata Sons Limited') has suffered loss because of 'prejudicial' decisions taken by Board of Directors; the fact that a number of 'Tata Companies' have incurred loss; in spite of decision making power vested with the Board of Directors with affirmative power of nominated Directors of the 'Tata Trusts'; the action in making change from 'Public Company' to 'Private Company'; the manner in which Mr. Cyrus Pallonji Mistry (11th Respondent) was suddenly and hastily removed without any reason and in absence of any discussion in the meeting shown in the Board of Directors held on 24th October, 2016 and his subsequent removal as Director(s) of different 'Tata Companies', coupled with global effect of such removal, as accepted by the Company in its 'Press Statement' form a consecutive chain of events with cumulative effect justifying us to hold that the Appellants have made out a clear case of 'prejudicial' and

'oppressive' action by contesting Respondents, including Mr. Ratan N. Tata (2nd Respondent), Mr. Nitin Nohria (7th Respondent) and Mr. N.A.Soonawala (14th Respondent) and other, the nominee Directors.

We further hold that the company's affairs have been or are being conducted in a manner 'prejudicial' and 'oppressive' to members including Appellants, Mr. Cyrus Pallonji Mistry (11th Respondent) as also 'prejudicial' to the interests of the company and its group companies i.e. 'Tata Companies' and winding up of the company would unfairly prejudice the members, but otherwise the facts, as narrated above, would justify a winding-up order on the ground that it was just and equitable that the company should be wound up and thereby, it is a fit case to pass order under Section 242 of the Companies Act, 2013.

184. In the facts and circumstances of the case, we declare the Resolution dated 24th October, 2016 passed by the Board of Directors of Company removing Mr. Cyrus Pallonji Mistry (11th Respondent) as the Executive Chairman of the Company ('Tata Sons') illegal; all consequential decisions taken by 'Tata Companies' for removal of Mr. Cyrus Pallonji Mistry (11th Respondent) as Directors of such companies are also declared illegal.

185. We are of the view that for better protection of interest of all stakeholders as also safeguarding the interest of minority group, in future at the time of appointment of the Executive Chairman,

Independent Director and Directors, the 'Tata Group' which is the majority group should consult the minority group i.e., 'Shapoorji Pallonji Group' and any person on whom both the groups have trust, be appointed as Executive Chairman or Director as the case may be which will be in the interest of the Company and create healthy atmosphere removing the mistrust between the two groups, already developed and has caused global effect as admitted in the 'Press Statement' of the Company.

186. As regards the conversion of the company from 'Public Company' to 'Private Company', as action taken by the Registrar of Companies is against the provisions of Section 14 of the Companies Act, 2013 and 'prejudicial' and 'oppressive' to the minority members and depositors etc., conversion of the 'Tata Sons Limited' from 'Public Company' to 'Private Company' by Registrar of Companies, is declared illegal.

187. In view of the findings aforesaid, we pass the following orders and directions:

(i) The proceedings of the sixth meeting of the Board of Directors of 'Tata Sons Limited' held on Monday, 24th October, 2016 so far as it relates to removal and other actions taken against Mr. Cyrus Pallonji Mistry (11th Respondent) is declared illegal and is set aside. In the result, Mr. Cyrus Pallonji Mistry (11th Respondent) is

restored to his original position as Executive Chairman of 'Tata Sons Limited' and consequently as Director of the 'Tata Companies' for rest of the tenure.

As a sequel thereto, the person who has been appointed as 'Executive Chairman' in place of Mr. Cyrus Pallonji Mistry (11th Respondent), his consequential appointment is declared illegal.

(ii) Mr. Ratan N. Tata (2nd Respondent) and the nominee of the 'Tata Trusts' shall desist from taking any decision in advance which requires majority decision of the Board of Directors or in the Annual General Meeting.

(iii) In view of 'prejudicial' and 'oppressive' decision taken during last few years, the Company, its Board of Directors and shareholders which has not exercised its power under Article 75 since inception, will not exercise its power under Article 75 against Appellants and other minority member. 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 right will be affected.

(iv) The decision of the Registrar of Companies changing the Company ('Tata Sons Limited') from 'Public Company' to 'Private Company' is declared illegal and set aside. The Company ('Tata Sons Limited') shall be recorded as 'Public Company'. The 'Registrar of Companies' will make correction in its record showing the Company ('Tata Sons Limited') as 'Public Company'.

188. At this stage, it is apt to notice some observations in the Judgment dated 9th July, 2018 passed by the Tribunal are inappropriate and avoidable.

189. The Tribunal in its opening paragraphs was not required to highlight the products of 'Tata Sons Limited' nor was required to appreciate its activities before deciding the case on merit. Sometimes, such observations or appreciation in favour of one or other party creates a wrong impression in the mind of the other party. The Tribunal is required to appreciate the merits and demerits of the case and should desist from highlighting the merits of a product or virtues of a party or appreciating any action taken by a party to a case.

190. We find certain observations made by the Tribunal against Mr. Cyrus Pallonji Mistry and other Appellants are undesirable and based on extraneously sourced material not on record. It casts impact on the reputation of the Appellants and Mr. Cyrus Pallonji Mistry which may

affect them in pending proceedings, if any, and their business. These remarks are not only disparaging but also wholly unsubstantiated by any document on record. An illustrative list of such remarks which the Appellant sought to expunge, is as under:

S. No.	**Disparaging Remarks Against the Appellant**	**Paragraph of the Impugned order**
1.	It appears that the petitioners and Mr. Cyrus, **because of the heart burn they had for Cyrus being removed as Executive Chairman of the company, they tried to steamroller all these business decisions upon Mr. Tata as mismanagement** of the affairs causing prejudice to the company, **so as to bully the answering Respondents** by using Section 241 as a device.	**Para 237**
2.	As against this story present on record, could it be conceivable to say that AirAsia decision is fait accompli upon him; all investment to AirAsia has been done by the company in his tenure without being known to Mr. Cyrus. **It is fundamental in law that the person privy to a transaction estopped from denying it, but unfortunately today the petitioners and Mr. Cyrus have made all kinds of allegations with impunity flouting all legal principles. They stated as if they did not take active part in AirAsia incorporation, as if Mr. Cyrus did not preside over meeting on 15.09.2016 in further funding it, they went ahead to make a scurrilous statement, without a shred of paper, that Mr. Tata funded one Terrorist through hawala with diversion of AirAsia India funds.**	**Para 245**
3.	These Petitioner as well as Mr. Cyrus have come out with unfounded allegations against Mr. Tata so as to settle their score for Mr. Cyrus was removed as Executive Chairman of the Company	**Para 304**
4.	Whose action in this episode is prejudicial? Is it Mr. Cyrus's action or the action of Mr. Tata saying to go ahead with the resolution is prejudicial? For the petitioners have filed this Company Petition, we have not gone any further over this issue leaving it to the wisdom of	**386**

	the petitioners to realize that the action of Mr. Cyrus is prejudicial to the interest of the company or Mr. Tata.	
5.	***Is it that Mr. Cyrus will remain whole and sole and call the shots in the company by virtue of he being appointed by the majority as Executive chairman,*** and keep Mr. Tata representing majority and the trust nominee directors remain as credit cards in his wallet to use them whenever board meetings and shareholder meetings take place?	**Para 396**
6.	His removal, who is taken as employee will not make any difference to the shareholders or the company. Therefore, unless an action is vitiated by fraud, it will not become a fraud or unfairness. This clause of prejudice will be only in respect to either the economic interest of the Petitioners or the economic interest of the company. **Here, personal emotions or personal egos will not have any place to attribute it as a grievance under Section 241**	**Para 457**
7.	If you see the correspondence and transactions happened under the stewardship of Mr. Cyrus it is evident on record that **Mr. Cyrus created a situation that since he being the executive chairman, he is not accountable either to majority shareholders or to the trusts nominee directors**.....Any executive chairman, for that matter, to all big companies will act, as a face of the company, but that does not mean he is whole and sole and the majority will remain at the beck and call of him.	**Para 542**
8.	The best example to prove that ***Mr. Cyrus tried to convey his way is highway is Welspun issue, where Mr. Cyrus on behalf of Tata Power entered into acquisition of an asset costing around Rs. 9,000 crores even before Tata Sons passing a resolution as mentioned under Article 121A of AoA, which is nothing but bypassing the approval that was to be taken from the board of Tata Sons before entering into any understanding with other parties, the reason behind it is, Tata Sons is an investment company, ultimately money has to go from Tata Sons, that means, acquisition in Tata Power is intrinsically connected to the economic interest of Tata Sons....***	**Para 543**
9.	The problem is Mr. Cyrus was taken as Executive Chairman to preside over the Board of Directors, ***he could not become a sovereign authority*** *over this*	**Para 561**

	company…	
10.	***For Mr. Cyrus started his journey as an Executive Chairman under the impression that he was given free hand or would be given free hand to run the affairs of the company, perhaps caused all these problems because he was obsessed with an idea that he alone would lead the company and others to remain assisting him in running the company.*** *Perhaps since he saw Mr. Tata working as Executive Chairman,* ***he might gone into the mind that he would exercise the powers as Mr. Tata*** *exercised forgetting the fact that Mr. Tata at that point of time had two hats…*	**Para 564**
11.	There is no befitting reply to any of these allegations except saying that they gave information to DCIT so that Mr. Cyrus would not be penalized for non-compliance of filings with Income Tax authorities for he was continuing as one of the directors of the company. As to leakage of his confidential letter dated 25.10.2015 sent by email, **the reply is so irrational that he could not explain away leaking email correspondence to outsiders except the person who has been using such email id.**	**Para 576**

191. For the reasons aforesaid, the impugned Judgment dated 9th July, 2018 passed by the National Company Law Tribunal, Mumbai, is set aside. Remarks made against the Appellants, Mr. Cyrus Pallonji Mistry and others stand expunged. Both the appeals are allowed with aforesaid observations and directions. No costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

NEW DELHI
18th December, 2019
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18.12.2019:

N.B. After the Judgment was pronounced, Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the 1st Respondent Company prays for the suspension of the part of the judgment by which it has been ordered to replace the Executive Chairman and to reinstate Mr. Cyrus Pallonji Mistry as Executive Chairman and Director of the 'Tata Sons Limited'.

With a view to ensure smooth functioning of the Company, while we are not inclined to suspend the Judgment pronounced today in its totality, but suspend the part of the Judgment so far as it relates to replacement of the present 'Executive Chairman' and reinstatement of Mr. Cyrus Pallonji Mistry as 'Executive Chairman' of 'Tata Sons Limited' for a period of four weeks. Rest of the Judgment and Directions including the direction to reinstate Mr. Cyrus Pallonji Mistry as Director of the Company and Directors of three Tata Companies shall be complied forthwith.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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