

The SPG holds 18.4% shares of Tata Sons which is higher than the 10% threshold. But its holding plummets to a mere 2.17% once preference shares are also included in computation. Preference shares by nature are entitled to special privileges in regard to dividend payment vis-à-vis equity shares but they carry much lower voting rights or no rights at all. Hence, their inclusion for the purpose of arriving at the voting power of a particular group is anomalous.

The NCLT has the power to waive the minimum shareholding requirement to determine whether the petition is maintainable. The Tribunal can exercise this discretion if it is convinced that the issue raised by the petitioner concerns wider public interest and has ramifications for minority shareholders. Yet, it decided against the maintainability of the petition.

It has averred that the actions of Tata Sons have not affected minority

shareholders and the public at large. Two crucial aspects need to be tested. First, whether there exists a link between the two. Second, whether the former took such decisions/actions as would adversely impact the latter.

Tata Sons is a closely held entity controlled by family-owned trusts which alone hold 66% of the shares. But it exercises control over dozens of companies, viz, Tata Motors, Tata Steel, Tata Consultancy (TCS), Tata Power, India Hotels and Tata Chemicals, to name a few. In TCS, Tata Sons has 73% ownership whereas in others, its shareholding ranges between 22% and 31% (acting in concert with institutional investors, it carries through all its proposals).

Almost all companies of the Tata Group are listed and millions of their shareholders and investors have a vital interest in their robust health and growth. The financial institutions and banks – being a repository of public

money – too have a major stake in view of the huge loans given to these companies. Further, the fate of hundreds of thousands of employees is inextricably connected with their smooth running.

PRETTY STRONG LINKAGE

So, the linkage of Tata Sons with shareholders (albeit minority) is pretty strong. As regards the nature of decisions and the manner of functioning of the Tata Sons Board and via it, the management of group companies, the events and developments narrated by the SPG leave no one in doubt that the interests of minority shareholders and the general public have been seriously compromised.

The functioning of a body corporate revolves around its Chairman. He has the responsibility of shepherding all group companies towards their stated goals. Cyrus Mistry (son of Shapoorji Pallonji) was on the Board of Tata Sons for several years till 2012 when he was

Minority shareholders 'short-changed' at Bombay House

The National Company Law Tribunal (NCLT) has turned down a request from Shapoorji Pallonji Group (SPG) vide its investment outfits, viz, Sterling Investment Corporation and Cyrus Investments, to initiate action against Tata Sons for the “oppression of minority interest and mismanagement”. It was done on the ground that the petitioner does not have the required minimum shareholding of 10%.

◆ By Uttam Gupta

A file picture of RATAN TATA with CYRUS MISTRY ◀



elevated to the position of Chairman with the full support of Tata Trusts. He continued at the helm for four years and his performance was commended by Independent Directors on the Board of group companies.

If this very person is removed in an unceremonious manner violating all norms of corporate governance, this by itself speaks volumes about the “mismanagement” and “irregularities”. Mistry was removed by moving a resolution under “any other item” on the agenda for the Tata Sons Board meeting (October 2016). Observers say this shows that the lack of transparency in decision-making had reached its nadir. What makes it even more appalling is that Mistry was not even given an opportunity to defend himself violating principles of natural justice!

A close scrutiny reveals that there was a premeditated plan to keep Mistry “lame duck” from the day one. All along, during almost one-and-a-half

century of the Tata empire, a person appointed as Chairman of Tata Sons “automatically” became Chairman of Tata Trusts also. But in this case Ratan Tata (RT) continued to be in command of the latter even after Mistry was made head of the former. Clearly, the intent was to run the conglomerate via remote control.

‘LAME DUCK’ CHAIRMAN

The “lame duck” Chairman, according to sources, was thus presented with a fait accompli on projects like AirAsia and Vistara Airlines, not being allowed to get out of the ‘Nano’ project despite persisting losses, the purchase of real estate property at inflated price (eg. Sea Rock Hotel, Mumbai), an unsuccessful foray into telecommunication (mishandling of issues with foreign partner NTT-DoCoMo) and a mess-up in the power sector.

At another level, Cyrus’s review of past decisions (taken under the RT

dispensation) such as a buy-out of the Corus Group (2007) and his attempts to reduce the unsustainable high level of debt were viewed as tantamount to working out of sync with the “ethos” and “culture” of the group or losing the trust of owners.

It is ironical that Mistry’s efforts to correct the wrong were allegedly stymied by Team RT leveraging its overwhelming control over Tata Sons (via Tata-owned family trusts). In fact, he was removed from the chairmanship for this very reason.

Observers say if justice is not delivered in this high-profile case, this will set a bad precedent. The owners/promoters will then continue to muzzle good/democratic corporate governance to the detriment of millions of shareholders and the public at large. ■

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