

Back In Business
The Mistry family owns 18.4% stake in Tata Sons, the holding company of the group



October 2016: Cyrus Mistry ousted as Tata Sons chairman. Ratan Tata named as interim chairman
December 2016: Two Mistry family-backed firms move NCLT Mumbai, challenge Mr. Mistry's removal
January 2017: Tata Sons names

N. Chandrasekaran as chairman
February 2017: Mr. Mistry removed as director on board of Tata Sons
March 2017: NCLT Mumbai sets aside plea of the investment firms
April 2017: The investment firms move NCLAT, challenging NCLT order



September 2017: NCLAT allows pleas by the two investment firms, seeking waiver in filing a case of oppression and mismanagement against Tata Sons, directs Mumbai-bench of the NCLT to proceed in the matter.
July 2018: NCLT Mumbai dismisses pleas of Mr. Mistry,

challenging his removal as Tata Sons chairman
August 2018: The two investment firms approach the NCLAT against NCLT order
May 2019: NCLAT reserves order
December 2019: NCLAT restores Mr. Mistry as executive chairman of Tata Sons



Tatas may move SC against NCLAT order

Order appears to even go beyond the specific reliefs sought by the appellant, says Tata Sons general counsel

PIYUSH PANDEY
MUMBAI

The Tata Group is likely to move the Supreme Court against National Company Law Appellate Tribunal (NCLAT's) order to restore Cyrus Mistry as the executive chairman of Tata Sons Ltd. and director on the board of other Tata companies for the rest of the tenure.

The group is studying the order to decide on the future course of action.

"It is not clear as to how the NCLAT order seeks to overrule the decisions taken by shareholders of Tata Sons and listed Tata companies at validly constituted shareholder meetings.

"The order appears to even go beyond the specific

reliefs sought by the appellant. Tata Sons strongly believes in the strength of its case and will take appropriate legal recourse," said Shuva Mandal, group general counsel, Tata Sons.

The NCLAT said the sixth meeting of the board of directors of Tata Sons held on October 24, 2016, so far as it relates to removal and other actions taken against Mr. Mistry, is declared illegal and is set aside.

"Today's judgment is not a personal victory for me, but is a victory for the principles of good governance and minority shareholder rights. For over 50 years, the Mistry family, as the significant minority shareholder of Tata Sons, has always endeavoured



In happier times: Today's judgment is a victory for minority shareholder rights, Mr. Cyrus Mistry said.

to play the role of a responsible guardian of an institution that the entire nation is proud of," said Mr. Mistry in statement.

The NCLAT, at the request on Tata Sons counsel Abhish-ek Manu Singhvi, has sus-

pending a part of the judgment relating to replacement of the present executive chairman N. Chandrasekaran and reinstatement of Mr. Mistry as executive chairman of Tata Sons for a period of four weeks, meaning Tata

Group can approach the Supreme Court to appeal against the NCLAT order.

However, the other directions, including the one ordering reinstatement of Mr. Mistry as director of Tata Sons and of three Tata companies shall be complied forthwith.

"The outcome of the appeal is a vindication of my stand taken when the then board of Tata Sons, without warning or reason removed me, first as the executive chairman, and subsequently as a director of Tata Sons," said Mr. Mistry.

Stand vindicated

"[The] Tatas now need to offer seat to Mr. Mistry on the board of Tata Sons and other companies of Tata Group. Our stand is vindicated by the NCLAT order," Somasekhar Sundaresan, counsel for Mr. Mistry told The Hindu.

"Tata Sons assures its stakeholders that it [always] acted in accordance with the law and will continue to do so," Mr. Mandal added.

According to Mr. Mistry, for the Tata Group to prosper as an institution, it is important that the management of individual companies, their boards, the management of Tata Sons, the board of Tata Sons and the shareholders of Tata Sons, all work harmoniously within a robust governance framework, that in substance and form, protects the rights of all stakeholders, including shareholders, investors and the Tata Group employees who represent the strongest asset of the group.

"I believe it is now time that all of us work together for sustainable growth and development of the Tata Group, an institution that we all cherish," said Mr. Mistry.

Big win for Mistry, uncertain times ahead for Tata Group

Time for saner counsel on both sides, but prospects appear bleak going by Tatas' reaction to the judgment

RAGHUVIR SRINIVASAN

The National Company Law Appellate Tribunal's (NCLAT) decision in the Mistry vs Tata Sons case is a big victory for Cyrus Mistry.

His plaint about being oppressed has been upheld; the proceedings of the board meeting on October 24, 2016 in so far as it relates to his removal as Executive Chairman of Tata Sons has been held as illegal; he has been restored to his original position as Executive Chairman; the conversion of Tata Sons from a public limited company to a private limited company has been held to be illegal and set aside and most

importantly, Tata Sons now cannot invoke a contentious article in its Articles of Association that would have enabled the majority shareholders to force the minority shareholders to sell their shares.

The icing on Mr. Mistry's cake is that Justice S. J. Mukhopadhyaya, Chairperson of the NCLAT, who delivered the judgement, has ticked off the earlier judgment by the National Company Law Tribunal in the case which has personal observations on Mr. Mistry, unrelated to the case.

The comments will now be expunged from the earlier judgment. NCLAT's decision is, however, bad news for the

Tata group which finds itself plunged into uncertainty that may extend over several months, unless if saner counsel prevails on both sides.

But that saner counsel appears a far cry now going by the first response of the Tatas saying that it will take

NEWS ANALYSIS

"appropriate legal recourse" which means that this case will now head to the Supreme Court.

That will prolong the uncertainty and shackle the top management of Tata Sons and all the group companies from taking major decisions.

The appointment of N. Chandrasekaran as Executive Chairman has been held as illegal which raises the question of what happens to the decisions that he has taken since his appointment?

And what frame of mind will Mr. Chandrasekaran be in going forward when he has to decide on major proposals for the group? If Tata Sons is shrouded in uncertainty what will be the signal for the group companies?

How will investors, especially foreign ones, react to this? There was a sharp markdown in some Tata group shares soon after the NCLAT judgment became public but that could be an

initial, kneejerk reaction.

The main part of the judgment - restoration of Mr. Mistry as Executive Chairman - has been stayed for four weeks but the direction to appoint him a director in Tata Sons and three other group companies - Tata Industries, Tata Consultancy Services and Tata Teleservices- will have to be complied with immediately.

So, will Mr. Mistry return as a director in these companies?

It appears unlikely as Mr. Mistry has always held that this is a fight for principles and governance and not for his position. But these things can never be said with cer-

tainty. The best course of action now would be for the two parties to settle their differences out of court and move on. Mr. Mistry has got what he wanted.

The Tatas may have lost but they should now look forward rather than backward. Prolonged uncertainty will affect the functioning of their companies.

Remember, the Tatas, as majority owners of the group, owe a fiduciary responsibility to the other shareholders, many of them common investors in their listed companies.

This should be kept in mind as they discuss the next course of action.

Chandrasekaran writes to Tata Sons employees

Tells them to stay focused on business

LALATENDU MISHRA
MUMBAI

Tata Sons chairman N. Chandrasekaran, in a letter to employees, said that though the NCLAT ruling which, apart from other things, had raised issues on his appointment as executive chairman of Tata Sons, the company firmly believed in the strength of its case and will pursue the appropriate legal recourse.

He said he was asked to take up the role and responsibilities of executive chairman in February 2017 and since then, his efforts have been primarily focused on restoring stability and moving decisively towards a healthier financial position and conducting the busi-

nesses with the highest ethical standards, which the group has been known for, for over 150 years.

Also, "honouring our commitments to all stakeholders and resolving outstanding issues; driving growth and transforming our businesses for the future." "Going forward, I assure you that we have set ourselves on a course that will make the Tata Group stronger and more vibrant than it has ever been before," he said. "I urge all employees to stay focused on their businesses and the welfare of our stakeholders.

"We will continue to work towards deepening the legacy of this unique institution," he said.

A setback for Tata Group

Experts say he can still be removed by shareholders

LALATENDU MISHRA
MUMBAI

The NCLAT order restoring Cyrus Mistry as Tata Sons' chairman is a major setback for the Tata Group and its former chairman Ratan Tata unless the Supreme Court reverses this judgment, according to legal and company law experts.

They also said though Mr. Mistry had been reinstated, he can still be removed by the shareholders by following the due process of law.

Hurried process

"It is surprising that the NCLT's order has been completely turned around by the NCLAT. We have been saying from the very beginning that though the Tata Sons' board had all the rights to remove Mr. Mistry, the process to re-

move him was hurried and not proper," said J.N. Gupta, co-founder and MD, Stakeholders Empowerment Services, a proxy advisory firm.

"The manner in which he was removed could be debatable but shareholders have every right to remove an executive chairman, there should not be any confusion on this. So, even if Mr. Mistry is reinstated, it will be a short-lived one because, he can still be removed by shareholders by following the due process of law," said Mr. Gupta, a former SEBI ED.

He said one had to read the full judgment to comment properly.

Vaibhav Bhure, advocate, Bombay High Court, said, "[The] NCLAT order has certainly brought huge respite to Mr. Mistry.

"Under the Companies Act, majority has power to remove any director in accordance with the articles of association. The board is under no statutory obligation to provide any reason for the removal," said Mr. Bhure.

"Thus, the NCLAT decision to declare removal of Mr. Mistry as illegal and consequently restoring him to the position of executive chairman of Tata Sons Ltd. has to clear the litmus test before the apex court. In all likelihood, the said direction will be stayed by the apex court pending the appeal. Equally, the other direction to reinstate Mr. Mistry as director of the three Tata companies forthwith would be unsustainable as he himself resigned from other group companies," he added.

FADA moves SC on sale, registry of BS-IV vehicles

Seeks modification of deadline order

SPECIAL CORRESPONDENT
NEW DELHI

The Federation of Automobile Dealers Associations (FADA), on Wednesday, said it had approached the Supreme Court for sale and registry of unsold BS-IV vehicles beyond the current deadline of April 1, 2020.

In a statement, FADA said that on behalf of its members, it has filed an Impleadment Application in the Supreme Court along with an application seeking modification in the apex court's order October 24, 2018, order directing that "...no motor vehicle conforming to emission standard Bharat Stage -IV shall be sold or registered in the entire country with effect from

01.04.2020."

FADA president Ashish Harsharaj Kale said that with the current timeline of all India BS-VI fuel availability of April 1, 2020, most manufacturers would shift to 100% BS-VI vehicle production only by end February, 2020 or first week of March, 2020.

"Looking at this timeline of BS-VI production and the current fluctuating demand situation, despite putting in the best of efforts, there is a possibility that many of our members are not able to ensure 100% liquidation of BS-IV inventory purchased by them in the course of business before the deadline of April 1, 2020," Mr. Kale added.

'Bank mergers may pose cybersecurity risks'

CBS versions in use are different; security solutions, controls divergent: RBI ex-ED

SPECIAL CORRESPONDENT
HYDERABAD

Former executive director of Reserve Bank of India (RBI) G. Padmanabhan on Wednesday cautioned that public sector bank mergers were likely to pose security challenges as divergent security solutions and controls get amalgamated.

Technology integration is the toughest, the senior banker, who is non-executive chairman of the Bank of India, said, speaking on cybersecurity challenges in the financial sector, at the Institute for Development and Research in Banking Technology (IDRBT) here .



G. Padmanabhan

Though banks chosen for merger had the same Core Banking Solution (CBS), the versions they used were different.

"Customisation is varied. Security solutions and controls are divergent. To bring

together all such systems over 2-3 years retaining and rebuilding adequate security solutions and processes is a tough task," he said.

Pointing out the process of merger was complex, he said the banks ought to be conscious of the security challenges. "Banks have started discussions... but they should focus on security as much as on functionalities or user interfaces," he said, adding skill set availability on security will be a greater challenge.

Mr. Padmanabhan, who was inaugurating the 15th international conference on Information Systems Security

(ICISS) 2019 at IDRBT, also sought to flag linkages with third-party partners.

"There is a lot of dependency on service providers. There is a significant cybersecurity risk in that a lot of data is going back and forth and held by third parties," he said, asking "will a merger of different versions of CBS enhance the challenge?"

Another challenge would be merging of SOC operations of the banks.

Different banks may have different set of controls and until these are fully merged the weakest link threat needs to be carefully monitored and controlled, he said.

MARKET WATCH

Table with 3 columns: Index, 18-12-2019, % CHANGE. Rows: Sensex, US Dollar, Gold, Brent oil.

NIFTY 50

Table with 3 columns: Index, PRICE, CHANGE. Rows: Adani Ports, Asian Paints, Axis Bank, Bajaj Auto, Bajaj Finserv, Bajaj Finance, Bharti Airtel, BPCIL, Britannia Ind, Cipla, Coal India, Dr Reddys Lab, Eichler Motors, GAIL (India), Grasim Ind, HCL Tech, HDFC, HDFC Bank, Hero MotoCorp, Hindalco, Hind Unilever, ICICI Bank, IndusInd Bank, Bharti Infratel, Infosys, Indian OilCorp, ITC, JSW Steel, Kotak Bank, L&T, M&M, Maruti Suzuki, Nestle India Ltd., NTPC, ONGC, PowerGrid Corp, Reliance Ind, State Bank, Sun Pharma, Tata Motors, Tata Steel, Tech Mahindra, Titan, UltraTech Cement, UPL, Vedanta, Wipro, YES Bank, Zee Entertainment.

EXCHANGE RATES

Table with 3 columns: CURRENCY, TT BUY, TT SELL. Rows: US Dollar, Euro, British Pound, Japanese Yen, Chinese Yuan, Swiss Franc, Singapore Dollar, Canadian Dollar, Malaysian Ringgit.

BULLION RATES CHENNAI

Table with 3 columns: Item, Price, % Change. Rows: Retail Silver, 22 ct gold.