Inspira- Journal of Modern Management & Entrepreneurship (JMME)
ISSN : 2231–167X, General Impact Factor : 2.7282, Volume 09, No. 01, January, 2019, pp. 19-24

CORPORATE GOVERNANCE: DISPUTE BETWEEN TATA AND MISTRY

Vaishnavi Patel*

ABSTRACT

Ratan Tata, the erstwhile majority shareholder and the Former Chairman of 'Tata Group', a subsidiary of holding company 'Tata Sons Ltd.' gave his legacy to be headed by Cyrus Mistry who is the managing director of Shapoorji Pallonji & Company, which is part of the Shapoorji Pallonji Group, holding 18.37% share in Tata sons. A reign of 21 years in the office as Chairman was given to "Cyrus Mistry" with a belief that he will take the company to new heights. Handpicked by Ratan Tata himself, Cyrus Mistry was privileged enough because many are not. The man who was accredited by the Economist as the most important industrialist in both" India & Britain" found himself ousted from the prestigious Tata group in a span of 4 years and it was not a happy farewell after all. The tussle between these major Indian corporate power houses strikes at the very center of Corporate Governance principles. Corporate Governance stipulates parameters of responsibility, control and announcing capacity of the Board of Directors (BOD) of partnerships. Keeping in view the principles stated above, the research will focus on two important questions of the mysterious dispute between Tata Camp and the Mistry camp, which are in direct conflict with principles of corporate governance.

- *Independent Directors: A case to rethink the role of Independent Directors in Governance of a Company.*
- *Oppression and Mismanagement.*

KEYWORDS: *Corporate Governance, Independent Directors, Oppression, Mismanagement.*

Introduction

Clash of Tycoons: The Fight between Mr. Ratan Tata and Mr. Cyrus Mistry

"Kingship knows no kinship"- means that justice must prevail irrespective of who the victim is. Divergent interpretations of this phrase used by Alauddin Khilji, the first Turkish Sultan of Delhi, is perhaps the key to understanding the duel between two of India's leading business personalities, Ratan Tata and Cyrus Mistry. The word 'Kingship' alludes to the two connections and a feeling of arrangement in comprehension. Researchers have deciphered Khilji's words to suggest that a ruler ought to be reasonable, just, non-divided and impartial in his basic leadership. The principle heroes of the performers i.e. Ratan Tata and Cyrus Mistry, in the corporate fight unfurling at the $103-billion Tata Group seem to have drawn their own particular derivations of the thirteenth century ruler's words to legitimize their individual actions. The rule legends of the performers i.e. Ratan Tata and Cyrus Mistry, in the corporate battle spreading out at the $103-billion Tata Group appear to have drawn their own specific determinations of the thirteenth century ruler's words to legitimize their individual actions. The TATA trademark that is taken into account is not only one of the foremost in mark ever however additionally reputation that boasts of keeping moral standards of business practices on an awfully high pedestrian. The company governance report of Tata Motors speak extremely of identical, "As a Tata Company, the Company's philosophy on company Governance is supported upon an upscale heritage of honest , moral and clear governance practices several of that were in existence even before they were mandated by adopting the highest standards of expertness, honesty, integrity and moral behavior." but the irony of the reality is that the same brand has found itself within the pit hole of one of the ugliest company fights in

* Student, Gujarat National Law University, Gujarat, India.

India. The removal of Cyrus Mistry by the board took everyone by surprise, including those who were following the Tata's closely. However when the news of removal broke, no official reason for such sudden removal was given but later on, in the letter sent to the stakeholders before EGM, the Tata group did try to elaborate upon such sudden axing of Mistry from the post of Chairman.

Content of Tata group letter to stakeholders clarified story of their side. They fought that the determination council constituted in 2011 was misled by Cyrus Mistry as during the season of selection for Chairman of the gathering Mr. Mistry influenced numerous guarantees and came to up with new administration structure and plan whose usage in the four year tenure was a disappointment. Issue of Corporate Governance was likewise raised by Tata. Before entering in the workplace as Executive Vice-Chairman, Mistry was educated to detach himself from his family endeavors Shapoorji Pallonji and Company and the other Shapoorji Pallonji Group substances. Mr. Mistry has agreed yet later withdrawn his situation in the company. This was proposed on the grounds of good corporate administration yet withdrawal scrutinized the very center of governance. Tata sons faced a financial downfall under the tenure of Mr. Mistry but he showed no concern and instead increased the dependence on TCS. It was highly unacceptable by the Tata group as it was the great risk to the financial viability of Tata Sons. Mr. Mistry took in his own hands all powers and authority as Chairman in all the major Tata operating companies and diluted the Tata Sons representation which is against the past practices as Tata Sons is the main promoter and largest shareholding group. With the post of Chairman of Tata Sons, Mr. Mistry was appointed as the Chairman of various other Tata Companies too. Therefore, when he was removed from the office of Tata Sons it was demanded that he step down from other posts too instead he resort to media leaks which damaged the company's reputation. This is highly unethical for a person being on the chair of head position.

Mr. Mistry joined as director with a motto to transform the bad legacy into great one. He had four years to bring the change yet he comfortably ignored the great heritages. It was the Tata's strategy to handle troublesome circumstances and for investors he faulted everything for the past management. In view of such situation Tata assemble presumes that Mr. Mistry has neglected to live up the genuine feeling of Tata philosophy. Tata group are known for their cooperating and generosity strategy. There is no individual intrigue required as the profits are paid to Tata Sons and in this way to its own investors. Tata companies have independently developed and succeeded yet have likewise been profited by Tata Group which make the TATA a brand broadly and universally. In this manner, Tata companies don't exist in vacuum thus they can't be leave at the stake of Mr. Mistry as the Chairman. His duration may prompt annihilation of Tata Group. However, the opposite side of the story tells an alternate scenario. The letter that Mr. Mistry wrote to Tata sons after his evacuation demonstrates that the affirmations made can't be blindly accepted. Mr. Mistry said that his shocking evacuation was a business of shortcoming and wrongdoing. He battled that he was pushed in to a place of "lame duck" executive and changes in basic decision making process made exchange control focuses in Tata Group. Mistry said he was guaranteed a free hand when he was named Chairman in December 2012 however Articles of Association were adjusted, changing the principles of engagement between the Tata family Trusts and the Board of Tata Sons. Expressing that he acquired issues, he went ahead to raise corporate governance issues claiming delegates of family trusts, which hold 66% of Tata Sons shares, were reduced to "mere postmen" as they cleared out executive gatherings halfway to get directions from Mr. Tata. Mistry featured Nano auto venture reliably lost cash but couldn't be closed down for emotional reasons and in light of the fact that it would have halted the supply of Nano gliders to an electric car making element where Tata had stake.

He additionally affirmed that it was Tata who constrained the Group to invasion into the aviation segment by making him a fait accompli to joining hands with Air Asia and Singapore Airlines and making capital mixture higher than initial commitment. Mistry additionally wrote about deceitful exchanges of Rs. 22 crore including non-existent parties in India and Singapore. Mistry also warned that the "salt-to-software" giant may face Rs 1.18 lakh crore in write-downs because of five unprofitable businesses he inherited namely Indian Hotels Co, passenger-vehicle operations of Tata Motors, European operations of Tata Steel and part of the group's power unit and its telecommunications subsidiary. Mistry also wrote in his letter that the foreign acquisition strategy with the exceptions of JLR and Tetley had left a large debt overhang. The European steel business has potential impairments in excess of USD 10 billion, only some of which has been taken as of date. Many foreign properties of IHCL and holdings in Orient Hotels have been sold at a loss. The onerous terms of the lease for Pierre in New York are such that it would make it a challenge to exit. Mistry said he took tough decisions in the face of the challenges and said that he did so "with sensitive care to the group's reputation as well as containing panic amidst internal and external stakeholders.

Hence, from the above discussion, we can say that, just like every coin has two sides the issue of Corporate Governance at TATA can be viewed at two facets. Having a look at the first side, we can justify the exit of Cyrus Mistry on following grounds: Firstly, there were certain corporate governance standards that were not kept in mind by Mistry by performing its duties and responsibilities towards the growth of the company. One of them was, after the appointment as a new executive chairman he started taking all the powers and authorities in his favor and diluted the Tata Sons representations which raise questions on corporate and ethical governance being followed at the company. Another situation in which the conflict arise between the two tycoons was related to the over ruling nature of the executive chairman Cyrus Mistry. Under this proposition, it was noted that Cyrus Mistry was over ruling his power and was reversing the decisions taken by the trustee of the company which was not an apt action consider by the founders. Hence, these were the two aspects which proved to be justifiable for the removal of the Cyrus Mistry.

However, the second aspect depicts even a more strong justification of problems faced by Cyrus Mistry on account of the founders. Firstly, although, Cyrus Mistry was appointed as a helping hand to the company at the initial stage, however, at a later point the articles of association of the company was modified without the prior permission of Mr. Mistry which increased its duties and responsibility towards the company. Second important aspects was related to acquisition of nonprofit companies by the founders wherein Mr. Ratan Tata had the practiced of acquiring foreign companies and illegalities in floating and funding airlines companies like Vistara, Air Asia which turned out to be failure and resulted into the down fall into the balance sheet of the company. In addition to this, Mr. Tata also used to undertake unstudied acquisition of hotels on the basis of his fancy which additionally affected financial statement of the company. Third important concern was related to the establishment of the NANO plant wherein, Mr. Cyrus Mistry was skeptical about the NANO project and his fears came true when the NANO plant fail and the company started running into the losses due to its expenditure being incurred more as compared to the returns.

Independent Directors: A Case to Rethink the Role of Independent Directors in Governance of a Company

The organization of Independent Directors (hereinafter alluded to as ’IDs’) shapes the foundation of the corporate governance system worldwide and in India, IDs are relied upon to carry objectivity into the working of the board and enhance its viability. IDs are required to protect the interests of all partners, especially minority investors, adjust the clashing enthusiasm of the partners and convey a target view to the assessment of the execution of the board and management. The battle between Mr. Ratan Tata and Mr. Cyrus Mistry has demonstrated one point i.e. the independence of directors in a listed company is not more than a myth. The dispute, revelations and allegation by the two sides brought into foray the legal implications on the independent directors, due to their position on boards. The meeting room overthrew on 24 October, 2016 brought about Mr. Mistry’s expulsion as executive and was trailed by endeavors from Tata Sons to discharge Mistry from the post of chairman at a few working organizations of the gathering. This made the role of independent directors in these companies to come into sharp focus. The independent directors in this debate continued moving, starting with one side then onto the next and the same was not driven by their autonomy in thought and basic decision making, however, it was more determined in light of the personality conflict (i.e. Mr. Tata on one hand and Mr. Mistry on other).

All such above examples demonstrated that the free executives had their own particular devotions and their decision making was affected not for the future advantage of the company and the interest of the investors, but they were towards the names that were related with the conflict. A proof of devotion of the independent directors can be reasoned from the way the sheets of Tata Group firms were demonstrated which included ID’s (for e.g. K.B. Dadiseth, an independent directors on the leading body of Indian Hotels, is also the member of Tata Trusts) who were additionally the trustees of Tata Trusts, which is the biggest investor of Tata Group parent firm Tata Sons, led by Ratan Tata. Such organization of the leading group of ID’s was criticized by Mr. J. N. Gupta who stated, "Being a trustee on Tata Trusts,which is the majority investor of Tata Sons, the parent company of Tata Group working firms, simply doesn’t meet the strictest governance criteria”. Additionally, when the declaration was made by Mr. Mistry to deliberately leave from all major Tata Group companies on December 19, 2016, the independent directors swung to Mr. Tata and started having a collaborative approach towards Tata, thus, proving that independent directors were more concerned about their future in the company, than the future and interests of the shareholders and company goals.

However, these swinging of executives were just a single side of the story. There were occasions where the Independent Directors were profoundly undermined by the Tata group. Claims were made by Mr. Mistry in the appeal to record in the NCLT that the status of Independent Directors was totally undermined by Mr. Tata in the Tata Group Companies and the same was demonstrated by finding a way to order a gathering to evacuate Mr. Nasli Wadia, simply because he expressed support for the leadership of Mr. Mistry. All of these examples demonstrate that the perspectives communicated in the Kumar Mangalam Birla Committee about the way that the non-executive directors (which includes Independent Directors as defined in the listing agreement of the companies) help expedite a independent judgment on board's consultation particularly on the issues of strategy, performance, management of conflicts an standards of conduct is still a far-fetched reality.

Clause 49 of the Agreement endorses that the Board should have an ideal mix of executive and non-executive Directors, with at least fifty for each penny (half) of the Board including non-executive Directors. Moreover, the control endorses the constitution of independent boards, the requirement for which, shifts relying upon whether the chairman of the board is a non-executive director or not. The first control of 2000 which was later reconsidered in October, 2004 required that, 'in case of non-executive chairman, at least one third of the board must comprise of independent directors, and in case of an executive chairman, at least half of the board should comprise of independent directors.' The main reason for improving the setup was to demonstrate Corporate Governance and to enhance adjustments between the outsider and insider model of Corporate Governance. The point expressed above was first mooted in 1996, by the Confederation of Indian Industry (CII). This was the main ever institutional initiative in Indian Industry.

Oppression and Mismanagement

However, when we talk in Indian Perspective, the model that is taken after is "The Insider Model". Here the board isn't at the middle phase of the whole setup of corporate governance. In India as opposed to what is by and large seen, that Corporate Governance is strife between the proprietors and administration. The situation is not like that; here the conflict is between the majority shareholders and the minority shareholders. The board here can't settle any conflict that may prop up on the grounds that it comprises of those individuals who hold the majority shares of the company concerned and on these majority investors, only the control is needed to be worked out. The circumstance that has been introduced in the past passage is like the question that is the point of convergence of this research. In Tata-Mistry debate too, the solicitor i.e. Cyrus Mistry in the petition filed under the watchful eye of the National Company Law Tribunal (NCLT) asserted that Cyrus Mistry who was chairman of Tata Sons, was expelled from the post by the board of directors of Tata Sons, with no due reason. He likewise affirmed that it was Ratan Tata and Tata Trust (the majority shareholder) who coordinated the whole proceeding, thus alleging oppression and mismanagement on the part of majority shareholders against the minority shareholders. Presently this board room fight brings an essential part of Corporate Governance into picture, i.e. what are the shields of the security of theinterest of the minority investors (thus Cyrus Investments Pvt. Ltd. and Sterling Investment Corporation Pvt. Ltd, who hold 18.37 per cent equity shareholding) against the majority.

When we discuss minority intrigue and their situation to bring a body of evidence against the majority, the primary decide that will be investigated is the "Foss v Harbottle Rule". This govern was given on account of Foss v Harbottle (1843). It expresses that, "Once a determination is passed by the essential majority then it is official on every one of the members of the organization. As a resultant end product, the court won't usually intercede to secure the minority intrigue influenced by the determination, as on turning into a part, every individual impliedly agrees to submit to the will of the majority of the members." This rule tells that minority can't go the court against the decision of the majority regardless of whether they are not happy or the choice is influencing their interest. However there is an exemption to this rule and that is, "the place the majority of the company's members utilize their energy to defraud or persecute the minority, at that point in such cases their conduct is liable to be impeached even by a single shareholder". Here the mistreatment ought to include an unconscionable utilization of majority's energy resulting, or liable to come about, either in financial related misfortune or is unfair or oppressive treatment of the minority, and should absolutely be more genuine than the disappointment of the majority to act in light of a legitimate concern for the company as a whole.

However all of these judgments will hold significance just when the petitioner would have the capacity to meet the edge required to exhibit an application in the company law council; as given in section 244 of the companies act. One of the key focuses on which practicality of Mistry petition was depended was

with regards to the two minority investors claimed one-tenth of the issued share capital of the company or not. The court chose this in negative in light of the fact that despite the fact that the companies hold around 18.4% of standard offers in the company yet with regards to preference shareholding, it comes down to around 2.17% because of this choice, the Mistry aggregate was not ready to go ahead with the case on the grounds that their case fell on a mere technical fallacy which in researcher view ought to have been postponed by the council when it went in request. The explanation behind the waiver was the gravity of the circumstance and the allegations that were made. This case was no such ordinary case on the grounds that if this case would have been taken up by the council then it would have set some benchmark guidelines and principles of corporate governance; particularly in the light of 'Oppression and Mismanagement'. However not able to get waiver from the council was not the end of the street for the Mistry camp in light of the fact that he had different alternatives left with them. They can approach the National Company Law Appellate Tribunal or they can go to High Court as an ordinary investor expressing that the limit laid out for admission of their plea is illegal or they can also opt for arbitration proceeding.

Conclusion

The fundamental focal point of the current research paper was the debate between Mr. Ratan Tata and Mr. Cyrus Mistry and the researcher here managed two vital inquiries in connection to corporate governance. These inquiries gave the research paper abundant chance to dig into the center issues that circles around Corporate Governance. The inquiries that were managed in the task discussed two vital aspects i.e. The Role of Independent Directors, and The Issue in Relation to Oppression of Minority by Majority and Mismanagement by Majority. Finding a response to these inquiries has helped the to better understand the idea of Corporate Governance. When we discuss the present world situation, the most important aspects is what place a Corporation holds in today's world and what position does Corporate Governance hold in these Corporations. One might say that, in actuality, for this world to work legitimately, we require companies. It is on account ofthey being the power houses that run the economy, maintain demand and supply, gives work and so forth. Business or Corporation is the essence for the prosperity of any country; which means that a country develops only when it has a robust corporate regime. Furthermore, for a robust corporate regime, the center rule that must be taken after, is the rule of "Corporate Governance".

The word Corporate Governance isn't new; this guideline has been a subject of different academic research and strategy talks in India as well as in nations around the world. Over the previous decade, policymakers, in India as well as around the world have essentially centered on the significance of corporate governance. When we discuss India, there has been different committees' setup under chairmanship of Mr. Kumar Mangalam Birla, Mr. Narayan Murthy, Mr. Naresh Chandra and the most recent being Mr. Uday Kotak. Every one of these committees has made valuable proposals that have been appropriately actualized too. Be that as it may, the most recent report by Mr. Uday Kotak is of October 2017 yet the researcher is sure that this report will prompt a few changes in the Company Law, 2013. It has been on numerous occasions demonstrated that companies that have shown a sound corporate governance system have possessed the capacity to create fundamentally higher measure of benefits than the companies that have not executed a sound corporate component or have displayed poor corporate governance. The governance framework additionally impacts the output and investment decision of firms through a few channels that include ownership.

Coming to TATA; "TATA" is one name that has been appended to us since our introduction to the world. It is a company that has been a constant source of power that has helped in building this country. It is a company that has developed from "salt to software", this expression demonstrates the inconceivability in the business that this company conducts. Ratan Tata is one of those corporate identities who is known to nearly everybody in India as well as around the world. The governance of TATA has dependably been praised not just in view of their business decisions, new pursuits yet in addition due to their tremendous inclination towards philanthropy and welfare work that they have done. It is a company that has not quite recently considered poor people and the white collar class, however, we have seen that they have worked towards fulfilling their dreams; "NANO CAR" is a living case for the same. Notwithstanding, in view of the debate between Mr. Ratan Tata and Mr. Cyrus Mistry, an undesirable 'crease' for the sake of TATA Group has come up, however in the meantime this question has given different researchers, corporate houses, legal counselors and numerous different players to comprehend the standards of Corporate Governance. A look at the dispute and a study of the arguments from both the sides; one can see what all constitutes Corporate Governance.

In the conclusion, we can say that, despite the fact that, with the progressions made in the companies, demonstration like consideration of Clause 49, the quantity of independent directors in a company board and so forth, still Governance practices in some of the most reputed publicly listed Indian companies have come under question on a number of dimensions, including assessments of company board, Independent Directors and their part, disclosure reports exhibited by the companies, protection of minority investor and so forth. Lastly, we can conclude by saying that there is a significant need for material changes in the Act of 2013 which ought to be made so the issues that are expressed above can legitimately be managed and the prompt concerns like "Independence of Independent Directors", "Minority Protection" should be contemplated upon, while in the meantime the point needs to be coordinated to make such upgrades that will help over the long run. These progressions, if made, will enable the companies to form a better and dependable governance contraption which will anticipate the future in the most ideal way that could be available.

Suggestions

Considering the different facets of Corporate Governance in the current research paper, despite the few down falls that the Tata have had in recent years, they seem to work in the spirit of the corporate philosophy of the founder, Jamshetji Tata. As a part of suggestion, we can say that the company must keep itself in alignment with the degree of corporate governance standards mention by various corporate governance committees along with clause 49 of listing agreements. Since, there were corporate governance issues relating to the composition of board in the company, it is necessary to constitute the board with due consent of the founders by maintain appropriate level of transparency. Another problem was related to the acquisition of the nonprofit companies without gathering appropriate details of the same which was a mistake on part of the founders wherein, it can be suggested that before acquiring any company, a detailed information should be gathered and the same must be discuss with all the board members and decision must be taken after mutual consent of the members. Lastly, we can say that, even though the company modernizes with the changing environment it must continue to follow corporate governance standards with due diligence and as followed by the founders since the inception of the company.

References

- Chugh. (2017, December). Oppression and Mismanagement – Does the Law need a Revamp? https://www.chugh.com/oppression-mismanagement-law-need-revamp/
- Dubey, R.(2016, October). The Cyrus Mistry. https://www.indiatoday.in/magazine/cover-story/story/20161107-cyrus-mistry-tata-group-ratan-tata-829789-2016-10-27
- Duhaime. Org.Rule in Foss v Harbottle Definition. http://www.duhaime.org/LegalDictionary/R/RuleinFossvHarbottle.aspx
- Express Web Desk. (2016, October). Cyrus Mistry's allegations and how Tata Sons countered it. http://indianexpress.com/article/business/companies/cyrus-mistry-tata-sons-ratan-tata-tata-group-3106032/
- Livemint. (2016, October). Cyrus Mistry V Ratan Tata: A guide to the key issues involved. https://www.livemint.com/Companies/0F1R1KoI1wugK6jq9r1ZFK/The-TataMistry-spat-All-you-need-to-know.html
- Pandey, P. (2016, December). Tata Sons 'Stooped Low' on Independent Directors: Mistry. http://www.thehindu.com/business/Industry/Tata-Sons-'stooped-low'-on-independent-directors-Mistry/article16444679.ece
- Siddique, I. (2016, November). Tata Sons' criticism of independent directors unfortunate: Mistry. http://www.freepressjournal.in/newsite/business/tata-sons-criticism-of-independent-directors-unfortunate-mistry/971175
- Team OD. (2017, August). Statement From Cyrus Mistry On The Tata Nano And How It Proved To Be A Failure With Respect To Sales. http://overdrive.in/news-cars-auto/statement-from-cyrus-mistry-on-the-tata-nano-and-how-it-proved-to-be-a-failure-with-respect-to-sales/
- Team PGurus. (2016, October). Why Ratan Tata removed Cyrus Mistry. https://www.pgurus.com/ratan-tata-removed-cyrus-mistry/