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A rough day at Tata Sons

The NCLAT judgement is a trigger for Tata Sons and Cyrus Mistry to find a new equilibrium to their relationship.

The National Company Law Appellate Tribunal (NCLAT) sprung a nasty surprise on Tata Sons. In its [order on Cyrus Investment Private Limited Vs Tata Sons](#), the NCLAT held Cyrus Mistry's removal as Chairman Tata Sons as illegal and has set it aside: Tata Sons had removed Cyrus Mistry as its chairman on 24 October 2016. NCLAT has ordered the Tata group to reinstate him (- a relief that Mistry has not sought). A consequence of this is that, Natarajan Chandrasekaran's appointment, as Tata Sons chairman is now illegal. Oddly the tribunal did not name Chandrasekaran but has pointed towards "the person who has been appointed as Executive Chairman in place of Cyrus Mistry ... is declared illegal."

Commenting on Cyrus Mistry's ouster in October 2016 ([Turbulence at Tata Sons: What stakeholders are asking?](#)), we had said that in replacing Cyrus Mistry, the Tata Sons board has asserted its rights and exercised its privilege of appointing and sacking its CEO - irrespective of whether you agree with the decision or not. We then went on to spell out the three questions that stakeholders were asking: The first related to the legality of the process, the second the decision itself, and finally, what happens now that Cyrus Mistry has been ousted? Four years later, the first question remains unanswered. We have seen two judgements on the legality, both contradict each other. There are theories, but still no consensus on why the relationship between Ratan Tata and Cyrus Mistry broke down. True Chandrasekaran replaced Cyrus Mistry within five months, in February 2017, but the NCLAT order has added its own element of uncertainty: what happens if the Supreme court also rules that Chandrasekaran's appointment is illegal?

Coming to the NCLAT order itself, citing a series of email exchanges as 'unfair abuse of power' the tribunals order holds-back Ratan Tata from back-seat driving in future. Its states that Ratan Tata and the nominees of the Tata trust will 'desist from taking any decision in advance which requires majority decision of the board or in the Annual General Meeting.'

The tribunal does not stop at this. It restricts the Tata Sons board and the directors from acting against minority investors (read Shapoorji Pallonji Group), citing 'prejudicial and oppressive decisions taken during the last few years.' It notes that if they are constrained to take a decision, these have to be in the interest of the company, the reasons must be recorded in writing and communicated to the affected shareholder.

Soon after removing Cyrus Mistry, Tata Sons converted itself from a public limited company to a private limited company. This act severely constrains the Shapoorji Pallonji group's ability to exercise their votes or sell their Tata Sons shares. The tribunal has found this conversion to be illegal and ordered that Tata Sons be converted to a public limited company.

The tribunal has suspended, by a period of four weeks that part of its judgement which relates to replacing Chandrasekaran by reinstating Cyrus Mistry. This gives Tata Sons time to appeal the judgement in the Supreme Court. (The Supreme Court closed for vacation the day the judgement was pronounced).

As Chandrasekaran's appointment is considered illegal, his decisions are also illegal. This opens a Pandora's box. For a corporate to reverse its decision is difficult. Tata Docomo is settled, the telecom businesses transferred to Bharti Airtel, Nano's operations shut-down, Tata Chemicals salt business transferred to Tata Global Beverages. All decisions taken by the operating companies no doubt, but not without Chandrasekaran's counsel. How do you unscramble an egg? And what about the decisions Chandrasekaran takes from now - or at least till the order is stayed? There is no immediate answer.

What does this mean for the various operating Tata companies? At one level, these are all professionally managed and board-governed, so it should be business as normal. But the NCLAT order is not a mere distraction that can be shrugged away, given the 'federal' nature of the group. The extra layer that Tata Sons and its CEO brings is an intrinsic part of their working and decision making, with the Chairman of Tata Sons being the 'ex-officio' chairman of the larger listed group companies. From company-level decisions like Tata Steel navigating Brexit with the UK government, to Tata Motors finding a long-term *solution* to Jaguar Land Rover, to more broad-based strategies across the group, it's the Tata Sons chairman who is the final voice. It was Ratan Tata who gave the group the focus on cross border acquisitions, Cyrus who dealt with the hot spots and Chandrasekaran who is pushing the group companies to reduce debt and focus on return ratios. Clearly the Chairman at Tata Sons influences the destiny of the listed companies in the group. So, while developments at Tata Sons may not impact operations in the very short term, they do influence medium to long-term outcomes. Given this, till such time as the Supreme Court opines, a Chandrasekaran-less future remains a possibility - howsoever remote the chances may be. It is a period of uncertainty for the group and its investors.

Tata Sons believes in the strength of its case and is preparing to push back. Cyrus Mistry in a [statement](#) after the judgement has extended an olive branch. The Shapoorji Pallonji group, with an 18% shareholding, cannot be wished away. And how the Tata group performs matters to the Mistry's. While the Supreme Court decides on the final outcome, both Tata Sons and Cyrus Mistry need to reset their relationship and find a new equilibrium. It is the best way to ensure a win for Tata Sons, the Mistry family and the public shareholders in the listed Tata group companies.

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