Page 3384 - 3388 **DOI:** *https://doij.org/10.10000/IJLMH.111732*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

Analysis of Tata-Mistry Feud: Whether the Reconversion of Tata Sons from a Public Company into a Private Company Valid under The Companies Act 1956 and 2013?

ANKITA DAS[1]

ABSTRACT

This article will provide a glimpse of the Tata – Mistry feud that shook the roots of the Corporate World in India with the sudden ouster of Shri Cyrus Pallonji Mistry as chairman and consequently as the Board of Directors of Tata Sons (Private) Ltd. It will further talk about the orders passed by the National Company Law Tribunal in favour of Tata Sons, the reliefs provided by the National Company Law Appellate Tribunal in favour of the Shapoorji Pallonji Group and finally the end of the turmoil with Supreme Court's ruling in favour of the Tata Sons.

This Article will also provide an analysis on whether the reconversion of Tata Sons from a public company into a private company was in sync with the provisions of Companies Act, 1956 (2000) and the Companies Act, 2013. It further states that TATA Sons was incorporated as a private company but became a public company not by choice but by virtue of Section 43-A (1A) of the 1956 Act. It is pertinent to note that the concept of deemed to be a public company in Section 43 A was removed by Act 53 of 2000 but it amended section 3 (1)(iii) by inserting an additional sub-clause, "(d)" along with sub-clauses (a), (b) and (c). The AOA of the Tata Sons complied with all the sub-clauses but not sub-clause (d). The 2013 Act reinstated the definition of the term 'private company" under Section 2 (68). The AOA of the Tata Sons satisfied the requirements of Section 2(68) of the2013 Act. Therefore, continued to be a private company.

The Supreme Court in the light of the above stated that the request made by Tata Sons for amendment of the Certificate of Incorporation and thereby the action taken by the Registrar of companies were perfectly in order.

Keywords: *Section 43-A, 3 (1)(iii) of the Companies Act, 1956; Section 2(68), 14(1) of the Companies Act 2013; Public Company; Certificate of Incorporation.*

[1] Author is a student at University Of Petroleum And Energy Studies, Dehradun, India.

 [ISSN 2581-5369]

I. INTRODUCTION

A turmoil that shook the roots of the Indian Corporate Sector on 24th October 2016, with the sudden ouster of Shri Cyrus Pallonji Mistry ("CPM"), as chairman and consequently after few months on 6th February, 2017 as the Board of Directors of Tata Sons (Private) Ltd. ("Tata Sons"), concluded finally in the Supreme Court of India. *Cyrus Mistry's widely leaked explosive 2,100-word mail to the board targeting Ratan Tata and the luminaries close to him with a string of allegations related to questionable deals and steps brings out many bitter facts.*[2], which was the reason for the removal of CPM from Directorship. Formerly, the National Company Law Tribunal ("NCLT") by Orders dated 06.03.2017 and 17.4.2017, dismissed the company petition and the application for waiver of Section 244 (1) (a), filed by the Shapoorji Pallonji Group ("SP Group") respectively. Further, the National Company Law Appellate Tribunal ("NCLAT") by an order dated 18.12.19 granted CPM the following reliefs: - *(i) reinstatement of CPM; (ii) declaring Tata Sons as a Public Limited Company; (iii) restraining the nominee Directors and Shri Ratan N. Tata (RNT) from taking any decision in advance and (iv) restraining the invocation of Article 75 except in exceptional circumstances.*[3]

The Hon'ble Supreme Court pronounced the judgement on 26.03.21. The bench comprised of Chief Justice S.A Bobde and comprising Justice V. Ramasubramanian and Justice A.S Bopanna. The bench set aside all the charges that was put forth by CPM against the Tata Sons. This article will deal with the fifth question of law formulated by the Supreme Court.

II. ANALYSIS - FIFTH QUESTION OF LAW

"Whether the reconversion of Tata Sons from a public company into a private company, required the necessary approval under Section 14 of the Companies Act, 2013 or at least an action under Section 43A (4) of the Companies Act, 1956 during the period from 2000 (when Act 53 of 2000 came into force) to 2013 (when the 2013 Act was enacted) as held by NCLAT?"

(A)Tata Sons a public Company not by choice, by operation of Law [Section 43-A (1A)]

The Tata Sons was incorporated as a Private Limited Company on 08.11.1917 under the Companies Act, 1913. It deemed to have become a Public Limited Company, by virtue of Section 43-A (1A) of the Companies Act, 1956 on and from 01.02.1975. Although, even after the private company has become a public company by virtue of the provision to Sub-section

[2] Wallace Jacob, Corporate Governance at Tata, 8 AIJM. 138, 148-153 (2019).
[3] Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd., (2021) SCC OnLine SC 272.

(1A), the Articles of Association of the Company, may include provisions relating to the matters specified in sub-clauses (a), (b) and (c) of Clause (iii) of Sub-section (1) of Section 3 of the 1956 Act. It is pertinent to note that the concept of deemed to be a public company in Section 43 A was removed by Act 53 of 2000.

There was no provision similar to that of Section 43 A in the Companies Act, 2013. Thus, Tata Sons on 21.09.2017 passed a resolution in its 99th Annual General meeting held to alter the Memorandum and Articles so as to insert the word "private" in between the words "Sons" and "Limited" in its name. Tata Sons approached the Registrar of Companies on 19.07.2018 seeking an amendment to the Certificate of Incorporation which was in turn amended by the Registrar of Companies as on 06.08.2018.

The Supreme Court in this case pointed out that *"(A) there are 3 distinct types of companies, namely Private companies, Public Companies and deemed to be public companies which occupy a distinct place in the scheme of the Act (B) that private companies, which become public companies, but which continue to retain in their articles those matters mentioned in section 3(1)(iii) of the Act are also broadly and generally subjected to the rigorous discipline of the Act and (C) that though section 43A companies cannot claim the same privileges to which private companies are entitled, there are certain provisions of the Act which would apply to public companies, but not to Section 43A companies.".*[4]

(B) Status of Tata Sons after the amendment of Section 3 (1) (iii) of Act, 1956 during the period of 2000

It is also important to note that with effect from 13.12.2000, the whole of Section 43A except Sub-section (2A) got scrapped but it amended section 3 (1)(iii) by inserting an additional sub-clause, "(d)" along with sub-clauses (a), (b) and (c).

The sequel of the amendment to section 3(1)(iii), under Act 53 of 2000, was that a company which would want to take the course of sub-section (2A) of section 43A, after the coming into effect of Act 2000 and reconvert itself into a private company, was required to satisfy the rigours of sub-clauses (a), (b) and (c) as well as (d) of clause (iii) of sub-section (1) of section 3. In simple words, the Articles of Association of such a company should contain all the four essentials namely, (i) limitation on the right to transfer shares (ii) restriction on the figure of members (iii) embargo of any invitation to the public to subscribe for shares or debentures and (iv) Ban of any call or acceptance of deposits from persons other than members, Directors or

[4] Needle Industries (India) Ltd. v. Needle Industries Newey (India) Ltd., (1981) 3 SCC 333.

 [ISSN 2581-5369]

their relatives. The Articles of Association of the Tata Sons complied with the first three essentials that is sub-clauses (a), (b) and (c) but not sub-clause (d). Thus, they did not take the route of subsection (2A) of section 43A after the birth of Act 53 of 2000.

(C) Tata Sons, a Private Company under Section 2(68) of the Companies Act, 2013

The Companies Act, 2013 changed the perspective altogether. It not only terminated the entire concept of deemed public companies, but also reinstated the definition of the term 'private company" to the position that prevailed before the inception of Act 53 of 2000. Section 2(68) of the Companies Act 2013 defines the phrase "private company" and contains only the original three stipulations incorporated in sub-clauses (a), (b) and (c) of clause (iii) of Section 3 of sub-section (1). The stipulation inserted as sub-clause (d) by Act 53 of 2000, was scrapped in section 2(68).

With effect from 12.09.2013, section 2(68) of the Companies Act 2013 came into force, and since that very day the Articles of Association of Tata Sons satisfied the requirements of Section 2(68) of the 2013 Act. Therefore, continued to be a private company.

"In other words, the status of Tata Sons- (i) was that of a private company till 31-01-1975; (ii) was that of a deemed public company under section 43A from 01-02-1975 till 12-12-2000; (iii) was that of a company that continued to be a deemed to be public company from 13-12-2000 till 11-09-2013 by virtue of section 3(1)(iii) of the 1956 Act as amended by Act 53 of 2000 with effect from 13-12-2000; and (iv) was that of a private company with effect from 12-09-2013 within the meaning of section 2(68) of the 2013 Act."[5]

III. CONCLUSION

No one disputed the fact that today the Tata Sons complies with the given prescriptions incorporated in Section 2(68) of the Companies Act, 2013. The SP Group raised question with regard to the procedure followed for reconversion of Tata Sons into a private Company and this was eventually accepted by the NCLAT. According to NCLAT's opinion the Tata Sons should have followed the parameters prescribed in Section 14(1)(b) read with Sub-sections (2) and (3) of Section 14 of the Companies Act, 2013 for getting an amended certificate of incorporation.

"But what NCLAT failed to see was that Tata sons did not become a public company by choice, but became one by operation of law. Therefore, we do not know how such a company should also be asked to follow the rigors of Section 14(1)(b) of the 2013 Act. As a matter of fact,

[5] Tata, 272 SCC OnLine. at 88.

Section 14(1) does not ipso facto deal with the issue of conversion of private company into a public company or vice versa. Primarily, Section 14(1) deals with the issue of alteration of Articles of Association of the company. Incidentally, Section 14(1) also deals with the alteration of Articles "having the effect of such conversion".[6]

NCLAT confused the attempt of Tata Sons to have the Certificate of Incorporation amended, with an attempt to have the Articles of Association amended. As Tata Sons passes the parameters prescribed in Section 2(68) of the 2013 Act, they applied for amendment of the certificate from the Registrar of companies. *The certificate is a mere recognition of the status of the company and it does not by itself create one.*[7]

"The Supreme Court in this case stated that, "it is not the records of the Registrar of Companies which determines the status of the company". The status of the company is determined by the Articles of association and the statutory provisions."[8]

The Supreme court held in this case that *"Parliament always recognised the possibility of a deemed public company again reverting back to the status of a private company.*[9] Though this court was aware of the clash between section 27(3) and section 3(1)(iii)(d), following the amendment by Act 53 of 2000, the Supreme court nevertheless held in Gharda Chemicals that to fulfil the requirement of sub-clause (d) of section 3(1)(iii) in the Articles of Association, a deemed public company can revert back to its status as a private company, by virtue of sub-section (2A) of section 43A, by integrating necessary provisions in the Articles. *"In simple terms, a company which becomes a deemed public company by operation of law, cannot be taken to have undergone a process of fermentation or coagulation like milk to become curd or yogurt, having an irreversible effect"*[10].

Thus, in the light of the above the Supreme Court set aside all charges against Tata Group and the Registrar of Companies, it also stated that NCLAT was completely wrong in holding that Tata Sons with the involvement of the Registrar of companies did something in a secretive and illicit way, not in sync with procedure established by law. The request made by Tata Sons for amendment of the Certificate of Incorporation and thereby the action taken by the Registrar of companies were perfectly in order.

*****

[6] Id. at 88.
[7] Id. at 88.
[8] Ram Parshotam Mittal v. Hillcrest Realty., (2009) 8 SCC 709.
[9] Darius Rutton Kavasmaneck v. Gharda Chemicals Ltd., 2015) 14 SCC 277. [see the editor's note in the SCC report regarding the conflict between sec. 27(3) and sec. 3(1)(iii)(d)]
[10] Tata, 272 SCC OnLine. at 88.

 [ISSN 2581-5369]