

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**I.A. No. 4331 of 2019**

**IN**

**Company Appeal (AT) No. 254 of 2018**

**IN THE MATTER OF:**

**Cyrus Investments Pvt. Ltd.**

**....Appellant**

**Vs.**

**Tata Sons Ltd. & Ors.**

**....Respondents**

**I.A. No. 4336 of 2019**

**IN**

**Company Appeal (AT) No. 268 of 2018**

**IN THE MATTER OF:**

**Cyrus Pallonji Mistry**

**....Appellant**

**Vs.**

**Tata Sons Ltd. & Ors.**

**....Respondents**

**Present:**

**For Appellant: Mr. Sanjay Shorey, Director (L&P), Ministry of Corporate Affairs for Registrar of Companies.**

**For Respondents: Mr. Akshay Makhija and Ms. Kriti Awasthi, Advocates for R-1.**

**Mr. C.A. Sundaram and Mr. Arun Kathpalia, Senior Advocates with Mrs. Sonali Jaitley Bakhshi, Mr. Manik Dogra, Mr. Ravi Tyagi, Mr. Shubhanshu Gupta, Ms. Rini Badoni, Mr. Pragalbh Bhardwaj, Mr. Akshay Doctor and Mr. Gunjan Shah, Advocates for Respondents 24 & 25.**

**J U D G M E N T****SUDHANSU JYOTI MUKHOPADHAYA, J.**

Interlocutory Applications have been preferred by the Registrar of Companies, Mumbai for seeking amendment in Judgment dated 18<sup>th</sup> December, 2019 passed by this Appellate Tribunal in so far as it relates to observations made at Paragraphs 181, 186 & 187 of the Judgment.

2. In the aforesaid Judgment, this Appellate Tribunal while dealing with conversion of 'Tata Sons Limited' from 'Public Company' to 'Private Company' noticed that the 'Tata Sons Limited' was initially a 'Private Company' but after insertion of Section 43A (1A) in the Companies Act, 1956 on the basis of average annual turnover, it assumed the character of a deemed 'Public Company' w.e.f. 1<sup>st</sup> February, 1975.

3. The aforesaid provision was amended and Section (2A) was substituted after the commencement of the Companies (Amendment) Act, 2000. As per sub-section (4) of Section 43A, a 'Private Company' which has become a 'Public Company' by virtue of the aforesaid provisions, is to continue to be a 'Public Company' until it has, with the approval of the Central Government and in accordance with the provisions of the Act, again becomes a 'Private Company'.

4. It was noticed that part of the Companies Act, 1956 was repealed by the Companies Act, 2013, from the date of its notification, except those covered in Part IX A of the Companies Act, 1956.

5. Section 31 of the Companies Act, 1956 which relates to “*Alteration of Articles by Special Resolution*” was repealed and substituted by Section 14 of the Companies Act, 2013 which relates to “*Alteration of Articles*”, as referred in the Judgment.

6. Taking into consideration the definition of ‘Private Company’ as defined under Section 2(68) of the Companies Act, 2013 and the definition of ‘Public Company’ as defined under Section 2(71) of the Companies Act, 2013, following observations were made by this Appellate Tribunal at Paragraphs 181, 186 & 187 of the Judgment dated 18<sup>th</sup> December, 2019:-

*“181. The aforesaid action on the part of the Company, its Board of Directors to take action to hurriedly change the Company (‘Tata Sons Limited’) from ‘Public Company’ to a ‘Private Company’ without following the procedure under law (Section 14), with the help of the Registrar of Companies just before filing of the appeal, suggests that the nominated members of ‘Tata Trusts’ who have affirmative voting right over the majority decision of*

*the Board of Directors and other Directors/ members, acted in a manner 'prejudicial' to the members, including minority members ('Shapoorji Pallonji Group') and others as also 'prejudicial' to the Company ('Tata Sons Limited').*

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186. *As regards the conversion of the company from 'Public Company' to 'Private Company', as action taken by the Registrar of Companies is against the provisions of Section 14 of the Companies Act, 2013 and 'prejudicial' and 'oppressive' to the minority members and depositors etc., conversion of the 'Tata Sons Limited' from 'Public Company' to 'Private Company' by Registrar of Companies, is declared illegal.*

187. *In view of the findings aforesaid, we pass the following orders and directions:*

- (i) *The proceedings of the sixth meeting of the Board of Directors of 'Tata Sons Limited' held on Monday, 24<sup>th</sup> October, 2016 so far as it relates to removal and other actions taken against Mr. Cyrus Pallonji Mistry (11<sup>th</sup> Respondent) is declared illegal and is*

*set aside. In the result, Mr. Cyrus Pallonji Mistry (11<sup>th</sup> Respondent) is restored to his original position as Executive Chairman of 'Tata Sons Limited' and consequently as Director of the 'Tata Companies' for rest of the tenure.*

*As a sequel thereto, the person who has been appointed as 'Executive Chairman' in place of Mr. Cyrus Pallonji Mistry (11<sup>th</sup> Respondent), his consequential appointment is declared illegal.*

- (ii) Mr. Ratan N. Tata (2<sup>nd</sup> Respondent) and the nominee of the 'Tata Trusts' shall desist from taking any decision in advance which requires majority decision of the Board of Directors or in the Annual General Meeting.*
- (iii) In view of 'prejudicial' and 'oppressive' decision taken during last few years, the Company, its Board of Directors and shareholders which has not exercised its power under Article 75 since inception, will not exercise its power under Article 75 against Appellants and other minority*

*member. Such power can be exercised only in exceptional circumstances and in the interest of the company, but before exercising such power, reasons should be recorded in writing and intimated to the concerned shareholders whose right will be affected.*

- (iv) The decision of the Registrar of Companies changing the Company ('Tata Sons Limited') from 'Public Company' to 'Private Company' is declared illegal and set aside. The Company ('Tata Sons Limited') shall be recorded as 'Public Company'. The 'Registrar of Companies' will make correction in its record showing the Company ('Tata Sons Limited') as 'Public Company'."*

7. Mr. Sanjay Shorey, Director Prosecution, Ministry of Corporate Affairs, who appeared on behalf of the Registrar of Companies, Mumbai was asked to clarify the date from which the definition of 'Private Company' as defined under Section 2(68) of the Companies Act, 2013 was amended and whether the Central Government has come out of the Rule

prescribing minimum paid up share capital so as to ascertain whether a 'Company' comes within the meaning of 'Private Company' as defined under Section 2(68) read with Section 2(66) of the Companies Act, 2013.

8. Mr. Sanjay Shorey, Director Prosecution, Ministry of Corporate Affairs, appearing on behalf of the Registrar of Companies, Mumbai specifically informed that the Central Government has not framed any Rule under Section 2(66) of the Companies Act, 2013 prescribing minimum paid up share capital of a 'Private Company'.

9. It was submitted that till such date, Section 43A (2A) had not been repealed and there is no corresponding provision enacted under the Companies Act, 2013, therefore, Section 43A (2A) of the Companies Act, 1956 is still in operation. Reliance has been placed on Ministry of Corporate Affairs' Notification S.O. 560(E) dated 30<sup>th</sup> January, 2019 in support of such submission.

10. It was submitted that in view of the aforesaid position of law as Section 43A (2A) has not been repealed, after Judgment of the National Company Law Tribunal, 'Tata Sons Limited' by its letter dated 19<sup>th</sup> July, 2018 intimated the Registrar of Companies of its exercise of the option under Section 43A (2A) for reversion back to the status of a private company, therefore, the Registrar of Companies was statutorily obligated to carry out the necessary changes in the 'Register of Companies', the

‘Certificate of Incorporation’ of ‘Tata Sons Limited’ and the ‘Memorandum of Association’ of ‘Tata Sons Limited’.

11. This Appellate Tribunal specifically asked Mr. Sanjay Shorey, Director Prosecution, Ministry of Corporate Affairs, who appeared on behalf of the Registrar of Companies, Mumbai that in the year 1975 when the Company was converted to be a deemed ‘Public Limited Company’, necessary correction was made in the Articles of Association with regard to the nature of the Company as ‘Public Limited Company’. On behalf of the Registrar of Companies, it is specifically stated that in the year 1975 when ‘Tata Sons Limited’ (Company) was converted to a deemed ‘Public Company’, necessary corrections were also made in the Articles of Association of the Company as ‘Public Limited Company’. Apart from this, necessary changes were made in ‘the Register of Companies’ and ‘the Certificate of Incorporation’ of ‘Tata Sons Limited’. This will be also evident from the specific pleading made at Paragraph 20 of the Interlocutory Application, as follows:

*“.....the Applicant was statutorily obligated to carry out the necessary changes in the Register of Companies, the certificate of incorporation of TSL **and the Memorandum of Association of TSL.**”*

12. It is accepted that prior to the letter dated 19<sup>th</sup> July, 2018, the definition of ‘Private Company’ as defined under Section 2(68) was

amended and the words “of one lakh rupees or such higher paid-up share capital” omitted by Act 21 of 2015 w.e.f. 29<sup>th</sup> May, 2015. After such amendment, the definition of ‘Private Company’ as defined under Section 2(68) reads as follows:

**“2. Definitions.—** .....(68) “private company” means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—

(i) restricts the right to transfer its shares;

(ii) except in case of One Person Company, limits the number of its members to two hundred:

Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:

Provided further that—

(A) persons who are in the employment of the company; and

(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment

*ceased, shall not be included in the number of members; and*

*(iii) prohibits any invitation to the public to subscribe for any securities of the company”*

13. The word ‘prescribed’ is defined under Section 2(66) of the Companies Act, 2013, as follows:

**“2. Definitions.—** (66) *“prescribed” means prescribed by rules made under this Act;”*

14. It is accepted that the Central Government has not framed any Rule under the Companies Act, 2013 under Section 2(66) prescribing minimum paid up share capital of a ‘Private Company’.

15. Therefore, it is clear that on the basis of definition of ‘Private Company’ as amended by Section 2(68) and was applicable on the date of correction of Certificate of Incorporation, in absence of any prescription of minimum paid up share capital, the Registrar of Companies has no power or jurisdiction to carry out any changes in the Register of Companies or Certificate of Incorporation of ‘Tata Sons Limited’ and the ‘Memorandum of Association’ of the ‘Tata Sons Limited’.

16. The Registrar of Companies cannot take advantage of Section 43A (2A) on the ground that it has not been repealed for the following reasons.

17. Section 43A (2A) while empowers a 'Public Company' to become a 'Private Company' on or after commencement of the Companies (Amendment) Act, 2000 by informing the matter to the Registrar for substitution of the word 'private company' with the word 'public company' in the name of the company upon the register and certificate of incorporation issued to the company and its memorandum of association but under Section 43A (4) such 'private company' which has been made public company by virtue of the said provision, will continue to be a 'public company' until it has, with the approval of the Central Government and in accordance with the provisions of the said Act, again become a 'private company'. This we have noticed in our Judgment at Paragraph 166 wherein Section 43A (2A) has been quoted along with sub-section (4) therein, relevant of which reads as follows:

***“43A. Private company to become public company in certain cases.— .....[(2A) Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the word 'private company' for the word 'public company' in the name of the company upon the***

*register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company].”*

**This provision has been referred to by the Registrar of Companies.**

**“43A. Private company to become public company in certain cases.—** ..... (4) *A private company which has become a public company by virtue of this section shall continue to be a public company until it has, with the approval of the Central Government and in accordance with the provisions of this Act, again become a private company.”*

**However, the aforesaid provision has not been noticed or referred to by the Registrar of Companies.**

18. For the purpose of appreciation, in terms of Section 43A (4), as referred to by the Registrar of Companies, the ‘Tata Sons Limited’ which was a ‘Private Company’ has becomes a ‘Public Company’ by virtue of the provision aforesaid shall continue to be a public company, having not

taken any approval from the Central Government and in accordance with the provisions of the said Companies (Amendment) Act, 2000 to become a 'Private Company'.

19. We have already referred Section 14 of the Companies Act, 2013 which relates to "*Alteration of articles*". It is not the case of the Registrar of Companies that as per Section 14, 'Tata Sons Limited' (Company) by a special resolution altered its article having the effect of its conversion as a 'Public Company' into a 'Private Company'. It is also not the case of the Registrar of Companies that such resolution was produced before it. No approval has been taken from Tribunal (NCLT).

20. Section 18 of the Companies Act, 2013 specifically refers to "*Conversion of Companies already registered*", as follows:

***"18. Conversion of companies already***

***registered.***— (1) *A company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of this Chapter.*

(2) *Where the conversion is required to be done under this section, the Registrar shall on an application made by the company, after satisfying himself that the provisions of this Chapter applicable*

*for registration of companies have been complied with, close the former registration of the company and after registering the documents referred to in sub-section (1), issue a certificate of incorporation in the same manner as its first registration.*

*(3) The registration of a company under this section shall not affect any debts, liabilities, obligations or contracts incurred or entered into, by or on behalf of the company before conversion and such debts, liabilities, obligations and contracts may be enforced in the manner as if such registration had not been done.”*

21. There being a specific provision of conversions of Companies already registered in terms of Section 18 of the Companies Act, 2013 and “*alteration of articles*” in terms of Section 14, the Registrar of Companies cannot rely on Section 43A (2A) that too without relying on Clause (4) therein which relates to requirement of approval of the Central Government.

22. Section 465 of the Companies Act, 2013 relates to “*repeal of certain enactments and savings*” and sub-section (1) therein reads as follows:

**“465. Repeal of certain enactments and savings—** (1) *The Companies Act, 1956 (1 of 1956)*

*and the Registration of Companies (Sikkim) Act, 1961 (Sikkim Act 8 of 1961) (hereafter in this section referred to as the repealed enactments) shall stand repealed:*

*Provided that the provisions of Part IX-A of the Companies Act, 1956 (1 of 1956) shall be applicable mutatis mutandis to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies:*

*Provided further that until a date is notified by the Central Government under subsection (1) of Section 434 for transfer of all matters, proceedings or cases to the Tribunal, the provisions of the Companies Act, 1956 (1 of 1956) in regard to the jurisdiction, powers, authority and functions of the Board of Company Law Administration and Court shall continue to apply as if the Companies Act, 1956 (1 of 1956) has not been repealed:*

*Provided also that provisions of the Companies Act, 1956 (1 of 1956) referred in the*

*notification issued under section 67 of the Limited Liability Partnership Act, 2008 (6 of 2009) shall, until the relevant notification under such section applying relevant corresponding provisions of this Act to limited liability partnerships is issued, continue to apply as if the Companies Act, 1956 (1 of 1956) has not been repealed.”*

23. In terms of Section 465 of the Companies Act, 2013, all provisions of the Companies Act, 1956 stand repealed except provisions of Part IX A of the Companies Act, 1956 which applies *mutatis mutandis* to a Producer Company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

24. Section 43A (2A) was inserted in the year 1975 in Companies Act, 1956 as amended in the year 2000 stood repealed by enactment of the Companies Act, 2013. In place of the old provision of Section 43A for ‘conversion of the company’ and ‘conversion of Articles of Association’, now Section 18 and Section 14 of the Companies Act, 2013 are applicable.

25. The stand taken by Mr. Sanjay Shorey, Director Prosecution, Ministry of Corporate Affairs, who appeared on behalf of the Registrar of Companies, Mumbai that in absence of any prescription by the Central Government under any Rule in terms of Section 2(66), for the purpose of

Section 2(68) ('private company'), the paid up share capital should be read as "zero". However, such submission cannot be accepted as there cannot be a 'Private Company' or 'Public Company'. For the said reason, in amended Section 2(68), it is specifically mentioned that "*as may be prescribed by the Central Government*" (i.e. under the Rules in terms of Section 2(66)).

26. In view of the aforesaid position of law, the prayer for amendment in the Judgment dated 18<sup>th</sup> December, 2019 is rejected.

27. However, in Paragraph 171 of the Judgment dated 18<sup>th</sup> December, 2019, we find that wrongly un-amended definition of 'Private Company' has been quoted which stood amended w.e.f. 29<sup>th</sup> May, 2015 i.e. much prior to filing of the petition under Sections 241-242 of the Companies Act, 2013 and the application for change of company from 'Public Company' to 'Private Company', which was filed in July, 2017. It is accordingly ordered to read the definition of 'Private Company' as defined under amended Section 2(68) of the Companies Act, 2013 as quoted in Paragraph 171, as follows:

**"2. Definitions.—** .....(68) "*private company*"  
*means a company having a minimum paid-up share capital as may be prescribed, and which by its articles,—*

*(i) restricts the right to transfer its shares;*

*(ii) except in case of One Person Company, limits the number of its members to two hundred:*

*Provided that where two or more persons hold one or more shares in a company jointly, they shall, for the purposes of this clause, be treated as a single member:*

*Provided further that—*

*(A) persons who are in the employment of the company; and*

*(B) persons who, having been formerly in the employment of the company, were members of the company while in that employment and have continued to be members after the employment ceased, shall not be included in the number of members; and*

*(iii) prohibits any invitation to the public to subscribe for any securities of the company”*

28. One of the grievances of the Registrar of Companies is that the observations made in Paragraphs 181, 186 & 187 of the Judgment cast aspersions on the Registrar of Companies who was not party before this Appellate Tribunal.

However, we find that there is a wrong perception of the Registrar of Companies as no observation has been made against the Registrar of Companies, Mumbai, nor anything alleged against him.

29. In Paragraph 181 of the Judgment, the action on the part of the Company, its Board of Directors has been referred which was taken hurriedly to change the Company from 'Public Company' to a 'Private Company' and nothing has been alleged against the Registrar of Companies, Mumbai.

30. Paragraph 186 of the Judgment is the finding of this Appellate Tribunal that the action taken by the Registrar of Companies is against the provisions of Section 14 of the Companies Act, 2013 which is 'prejudicial' and 'oppressive' to the minority members and depositors. No specific malafide action has been alleged against it.

31. Similarly, Paragraph 187 is the directions of this Appellate Tribunal which does not cast any aspersions on the Registrar of Companies.

32. Therefore, no ground is made out to amend the Judgment dated 18<sup>th</sup> December, 2019 in absence of any factual or legal error apparent on the body of the aforesaid Judgment. There is a typographical error at Paragraph 171 wherein un-amended Section 2(68) has wrongly been typed which has been ordered to be corrected.

In absence of any merit, both the Interlocutory Applications are dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI  
6<sup>th</sup> January, 2020

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