

Corporate Governance issues in Tata-Mistry dispute

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Basic Concepts

Company – Shareholders – Directors.

Articles of Association – Table F.

Holding Co. – Subsidiary Co.

Executive Director & Non-executive Director

Independent Director.

Chairman – Appointed Vs Elected.

Oppression & Mismanagement.

3 Tata Sons shareholding structure in Tata Group of Cos.

Status of Tata Sons

Provisions in Tata Sons' Articles of Association

Appointment of Chairman – provision in AoA

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What is so special about Tata Sons' Chairman?

Who is a Chairman of Co.?

What is his Role?

Appointed Chairman.

Removal of Chairman Vs Removal of Director

Situation at Tata Sons till the EGMs of other Tata Cos.

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Before Tata Sons' BM – Oct. 24, 2016

Legal Opinions were sought by Tatas

How can BoD discuss 'any other business agenda item' at its Board Meeting?

What is Notice of the meeting?

What is the Agenda of the meeting?

Provisions in Secretarial Standards:

1.3.10 Any item not included in the Agenda may be taken up for consideration with the permission of the Chairman and with the consent of a majority of the Directors present in the Meeting, which shall include at least one Independent Director, if any.

Board Meetings of other Tata Cos.

Indian Hotels

Tata Motors

Tata Steel

Tata Power

TCS

Tata Global

Tata Teleservices

Tata Chemicals

Tata Industries

Wadia – Independent Director on Board of few Tata Cos.

- ❑ Who is Independent Director?
- ❑ What is his role?
- ❑ Any liabilities linked to Independent Director's role?
- ❑ Wadia & Mistry Vs Tatas

Provisions relating to 'Directors' Resignation'

- ❑ Acceptance of resignation Vs Noting of resignation.
- ❑ Unilateral communication Vs Bilateral acceptance.
- ❑ Is there any provisions relating to 'compulsory resignation'?

Concept of 'Compulsory Resignation'

Compulsory Resignation

Vs.

Removal of Director

Wadia's Petition in Bombay HC

- ❑ Removal of Independent Director – Only public shareholders should vote.
- ❑ Prayer – Conducting of EGMs be restrained.

Role of Independent Directors

Co. Law & SEBI Regulations – Independent Directors

Is Independent Director a Myth?

Are Independent Directors – ‘Yes Directors’?

Are Independent Directors really ‘independent’?

Procedure for Removal of Director

Section 169 of Cos. Act, 2013
(vis-à-vis to Section 284 of Cos. Act, 1956)

LIC Vs Escorts

[1986] 59 COMP CASE 548 (SC)

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- *Every shareholder of a company has the right, subject to statutorily prescribed procedural and numerical requirements, to call an extraordinary general meeting in accordance with the provisions of the Companies Act.*
- ***He cannot be restrained from calling a meeting and he is not bound to disclose the reasons for the resolution proposed to be moved at the meeting. Nor are the reasons for the resolutions subject to judicial review.***
- *No doubt, u/s 173(2), there shall be annexed to Notice of meeting a statement setting out all material facts concerning each item of business to be transacted at the meeting including, in particular, the nature of the concern or the interest, if any, therein, of every director, the managing agent, if any, the secretaries and treasurers, if any, and the manager, if any.*
- *This is a duty cast on management to disclose, in an explanatory note, all material facts relating to resolution coming up before General Meeting to enable the shareholders to form a judgment on the business before them.*
- ***It does not require the shareholders calling a meeting to disclose the reasons for the resolution which they propose to move at the meeting.***

Karnataka Bank Ltd. v. A.B. Datar [1994] 79 Comp. Cas. 417 (Kar.)

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- *None has right to claim office of director as a right*
- *If majority shareholders elect to entrust the directorship to a person, he may accept and execute that office;*
- *But one cannot claim such an office as of right and, therefore, it is not open to any person to prevent the company holding a meeting and passing a resolution for removal of a director.*

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Can a Company appoint 'Permanent Director'?

Can such Director be removed?

Vacation of office of Director Vs Disqualification for appointment

Vacation of office of Director u/s 167 of CA, 2013, 2013

Disqualification for appointment u/s 164 of CA, 2013

Sec. 167(1)(b): Office of a director shall become vacant if he absents himself from all meetings of the Board of Directors held during a period of 12 months with or without seeking leave of absence of the Board

Status of matters (Mistry Vs Tata Sons) pending before NCLT

- ❑ Oppression Mismanagement Petition
- ❑ Contempt Petition
- ❑ Rs. 300-Crore Defamation case by Wadia against Tata

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Q & A session

Presentation to the members of ILS Corporate Law Cell

Thank you Students!
It was nice interacting with you!

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