BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
CONTEMPT APPLICATION NO. 03 OF 2017
IN
C.P. NO. 82/241,242,244/NCLT/MAH/2016

Coram: B.S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of **Sections 241, 242 & 244** of the Companies Act, 2013.

Between:

Cyrus Investments Pvt. Ltd. & Anr. ... Applicants/ Orig. Petitioners

V/s.

M/s. Tata Sons Ltd. & Ors. ... Respondents/ Orig. Respondents

Applicants/ Petitioners:

1. Cyrus Investments Pvt. Ltd.
2. Sterling Investment Corporation Pvt. Ltd.

Respondents/ Respondents:

1. Tata Sons Ltd.
2. Ratan N. Tata
3. Amit Ranbir Chandra
4. Ishaat Hussain
5. Ajay Gopikisan Pairamal
6. Venu Srinivasan
7. Nitin Nohria
8. Ranendra Sen
9. Vijay Singh
10. Farida Dara Khambata
11. Cyrus Pallonji Mistry
12. Ralf Speth CEO of Jaguar Land Rover
13. N. Chandrasekaran
14. N.A. Soonawala
15. J. N. Tata
16. K. B. Dadiseth
17. R. K. Krishna
18. S. K. Bharucha
19. N. M.Munjee
20. R. Venkataramanan
21. Dr. Amrita Patel
22. V. R. Mehta
23. F. N. Subedar

Petitioners' Counsel:

Mr. Aryama Sundaram, Sr. Counsel, Mr. Milind Sathe, Sr. Counsel, Mr. Somasekhar Sundaresan, Mr. Rugvesh Mistry, Mr. Apurva Diwanji, Mr. Anoj Menon, Mr. Gunjan Shah, Mr. Parag Sawant, Mr. Akshay Doctor, Advocates for the Petitioners.

Respondents' Counsel:

1. Dr. Abhishek Manu Singhavi, Sr. Counsel, Mr. Ravi Kadam, Sr. Counsel, Mr. Nitesh Jain Advocate for the Respondent Nos. 1, 2, 3 & 23.

2. Mr. Dinesh Pednekar, Mr. Shailesh Poria, Advocates for the Respondent No. 5 & 7.
3. Mr. Mohan Parasaran, Sr. Counsel, Mr. Zal Andhyarujina, Mr. Jahangir Mistry, Ms. Namrata Parikh, Advocates for the Respondent Nos. 6, 14, 17 & 20.
4. Mr. Janak Dwarkadas, Sr. Counsel, Mr. Sharan Jagtiani, Mr. Jehangir Jejeebhoy, Ms. Shireen Pochkhanawalla, Mr. Nirav Barot, Advocates for the R-11.

ORDER

(Heard on 16.01.2017)

(Pronounced on 18.01.2017)

The petitioners are the family Companies of Mr. Cyrus Mistry (R11), they mentioned Contempt Application alleging that the contesting Respondents willfully disobeyed the orders dated 22.12.2016 of this Bench by R14, R17, and R20, in their capacity as Trustees – JRD Tata Trust, Tata Education Trust, Tata Social Welfare Trust holding 13.66% in Tata Sons Ltd (R1) by issuing a requisition notice u/s 169 of the Companies Act 2013on 3rd January 2017, on which, R2-10, 12 and 23 at the behest of R1, though being parties to the CP, issued a notice on 5th January 2017 to hold Extra Ordinary General Meeting (EGM) on 6th February 2017 to get an approval for removal of R11 from the office of Director of the company with immediate effect annexing an Explanatory Statement with a disclosure of background that R11 was on 24th October 2016 replaced as Executive Chairman with a further resolution to continue him as Director of the Company. The Explanatory Statement further says that Mr. Cyrus Mistry (R11) since subsequent to his removal as Chairman of R1 made unsubstantiated allegations casting aspersions not only on R1 as a whole but also made internal communications public, which are marked as confidential causing enormous harm to the Tata Group, its stake holders, including employees and shareholders, causing significant erosion in the market value of the Tata Group companies which has consequently resulted in harm to Tata Sons Limited (R1) and indirectly losses to its shareholders. And the Board is also of the opinion that the integrity of the Board proceedings is being

jeopardized by Mr. Mistry's continuation as a Director and the confidentiality of the Board decisions and proceedings cannot be ensured as the documents presented to the Board have been leaked and made public in a distorted and untruthful manner. This statement further mentions that at the EGM, pursuant to Section 169 (4) of the Companies Act 2013, the Director being sought to be removed has a right to make representation to the shareholders in the manner stated therein.

2. Now the case of these petitioners is that the spokesperson (name has not been mentioned) for the Tata Group has spoken to the Media on 21.12.2016 (that is before mentioning date of the CP, i.e., 22.12.2016), inter alia, representing that the Respondents had no intention to remove R11 from the Board and even marked that excerpt as Exhibit to this CA as if it is evidence to decide the relief sought in this Application. Had News Papers become evidence, the petitioners should not forget that almost all newspapers minced no words to say that interim reliefs sought on 22.12.2016 were not granted by NCLT. Of course, this Bench will neither take the newspaper cutting the petitioners made as Exhibit nor the news saying that interim reliefs rejected to R11 as material or inputs to arrive to a determination over this application.

3. In Para-h of this Application it has been mentioned that R14, 17, 20 having categorically agreed that they will not initiate action over this subject matter pending disposal of the company cannot cause such notice to be issued. This bench will answer this point later. As to EGM notice and its contents, it has already been enumerated in the first Para of this order itself.

4. The Petitioners further submit that if EGM is allowed to be held, it would constitute a deliberate and contumacious breach of the aforesaid order dated 22nd December 2016 and all those participating in and voting in such meeting would also be guilty of contempt, therefore it is necessary

that R1 be restrained by an order and injunction from convening or holding such a meeting or from transacting any business thereat.

5. The reliefs sought by these petitioners are to punish R14, R17 and R 20 as prescribed under Contempt of Courts Act for having committed breach of the order dated 22nd December 2016 by issuing requisition notice for removal of R11, and to punish R1, its directors R2-10, R12, R13, R13 and other officers for having issued the notice dated 5th January 2017, for requisitioning an EGM for removal of R11 from the Board of Directors.

6. These Petitioners have gone ahead in this contempt application seeking a restraint order against R1 not to convene or hold EGM scheduled on 6th February 2017 or any other date or from transacting any business there at.

7. In this background, it is imperative to place the text of the order to examine as to whether the conduct of the Respondents has really been reflecting disobedience to the orders dated 22.12.2016 and also to see whether any directions have been issued against the Company restraining it from carrying its functions, the text of the order is as follows:

"The Petitioner Counsel mentioned this Company Petition arguing for about 90 minutes inter alia asking reliefs (e), (f) and (g) covered under IA 17/2016. As soon as the Petitioner Counsel has completed his submissions, when this Bench put it to the Senior Counsel Shri Aryama Sundaram appearing on the petitioners' behalf as to why this Company Petition should not to be posted for main hearing after completion of the pleadings, instead of dealing with the interim reliefs he sought in the IA, to which the Petitioners Senior Counsel Shri Aryama Sundaram, R11 Senior Counsel Shri Janak Dwaraka Das and the answering Respondents Senior Counsel Dr. Abhishek Manu Singhvi, Shri S. N. Mookerjee, Shri Ravi Kadam and Shri Mohan Parasaran conceded for the following Consent Order as mentioned below:

The answering Respondents' side has agreed to file reply within 15 days hereof. The Counsel appearing on behalf of R11, who is evidently sailing along with

the Petitioners side, agreed to file reply to the Company Petition within one week hereof enabling the answering Respondents to file response to R11 reply within one week thereof and reply to the main Petition within 15 days hereof.

The Petitioner shall file rejoinder to the reply within 15 days thereof. In case R11 notices any new facts in the response of the answering Respondents to R11 Reply, he is at liberty to further respond to the same within 15 days.

It has also been further agreed by all the parties, more specially by the Petitioner Counsel, R11 Counsel and the Counsel on behalf of the answering Respondents, that they will not file any interim Application or initiate any action or proceedings over this subject matter pending disposal of this Company Petition. They have also further agreed that they will not violate the time schedule mentioned above.

Since the answering Respondents Counsel was about to argue over the maintainability of the Company Petition seeking dismissal of the Company Petition in limine, this Bench hereby gives liberty to the answering Respondents to raise maintainability point as first issue in the reply they file to this Company Petition.

The parties are hereby directed to file written submissions in brief, preferably in 10 pages, within 2 days before the next date of hearing after exchange of the same between the parties.

List this matter on 31.1.2017 for hearing the petitioners' side submissions and R11 side submissions and on 1.2.2017 for hearing the Respondents side submissions and rejoining submissions if any."

8. We must at the outset, before dealing with the contempt application mentioned against the answering Respondents, clarify that this order dated 22.12.2016 being passed by this Bench, it is not only relevant but also bounden duty of this Bench to put across as to what was the situation warranted this Bench to pass such an order on 22.12.2016.

9. It was recorded in the order itself that the petitioners counsel argued 90 minutes inter alia asking three interim reliefs (e), (f) and (g), on hearing the submissions, this Bench raised a query as to what are the allegations

made against the Respondents making case under section 241 of the companies Act 2013 and what is the material placed to support such allegations? Then this Bench, though the answering Respondents already expressed that this petition should be dismissed at the threshold on the ground of maintainability, put it to the Petitioners counsel whether this Bench was to pass orders on merits or to give directions for completion of the pleadings, such as filing reply, rejoinder and hear the main company petition at the earliest, to which, the petitioner counsel agreed for directions for completion of the pleadings. Having the answering Respondents, withholding themselves arguing over the maintainability, agreed for directions for completion of pleadings, accordingly this Bench recorded the consent of both of them. The order also bears out the fact that this Bench suggested for completion of the pleadings instead of pressing on interim reliefs.

10. We believe that this Bench can remain cognitive to the things happening before it and accordingly records them if required. We strongly believe that privilege is inbuilt in the majesty of adjudicating authority. For courts will remain impersonal to the parties and remain cognitive to the deliberations and proceedings taking place before it, this Bench, as stated above, places here the facts happened before it to the extent that are relevant.

11. For this matter being agreed to be posted for completion of pleadings, this has also been agreed *"that they will not file any interim application or initiate any action or proceeding over this subject matter pending disposal of this Company Petition"* this in fact is a precautionary order added to the directions for completion of the pleadings, so that there would not be any further filings in between causing hindrance or postponement to hearing of main company petition.

12. Generally, in 397 & 398/241 company petitions, once proceeding is launched, if no interim order is passed, to anchor CP to the shore of this

Forum, one after another application will come, for inspection one application, for some other cause some other application, from time to time amendment applications on the ground of bringing new facts, no end to it, ultimately main company petition will never come for hearing. This is not an irresponsible statement coming from this Bench; though it does not go well, stark reality is these inconceivable applications, most of the times do not permit the forum to deal with main petition. Though it has been categorically mentioned that this Tribunal or even erstwhile CLB is not bound by CPC, guided by the larger principles of natural justice, but more often than not, CPC comes in with its rigmaroles. To do away filing amendment application business, filing of an additional affidavit has started working well in the place of amendment application to take in subsequent facts into consideration, and to file reply affidavit from other side, so that this Bench need not pass an order and directly consider those facts at the time of hearing, but sometimes this Bench comes across a sticky situation that a party wants to bring in subsequent facts and such party will not agree for filing affidavit, rather insists upon to take amendment application and to pass an order, which not only consumes the time of this Bench, but also bothers appellate forum, so there won't be any let up for main company petition. If disposal of main petition does not take place, it is quite obvious company being a going concern, as long as it runs, it cannot stop acting, so is the case with new applications, they also keep coming. Some may be for genuine cause, some trot out to keep the management busy with the litigation; the net result in genuine as well as ingenuine cases is inordinate delay in disposing the matters, sometimes paralyze the companies as well. Sometimes, litigants start filing applications, if it does not work out, then land up before some other forum, what ultimately comes out is not material to them, main thrust is to throw this gauntlet of litigation around the rival party. If it is a genuine case, the party aggrieved will suffer, if it is an ingenuine case, the answering party suffers, but one

thing is inevitable that is delay, for now there being a mandate to expedite dispensation of justice at the earliest, we believe that NCLT could take the help of the statute to thwart this delay tactics. And this is important for two reasons, one, relief under these sections is derivative and preventive, not declaratory, two, the main objective is to ensure that functioning of the company is not arrested by the unfair attitude of anybody. This relief is conceived as extraordinary relief, because internal management of a company is monitored by two layers of authority, one is representative authority, that is Board of Directors, two, supreme authority, that is body of shareholders, who can take a call over the governance of the company or rather governance over their interest, normally this Bench can interfere under this section only when governance of the company is going out of the mandate of the constitutional documents, that is Memorandum of Association and Articles of Association and when the actions of the persons conducting the affairs of the company are unfairly prejudicial to the interest of the members. The jurisdiction under this section triggers into action only when the interest of the members unfairly dealt with a malafide to effect the interest of the members. There being in-house checks and balances for management, this Bench will normally not interfere, unless action is solely done with a malafide intention to cause harm to the interest of members. This exceptional right of minority will be dealt with under section 241 and 242 of the Act 2013. Perhaps by looking at the delay taking place in resolving the corporate litigation, strict mandate has been given to make the corporate sector free from litigation, so that organization can devote time and efforts to develop the business which ultimately takes this country forward.

13. To avoid a situation like above, this Bench suggested not to initiate any proceeding in relation to this subject matter not with an idea to stay the functioning of this conglomerate that takes actions from to time to time, but with a view to make the company and the parties free from litigation as

early as possible, so that at least litigation will not become a hurdle in the growth of the company and indirectly to the economy of the Nation. Indeed the beauty of the oppression and mismanagement jurisprudence is unique and incompatible to other jurisprudences, the reason being, action is derivative to take the cause of the company to protect its subjects within the frame work of the company, equally important or more important is the interest of the company, if the action under this jurisdiction is malafidely aimed at denigrating the company under the garb of section 241, such action cannot be considered as subject matter falling within the ambit of section 241 of the Companies Act 2013.

14. If this Bench was of the view to pass interim reliefs in favor of the petitioners, it would have not suggested the petitioner counsel to elect either to argue on the petition or to take directions for completion of the pleadings, had it been satisfied to pass interim orders, this Bench ought to have heard the respondent side as well and would have also heard them before passing such orders. It should also be kept in mind that it was suggested to the Petitioners counsel, not to the Respondents; therefore, it could not even be imagined that the Respondents side would agree to pass blanket order against them even without opening their mouth to reply to the arguments of other side, hence it is inconceivable to any prudent man to assume a consent order was passed against R1 Company not to take up issues to meet the requirements of the company or even about removal of R11. When battle of senior counsel appear on either side, can it be assumed that one side directly agreed for consent order without even giving their reply submissions?

15. To test as to whether any element of contempt is made out in an allegation, such allegation must constitute the following elements; let us see what they are,

1. making of a valid court order against Respondents,
2. knowledge of the order by the Respondents,

3. ability of the respondent to render compliance and

4. willful disobedience of the order.

16. As to first element, it has to be examined whether any direction has been given against the answering Respondents to act or not to act in respect of something, here in this case it is self-evident that it is a Consent Order passed by this Bench as to **how to go about the proceedings pending before this Bench,** as we said above, this Bench has not passed any order in respect to the relief sought by the Petitioner Counsel. When the Petitioner Counsel argued the matter, this Bench straight away put it to the said Counsel why not this matter be posted for completion of pleadings instead of dealing with interim reliefs sought by the Petitioner Counsel. Therefore, it could not now be said that the Respondents side agreed for passing interim reliefs against the Respondent Company not to take decisions in relation to the affairs of the company. At the cost of repetition, we must again say that a clause ***initiate any action*** ..... *over the subject matter* cannot be taken out of the context and read it as injunction against the company. If the words in the order saying *"that they will not file any interim application or* ***initiate any action*** *or proceeding over this subject matter pending disposal of this Company Petition"* is again visited, if the word "initiate any action" in between the clause *any interim application* and *proceeding over the subject matter* is read along with the words on either side in the light of doctrine of ejusdem generis, it has to be understood that the clause is to say that no action or proceeding should be invoked over the subject matter in the CP between the mentioning date i.e., 22.12.2016 and the hearing date 31.1.2017 to keep the case clean and ready for main hearing. Therefore, the clause afore said cannot be construed to restrain the company from proceeding with the affairs of the company.

17. The Respondents did not advance their submissions because the Bench was not inclined to pass any interim orders on the submissions made by the Petitioner Counsel. Normally, if this Bench is inclined to pass interim

relief, it will grant interim relief as well as directions for completion of pleadings. But this bench has not done so; it has only suggested the Petitioner Counsel to take directions for the completion of the pleadings. Basing on such suggestion, the Petitioners having agreed for a direction for completion of pleadings, consent order was passed first for completion of pleadings, then additional consent that none of them will file any interim applications or initiate any action or over this subject matter pending disposal of Petition. The word "subject matter" in relation to a Company Petition, speaks about the issues raised in the Company Petition i.e. over the alleged actions said to have taken place before filing the Company petition, here in this additional understanding it has not spoken about either interim reliefs or reliefs sought in the Company Petition, therefore, the subject matter in the Company Petition or issues in the Company Petition cannot be said as reliefs sought in a Company Petition. The word subject matter always speaks of the facts in dispute prior to filing company petition; reliefs are only remedial measures to be granted after examining the subject matter, therefore since the word *this subject matter* of the company petition has to be construed as dispute in relation to the historical facts. It is audacious to connect a statement in the first para of the order saying that the petitioners counsel sought three reliefs above to the word *subject matter* appearing three four paras down below to the first para for saying this Bench passed consent order stopping the company from carrying its functions.

18. It goes without saying whenever any contempt Petition is moved, it has to be seen whether order on face showing a restraint order against any of the parties, if it is there, then only first element mentioned above comes into existence, if it comes into being, then second element about knowledge of the Respondents is to be proved, if second element is also through, then third element about ability of the Respondents to comply with is to be proved, if all the above three are proved, then fourth element about

disobedience has to be proved, unless all these elements have been proved, it cannot be held that action of the answering respondents is contumacious. Here, the petitioners failed to prove that a restraint order has been pending against the Respondents, because out of the four elements, not even first element has been established.

19. In the main company petition, it has not been said that the company is likely to hold EGM to remove R11 as the Director of the Company, it cannot even be a subject matter in the Company Petition because no such action was initiated against R11 for his removal as Director. Simply by looking at the wording in the order stating that the Petitioner Counsel argued over reliefs inter alia asking relief (e), (f), and (g), it cannot even be assumed that this Consent Order has been passed to restrain the company or its Board to proceed with taking decisions and carrying its decisions. To our understanding either on the day this Order was passed or on reading the consent order passed by us, it was/is not in our contemplation that this Bench has recorded a Consent order restraining R1 from taking decisions to carry its functions.

20. The Petitioner side Counsel and the Respondents' Counsel argued left and right over contempt jurisdiction by referring various rulings.

21. The petitioner side Counsel submits that a Consent order would become an undertaking given to the Court therefore, any non-compliance or violation of such orders tantamount to contempt whereas the Respondent counsel submits that there are no orders against any of the Respondents, the order is only limited not to proliferate this Company petition into interim applications and to stop proceeding on the same subject matter before other forums. The Respondent Counsel has gone further ahead that even assuming that consent order is against the Respondent, violation of such order would not amount to willful disobedience on the part of the Respondents. To fortify that consent order does not amount an undertaking and contra argument consent order

amounts to undertaking, both the counsel relied upon citations ***State of Bihar vs Rani Sonabati Kumari AIR 1961 SC 221; Babu Ram Gupta vs. Sudhir Bhasin and another (1980) 3 SCC 47; Sanjay Gupta vs Rajiv Gupta & Anr 2014 SCC On Line Del 6894; Rama Narang vs. Ramesh Narang and Another (2009) 16 SCC 126 and Sudhir Vasudeva v. M. George Ravishekaran and Others (2014) 3 SCC 373.***

22. For this Bench having noticed that no consent order is there against R1 to be restraint in dealing with the affairs of the company and its management, there is no point in uploading this order with the ratios not required to be discussed. But one para of ***Sudhir Vasudeva supra***, says that we must bear in mind that the power to declare that individuals are in contempt is rare power and that could not be easily exercised because it interferes with the liberty of an individual, for the benefit of understanding it, the text is placed below:

"19. The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor can the plea of equities be considered. Courts must also ensure that while considering a contempt plea the power available

to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and Others (2002) 5 SCC 352, V.M.Manohar Prasad vs. N. Ratnam Raju and Another (2004) 13 SCC 610, Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others (2008) 5 SCC 339 and Union of India and Others vs. Subedar Devassy PV (2006) 1 SCC 613."

23. For the reasons aforementioned, this Bench hereby dismisses the Contempt Application filed by the Petitioners. Both the Counsels on either side vehemently argued transgressing to the merits of the case, however, this Bench need not go into the merits of the case at this juncture, henceforth we have not dealt with arguments gone on the substantial aspects of the Company Petition.

24. The Petitioners happened to raise a point in the Contempt petition that the Board of Directors convening to hold EGM on 6.2.2017 for removal of R11 from the Directorship he has been holding. Over this aspect, the Petitioners and R11 has liberty to raise that point before NCLT, thereby notwithstanding whether the procedure followed in proposing for his removal as a Director in Shareholders meeting leaving it open to exercise the democratic rights of the Shareholders, this Bench does not and will not want to curtail the liberty conferred upon them by the statute.

25. Though it is not a point to be taken up in a Contempt Application, having the Petitioners already mentioned and brought it to this bench notice, this Bench, invoking the inherent powers endowed upon this Bench under Rule 11 analogous to powers under section 151 of CPC, the petitioners and R11 are given liberty to file an affidavit limiting it to the

proposal for removal of R11 from the Board within three days from the day this order made available to the parties and then the answering Respondents to file reply within three days from thereof and rejoinder if any three days from the date of filing reply affidavit, so that this Bench could hear this issue along with other issues of main company petition.

26. List this matter as fixed earlier for hearing main company petition and the affidavits ordered to be filed.

Sd/-

B. S.V. PRAKASHKUMAR
Member (Judicial)

Sd/-

V. NALLASENAPATHY
Member (Technical)