

Supreme Court's Mistry-Tata Judgment: The case for a review

There are substantial questions of law—concerning the provisions of the Companies Act 2013—that the Supreme Court must clarify on

Written by **Guest**

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By VK Unni

Cyrus Investments Pvt. Ltd, part of the Shapoorji Pallonji Group, has filed a review petition before the [Supreme Court](#) (SC) regarding its March 26, 2021, judgement

(hereon, SC Judgement). In the said judgement, the SC had held in favour of the controlling shareholders of Tata Sons Pvt. Ltd, by setting aside the decision of the National Company Law Appellate Tribunal (NCLAT), pronounced in December 2019.

Scope of the review petition

The SC has authority to review its judgement pronounced earlier. It shall review its judgement only if the petitioner is able to satisfy a very important test, called the “error apparent on the face of record” test. In its matters, the SC is guided by the doctrine of ex debito justitiae (as of right) as well as the fundamental principal of administration of justice that no one should suffer because of a mistake of the court.

Important issues that a review can clarify

One pertinent issue which a review in the present matter can clarify is the role of directors and their duties in a company, as the SC judgement regarding the same has some inconsistencies with the provisions of the Companies Act 2013 ([CA](#) 2013). The CA 2013 prescribes a detailed set of duties which all directors are expected to perform, and these duties are codified in Section 166 of the Act. The section states that the director of a company shall act in accordance with the articles of the company, he/she shall act in good faith for the benefit of its members as a whole, and in the best interests of the company, its employees, the community and for the protection of environment. The section imposes a duty on the director to exercise his duties with due and reasonable care, skill and diligence and to exercise independent judgment, and they are applicable to directors of all companies, i.e., both public companies and private companies.

Coming to the SC judgement, the court held that the directors nominated by Tata Trusts, who held controlling shares in Tata Sons were to be treated on a different footing because of two reasons: i) Tata Sons was just the principal investment holding company that had no manufacturing or trading activity, and ii) its majority shareholding was held by charitable trusts. This interpretation is bound to open a Pandora’s Box

because it conflicts with the legislative intention on director's duties embodied in Section 166 of CA 2013 and raises many relevant questions such as:

- Whether the relevant sections of the CA 2013 are not applicable when it comes to the duties of a director nominated by a charitable trust?
- Whether the situation would have been different if the investee company were an operating company that is involved in manufacturing or trading activity?

A director owes a fiduciary duty towards the company and he/she is duty-bound to protect the interests of the company above anything else. He/she has a duty to do what they consider to be in the best interest of the company and cannot give up their independent judgment. The SC, on earlier occasions, has held that a director of a company undoubtedly stands in a fiduciary capacity vis-a-vis the company and all of his/her actions should be based on the paramount interest of the company. Since the SC judgement seems to differ from all these well-established legal principles, it would be appropriate for it to consider these divergences and clarify the legal position of directors if it decides to review the judgement.

The second issue which warrants an SC review is regarding the just and equitable winding up test mentioned under Section 242 of the CA 2013. The SC has applied the just and equitable winding up provision only to cases involving corporate quasi-partnerships and functional deadlock. Such a narrow interpretation can seriously impact minority shareholders of large number of companies, including public and listed companies. Earlier, the SC, in the landmark Hind Overseas judgement, held that the test of just and equitable winding up had no precise definition and the test could not be reduced to a straitjacket of an inflexible formula.

The third issue which the SC can clarify through the review is the interpretation of "prejudice to member/members". Compared to the earlier law, CA 2013 contains an additional ground regarding conduct that causes prejudice to any member. The judgement of the SC did not deal with meaning of the word "prejudice". Would prejudice

to member mean acts/omissions on the part of the controlling shareholder that causes harm or injury to the petitioner? Perhaps the SC can clarify this crucial question through the review.

In a litigation dealing with oppression under the CA 2013, the power of the SC is unfettered on rendering substantial justice, and it can grant remedies even if oppressive conduct is not proved. The endeavour of the SC should be to settle the dispute once and for all, so as to rid it of all uncertainty and confusion that both parties may have. The hope is that the SC will review its previous judgement and clarify the important questions of law which have been pointed out here and pass a judgement which will render substantial justice to all the parties.

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