

OPPRESSION AND MISMANAGEMENT OF MINORITY SHAREHOLDERS: A PRACTICAL PERSPECTIVE FROM TATA- MISTRY CASE

STUDY CIRCLE - V.P. SHINTRE & ASSOCIATES

Adv CS Deepti Dole

(99603 49856/ doledeepti@gmail.com)

Office: 1098/1 “Saphalya”, Model Colony, Pune- 411016

Foss v Harbottle- Rule of Majority

Jenkins L.J in Edward v. Halliwell:

“ The rule in Foss v. Harbottle, as I understand it, comes to no more than this. First, the proper plaintiff in an action in respect of a wrong alleged to be done to a company or association of persons is prima facie the company or the association of persons itself.

Secondly, where the alleged wrong is a transaction which might be made binding on the company or association and on all its members by a simple majority of the members, no individual member of the company is allowed to maintain an action in respect of that matter for the simple reason that, if a mere majority of the members of the company or association is in favour of what has been done, them cadit quaestio (cannot be questioned).”

What is oppression or mismanagement?

Shanti Prasad Jain v. Kalinga Tubes Limited

AIR 1965 SC 1535

- Whether the conduct of the affairs of a company by the majority shareholders **was oppressive to the minority shareholders** and that depends upon the facts proved in a particular case.
- Not enough to show that there is just and equitable cause for winding up the company and further be shown that the **conduct of the majority shareholders was oppressive to the minority as members**
- **Events** have to be considered **not in isolation** but as a part of a **consecutive story**.

Shanti Prasad Jain v. Kalinga Tubes Limited

AIR 1965 SC 1535

- There must be **continuous acts on the part of the majority shareholders**, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members.
- Conduct must be **burdensome, harsh and wrongful**
- **Mere lack of confidence between** the majority shareholders and the minority would **not be enough** unless the lack of confidence springs from oppression of a minority
- Oppression must involve at **least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder.**

Acts amounting to Oppression & Mismanagement

- Sending notices to a shareholder to a place where he did not reside. NRI petitioner does not attend the Board meeting of the company of which he was the Promoter, notices of such meetings, contrary to the provisions of the Articles, were sent to his Indian address and systematically his majority shareholding was reduced to minority. *Shivnath Rai Bajaj v. NAFABS India P. Ltd.* [2002] 35 SCL 448 CLB
- Continuous refusal by the company to register the shares with an ulterior motive of retaining control over affairs of the company- *Kumar Exporters Private Limited v. Naini Oxygen and Acetylene Gas Ltd* [1986] 60 Comp Cas 984 (All)

Acts amounting to Oppression & Mismanagement

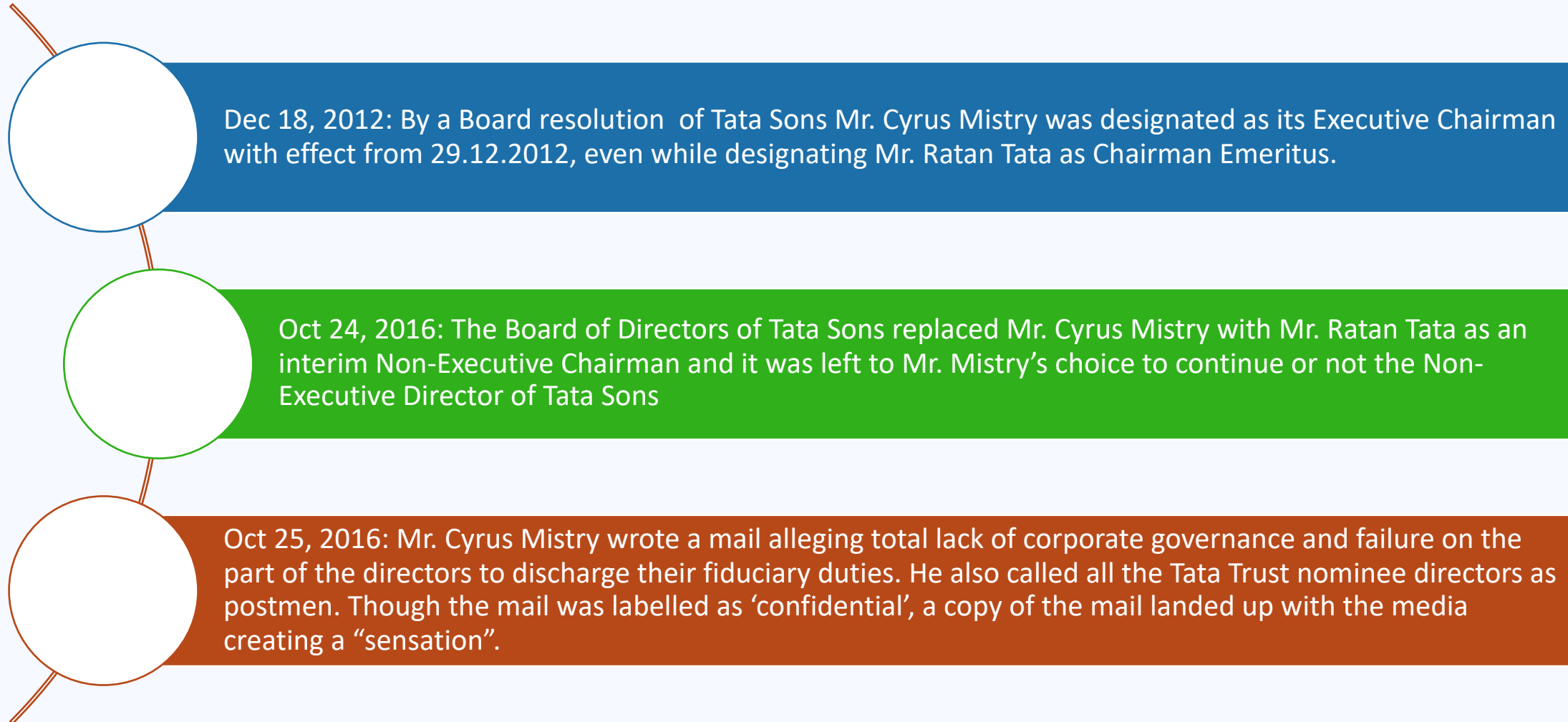
- Where shareholders were left completely in the dark, because no AGM was called with no information regarding the manner in which the affairs of the company were being conducted, while those men who purported to act as directors dealt with the company's money in any fashion they liked and prejudicial to the interest of the company. *Hindustan Co-op Insurance Society Ltd; 1961 Comp. Cas. 193 (Cal)*.
- Director trying to gain majority control of the company by issuing shares to himself, then such act would tantamount to oppression, as here the majority shareholders are being reduced to minority because of such oppressive action. *Dale and Carrington Investment Ltd. vs. Prathapan & Ors. (2004)*:

Acts NOT amounting to Oppression & Mismanagement

- An unwise, inefficient or careless conduct of a director- *Needle Industries (India) Ltd. V. Needle Industries Newey (India) Holdings Ltd. [1981] 51 Comp.*
- Non-holding of the meeting of the directors- it may affect the rights of the petitioner as director but his rights as a minority shareholder would not be affected- *Chander Krishnana Gupta v. Pannalal Girisharilal P. Ltd. [1984] 55 Comp. Cas 702 (Delhi)*
- Not declaring dividends when company is making losses (as above)
- Merely the company incurs loss, it cannot be said that it is mismanaged

Tata v. Mistry- Timeline

Study Circle Session - VP Shintre & Associates



Dec 18, 2012: By a Board resolution of Tata Sons Mr. Cyrus Mistry was designated as its Executive Chairman with effect from 29.12.2012, even while designating Mr. Ratan Tata as Chairman Emeritus.

Oct 24, 2016: The Board of Directors of Tata Sons replaced Mr. Cyrus Mistry with Mr. Ratan Tata as an interim Non-Executive Chairman and it was left to Mr. Mistry's choice to continue or not the Non-Executive Director of Tata Sons

Oct 25, 2016: Mr. Cyrus Mistry wrote a mail alleging total lack of corporate governance and failure on the part of the directors to discharge their fiduciary duties. He also called all the Tata Trust nominee directors as postmen. Though the mail was labelled as 'confidential', a copy of the mail landed up with the media creating a "sensation".



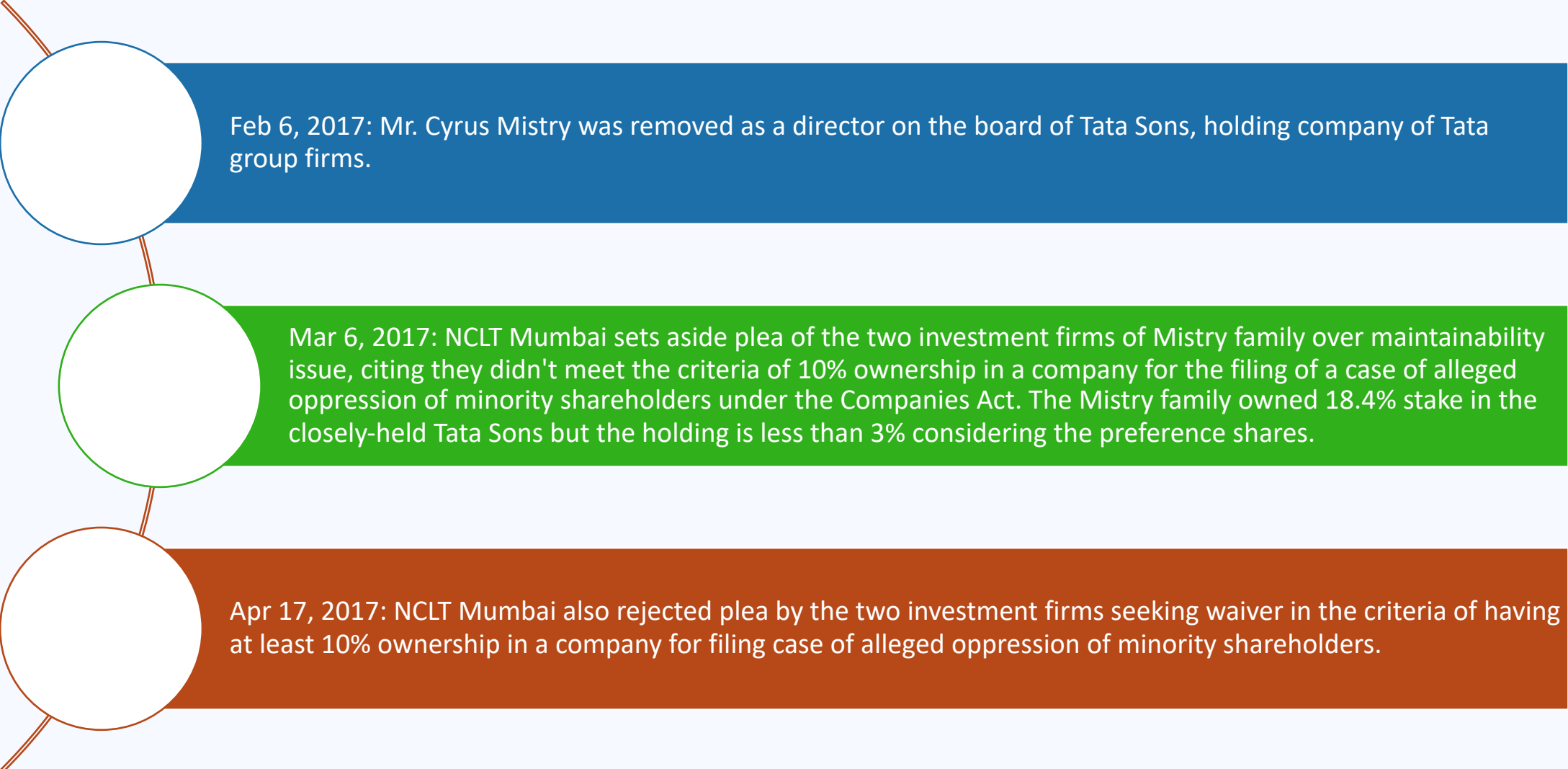
Nov 10, 2016: Tata Sons issued a Press statement

Dec 12- Dec 14, 2016: Removal of Mr. Cyrus Mistry from the Directorship of Tata Industries Limited, Tata Consultancy Services Limited and Tata Teleservices Limited

Dec 19, 2016: Mr. Cyrus Mistry resigned from other operating companies of Tatas such as The Indian Hotels Company Limited, Tata Steel Limited, Tata Motors Limited, Tata Chemicals Limited and Tata Power Limited, on the eve of the Extraordinary General Meetings of those companies, convened for considering resolutions for his removal

Dec 20, 2016: Two Mistry family backed investment companies, Cyrus Investments Pvt Ltd and Sterling Investments Corporation Pvt Ltd, moved NCLT Mumbai, alleging oppression of minority shareholders and mismanagement by Tata Sons. They also challenge Mistry's removal.

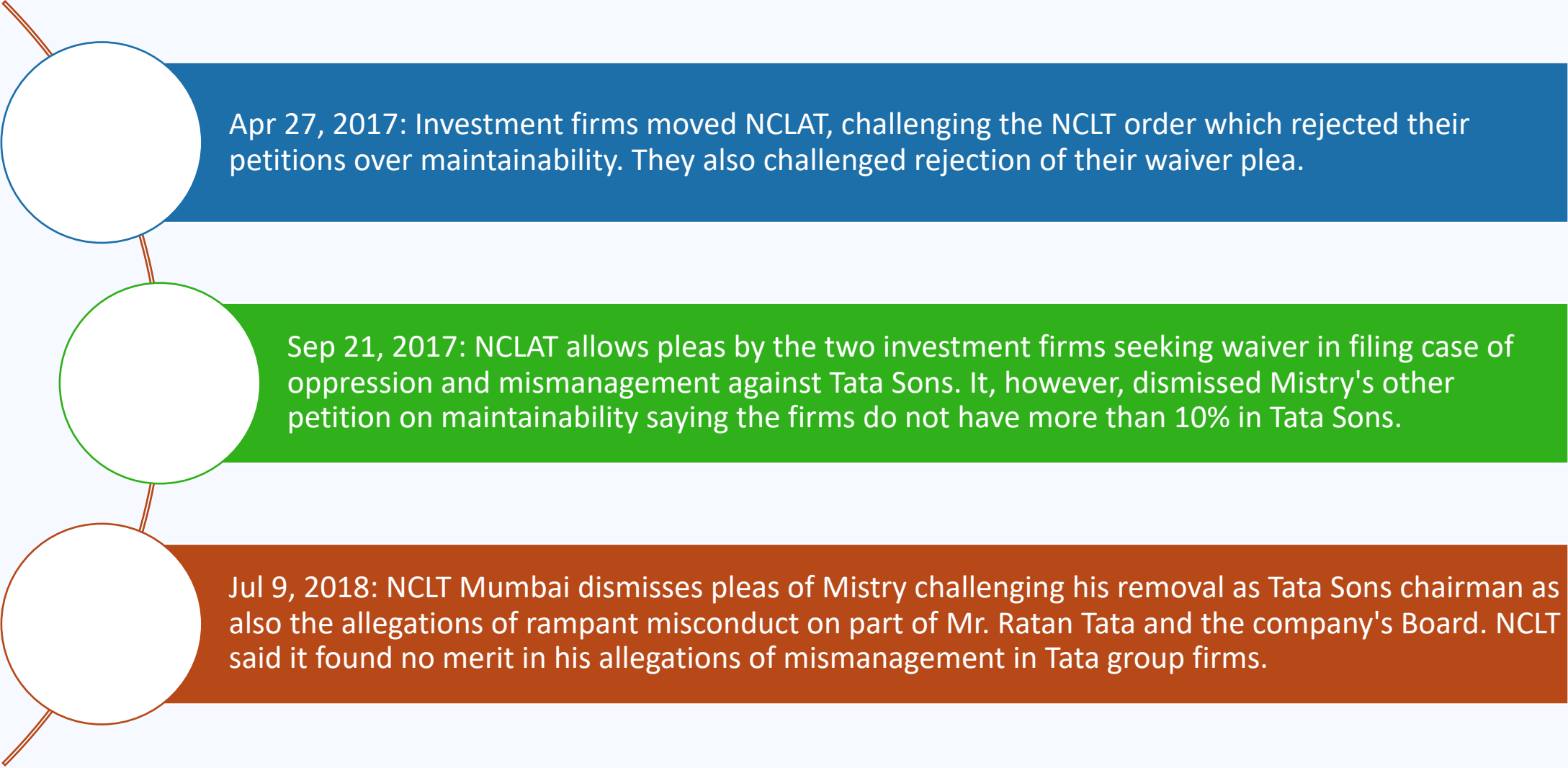
Jan 12, 2017: Tata Sons names Mr. N Chandrashekar as Chairman, the then TCS Chief Executive Officer and Managing Director.



Feb 6, 2017: Mr. Cyrus Mistry was removed as a director on the board of Tata Sons, holding company of Tata group firms.

Mar 6, 2017: NCLT Mumbai sets aside plea of the two investment firms of Mistry family over maintainability issue, citing they didn't meet the criteria of 10% ownership in a company for the filing of a case of alleged oppression of minority shareholders under the Companies Act. The Mistry family owned 18.4% stake in the closely-held Tata Sons but the holding is less than 3% considering the preference shares.

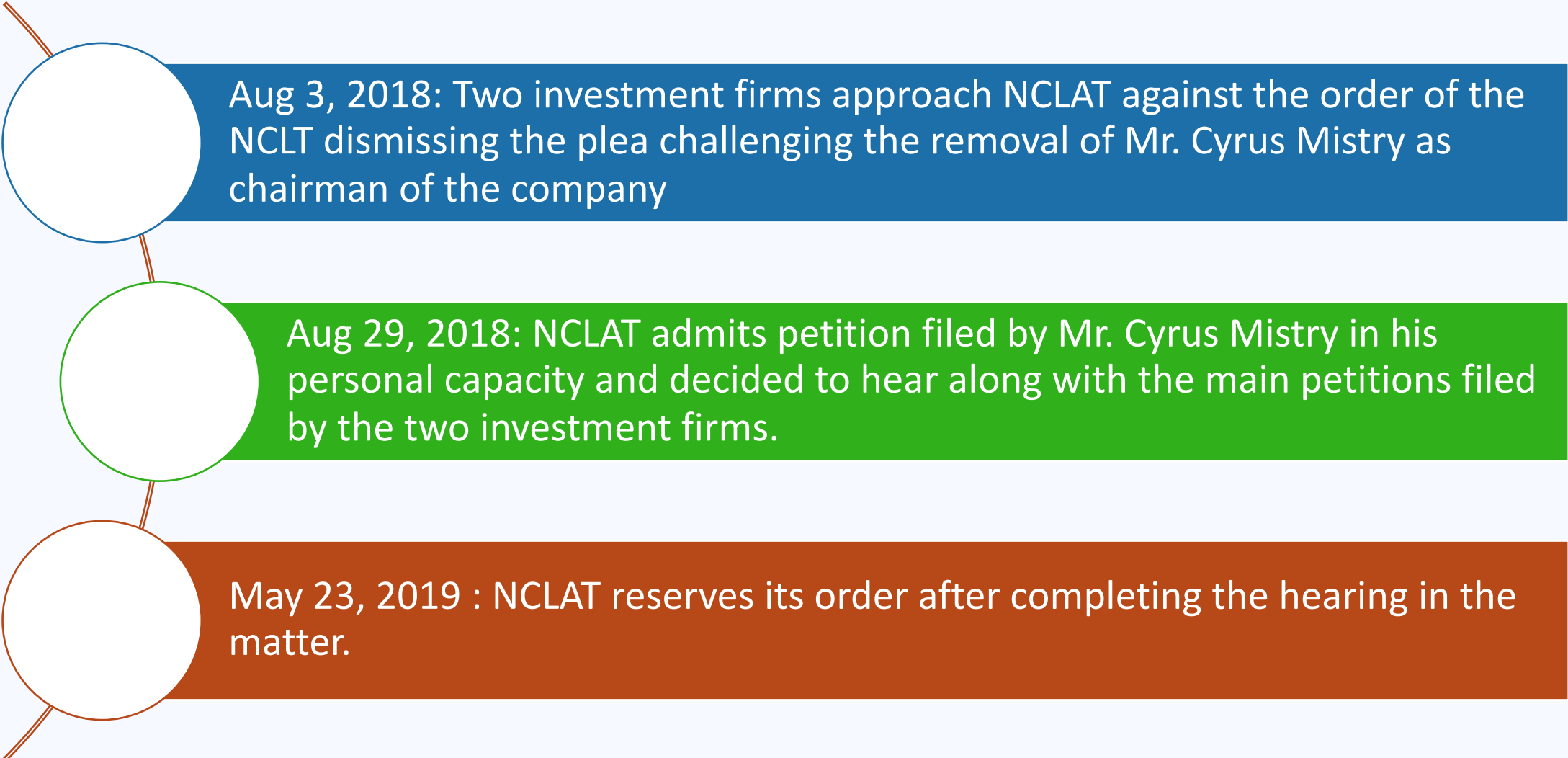
Apr 17, 2017: NCLT Mumbai also rejected plea by the two investment firms seeking waiver in the criteria of having at least 10% ownership in a company for filing case of alleged oppression of minority shareholders.



Apr 27, 2017: Investment firms moved NCLAT, challenging the NCLT order which rejected their petitions over maintainability. They also challenged rejection of their waiver plea.

Sep 21, 2017: NCLAT allows pleas by the two investment firms seeking waiver in filing case of oppression and mismanagement against Tata Sons. It, however, dismissed Mistry's other petition on maintainability saying the firms do not have more than 10% in Tata Sons.

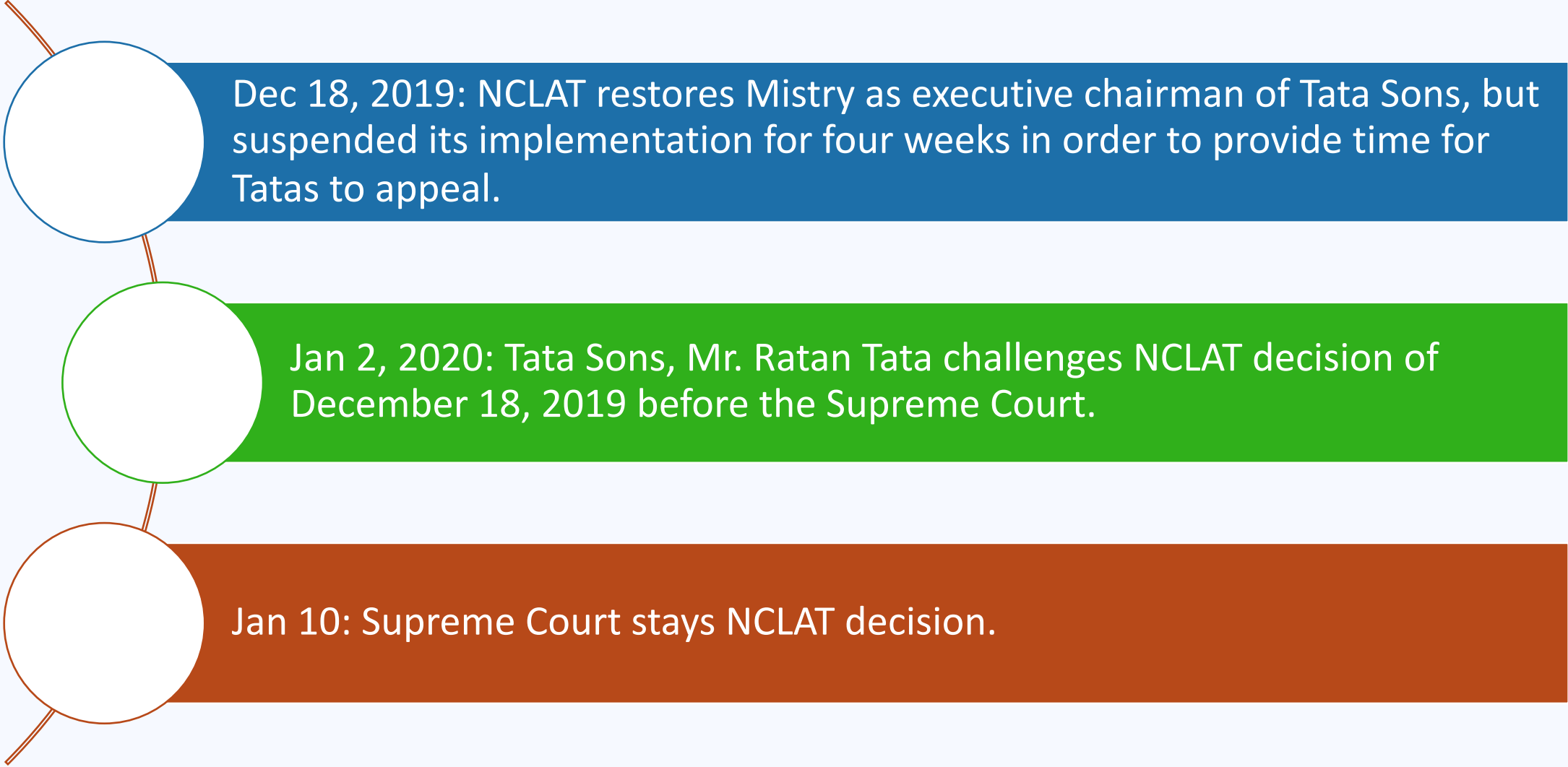
Jul 9, 2018: NCLT Mumbai dismisses pleas of Mistry challenging his removal as Tata Sons chairman as also the allegations of rampant misconduct on part of Mr. Ratan Tata and the company's Board. NCLT said it found no merit in his allegations of mismanagement in Tata group firms.



Aug 3, 2018: Two investment firms approach NCLAT against the order of the NCLT dismissing the plea challenging the removal of Mr. Cyrus Mistry as chairman of the company

Aug 29, 2018: NCLAT admits petition filed by Mr. Cyrus Mistry in his personal capacity and decided to hear along with the main petitions filed by the two investment firms.

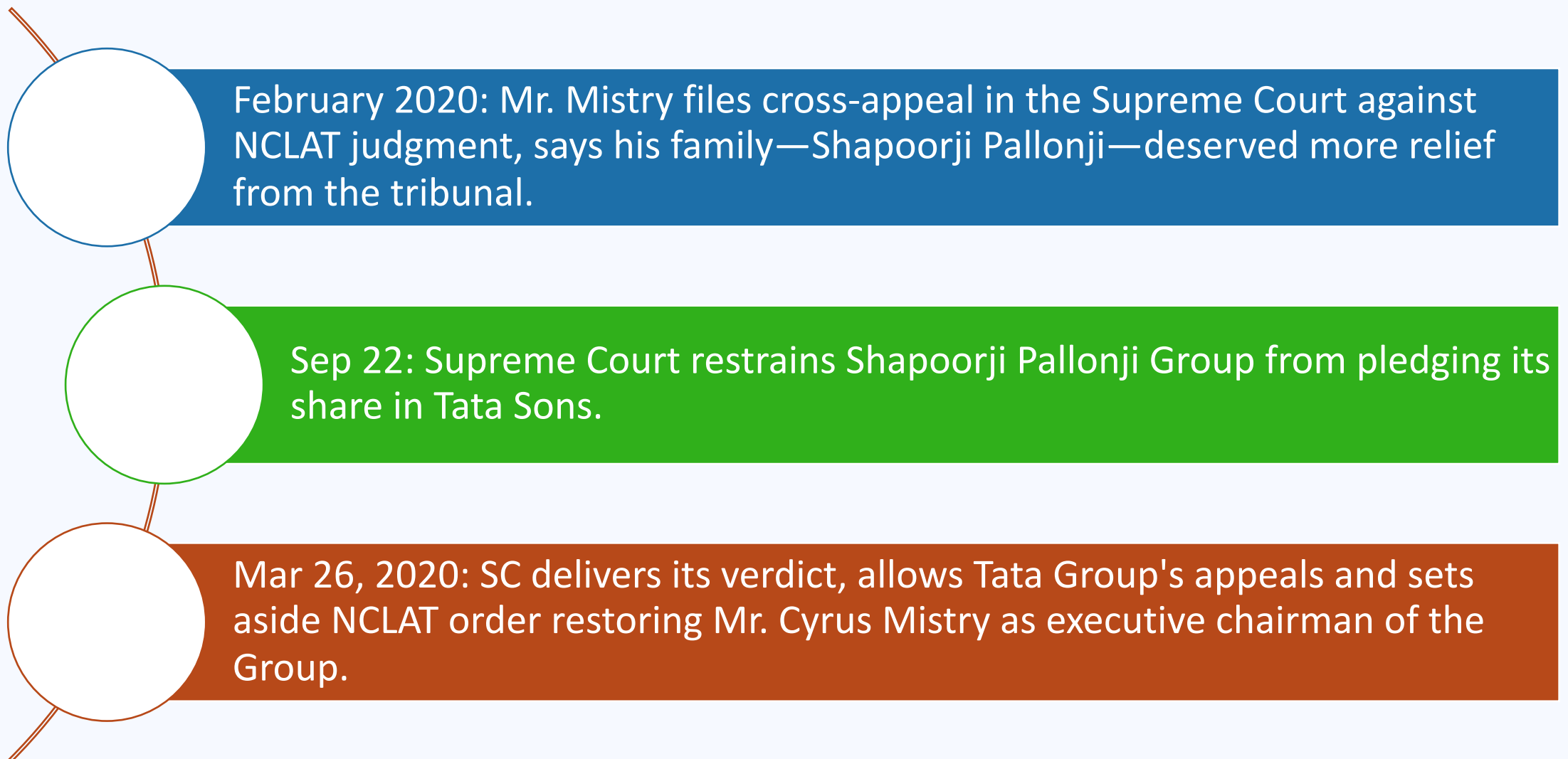
May 23, 2019 : NCLAT reserves its order after completing the hearing in the matter.



Dec 18, 2019: NCLAT restores Mistry as executive chairman of Tata Sons, but suspended its implementation for four weeks in order to provide time for Tatas to appeal.

Jan 2, 2020: Tata Sons, Mr. Ratan Tata challenges NCLAT decision of December 18, 2019 before the Supreme Court.

Jan 10: Supreme Court stays NCLAT decision.



February 2020: Mr. Mistry files cross-appeal in the Supreme Court against NCLAT judgment, says his family—Shapoorji Pallonji—deserved more relief from the tribunal.

Sep 22: Supreme Court restrains Shapoorji Pallonji Group from pledging its share in Tata Sons.

Mar 26, 2020: SC delivers its verdict, allows Tata Group's appeals and sets aside NCLAT order restoring Mr. Cyrus Mistry as executive chairman of the Group.

Who can apply under Section 241?

1. Company having share capital:

Minimum **100** members of the company or not less than **1/10th** of the total number of its members, whichever is less, or

Any member or members holding not less than **1/10th of the issued** share capital of the company,

subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares.

2. Company not having share capital :

Not less than **1/5th** of the total number of its members

However Tribunal may, on an application waive all or any of the requirements so as to enable the members to apply under section 241.

Conditions by NCLAT for waiver

- Whether the applicants are member(s) of the company in question?
- Whether (proposed) application under section 241 pertains to ‘oppression and mismanagement’?
- Whether similar allegation of ‘oppression and mismanagement’, was earlier made by any other member and stand decided and concluded?
- Whether there is an exceptional circumstance made out to grant ‘waiver’, so as to enable members to file application under section 241 etc.
- Any factors unrelated to the merits of the case

Allegations by Cyrus Mistry Group

Interference of
Mr. Ratan Tata in
decision making

Transactions with
Mr. C.
Sivasankaran

Acquisition of
Corus Group

Removal of Mr.
Cyrus Mistry as
Executive
Chairman

Doomed Nano
Project

Dealings with
NTT DocoMo

Transactions with
Mr. Mehli Mistry

**Whether the allegations of the Mistry Group
amounted to
oppression & mismanagement?**

Whether removal of Mr. Cyrus Mistry was an oppressive Act?

**Whether reinstatement of Mr. Cyrus Mistry
was within, reliefs sought,
the powers of NCLAT?**

Whether NCLAT muted the power of Article 75 of Articles of Association even while refusing to set it aside?

Article 75 of the Articles of Association

75. Company's Power of Transfer

The Company may at any time by Special Resolution resolve that any holder of Ordinary shares do transfer his Ordinary shares. Such member would thereupon be deemed to have served the Company with a sale notice in respect of his Ordinary shares in accordance with Article 58 hereof, and all the ancillary and consequential provisions of these Articles shall apply with respect to the completion of the sale of the said shares. Notice in writing of such resolution shall be given to the member affected thereby. For the purpose of this Article any person entitled to transfer an Ordinary share under Article 69 hereof shall be deemed the holder of such share.”

Whether affirmative vote items are oppressive in nature?

**Petition to be prepared in NCLT-1
Accompanied by verifying affidavit in NCLT-6**

**(NCLT-1 and NCLT-6 should be accompanied by
NCLT-2 – Notice of admission)**

Question & Answer Session

THANK YOU

Study Circle Session arranged by V.P. Shintre & Associates, Advocates
Contact details

Website : www.vaishalibhagwat.com

Office: 1204/13 Namaskar Apartments,
Ghole Road,
Shivajinagar, Pune

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