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RESEARCH ARTICLE

CORPORATE GOVERNANCE TO FAMILY GOVERNANCE, WHICH IS MORE RELEVANT

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ABSTRACT

Corporate governance is like the backbone of an organization. It acts as a guide to all the activities and decisions that are made for the company. Through the effective implementation of corporate governance the board of directors are able to devise efficient and effective strategies in order to achieve the company's goals. This case on corporate governance and its implementation by the board of directors helps us understand the role, importance and the value of corporate governance. The case is made in light of the recent events that had taken place with the Tata Group of companies which is the removal of Cyrus Mistry from the chairmanship of the Tata Sons (the holding company for the entire Tata conglomerate) and from the board of other Tata group companies as well. The case helps in understanding the corporate governance of the Tata Group and the mind-set behind it. Tata Group is a conglomerate which is worth almost a $100 billion dollar and has taken a lot of years of dedication and hard work to reach to the position that it holds today. This wouldn't have been possible without a strong emphasis on ethics and corporate governance. This case helps the reader understand as to how the company's governance is implemented and what the areas are of key importance to the company. It also highlights the relation between 2 major conglomerates namely the Pallonji Group (owned by Cyrus Mistry's father Pallonji Mistry) and Tata Group. Apart from this it also throws light on the roles and responsibilities that the board of directors have towards the company and the stakeholders. After going through the recent events of the Cyrus Mistry removal the case also tries to analyse and present some suggestions that could help in avoiding such situations of conflict. The major emphasis throughout the case is on relating theory with practical events or happenings in order to understand the relevance of corporate governance in a corporation or a company.

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INTRODUCTION

Corporate governance is the arrangement of tenets, practices and procedures by which an organization is coordinated and controlled. Corporate administration basically includes adjusting the interests of an organization's numerous partners, for example, shareholders, administration, clients, providers, lenders, government and the group. Since corporate administration likewise gives the structure to achieving an organization's goals, it incorporates for all intents and purposes each circle of administration, from activity arranges and inward controls to execution estimation and corporate revelation. The board of directors is the primary direct stakeholder influencing corporate governance. Executives are chosen by shareholders or delegated by other board individuals, and they speak to shareholders of the organization. The board is entrusted with settling on essential choices, for example, corporate officer arrangements, official pay and profit approach. In a few examples, board commitments extend past money related advancement, when shareholder resolutions require certain social or ecological worries to be organized.[1]

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Tata group

Tata Group is a multinational aggregate and holding company headquartered in Mumbai, Maharashtra, India. It was established in 1868 by Jamshedji Tata and increased universal acknowledgment in the wake of acquiring a few worldwide companies. There are 30 freely recorded Tata undertakings with a consolidated market capitalisation of about $116 billion as of March 2016. Tata companies with significant scale include Tata Steel, Tata Motors, Tata Consultancy Services, Tata Power, Tata Chemicals, Tata Global Beverages, Tata Teleservices, Titan, Tata Communications and Taj Group. About 66 percent of the equity capital of Tata Sons is held by philanthropic trusts endowed by members of the Tata family. The Tata Group has built up and back various research, instructive and social establishments in India. The Tata Group was granted the Carnegie Medal of Philanthropy in 2007 for magnanimous exercises. Tata Business Excellence Group, a division of Tata Sons, helps Tata organizations in their business perfection activities through the Tata Business Excellence Model, Management of Business Ethics and Tata Code of Conduct. [2]

Tata's corporate governance

Vision

At the Tata group we are committed to improving the quality of life of the communities we serve. We do this by striving for leadership and global competitiveness in the business sectors in which we operate. Our practice of returning to society what we earn evokes trust among consumers, employees shareholders and the community. We are committed to protecting this heritage of leadership with trust through the manner in which we conduct our business.[3]

Mission

To improve the quality of life of the communities we serve globally through long-term stakeholder value creation based on Leadership with Trust.[3]

Tata code of conduct

The Tata Code of Conduct represents the values and core principles that guide the conduct of every Tata business. The Code lays down the ethical standards that Tata colleagues need to observe in their professional lives. The Code is expected to be a contemporary and pertinent guide for our circumstances. It can't, notwithstanding, give a response to every single question or moral difficulties that may emerge at the work environment. Tata employees who feel dubious about the suitable professional conduct in any circumstance must look for direction from the assigned people in their organization, including the organization's morals instructors, and use fitting diverts or stages recognized in the Code. Each Tata colleague has the ability to make a vital difference to the quality of life of the communities we serve. This Code represents our individual and mutual commitment to discharge our responsibilities through the most sustainable and ethical means, and our shared determination to reinforce the Tata reputation of Leadership with Trust.[4]

The cyrus mistry ouster case

As per Economic Times [5]Indian salt-to-software conglomerate Tata Sons has ousted Cyrus Mistry as chairman and restored Ratan Tata to the position while it seeks a permanent replacement. The Tata Sons board did not give any reasons for its decision, though Mistry, 48, had been attempting to shake up the $100 billion company by changing the management structure to bring in new faces at senior levels.

Appointment of Cyrus Mistry as Chairman

Mistry, chosen as Chairman of Tata Sons in November 2011, has been replaced by his predecessor Ratan Tata as interim Chairman. Tata who had retired in 2011 when he turned 75 will now be back at Bombay House, the headquarters of Tata group in Mumbai in the near term until a new chairman is appointed. Tata Sons is a large shareholder in listed Tata Group companies in a business empire that ranges from Jaguar Land Rover and steel mills to aviation and salt pans. Mistry replaced company patriarch Ratan Tata in December 2012, having been named as heir apparent the previous year after a 15-month search for a successor. Mistry has been battling problems on a number of fronts in recent months, including a costly settlement with Japanese telecoms operator NTT Docomo and the sale of Tata Steel's loss-making business in Britain. His departure, however, came as a surprise to many analysts and investors, though it has moved to quell concerns with Ratan Tata's appointment as interim chairman.

Relations between Tata Group and Shapoorji Pallonji Group

Cyrus Mistry's family and his family's business empire, the Shapoorji Pallonji Group (which is the single largest stakeholder in Tata Sons), have reportedly opposed the move. According to reports, the Shapoorji Pallonji group is "claiming Cyrus Mistry's removal is illegal" and that minimum 15 days notice is needed. It became a sensation among the whole world because such sudden sackings are simply not the Tata style. Cyrus had the shortest stint as the chairman-NowrojiSaklatwala had six year tenure in the 1930s, when he died of a heart attack in 1938.

Who decided for Mistry to go?

As per Hindustan Times [6]While it's still unclear at this point, a statement put out by a Tata Trusts spokesperson says that "on the recommendation of the principal shareholder", it was decided that a change would be necessary for the long-term interest of Tata Sons and Tata Group. "The board in its collective wisdom and on the recommendation of the principal shareholder (Tata Trusts) decided it may be appropriate to consider a change for the long term interest of Tata Sons and Tata Group. There is no change at the levels of CEOs in the operating companies," the statement says. What exactly are the Tata Trusts? It comprises of the Sir Ratan Tata Trust and Allied Trusts and the Sir Dorabji Tata Trust and Allied Trusts. According to its website, the Tata Trusts own "two-third of the stock holding of Tata sons, the apex company of the Tata group of companies".

Wasn't Mistry's appointment considered carefully?

On the contrary, the panel constituted to find a successor for Ratan Tata in 2010, the same panel which chose Mistry, took over a year to come to its decision. In contrast, the panel appointed to find a successor for Mistry today has been given only four months to come to a decision. Mistry's appointment was also widely seen as part of a larger generational shift needed at Tata Sons. His ascension to the top posting also represented the first time that a member of the Shapoorji Pallonji family (a construction company business family that is the biggest shareholder of Tata Sons) had exercised management control since they first started acquiring Tata Sons shares in the 1930s.

What was Mistry's performance as the head of the Tata Group?

As per Economic Times [7]multiple analyses of Mistry's tenure don't paint a glowing picture. If one steps back and takes a quick snapshot of how the largest publicly-listed Tata entities have done over the last four years, the result is below average. Out of the nine biggest listed Tata group firms, seven have had "negative economic value added, meaning that their earnings before interest and tax translate into a return below their overall cost of capital," according to an analysis by the Economist. While there are bright spots, Jaguar Land Rover and Tata Consultancy Services being two of the brightest, other group verticals such as hotels and chemicals have suffered; some due to structural issues left behind by Ratan Tata and others due to not being able to cope with global headwinds. The re-structuring of Tata Sons has also been seen by the business community true test of Mistry's abilities. While the salt-to-software conglomerate's outside shareholder structure has long been cited as an advantage when it looks to get into new markets or raise capital, it has also resulted in a crucial strategic and economic tax for the overall group. Long-standing concerns by analysts that multiple analysts have had — that Tata firms often bid on same contracts or that forays into new sectors are duplicated — still remained valid under the Mistry era. Nowhere is this clearer than Tata Docomo and Tata Sky, which are unable to combine their services to offer a competitive combination, simply because they are owned by different shareholders. Both these firms have suffered, with the Tata Docomo venture being all but a major embarrassment for the Tata Group at this point. Other questions that Mistry has faced are over his decisiveness in shutting down new verticals or reversing business decisions taken by Ratan Tata. For instance, in 2007, Tata Sons acquired Anglo-Dutch firm Corus for \$13-billion, one year before European steel demand suffered a nasty slump. The acquisition, in hindsight, has been seen as partof the great Indian rollback of overseas acquisitions. Just earlier this year, Mistry finally took a decision to put its UK steel plants up for sale. Kotak Institutional Equities analyst said at the time, "For the first three years it looked like Mr Mistry was continuing on the path of his predecessor. But this is a defining moment for him. If, finally, they are taking a call that they need to shut down some parts of the business, then I assume it's a good thing."

What possible impact will be in the relationship of the Pallonji Group and Tata Sons?

Almost certainly so, if media reports on the Pallonji Group's oppose to Mistry's removal are true. This is also a question that will likely play out in the weeks and months ahead. Although Mistry was the first chairman to not be related to the group's founder Jamsetji Tata, he is related to the Tata family through his sister's marriage. Cyrus's sister is married to Noel Tata, half brother of Ratan Tata. More crucially, Mistry's father, Shapoorji Pallonji, is the second-largest stakeholder in the Tata Group with a stake of a little over 18.5% in Tata Sons. Mistry's nomination and ascension to the top position in that way was seen very much as a "vote for continuity and a vote to keep the peace", accord to one former Tata executive. The Pallonji's family holding is the biggest stakeholder in the Tata Sons, second only to the charitable trusts chaired by Ratan Tata. At least one observer has pointed out that Tata Trusts (headed by Ratan Tata) were at odds with Tata Sons in a "fundamental clash of cultures". Additionally, it appears as if Mistry was not even given the option of resigning or stepping down of his own accord. Media reports claiming that the Pallonji group is against Mistry's removal, claiming it is illegal, are a sign of an ugly legal spat in the days ahead.

Will Mistry's successor be more effective or would work better thanRatan Tata?

As per Indian Express [8] this again is unclear. According to industry observers, the fact that Ratan Tata still remained chairman of Tata Trusts laid the ground for natural clashes between Tata and Mistry. While this may not have manifested in any form of direct or overt interference, there are some former Tata executives who believe that the two men clashed over the execution of Ratan Tata's personal passions (such as aviation where the Tata Group has diverted its investments to both Air Asia and Vistara) or the replacement of key managers and executives that had Tata's favour. Interesting parallels can be drawn to other similar, if not exact, situations in other companies. IT firm Infosys for instance has for the longest time lived under the shadow of founder Narayana Murthy. While we may never know the nature of the dispute between Cyrus Mistry and Ratan Tata, it is clear that Mistry never got around to executing his own strategy (a plan he refers to as 'Vision 2025') for the Tata Group conglomerate. This is not to say that Mistry had not started making the right moves. Some of his turnaround acumen is best seen in more low-profile firms such as Tata Power. The move to junk the Corus acquisition was also wise, even if it came a little late. And the Vision 2025 plan gave us a peek at Mistry's potential passions and, more importantly, his perspective on where the future of the Tata Group may have been heading: namely, business clusters concentrated around the areas of defence and aerospace, retail and finance.

Role of corporate governance

Corporate governance is like the back bone of any company or group. As stated earlier it guides the way in which the interests of the stake holders are taken care of. We can understand this with the help of the recent event that took place in the Tata Group of companies. The removal of Cyrus Mistry from the chairmanship of the Tata Sons is primarily due to the assumed inefficient implementation of the corporate governance of the company by him. He was removed from the chairmanship of the company on 24th October 2016, on the grounds of poor management of the company. This was followed by his removal from Tata teleservices, Tata Industries and Tata Consultancy services too. The shareholders voted him out as according to them he was not efficient in implementing the corporate governance of Tata as it had been implemented since the company was started. He was on the chair for nearly 4 years in which he could not convince the shareholders with his performance. Such important is the role of corporate governance in a company that not following it in the best interest of the stakeholders can force the directors out of the board.

Importance of directors in implementing corporate governance

The Board's key purpose is to ensure the company's prosperity by collectively directing the company's affairs, whilst meeting the appropriate interests of its shareholders and stakeholders. Private limited companies or closely held companies like Tata Sons are managed by the directors through AGM (Annual General Meetings) and EGM (Extraordinary General Meeting). In such cases the power to certain decisions rest with the shareholders. Company is a legal personality and Board of Director acts as its body and mind. Under Section 291 of the Companies Act, BoD is authorized to do what the company is authorized to do, unless barred by restrictions on their power by the provisions of the Companies Act. It is well settled that directors, while exercising their powers, do not act as agents for the majority or even all the members and so the members cannot by a resolution passed by a majority of even unanimously, supersede the directors' power and instruct them how they shall exercise their power. The powers of management are vested in directors and they and they alone can exercise these powers. Cyrus Mistry as the chairman of Tata Sons had complained about certain businesses that were not functioning properly in terms of their financial performance and wanted to gradually close such non performing businesses. As far the interests of the stakeholders is concerned this would only serve the interest of the investors as it was an initiation to maximise the profits. The other directors were not in the same favour as such and neither were the shareholders in majority. As its known that a major portion of the equity invested in Tata Sons is owned by various trust and social welfare organisation who are closely connected to Ratan Tata. This decision to alter the course of corporate governance was not liked by them as there were a lot of other stakeholders like the employees, the loyal customers who would be adversely effected and apart from that the corporate image of the entire conglomerate and the name of Tata could have been tarnished. As per a research conducted by Sumaira Jan and Mohi-ud-Din Sangmi in 2016 on The Role of Board of Directors in Corporate Governance[9], that apart from the basic points of concerns that are the supervision of the vison, mission and corporate values, creating and implementing strategies, delegating authority and exercising accountability towards stakeholders there are certain other points that the directors can take care of in order to improve the way corporate governance is implemented:

1. Conducting board meetings at frequent time gaps and exhibiting total commitment towards the company.
2. The directors should steer the discussion in a way that leads them to a fruitful conclusion. They should have the courage to disagree to those points that they feel are unethical or not right in any way and those points should be discussed for their morality and effects.
3. The directors should use their power over the company for its benefit. They should have a proper purpose behind their actions. Not in any case should they be hypocritical in taking decisions and must not put their own interests of any sort before that of the company.
4. The corporate performance of the company should be monitored by them against proper strategic business plans.
5. The board should make sure that the company's actions are well within the statutory and legal requirements of the region in which its business operates.

Conclusion

In the eyes of law, a company is an artificial person, who has no physical existence and neither has a body. Therefore, a company cannot act itself in its own person, it can only act through its directors. The directors have been delegated the duty to manage the general affairs of the company. A board is a very crucial part of the Corporate Governance of any organisation. The corporate board of directors assists in corporate governance by supervising executive management and makes strategic decisions for the company. The board is generally supposed to govern the corporation on behalf of the shareholders, effectively acting as trustees for stockholder interests. The roles and responsibilities of a Board of Directors vary, depending on the nature and type of business entity and the laws applying to the entity.

Teaching notes

1. The idea or mindset behind the corporate governance of a company should be understood in depth before implementing it or bringing about any change in it.
2. The role of corporate governance is to take care of the interests of the entire stakeholder group of the company rather than just the shareholders money or the company's profitability.
3. All the directors in the company are more or less equally responsible for its effective running. Therefore any major business decision should be taken after their formal / informal consent in order to avoid such conflicts.
4. Although the shareholders do not have a direct hand in running the company but they need to be kept in confidence before any major manoeuvre in business is taken.

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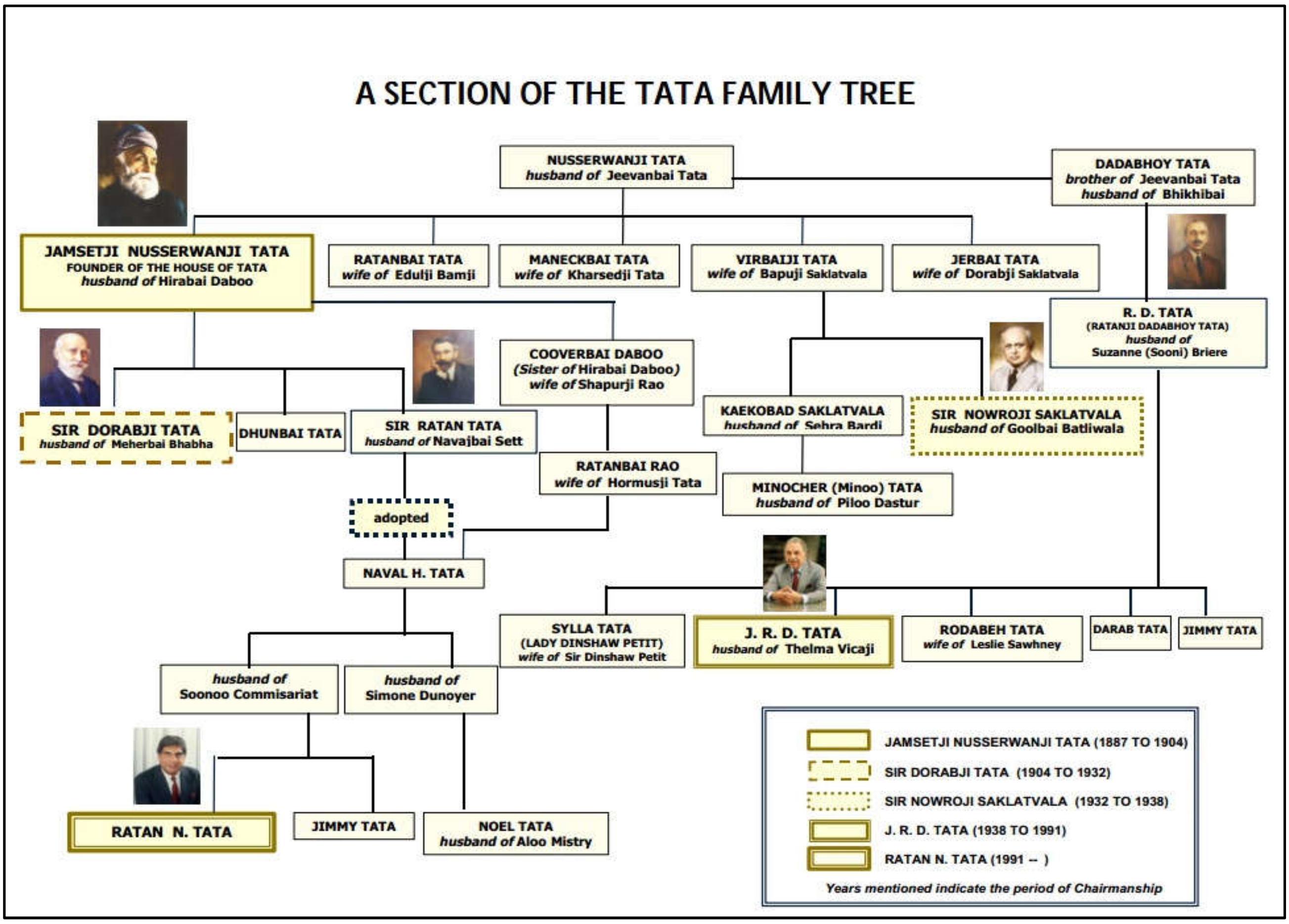
Appendix

The Tata Family tree.



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