NCLAT's Order - Reinstating Cyrus Mistry

Why in news?

The National Company Law Appellate Tribunal (NCLAT) reinstated Cyrus Mistry as Chairman of Tata Sons and Director of the Tata Group of companies for the remainder of his tenure.

Who is Cyrus Mistry?

- Cyrus Mistry, son of Pallonji Mistry, is the owner of Shapoorji Pallonji group and the biggest stakeholder in the Tata group.
- Mistry was the sixth chairman of Tata Sons and had taken over in 2012 after Ratan Tata.
- Relations were seen as amicable between Mistry and Tata.
- However, after differences of opinions with group patriarch Ratan Tata, Mistry was ousted as both Chairman and Director in October 2016.
- This was done in a surprise move by the Tata Sons board.
- Mistry later moved the National Company Law Tribunal (NCLT).
- The Mumbai bench had upheld Mistry's removal from his positions at Tata Sons and other Group companies.

What is NCLAT's decision?

- The appellate tribunal, NCLAT held Mistry's sacking and the subsequent appointment of N Chandrasekaran to the top post at Tata Sons illegal.
- The move to take Tata Sons private has also been declared illegal and reversed.
- NCLAT set aside the 2017 order by the Mumbai bench of the NCLT.
- The current NCLAT order included directions on several major questions of corporate governance.
- Article 75 of the Articles of Association of the Tata Group grants Tata Sons the right to transfer the 'ordinary shares' of any shareholder.
- This can be done bypassing a special resolution in the presence of nominated directors of Tata Trusts.
- The NCLAT has barred Tata Sons from taking any action against Mistry, Shapoorji Pallonji, Cyrus Investments, and other minority shareholders under this provision.
- It also directed Tata Sons to consult all its minority shareholders before

making any appointments in the future.
- These include for the post of Executive Chairman, Independent Director, and Director on the boards of Group companies.

How will it benefit?

- The NCLAT direction will empower the minority shareholders.
- Also, it will force Independent Directors to take their objections more seriously.
- One of the functions of Independent Directors is to safeguard the interests of all stakeholders, particularly the minority shareholders.
- The Code for Independent Directors, which is part of The Companies Act, 2013, specifies this.
- The directive will also give a boost to the Shapoorji Pallonji Group, which is owned by the Mistry's family.
- The group, although a minority shareholder (18%), is still the biggest outside shareholder in Tata Sons, the holding company of the Tata Group.

What next?

- Although the NCLAT passed an order restoring Mistry to the top position, the execution of the order has been suspended for 4 weeks.
- This will allow the Tata Group to challenge the NCLAT decision before the Supreme Court.
- However, barring the direction to reinstate Mistry, the NCLAT has not stayed the execution of any of its other directions.
- This means Mistry will be immediately restored to his position as Director on the boards of at least three Tata Group companies.

What are the likely implications?

- The NCLAT decision will undoubtedly cause ripples of uncertainty through the Tata empire and the broader corporate sector.
- The decision will be implemented after 4 weeks, giving time to the Tata group to contest it. However, the charges are serious:

i. oppression of minority shareholders (the Shapoorji Pallonji group is one of them)
ii. mismanagement at Tata Sons
iii. undue haste in removal of Mr Mistry as chairman

- If the NCLAT judgment is upheld by an appropriate forum, several critical decisions taken by the new management will come up for scrutiny.

Source: Indian Express

Quick Fact

NCLAT

- The NCLAT was constituted under Section 410 of The Companies Act, 2013.
- It was tasked to hear appeals against the orders of the NCLT(s).
- It is also the appellate tribunal for orders passed by -
    1. the NCLT(s) under Section 61 of the Insolvency and Bankruptcy Code (IBC), 2016,
    2. the Insolvency and Bankruptcy Board of India (IBBI) under Sections 202 and 211 of the IBC

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