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RATAN TATA OR CYRUS MISTRY?: TATA STEEL SHAREHOLDERS’ DILEMMA[[1]](#endnote-1)

Pitabas Mohanty and Supriti Mishra wrote this case solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.

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The shareholders of Tata Steel Limited (Tata Steel) received a letter from the company dated November 25, 2016, informing them of the extraordinary general meeting (EGM) to be held on December 21, 2016, in Mumbai,[[2]](#endnote-2) at which they needed to decide the fate of Cyrus Mistry and Nusli Wadia, two company directors. Shareholders of six other Tata Group companies received similar notices of EGMs, at which the shareholders would have to decide the fate of these two directors of the boards of their respective companies. Electronic voting options would also be available to Tata Steel shareholders to vote on the resolution between December 18 and December 20, 2016. Shareholders of Tata Consultancy Services Limited (TCS) had already voted in favour of the resolution; however, how the shareholders of Tata Steel would vote was unclear.

UNFOLDing of events

The employees of the Tata Group, India’s largest business group, received a letter from Ratan Tata on October 24, 2016, stating that the board of Tata Sons Limited (Tata Sons), the holding company of the Tata Group, had removed Mistry from his role as company chairman. The board of Tata Sons constituted a new committee to select Tata Sons’ next chairman, and appointed Ratan Tata as the interim chairman.[[3]](#endnote-3) This announcement shocked the market, as “Tata Group is not known to spring such surprises.”[[4]](#endnote-4) Share prices of major listed Tata Group companies decreased by an average of 2.03 per cent within a day and decreased by nearly a further 5 per cent in the next two days (see Exhibit 1; all case exhibits can be found in the student spreadsheet [Ivey product number 7B19N016] that accompanies this product.).

In a letter sent to the board of Tata Sons, Mistry questioned the board’s decision. He remarked, “To ‘replace’ your Chairman without so much as a word of explanation and without affording him an opportunity of defending himself in a summary manner must be unique in the annals of corporate history.”[[5]](#endnote-5) Mistry went on to state that it was unfair to terminate him on grounds of “non-performance” because during his tenure, the market value of the listed group companies had increased by 14.9 per cent and the net worth of Tata Sons had increased by 61.5 per cent, whereas the Bombay Stock Exchange (BSE) Sensex, a broad-based market index, had increased by only 10.4 per cent.

J. N. Gupta from Stakeholder Empowerment Services, a proxy advisor firm, stated that such sudden changes in the board were unheard of in the Tata Group. “The reason for such a move is unknown. And, this unknown worries us.”[[6]](#endnote-6) While analysts from JPMorgan Chase & Co. remained bullish on Tata Steel’s shares, analysts from Emkay Global Financial Services Ltd., Elara Capital Plc, IIFL (formerly India Infoline Limited), ICICI Direct, and Ambit Capital had issued SELL recommendations on Tata Steel. However, none of these analysts’ reports had indicated the ongoing power struggle in Tata Steel.[[7]](#endnote-7)

By virtue of his position as the managing director of Tata Sons, Mistry was also the chairman in most of the Tata Group companies. Even after he had been removed as the chairman of Tata Sons, Mistry continued to function as the chairman of the other Tata Group companies. The biggest support for Mistry came from some of the Tata Group’s independent directors, such as those from Tata Chemicals[[8]](#endnote-8) and Indian Hotels Company Limited (IHCL), who supported and appreciated Mistry for his leadership. The independent directors of IHCL stated that “it was imperative for the independent directors to state their views to the investors and public at large, so that those who trade in securities of the company [could] make an informed decision.”[[9]](#endnote-9)

As Mistry did not resign from the boards of the group companies, Tata Sons asked the boards to remove Mistry from the post of executive chairman. Using Article 90 of TCS’s Articles of Association, Tata Sons replaced Mistry and appointed Ishaat Hussain as the chairman of TCS on November 10, 2016.[[10]](#endnote-10) The board of Tata Global Beverages replaced Mistry with Harish Bhatt as its chairman on November 15, 2016.[[11]](#endnote-11) In a circular resolution,[[12]](#endnote-12) the board of Tata Steel replaced Mistry with O. P. Bhatt as its chairman on November 25, 2016. Although Mistry was removed from the post of chairmanship of these companies, he continued to operate as a director. As Mistry refused to quit from the listed companies, Tata Sons asked the boards of the group companies to convene EGMs and use shareholders’ permission to remove Mistry from the directorship of these companies.

The shareholders of TCS voted in favour of the resolution passed by Tata Sons at an EGM held on December 13, 2016.[[13]](#endnote-13) Because Tata Sons had only a 29.75 per cent stake in Tata Steel (see Exhibit 2), compared with its 73.33 per cent stake in TCS,[[14]](#endnote-14) the possible outcome of Tata Steel’s EGM could not be predicted. Mistry urged the shareholders of Tata Steel to vote against the resolution, saying, “The Tata Group is no one’s personal fiefdom: it does not belong to any individual. . . . It belongs to all the stakeholders, including every one of you. I therefore urge you to have your voice heard loud and clear.”[[15]](#endnote-15) In his letter dated December 7, 2016, Ratan Tata wrote to the shareholders, “The Board of Tata Sons lost confidence in him [Mistry] and in his ability to lead the Tata Group in the future.” He urged the shareholders to vote in favour of the resolution.[[16]](#endnote-16) The stock price of Tata Steel closed at ₹414.05[[17]](#endnote-17) per share on December 16, 2016, the last trading day before the electronic voting started.[[18]](#endnote-18)

The Tata Group

Popularly hailed as the “salt-to-software conglomerate,” the Tata Group, one of the largest business groups in India, had a humble beginning in Mumbai as a trading company founded in 1868 by Jamsetji Nusserwanji Tata. The first big industrial project undertaken by the group was Express Mills, a textile venture set up in 1874. The group went on to establish large companies of repute in India, including the Taj Mahal Hotel in Mumbai in 1903, Tata Iron and Steel Company (later Tata Steel) in 1907, Tata Chemicals in 1939, Tata Engineering and Locomotive Company (later Tata Motors) in 1945, Voltas in 1954, Tata Tea (later Tata Global Beverages) in 1962, Tata Consultancy Services (TCS) in 1968, and Titan Company in 1984.[[19]](#endnote-19)

After the death of Jamsetji Tata in 1904, Sir Dorabji Tata and subsequently Sir Nowroji Saklatwala were in charge of the group. In 1938, J. R. D. Tata took over the chairmanship and led the group until 1991. Most of the group companies were set up during his time. Ratan Tata became the chairman of the group in 1991, around the time when India started the process of economic liberalization, and led the group until 2012. The Tata Group made numerous acquisitions during Ratan Tata’s leadership, including the notable acquisitions of British company Tetley in 2000, Indian telecom company VSNL in 2002, the heavy vehicles unit of South Korea’s Daewoo Motors in 2004, NatSteel of Singapore in 2005, British steel maker Corus in 2007, and Jaguar and Land Rover in 2008.[[20]](#endnote-20)

Mistry became an independent director of Tata Sons in 2006, after his father, Pallonji Mistry, resigned from the board of Tata Sons. Subsequently, Cyrus Mistry became the deputy chairman of Tata Sons in November 2011 and its chairman in 2012, after Ratan Tata’s resignation from the board.[[21]](#endnote-21) Initially, Mistry had been reluctant to join Tata Sons because of his engagement with his own family business. He decided to join the board as its chairman only when the selection committee had requested his chairmanship for the second time. Although Ratan Tata had resigned from the board of Tata Sons, he continued to guide the Tata Group as chairman emeritus. In Mistry’s capacity as the chairman of Tata Sons, he became the chairman of many of the Tata Group companies, including some of the well-known companies such as Tata Steel, Tata Motors, Tata Chemicals, TCS, Tata Power, Tata Global Beverage, and Indian Hotels.

Members of the Tata family were known for their benevolence and generosity. Many had bequeathed most of their personal assets to the various trusts the family had created. As of 2016, these trusts controlled 66 per cent of the total equity of Tata Sons. Two of the principal trusts created by the Tata family members were the Sir Dorabji Trust and Allied Trusts and the Sir Ratan Tata Trust and Allied Trusts.[[22]](#endnote-22) These trusts were not family trusts but “public charitable trusts,”[[23]](#endnote-23) set up with the sole intention of benefiting the general public, and therefore enjoyed many tax exemptions in India. These trusts controlled Tata Sons, the holding company of the group, which in turn controlled the Tata Group companies in India.[[24]](#endnote-24) Although these trusts controlled approximately 66 per cent of the shares of Tata Sons, the single largest shareholder of Tata Sons was Shapoorji Palonji Group, a large construction company owned by Mistry’s family.[[25]](#endnote-25)

The Articles of Association of Tata Sons empowered the Trusts of the Group to nominate one-third of the directors to the board of Tata Sons. These trustee-nominated directors had the veto power to negate any decision taken by the Tata Sons’ board. After Mistry became the chairman of Tata Sons, he made it mandatory for certain decisions pertaining to the group companies to be discussed by the board (even though the nominated directors could veto them).[[26]](#endnote-26)

The Tata Group was known for its ethical approach in dealing with business problems. The values and core principles of the Group were documented as the Tata Code of Conduct[[27]](#endnote-27) and practised in all the Tata Group companies. Brand Finance, a globally renowned brand consultancy firm, valued the Tata brand at US$13,688 million in January 2016.[[28]](#endnote-28) The Tata Group companies were required to pay a percentage of their total turnover (or net income) as royalties to the Tata Sons for using the Tata name.[[29]](#endnote-29) In 2015, Mistry reduced the maximum royalty payable by any group company to ₹750 million.[[30]](#endnote-30)

Indian business groups controlled their group firms through “interlocking shareholding,” and the Tata Group was no exception to that practice. For example, at the end of September 2016, while Tata Sons owned 29.75 per cent of the shares in Tata Steel[[31]](#endnote-31) and 26.98 per cent of the shares in Tata Motors,[[32]](#endnote-32) Tata Steel owned 2.9 per cent of the shares in Tata Motors, and Tata Motors owned 0.46 per cent of the shares in Tata Steel. Both Tata Steel and Tata Motors owned 12,375 shares each in Tata Sons.[[33]](#endnote-33) Exhibit 3 shows the promoter’s stake in the various listed Tata Group companies.

Business groups in India also used funds owned by the group companies to increase their stake in these companies. Tata Sons, for example, made a rights issue in September 1995, and issued its shares at ₹100,000 per share (with a book value of approximately ₹36,000 per share) to the group companies. All the trusts in the group renounced their rights, and hence received ₹25,000 per share from the rights issue. Using the money collected from the rights issue, Tata Sons acquired shares in the group companies.[[34]](#endnote-34)

In 1997, the Securities and Exchange Board of India (SEBI) introduced *Substantial Acquisition of Shares and Takeovers Regulations, 1997*, which made takeovers easier in India, thereby encouraging many promoters of Indian companies to increase their stake in their group companies to pre-empt any hostile takeover. During this time, Tata Sons’ stake in Tata Steel increased substantially—from a mere 2 per cent in 1994 to 29.75 per cent in 2016.[[35]](#endnote-35)

By 2016, 30 of the Tata Group companies were listed on India’s various stock exchanges. By the end of fiscal year 2015–16, total assets of the group companies stood at ₹6,956 billion, equivalent to approximately 2.12 per cent of India’s total corporate assets. In the fiscal year ending March 2015, the Tata Group firms generated 3.5 per cent of India’s total corporate revenue.[[36]](#endnote-36) Exhibit 4 presents the key financials (aggregate) of the Tata Group’s listed firms. Exhibit 5 presents the key financials of all the listed firms in India. Exhibit 6 shows India’s growth rates in gross domestic product and inflation rates (based on the Consumer Price Index).

In emerging economies such as India, product markets, capital markets, and labour markets were not as well developed as in many developed countries. In this scenario, business groups played a critical role in filling the void created by the inadequacy of such markets.[[37]](#endnote-37) Business groups such as the Tata Group often played the role of a mediator between the group companies and any other third party. As a letter by Tata Sons to the shareholders of the group companies rightly mentioned, “Tata companies do not exist in vacuum but benefit from being part of the Tata Group which is most evident in times of difficulty.”[[38]](#endnote-38)

A conflict of interest often emerged between the promoter shareholders and the minority shareholders in India. The SEBI’s listing agreement made it mandatory for listed Indian companies to follow the prescribed governance practices, which were in line with some of the best governance practices followed worldwide. The SEBI mandated that if a company had an executive chairman, then at least 50 per cent of the board members must be independent directors, and an independent director must chair the audit committee. In 2013, the SEBI also made it mandatory for Indian companies to obtain the permission of a majority of the minority shareholders if they decided to pursue any material-related party transaction. According to the *Companies Act, 2013*, an independent director could serve a company for a maximum of 10 years.[[39]](#endnote-39)

Tata Steel Limited

Tata Iron and Steel Company (renamed Tata Steel in August 2005) was set up in 1907 at Jamshedpur, India, as Asia’s first integrated steel plant. By March 2016, Tata Steel had become the world’s 11th largest steelmaking company with an annual crude steel capacity of 29.5 million tons. In addition to its iron ore mines, Tata Steel had its own captive coal mines, which were located near its steel plants in the states of Jharkhand and Odisha, giving the company a distinct cost advantage. Through its own divisions, subsidiaries, and strategic alliances, Tata Steel’s product lines included the categories of tubes, wires, bearings, ferro-alloys, minerals, and related industrial by-products.[[40]](#endnote-40) Being a Tata Group company, the company adhered to the Tata Group code of conduct. The company proudly stated its vision statement: “We aspire to be the global steel industry benchmark for value creation and corporate citizenship.”[[41]](#endnote-41)

Tata Steel completed the first phase of its second integrated plant in Kalinganagar, Odisha, in 2015. Although Tata Steel signed the memorandum of understanding with the Odisha government in 2004, the local community initially mounted stiff opposition to the plant, which substantially delayed the project,[[42]](#endnote-42) thereby increasing the total capital expenditure from the projected ₹150 billion to ₹400 billion by 2015. T. V. Narendran, managing director of Tata Steel, argued that Tata Steel was also spending money on building local infrastructure and amenities in addition to building the steel plant at Kalinganagar. According to Narendran, “Typically it costs about $1 billion dollars (about ₹60 billion) to produce a million tonnes of steel. At Kalinganagar, we are spending about ₹40-50 billion extra at the project site to build local infrastructure and amenities.”[[43]](#endnote-43) The completion of the first phase of the Kalinganagar plant increased Tata Steel’s total capacity by 3 million tons per year. Tata Steel expected that by the end of 2025, the Kalinganagar plant would have a final capacity of 16 million tons per year.[[44]](#endnote-44)

Tata Steel acquired NatSteel of Singapore in 2005 and Corus in the United Kingdom in 2007. The Corus acquisition enabled Tata Steel to move from its position as the world’s 56th largest steelmaker to the world’s sixth largest steelmaker in 2007.[[45]](#endnote-45) Tata Steel was internationally diversified, with production facilities located in India, the United Kingdom, the Netherlands, Thailand, Singapore, China, and Australia. Its plants in India were located in two locations: Jamshedpur, which had an annual capacity of 9.7 million tons, and Kalinganagar of Odisha, which had an annual capacity of 3 million tons. Tata Steel Europe (previously Corus) had an annual capacity of 18 million tons at the end of 2016.[[46]](#endnote-46)

Tata Steel acquired Corus on January 30, 2007, by agreeing to pay £6.08[[47]](#endnote-47) per share (approximately a 68 per cent premium over the price of Corus from the time Tata Steel initially showed its interest in buying Corus[[48]](#endnote-48)) in a fiercely competitive takeover after outbidding CSN (Companhia Siderúrgica Nacional), the Brazilian steelmaking company.[[49]](#endnote-49) Ratan Tata, then chairman of Tata Steel, called it “a moment of great fulfilment for all in India” and noted, “This is the first step in showing that Indian industry can step outside its shores into an international market place as a global player.”[[50]](#endnote-50) The market was, however, surprised by this move by Tata Steel for a number of reasons. First, the acquisition happened in 2007 when steel prices were very high, which required Tata Steel to pay a huge premium over the (already high) value of Corus. In 2003, Corus’ stock was trading at around £0.10 per share when the company was almost on the verge of bankruptcy. Second, Corus was a much larger company compared with Tata Steel, and with Tata Steel having no prior experience in managing such large acquisitions, many were skeptical about the company’s ability to reap any real benefits from the acquisition. On January 31, 2007, a day after the announcement of the acquisition, Tata Steel’s stock price in India fell by 10.46 per cent. Ratan Tata, however, defended the move, saying, “Quite frankly I do feel [the stock market] is both taking a short-term and harsh view. . . . In future, somebody will look back and say we did the right thing.”[[51]](#endnote-51)

Tata Steel funded the Corus acquisition using a mix of equity, quasi-equity (funded by Tata Steel Asia and Tata Steel Singapore), and debt raised by Tata Steel UK. Including the existing debt of US$846 million, the total debt taken by Tata Steel UK increased by US$6,989 million.[[52]](#endnote-52) This additional borrowing increased Tata Steel’s debt in its consolidated balance sheet by more than 100 per cent in 2007–2008. Although the debt fell marginally in 2010–2011 and 2011–2012, it increased again in 2012–2013 and stood at ₹838.04 billion on March 31, 2016. Exhibit 7 shows the key financials of Tata Steel. Exhibit 8 shows the key financials of JSW Steel, a peer company belonging to the O. P. Jindal Group.

Although Tata Steel’s Indian operations remained profitable, its European operations proved to be unprofitable within two years of Tata Steel’s acquisition of Corus. Except for 2013–2014, when Tata Steel Europe reported a meagre net income of ₹454.2 million,[[53]](#endnote-53) Tata Steel reported losses in all other financial years after 2008–2009, forcing Tata Steel to report consolidated net losses in 2009–2010, 2014–2015, and 2015–2016 (see Exhibit 9). The losses in the European operations were due to the 2008 global recession and the drop in the growth rate in China that resulted in a decrease of steel prices, both of which adversely affected the performance of all steel companies in the world (see Exhibit 10). T. V. Narendran, managing director of Tata Steel, summarized his frustration, saying, “If Tata Steel did not have to worry about shareholders and profits, we too could have sold steel at any price, just to keep our plants running.”[[54]](#endnote-54)

In 2009, Tata Steel laid off 2,500 workers across the United Kingdom due to the economic downturn. In 2015, Tata Steel announced another 900 job losses because of the restructuring of its European operations.[[55]](#endnote-55) After writing off ₹83.56 billion in 2012–2013 and ₹65.28 billion in 2014–2015 as impairment charges[[56]](#endnote-56) largely related to its European operations, Tata Steel finally decided to sell off its European division in March 2016. On the day after this announcement, the stock price of Tata Steel increased by approximately 7 per cent.[[57]](#endnote-57)

Mistry removed as chairman of Tata Sons

On October 24, 2016, all employees of the Tata Group received an email from Ratan Tata stating that the board of Tata Sons had replaced Mistry as chairman. The board had constituted a selection committee to appoint a new chairman, and it had appointed Ratan Tata as the interim chairman.[[58]](#endnote-58) In a second letter, dated November 1, 2016, Ratan Tata justified the move, saying, “This difficult decision, made after careful and thoughtful deliberation, is one the board believes was absolutely necessary for the future success of the Tata Group” and noting that the group companies should be leading rather than following.[[59]](#endnote-59) Although no reason was given in the original communication sent from Ratan Tata, the Indian media believed that Tata Sons was unhappy with Mistry’s decision to sell unprofitable businesses, including Tata Steel Europe, and to focus only on cash cows (i.e., those businesses that provided a steady profit).[[60]](#endnote-60)

On October 25, 2016, Mistry sent a letter to the directors of Tata Sons complaining about the unfairness of the decision. He argued that the total debts of the Tata Group companies were very high because of the foreign acquisition strategy adopted by Ratan Tata. Mistry argued that although he had been an independent director of Tata Sons prior to 2012, he never had a “clear grasp of the gravity” of the problems the group was facing. Secondly, Mistry complained that Ratan Tata had often interfered in his functioning, despite, at the time of his appointment, his having been promised to have a free hand. For example, Ratan Tata forced Mistry to enter the aviation sector, even though Mistry’s first priority was to improve the performance of the existing group companies and help them to come out of the mess some of them were in.[[61]](#endnote-61)

Although Mistry was removed from the chairmanship of Tata Sons, he continued to function as the chairman of the listed companies of the Tata Group. Mistry, in fact, chaired a session of Tata Global Beverages on October 26, 2016.[[62]](#endnote-62) The biggest support for Mistry came from the independent directors of some of the group companies. Independent directors of Tata Chemicals supported Mistry and praised him for the various decisions made by him in a meeting held on November 4, 2016.[[63]](#endnote-63) On the same day, the independent directors of IHCL, another Tata Group company, backed Mistry, expressing appreciation for the steps he had taken “in providing strategic direction and leadership.”[[64]](#endnote-64)

Mistry removed as Chairman of Group Companies

Article 90 of TCS’s Articles of Association extended Tata Sons the right to nominate any person as the chairman of a group company as long as Tata Sons had a stake of at least 26 per cent. Under this article, Tata Sons appointed Ishaat Hussain as TCS’s chairman on November 10, 2016.[[65]](#endnote-65) The board of Tata Steel similarly appointed O. P. Bhatt as its chairman on November 25, 2016.[[66]](#endnote-66) Mistry criticized both these decisions. Although Tata Sons had the right to nominate a chairman, a board meeting was necessary. Similarly, a circular resolution route had been used to replace Mistry at Tata Steel. But the move to replace Mistry with O. P. Gupta, ex-chairman of the State Bank of India, was supported by J. N. Gupta of Stakeholder Empowerment Services, who said, “It is a battle between two individuals and the company should not be made to suffer in this fight. The board has a duty to stakeholders and not to any individual.”[[67]](#endnote-67) Although Mistry was removed as the chairman of these companies, he continued to be a director on the boards of these companies.

Tata Sons’ Plan to remove Mistry as a Director at TATA Group Companies

The independent directors of Tata Chemicals included Nusli Wadia, the promoter and chief executive officer of various Wadia Group companies, including GoAir, Bombay Dyeing, and Britannia.[[68]](#endnote-68) Wadia was a long-time friend of Rata Tata, and Wadia’s decision to support Mistry did not go well with Ratan Tata. When Mistry showed no sign of resigning from the boards of the various Tata Group companies, Tata Sons asked the individual group companies to call EGMs to remove Mistry from the post of the director/chairman. Wadia was an independent director at Tata Steel, Tata Motors, and Tata Chemicals. Tata Sons also asked these three companies to garner permission from their shareholders to remove Wadia.[[69]](#endnote-69)

EGMs for the different group companies were to be held between December 13, 2016, and December 26, 2016 (see Exhibit 11). Ratan Tata sent a letter dated December 7, 2016 to the shareholders of all Tata Group companies, urging them to vote in favour of the resolution to remove Mistry as the chairman and director of the respective group companies. Ratan Tata explained that when the board of Tata Sons was unhappy with Mistry’s performance, he had been given an opportunity to resign from the board. It was only when Mistry refused to resign that the board had dismissed him. Ratan Tata argued that some of the investments made by the group would take time to be profitable, and that the Tata Group had exited from only the unviable businesses. He also argued that the group companies benefited from their association with the group, Mistry had a “disruptive influence” on the group companies, and the presence of Mistry as the chairman could make the companies “dysfunctional.”[[70]](#endnote-70) Mistry disagreed with most of these points and argued that just five minutes before the board meeting he had been informed that the trustees of Tata Sons were unhappy with him and wanted him to leave, “ostensibly because Mr. [Ratan] Tata did not get along with him.”[[71]](#endnote-71)

Tata Sons sent a letter to all the shareholders on December 12, 2016, explaining some of the reasons for removing Mistry as the chairman of Tata Sons: (1) dividends paid by group companies had decreased; (2) Mistry often complained about bad legacy issues, even though he had been aware of them; (3) Mistry had misled the selection committee in 2011 with his lofty plans for the group, but subsequently failed to lead the group; (4) Mistry did not distance himself from his own family-run business, the Shapoorji Pallonji Group; and (5) Mistry had increased his concentration of power and authority after becoming chairman of Tata Sons, which was against the interests of the group companies. The letter concluded by stating, “Tata Sons is therefore compelled to propose the removal of Mr. Cyrus P. Mistry as the Chairman and Director of all Tata Group Companies by convening Extraordinary General Meetings. . . .”[[72]](#endnote-72)

EGM in Tata Steel

Shareholders of Tata Steel received an email dated November 25, 2016, informing them of the EGM to be held on December 21, 2016, in Mumbai, with the sole agenda of removing both Mistry and Wadia from the company’s board. The EGM was called on the requisition made by Tata Sons, which held 29.75 per cent of Tata Steel’s total shares. The shareholders could vote electronically between December 18 and December 20, 2016. The EGM notice also contained the letter sent by Tata Sons on November 10, 2016 to the board of Tata Steel, asking it to convene the EGM. The letter alleged that Mistry’s “unsubstantiated allegations” had caused harm to Tata Steel and its various stakeholders, and hence he should leave. The letter also alleged that Wadia had been “acting in concert” with Mistry, and that he was behaving as an interested party by gathering support from other independent directors; hence, he should also be removed as an independent director. The letter also pointed out the benefits that Tata Steel received by being a part of the Tata Group. In particular, Tata Steel could use the Tata brand because of the Tata Brand Equity and Business Promotion Agreement it had signed with Tata Sons. The letter claimed that Tata Steel was receiving “substantial benefits” because of its association with Tata Group.[[73]](#endnote-73)

Cyrus Mistry then sent an email, dated December 5, 2016, to all the shareholders of Tata Steel under Section 169 of the *Companies Act, 2013*.[[74]](#endnote-74) Mistry alleged that he was never given a free hand in running the group companies, though he had been assured of such freedom at the time of his appointment. He also claimed that governance failures existed in all the listed Tata Group companies because of frequent intervention from the trustees of the various trusts, who owned approximately 66 per cent of the shares in Tata Sons, and that poor investments made by Ratan Tata and the subsequent increase in debt had dragged down the performance of the group companies, although he had tried his best to manage those companies. Mistry financed the entire capital expenditure of US$25 billion over 2013–2016 through internal accruals. To substantiate his statements, Mistry argued that Tata Sons’ Nomination and Remuneration Committee had lauded his performance and had recommended Mistry receive a 6 per cent pay hike on June 28, 2016.[[75]](#endnote-75)

Mistry was particularly vocal about the need for stronger corporate governance in the Tata Group, saying that the group needed more than “just the imagery that the [Tata] name evokes.”[[76]](#endnote-76) He argued that the future of the Tata Group depended on how the Tata Trusts were governed by the trustees. The trustees should not interfere in the functioning of Tata Sons, as doing so might affect the preferential tax status of the trusts, which were essentially public charitable trusts. Minstry alleged that Both Ratan Tata and N. A. Soonawala, trustees of the Tata Trusts, had misused the Articles of Association to ask for information on any subject pertaining to a group company, even though doing so gave them personal benefits. The trustees forced Tata Sons to enter the civil aviation business by forming a joint venture with Air Asia and starting Vistara Airlines, another joint venture, with Singapore Airlines. Similarly, two months before Mistry was replaced, two new directors had joined the board of Tata Sons, at the behest of Ratan Tata. These new directors, along with the trustee-nominated directors, voted for the removal of Mistry at Tata Sons’ board meeting on October 24, 2016.[[77]](#endnote-77)

In addition, Mistry also referred to the fraudulent transactions worth ₹220 million between Tata Sons and Air Asia that had been exposed after forensic investigations. In reply to Ratan Tata’s allegations that Mistry had not distanced himself from his family-owned group, Mistry argued that the total value of transactions between the Tata Group and his own family business had decreased from ₹11 billion in 2012 to zero in 2016.[[78]](#endnote-78)

Mistry alleged that, according to Tata Sons’ Articles of Association, to replace and appoint a new executive chairman required the formation of a selection committee. No such selection committee had been formed to appoint his replacement. Tata Group’s retirement policy also did not allow anyone older than 75 years of age to join the board as a director, but Ratan Tata, aged 79, had become its interim director.

Mistry also alluded to the possibility that his decision to sell Tata Steel Europe (which Tata Steel had acquired under the chairmanship of Ratan Tata) was one of the reasons for his removal from the board. To prove his point, Mistry noted that on November 25, 2016, Joy Bhattacharya, who was both a close friend of Ratan Tata and a member of the selection panel that was set up to recruit Mistry’s successor, said that Tata Steel would remain committed to Europe for at least another decade.[[79]](#endnote-79)

On December 13, 2016, Wadia, an independent director at Tata Steel, sent a letter to all shareholders of Tata Steel, stating that he was being removed from Tata Steel because Tata Sons believed that he was acting against the interest of Tata Sons. However, as an independent director, he should work for the interests of the company and not the promoter shareholder group. He also argued that Tata Steel had invested close to ₹140 billion in other Tata Group companies and, as Tata Steel had lot of debt, it should simply sell those shares and repay an equivalent amount of debt to save on interest expenses. Wadia concluded his letter by stating, “It is now in your hands to decide not on my fate as an Independent Director of Tata Steel, but on the fate of the very institution of Independent Director requires to be protected.”[[80]](#endnote-80)

What Should Tata Steel Shareholders Do?

The shareholders of Tata Steel needed to vote on two resolutions for removing Mistry and Wadia from the board. The shareholders could vote for or against both the resolutions. Alternatively, they could vote against only one resolution. Although Tata Steel’s board had already removed Mistry as its chairman, it had not taken any such action against Wadia.

Before TCS’s EGM, where proxy advisor firms such as ISS and InGovern advised the shareholders to vote against the resolutions, others such as Stakeholders Empowerment Services and Institutional Investor Advisory Services advised the shareholders to vote in favour of the resolution. Shriram Subramanian of InGovern argued that Tata lacked a convincing argument against Mistry, and further added that “personal vendetta or enmity cannot be a reason to remove a chairman.”[[81]](#endnote-81) Although Institutional Investor Advisory Services had initially advised shareholders to vote against the proposal to remove Wadia, it changed its opinion on December 16, 2017, on the grounds of the deteriorating relationship between Wadia and Ratan Tata, and argued that Wadia’s presence in Tata Steel’s boardroom “is likely to be a distraction.”[[82]](#endnote-82)

At TCS’s EGM held on December 13, 2016, 78 per cent of the individual investors and 43 per cent of the institutional investors voted in favour of Mistry (i.e., against the resolution of Tata Sons).[[83]](#endnote-83) However, as Tata Sons owned 73 per cent of the total shares, it managed to pass the resolution that sought Mistry’s removal from the TCS board. Tata Sons controlled only 31 per cent of the total shares in Tata Steel, and it was unclear what the outcome of the voting would be.

Life Insurance Corporation of India (LIC) controlled more than 13 per cent of Tata Steel’s shares. At TCS’s EGM, LIC abstained from voting.[[84]](#endnote-84) Nobody knew how the institutional investors, including LIC, would vote at Tata Steel’s EGM. On December 16, 2016, the last trading day before the electronic voting on these two resolutions started, Tata Steel stock closed at ₹414.05 per share.[[85]](#endnote-85)

endnotES

1. This case has been written on the basis of published sources only. Consequently, the interpretation and perspectives presented in this case are not necessarily those of Tata Steel Limited or any of its employees. This case was awarded second place overall in the ISB-Ivey Global Case Competition 2017. The prize was sponsored by ISB. [↑](#endnote-ref-1)
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