

Shri NJ Yasaswy Memorial 5th National Moot Court Competition - 2020 Moot Problem 2

Battle for Legacy

'Tobo Sons Ltd.' is the holding company of 'Tobo Mining Ltd', 'Tobo Petroleum Ltd.' and 'Tobo Heavy Industries Ltd.' The 'Kanji-Lalji Group' (KLG) having a stake in Tobo Sons Ltd., and headed by Mr. Vivekananda, has had joint ventures/joint businesses with Tobo Sons Ltd. for over five decades which developed trust and confidence amongst them and the resultant business operations were smooth and progressive.

Mr. Raju Tobo was the pioneer who founded Tobo Sons Ltd. He is the head of the 'Tobo family'. His wife, sons and daughter-in laws are all engaged with the working of the Tobo Sons Ltd. through their various administrative positions. 'Tobo Sons Ltd.' has controlling interests in a wide range of Companies which operate in 160 countries across six continents and employ over 760,000 people. It is engaged in businesses like car manufacturing, hotel establishments, steel industries, clothing, e-commerce and petroleum etc.

The Tobo Group comprises over a hundred operating companies of which 29 are listed companies with millions of shareholders and operates as a two-group company to provide checks and balances in its conduct of business rather than applying the law. Applying the majority rule would mean that one group can unilaterally determine the destiny of over 100 operating companies including the 29 listed companies and millions of stakeholders. There has always been constructive participation and engagement by the nominees of the 'KL Group' at

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the Board level and active support of the 'KL Group' as shareholders, in the conduct of the affairs of Tobo Sons Ltd.

The Tobo family collectively holds over 77% of total shareholding while the 'KL Group' holds over 23% of the equity share of 'Tobo Sons Ltd'. The business relations of these two groups had impact on the family relations and members of the both families became further close in and outside the businesses. At the same time, this relation started having positive impact on the business and the families jointly ventured into further sectors and businesses by investing the equity in each other's companies.

In this environment of mutual inter-dependence, Mr. Vivekananda was selected after subjecting him to a professional selection process as 'Executive Chairman' of Tobo Sons on merits. Mr. Raju Tobo, the former Executive Chairman, was designated as a Chairman Emeritus, an honorary title on the Board of 'Tobo Sons Ltd' for his contributions to the company.

Mr. Vivekananda, after his appointment used to avail the advice of Mr. Raju Tobo from time to time. These included matters of transition and historical legacy hotspots of Tobo Sons Ltd.

Mr. Vivekananda during his tenure took vital decisions to cut losses and to restructure the company so as to look after its interests. Mr. Vivekananda throughout his tenure dedicated himself completely for the benefit of the company and sometimes also went out of his way to protect its legacy. Everyone hailed him for his decisions which resulted in increase in the market value of the company multi-folds.

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After few months Tobo sons have taken a decision in the Board of Directors meeting to restructure the share capital by converting the existing surplus reserves into 'rights shares' to the existing shareholders at the ratio of 10:3. The resolution was filed with ROC and published in the newsletter of the company and also uploaded on the website.

60 days after the resolution Mr. Vivekananda allotted 'rights shares' to the shareholders of Tobo sons who were also shareholders of KL Group. Some shareholders exclusively belonging to Tobo sons have filed an application to the Mr. Raju Tobo, the former Executive Chairman mentioning the grievances holding that the 'Rights Shares' are allotted only to those shareholders of Tobo sons representing the KL group.

On 1st April 2019, Mr. Vivekananda was suddenly removed as 'Executive Chairman' from the Tobo Sons Ltd, without giving any substantial reasons. As a result, the relations between two groups strained and the market capitalization also came down. Later, Mr. Vivekananda came to know through media channels that Mr. Tobo had attributed charges of mismanagement of Companies against him.

It is pertinent to point out that the media coverage of the issue has further caused consternation amongst both groups and the business world came to know the glaring differences between Mr. Raju and Mr. Vivekananda over the direction in which the company was heading.

As a part of this dispute, the flagship business of Tobo Sons Ltd., Hydrel Project suffered losses and impacted other Tobo Group Companies such as 'Tobo Hotels Company Limited' ("THCL"), 'Tobo Teleservices Limited' ("TTSL") etc.

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As a result, internal operations systems got modified and every decision was required to take permission and approval from Mr. Raju and his family members and Mr. Vivekananda was not ready for such an operations model.

Mr. Raju by conducting a Board meeting having his own supporters and without giving any opportunity to Mr. Vivekananda to defend himself or plead his case, passed a resolution removing him from the post of Executive Chairman.

Aggrieved by his removal, Mr. Vivekananda approached the NCLT bench in Delhi which upheld the removal of Mr. Vivekananda. Aggrieved by the orders of NCLT, Mr. Vivekananda appealed to the NCLAT, challenging the decision of NCLT. NCLAT reversed the decision to the NCLT. Aggrieved by the decision of NCLAT the Tobo Sons Ltd. approached the Supreme Court.

The matter is pending before Supreme Court of India.

Submit you arguments.

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