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OPPRESSION & MISMANAGEMENT CASES UNDER THE COMPANIES ACT, 2013.

The provisions regulating oppression and mismanagement in companies are an integral part of corporate governance. They ensure that interests of a company are protected and that no shareholder or member of the company faces undue bias or prejudice.

Functioning of companies, of any significant size in terms of issued shares, is based on the broad rule of corporate democracy, i.e. the company makes decisions on its various affairs based on the rule of majority voting, in one form or another, with votes being cast by its shareholders to approve or disapprove of a particular course of action. However, it may sometimes be the case that the decisions of the majority are prejudicial to the company or to the public interest, or prejudicial or oppressive to any of its members. The provisions relating to oppression and mismanagement are included in company law as exception to the majority rule, with a view to prevent misuse or abuse of the voting power of the majority shareholders.

The term 'oppression' involves a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely.[1] Whereas mismanagement implies that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company.[2]

Provisions relating to oppression and mismanagement are found in Sections 241-246 of the Companies Act, 2013. The relevant provisions and their operation are discussed hereinunder.

WHEN CAN AN APPLICATION BE MADE:

Section 241 provides that members can approach the National Company Law Tribunal ("Tribunal") in two cases.

i) First, if the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to them or any other member(s), or in a manner prejudicial to the interests of the company.

ii) Secondly, if there is a material change in the management and control of the company by an alteration in the board of directors, membership or share capital, or in any other manner, and the change is likely to cause the affairs of the company to be conducted in a manner prejudicial to the affairs of the company or to its members or any class of members.

NOTE : However, if such change is brought about in the interest of creditors, debenture-holders, or any class of shareholders of the company then the change will not qualify as a material change.

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WHO CAN MAKE THE APPLICATION:

Section 244 gives the following people the right to apply for an action under Section 241:

a. *in case of a company having a share capital, not less than 100(one hundred members) of the company or not less than (1/10) one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth 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;*

b. *in the case of a company not having a share capital, not less than one-fifth of the total number of its members.*

NOTE: The Tribunal however can waive the aforementioned numerical requirement if it deems such waiver to be necessary. The National Company Law Appellate Tribunal ("NCLAT") in case of *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd.& Ors.* ***devised a four-step analysis to determine whether the numerical requirement of Section 244 should be waived or not.***

The four-steps proposed by NCLAT are:

i. *Whether the applicants are member(s) of the company in question?*

If the answer is in negative i.e., the applicant(s) are not member(s), the application is to be rejected outright. Otherwise, the Tribunal will look into the next factor.

ii. *Whether (proposed) application under Section 241 pertains to 'oppression and mismanagement'?*

If the Tribunal on perusal of proposed application under Section 241 forms opinion that the application does not relate to 'oppression and mismanagement' of the company or its members and/or is frivolous, it will reject the application for 'waiver'. Otherwise, the Tribunal will proceed to notice the other factors.

iii. *Whether similar allegation of 'oppression and mismanagement', was earlier made by any other member and stands decided and concluded?*

iv. *Whether there is an exceptional circumstance made out to grant 'waiver', so as to enable members to file application under Section 241 etc.?*

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Therefore, in light of the four-step analysis applied to the facts of the case, NCLAT granted waiver to the Appellant/Applicant though it fell short of the 10% requirement.

Further, under Section 241(2) the Central Government can also make an application to the Tribunal if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to the public interest.

WHAT CAN THE TRIBUNAL DO:

Section 242 lays down the powers of the Tribunal: *it states that on receipt of application if the Tribunal is of the opinion that ;*

i) the affairs of the company are being conducted in a manner prejudicial or oppressive to any member(s), or

ii) prejudicial to the public interest or interest of the company,

And that the Tribunal would be justified in winding up the company on just and equitable grounds but doing so will unfairly prejudice such members or members of the company, then it can pass any order as it may deem fit with a view to end the matters being complained of in the application.

Further, Section 242(2) *provides a non-exhaustive list of actions that the Tribunal can take against companies if their actions are found to be oppressive. The list in Section 242(2) includes powers to regulate the conduct of affairs of the company in future, or restrict the allotment or transfer of the shares of the company, or remove managing director or directors of the company etc. Further, Section 242(4) allows the Tribunal to pass an interim order and thereafter a final order.*

SOME SIGNIFICANT RULINGS:

The recent case of Tata Consultancy Services Limited v. Cyrus Investments Pvt. Ltd. & Ors. is a landmark decision on oppression and mismanagement. In this case Mr. Cyrus Mistry was replaced from the position of non-executive director with Mr. Ratan Tata on the board of Tata Sons, by a resolution of the companies' Board of Directors. Further, he was also removed from directorship in various companies of the Tata Group, by resolutions passed at shareholder meetings. Upon his removal, two companies by the name of Cyrus Investments Private Limited and Sterling Investment Corporation Private Limited that held shares of Tata Group of Companies filed a complaint under Sections 241, 242 and 243 alleging prejudice, oppression and mismanagement. Mr. Mistry had controlling shareholding in both these companies.

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The NCLT held that there was no oppression or mismanagement on a mixture of facts and law.

The NCLAT on appeal reversed the judgement, went one step further and reinstated Mr. Mistry as the director of Tata Sons and few other companies in the Tata Group. Various companies from Tata Group filed appeals to the Supreme Court ("SC") which were clubbed and heard together. While holding that affairs of the Tata Group do not amount to oppression, the SC made the following important observations:

- *Removal from position of directorship is not sufficient to make out a case of oppression and mismanagement, and the NCLT can dismiss such complaints. However, relief under Section 242 can be granted if the removal is carried out in accordance with law but "forms part of a larger design to oppress or prejudice the interest of some members."*

- *Winding up of a company upon finding of oppression/mismanagement can only take place when there is a justifiable lack of confidence in the conduct and management of the company's affairs. A mere lack of confidence between majority and minority shareholders will not be sufficient.*

- *Sections 241 and 242 do not give the Tribunal powers of reinstatement.*

- *Court while deciding a case under Section 241 can only look at past conduct or conduct which is going on. An apprehension of future misconduct arising out of the Articles of the company cannot be looked into by the Tribunal under a Section 241 complaint.*

POWER OF GOVERNMENT TO MAKE COMPLAINTS:

Review of opinion formed by the Central Government under Section 241(2):

Another remarkable judgement relating to oppression and mismanagement was the 2021 judgement of Union of India v. Delhi Gymkhana Club. In this case the petition for oppression and mismanagement was filed by Government of India under Section 241(2). The NCLAT discussed the scope of Section 241(2) and made the following observations:

- *when the Central Government files a complaint under Section 241(2), it is required to record its opinion as regards affairs of the company being conducted in a manner prejudicial to public interest, and recording of such opinion is a sine qua non for applying to the Tribunal under Section 241(2).*

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- *The Tribunal cannot review sufficiency or otherwise of material based on which the government has formed its opinion, more so when no mala fide is attributed to the Central Government.*
- *The phrase 'public interest' cannot be stretched so far as to include all Indian citizens. It would suffice if the rights, security, economic welfare, health and safety of even a section of the society -like the candidates seeking membership from the category of common citizen- are affected notwithstanding the fact that they are only a few individuals.*

POWER OF TRIBUNALS UNDER CERTAIN CIRCUMSTANCES:

POWER TO PASS INTERIM ORDER:

In Smt. Smruti Shreyans Shah v. The Lok Prakashan Ltd. & Ors., the NCLAT held that Tribunal can issue interim orders under Section 242, if a prima facie case is made out. It observed that the making of an interim order by the Tribunal across the ambit of Section 242(4) postulates a situation where the affairs of the company have not been or are not being conducted in accordance with the provisions of law and the Articles of Association. For carving out a prima facie case, the member alleging oppression and mismanagement has to demonstrate that he has raised fair questions in the Company Petition and which require a probe.

POWER TO DECIDE MATTER PENDING BEFORE CIVIL COURT:

The SC in Aruna Oswal v Pankaj Oswal & Ors., held that since questions relating to right, title, and interest in shares as a result of nomination were pending before a civil court which had ordered status quo in relation to the SC matter, it would not be open to a shareholder whose title to the shares had been disputed and who was not eligible to maintain a petition under Section 244, to agitate matters relating to the disputed shares, by way of a petition for oppression and mismanagement, including by seeking a waiver of the requirements under Section 244.

POWER TO DECIDE MATTERS IN PRESENCE OF ARBITRATION CLAUSE:

In Dhananjay Mishra v Dynatron Services Private Limited & Ors., the NCLAT held that acts of non-service of notice of meetings, financial discrepancies and non-appointment of directors being matters specifically dealt with under Companies Act and falling within the domain of the Tribunal to consider grant of relief under Section 242 of Companies Act render the dispute non-arbitrable though it cannot be disputed as a broad proposition that the dispute arising out of breach of contractual obligations referable to the MOUs or otherwise would be arbitrable.

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POWER TO IMPLEAD AUDITORS OF THE COMPANY UNDER INVESTIGATION:

In Deloitte Haskins & Sells LLP v Union of India, NCLAT allowed the government to implead auditors of a company in case of fraud and mismanagement. In this case, a petition was filed by the Central Government against Infrastructure Leasing & Financial Services ("IL&FS") and IL&FS Financial Services (IFIN) inter-alia under Section 241(2) alleging fraud and mismanagement and conduct of affairs which were prejudicial to public interest. The Central Government also sought to implead IL&FS and IFIN's statutory auditing firms and the partners of the firm who were involved in the audit (those who were still working with the firm or who had resigned). This was assailed by the auditors on the grounds that they were not necessary parties to the proceedings and that they had resigned as auditors prior to the institution of the proceedings by the Central Government. Rejecting the contention, the NCLAT held that the powers of the Tribunal under Section 242 are very wide and it would be open to the Tribunal to hear any party including the former auditors, before passing an order, in order to protect public interest or the interests of the company.

CONCLUDING REMARKS:

Although the Tribunal has wide powers under Section 242 to pass any order as it may deem fit to bring an end to the matters complained of, its capability to do so is conditioned by Sections 241, 242 and 244. For obtaining orders under Section 242, the applicant has first to pass the test of meeting the numerical requirement under Section 244, and then to satisfy the Tribunal on the requirements of Sections 241 and 242 –viz. oppressive or prejudicial conduct, and a just and equitable case for winding up of the company.

These requirements have thresholds that are somewhat high since the numerical requirement can only be waived in exceptional cases, and a mere lack of confidence between members and directors will not amount to just and equitable grounds for winding up. The provisions of oppression and mismanagement coupled with precedents set by the courts can thus be seen to strike a balance between the rights of the majority and minority shareholders in a company. They provide a way to set the house in order.