

**OPPRESSION AND  
MISMANAGEMENT  
REMEDIES UNDER CA13**

**14<sup>th</sup> MARCH 2025**

# Introduction

- A company functions through the instrumentality of the Board of Directors . It is guided by the wishes of the majority subject to the welfare of the company as a whole.
- The general principle of company law is that every member holding shares of a particular class will have equal rights. In case of difference amongst the members, the issue is decided by vote of the majority.
- It has therefore become a '*Cardinal Rule*' of Company Law that *prima facie*, a majority of members of a company are entitled to exercise the powers of the company and generally control its affairs.

- **As a general rule, it has been well settled that the actions and decisions of the majority in a company as long as they are within the framework of law and the articles of the company, are binding on the shareholders of the company. [*MacDougal v. Gardiner (1875) 1Ch D 13 (C.A)*].**
- **The basic principle of non-interference with the internal management of company by the court is laid down in a celebrated case of *Foss v. Harbottle 67 E.R. (189) (1843)*.**
- **In the corporate world, whether it be United Kingdom or India or Japan, number of instances have been observed where majority (i.e. a group of shareholders in management) are not conducting affairs of the company properly and impartially.**

- **The public concern to look after and safeguard the interest of the body of shareholders who are not in management or the protection of a few dissident shareholders can be largely termed as '*minority protection*'.**
- **Of late, the number of cases before NCLT / nclat are increasing**

# Exceptions To Rule Of Majority:

- Rule in *Foss v. Harbottle* is not absolute but is subject to certain exceptions.
- One of the exceptions to the majority rule in *Foss v. Harbottle* is the right of the oppressed minority to get relief against the wrongful conduct of the majority.
- This is one of the statutory protections to the investors and was provided for in sections 397-402 of the Companies Act, 1956. now **Sec 241- 244 of CA 2013 ,CHAPTER XVI**

- SECTION 241 HAS CLUBBED 397 & 398 OF THE OLD ACT
- SECTION 242 IS ABOUT POWERS OF NCLT
- SECTION 243 IS ABOUT CONSEQUENCES OF TERMINATION OR MODIFICATION OF AGREEMENTS
- SECTION 244 IS ABOUT ELIGIBILITY OF MEMBERS TO FILE PETITION

# Section 397 (Now 241): Application for relief in cases of oppression

Section 397 (241) provides that any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member(s) (including any one or more of themselves) may make an application to the Company Law Board/Tribunal by way of petition for relief.

- Minority can approach tribunal if the affairs of the company [have been](#) or are being conducted in an oppressive manner. Thus past concluded acts can be a ground for relief.

# CLASS ACTION SUITS- ONLY AT PRINCIPAL BENCH

- **Section 245** : *This is a new concept.*
- Class action by member(s) , depositor(s) or any class of them.
- *If company acts ultra-virus to MOA/AOA ;*
- *If terms of MOA/AOA are violated ;*
- *If amendments are sought to MOA/AOA by misleading members;*
- *If company commits an act contrary to the provisions of law or contrary to provisions of members' resolution.*
- *Against Auditors/ Consultants*

# Requirements to be satisfied for seeking relief under the section

- That the affairs of the company are being conducted: (a) in a manner prejudicial to public interest; or (b) oppressive to any members.
- That the fact justified the compulsory winding up order on the ground that it is just and equitable that the company should be wound up.
- That to wind up the company would unfairly prejudice the petitioners [Ramji Lal Baiswala v. Britain Cable Ltd., (1964) 14 Raj. 135].

# Explanation of statements

## *“Affairs of the company”*

- The words “the affairs of the company” are not limited to business or trade matters, but encompass capital structure, dividend policy, voting rights, consideration of takeover offers and indeed, all matters which may come before the Tribunal for consideration.

## *“.....are being conducted”*

- There must be continuous acts on the part of the majority shareholders continuing up to the date of the petition showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. So isolated acts or past acts which have come to an end could not have been challenged under section 397. **But under new provisions it is possible.**

**“in a manner prejudicial to public interest.....”**

- The term ‘public interest’ as pointed out in *N.N. Murty v. Industrial Development Corporation of Orissa Ltd.* is an elusive abstraction. It is said to mean a general social welfare or regard for social good and to predicate interest of the general public in matters where a regard for the social good is of the first moment.

**“...or in a manner oppressive to any member or members.....”**

- The expression ‘in a manner oppressive to any member or members’ IS NOT defined .

**Oppression**

- The term ‘oppression’ has not been defined in the Act.

# MAJOR REASONS FOR DISPUTES BETWEEN SHAREHOLDERS/ BOARD OF DIRECTORS

*“Prevention is better than Cure”*

- **PERSONAL CONFLICTS AND RELATIONSHIP BREAKDOWN**

**1. Communication gap** between Shareholders / Board of Directors. LUST , GREED AND WRATH

2. Directors creating an **environment of distrust** and suspicion in the company or kept **surveillance through consultants or subordinates.**

**3. Absence of workplace decorum.** E.g., Use of abusive language or aggression.

**4. Taking things for granted.**

**5. Personality clash:** one is aggressive another is subdued, concepts about needs, luxuries and comforts are polar opposites.

6. Not maintaining priority of the authorities in the company and proper policy on remuneration

7. Under-hand dealings ---scrap sell.

8. Trying to exploit the situation to one's advantage.

- **GOVERNANCE AND STRUCTURAL ISSUES**

- 1. Deadlock Situations:** In small companies with 50/50 director-shareholders, a disagreement can halt all decision-making.
- 2. Boardroom Power Games:** Struggles for control or influence, particularly in family businesses or when, for example, a founder is forced out.
- 3. Arbitrary decision-making:** Not explaining the logic and justification for taking a particular decision.
- 4. Lack of Recognition:** Thinking “I am the only one working and I am not getting the remuneration as much as I deserve”.

- In the case of **Mr. Virendra R. Gandhi and Ors. Vs. Vadilal International Pvt. Ltd. and Ors.** – NCLT Ahmedabad Bench (2024)

NCLT held that **“The principal of quasi partnership can be invoked in family companies and also applicable in public listed companies”.**

- **NON-COMPLIANCE OF STATUTORY PROCEDURES**

1. Non-maintenance of **minutes, notices, attendance sheets, records and statutory registers**
2. Not having **organisational hierarchy, reporting mechanism or control chart.**
3. Directors do not have well-defined **Roles and Responsibilities** in the organisation or; have overlapping **Duties and Functions.**
4. **Absence of written understanding in form of shareholders' agreement** between the directors and shareholders.
5. **Lack of policy in respect of dividend declaration , decision** making process , clear understanding about decisions which need special majority / veto rights / unanimity
6. Not giving **exit route on fair terms.**

- **FINANCIAL MIS-MANAGEMENT AND MISUSE OF FUNDS**

1. **Financial indiscipline:**

- ❖ use of short-term funds for long term investments;
- ❖ booking of personal expenses as business expenses., uncontrolled expenses like foreign trips;
- ❖ absence of maker checker system while issuing cheques;
- ❖ neglecting contingent liabilities

2. Exhibiting **disproportionate wealth and living standards.**

3. **Signing blank documents** without due care.

- **MIXING BUSINESS AND PERSONAL RELATIONS**

1. Involvement of **relatives in the business** decisions may cause dissatisfaction among Directors.

2. Entering into **related party transactions on seemingly unfair terms.**

3. Involvement of **next generation in business at their young age** might disrupt workflow.

- **DIVERGENT VISION AND STRATEGY**

1. Directors may have **different views on strategy** to drive growth of the company:
  - A. **Use of Funds:** Borrowed money v/s Equity capital
  - B. **Asset Management:** Capital investment v/s Machines on rent.
  - C. **Legal Dispute Resolution:** Out of Court Settlement v/s Litigation.
  - D. Whether personal guarantees should be extended?
2. Directors may have **long term vision of the business** of the company and different **parameters of success**.
3. **Ethical Dilemma:** Directors have opposing ideals on ethical concepts like tax avoidance vs. tax evasion.

# CASES IN OPPRESSION & MISMANAGEMENT

- **Tata Consultancy Services Ltd. v Cyrus Investments P. Ltd.(2021) 162 CLA 1 (SC)**

In a petition under **Section 241**, the Tribunal's role is **not to decide whether the removal of a director was legally valid or justified**. Instead, it must determine **whether the removal amounts to oppressive or prejudicial conduct toward certain members of the company**. Even if the removal was **illegal or unjustified**, relief under **Section 242** can only be granted **if the removal also constitutes oppression or prejudice to members**. Therefore, the **legality of the director's removal is secondary** and only relevant if it forms part of **oppressive or prejudicial conduct**.

- **Birla Corporation Ltd v Adventz Investments and Holdings Ltd., [2019] 152 CLA 11 (SC)**

If shareholder respondents, use company documents in court to support a case of oppression and mismanagement, it **does not amount to theft**, even if the company has filed a criminal complaint. Since there is **no dishonest intention to cause wrongful loss or gain**, the **essential elements of theft are not satisfied**.

- **Cyrus Investments (P.) Ltd. v. Tata Sons Ltd., [2019] 148 CLA 172 (NCLT)**

Under the new regime of the Act, **twin condition** have to be proved for mismanagement ie., mismanagement as well as ground for winding up under just and equitable ground. Oppression as well as ground for winding up .

- **Vangala Niranjana Reddy v. Breezy Farms & Resorts (P.) Ltd., [2017] 137 CLA 217 (NCLT)**

Where a director who has invested large amount in company is removed, the **NCLT may direct the company to invite him as a special invitee to Board meetings discussing financial matters** to protect his financial interest on **just and equitable grounds**.

- **Kanubhai C. Patel v. Doloo Tea Co (India) Ltd., [2017] 137 CLA 232 (NCLT)**

A petition under **Sections 397/398** (oppression and mismanagement) is **representative in nature**. Therefore, **the petition does not abate on the death of the petitioner**, and the Tribunal must ensure that the case continues to its **logical conclusion**.

- **Paras S. Porwal v. Blue Lotus Jewellery (P.) Ltd., [2017] 137 CLA 1 (NCLT)**

**Non-supply of documents alone does not amount to oppression unless it is done with mala fide intent causing prejudice to members. If petitioners fail to show how their interests were harmed, such actions cannot be treated as oppressive.**

- **Ram Saroop v. Hindustan Thompson Associates (P.) Ltd.. [2016] 130 CLA 96 (CLB)**

**If the Articles of Association require an employee to surrender shares upon retirement, the employee must comply as it is a binding contract. Enforcing this provision does not constitute oppression or mismanagement.**

- **Girdharlal Nathubhai Dalai v. K C Agro (P.) Ltd. , [2015] 129 CLA 395 (CLB)**

In a family company, allotting shares secretly to dilute a petitioner's stake with mala fide intent to take control constitutes oppression.

Share transfers violating the Articles of Association or done with mala fide intent to block a member's rights are illegal and constitute oppression.

- **R Khemka v. Deccan Enterprises (P.) Ltd., [2000] 38 CLA 392 (AP)**

Oppression complained of must affect members in their capacity as shareholders, not in any other role or capacity.

- **Nafan B V v. SAF Yeast Company (P.) Ltd., [2016] 131 CLA 70 (Bom.)**

- ❖ High Court interpreted the underlying principle in the concept of 'oppression'. The term 'oppression' used in section 397 generally refers to a conduct which is wrongful and harsh and also refers to a lack of probity and fair dealings in the affairs of the company. Oppression can be in different forms. Something which is illegal may not be oppressive and something which is legal may be oppressive. Therefore, the enquiry in such matters will be focused on probity and fairness in dealing amongst the shareholders rather than only testing the legality of the actions.
- ❖ While expert valuers' opinions are generally respected, **share valuation done hastily, ignoring established methods, can amount to oppression, especially if there's evidence of fundamental errors, collusion, or fraud.** Courts/tribunals may discard such valuations in such cases.

- **Shubhkam Ventures (I) (P.) Ltd. v. Milton Plastics Ltd., [2015] 125 CLA 517 (CLB)**

A **single act of oppression** can constitute a **continuing act** if it is **harsh, burdensome, wrongful, and deprives a member of rights over many years**, allowing a petition under **Section 397** even for just one act.

- **Rajesh Gopalkrishna Uchil v. Trikon Electronics (P.) Ltd., [2015] 124 CLA 543 (CLB)**

Even if a **Section 397/398 petition fails**, the **CLB under Section 402** can order one shareholder group to **buy out the other** in case of **deadlock and loss of trust**, giving management the first opportunity to do so.

# What is Oppression?

- In *Shanti Prasad v. Kalinga Tubes*, (1965) 35 Com Cases, it is observed that “it is not enough to show that there is just and equitable cause for winding up the company though that must be shown as a preliminary to the application of section 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members.
- A conduct which lacks in probity, conduct which is unfair to and which causes prejudice to the petitioner in the exercise of his legal and proprietary rights as a shareholder must be shown to exist. *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.*, (1981) 51 Com Cases 743 (at 782) : AIR 1981 SC 1298.

In case of **V S Krishnan and Others Vs Westfort Hi-tech Hospital Ltd and Others**

[2008] 83 CLA 371 (SC) / [2008] 142 Comp CAS 235 (SC) / [2008] 3 SCC 363 /

[2008] 2 Comp LJ 1 (SC)

**SUPREME COURT HELD – Oppression** would be made out under section 397

- where conduct is harsh, burdensome, and wrong;
- where the conduct is with bad intentions and is for a collateral purpose where although the ultimate objective may be in the interest of the company, the immediate purpose would result in an advantage for some shareholders vis-a-vis the others
- where the action is against probity ( Virtuous ) and good conduct

- the oppressive act complained of may be fully permissible under law may but yet be oppressive.
- once conduct is found to be oppressive under sections 241, the discretionary powers given to NCLT under section 242 to set right, remedy or put an end to such oppression are very wide
- What would give rise to or constitute oppression is basically a question of fact

- **Mere existence of concerns about future breaches of fiduciary duty by certain directors cannot provide a present basis for prevention of future unfair conduct. There must be some proposed course of act or omission by or on behalf of the company.[Astec (BSR) Plc Re (1998) 2 BCLC 556 (ChD)].**

- **Competing business**

Merely because the majority are carrying on a competing business does not necessarily mean that the minority are being oppressed in relation to their own company, unless the majority are diverting corporate opportunities away from the company or are using the company's facilities for the purposes of their competing business without proper payment (see, for example, Re Cumana Ltd., 1986 BCLC 430).

An attempt to force new and more risky objects upon an unwilling minority may in certain circumstances amount to oppression. This was held in Re. Hindustan Co-operative Insurance Society Ltd., AIR. 1961 Cal. 443.

- **Irregular Acts**

**Mere illegal, invalid or irregular acts by themselves, unless they are oppressive to any shareholder or prejudicial to the interests of the company or to public interest, cannot support a petition.**

**Sheth Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co.Ltd. (1964) 54 Com Cases 777 (Guj); Maharashtra Power Development Corpn. Ltd. v. Dabol Power Co., (2003) 56 CCA 263.**

- Provisions of the Act as to the length of notice being only directory and not mandatory, short notice is not an act of oppressive nature unless it is intended to be adopted as a strategy to ride roughshod over the interest of the lesser number of shareholders. *Shantidevi Pratapshingh Gaekwad v. Sangramsingh P. Gaekwad, (1996) 1 Comp LJ 72 (Guj).*
- Suppressing the notice to some of the members is an act of oppression. *Farhat Sheikh v. Esemen Metalo Chemicals P.Ltd., (1996) 87 Com Cases 290 (Company Law Board-New Delhi).*

- **Continuing Act**

Oppression must be a continuous process. Isolated acts of oppression will not give rise to an action under Section 397 of the Act. [Held in *Shanti Prasad Jain and other cases*]. **Now perhaps not relevant**

Words used in sec. 241 are ...the affairs of the company **have been** or are being conducted in a manner prejudicial

..

A single act of letting out company's premises was held to be not in the nature of continuing oppression or mismanagement, [*Power Tools and Appliances Co.Ltd. v. Jaladhar Chakraborty, (1991-92) 96 CWN 313 (Cal.)*]. **Now perhaps not relevant**

In the case of an oppressive act, though it may itself be not continuous, if the circumstances indicate that the effect is continuous, the Court will interfere. [*Sindri Iron Foundry (Private) Ltd., (1964) 34 Com Cases 510*].

**A mere apprehension that the minority shareholders will be oppressed in future is not sufficient to invoke this section.  
[*Nagavarapu Krishna Prasad v. Andhra Bank Ltd.*, (1983) 53 Com Cases 73 (at 98) (AP)].**

***Tea Brokers P.Ltd. v. Hemendra Prosad Barooah*, (1998) 5 Comp LJ 463 (Cal), Division Bench of the Calcutta High Court observed (at para 46).It will ordinarily be an act of oppression on the members if he is deprived of a privilege and right. Such an act may be even a single act done on one particular occasion, if the effect of such an act will be of a continuing nature and the member concerned is deprived of his rights and privileges for all time to come in future.**

## • Additional issue

- Additional issue of shares resolved and made at the Board meeting of which notice not given to a director was held as oppressive and set aside. *Dileep Makhija v. Arun Mittal (2003) 47 SCL 241: (2004) CLC 209.*
- If additional directors are appointed to gain majority control of the Board without any bona fide need or any interest of the company, it can be treated as an oppressive exercise. [*Kshounish Chowdhury v. Kero Rajendra Monolithics Ltd. (2002) 1 Com LJ 552*].
- *Deadlock in management* : Where each side is equally strong, and one is unable to oppress the other, there may be a deadlock but not oppression. It is not a case for winding up. *Gnanasambandam (C.P.) v. Tamilnad Transports (Coimbatore) (P.) Ltd., (1971) 41 Com Cases 26 (Mad).*

**“...to wind up the company would unfairly prejudice such member or members...”**

**It is a condition precedent for claiming relief under section 241 that even though the facts would justify the winding up of the company, it would be unfairly prejudicial to the members to wind up the company. The onus is on the applicants to show that it would be so. Winding up will be prejudicial where, for example, the members would be able to get only the break-up value of the shares.**

# Oppression may result from not acting as much as by acting.

- **Unfairly prejudicial**

As laid down in *Saul D. Harrison & Sons Plc., Re. (1995) 1 BCLC*, some of the salient check points in relation to unfairly prejudicial are:

- i. The conduct must be both prejudicial (in the sense of causing prejudice or harm to the relevant interest) and also unfairly so: conduct may be unfair without being prejudicial or prejudicial without being unfair, and it is not sufficient if the conduct satisfies only one of these tests.
- ii. In construing the word “unfairly” in this context, it will be necessary to take into account not only the legal rights of the petitioner, but also whether there are any equitable considerations such as the petitioner’s legitimate expectations to be weighed in the balance.

**iii. In order to establish unfairness it is clearly not enough to show that some managerial decision may have prejudiced the petitioner's interest.**

**iv. Though in general, members of a company have no legitimate expectations going beyond the legal rights conferred on them by the constitution of the company, additional legitimate expectations may be superimposed in certain circumstances.**

**“.....but otherwise facts would justify the making of a winding up order on just and equitable ground.....”**

**In order to make out a case under section 241 it is essential to show that there exist such facts as would justify the winding up of the company on just and equitable grounds.**

**Instance of this include : Loss or failure of substratum; Fraud; Illegality of objects; Directors' misconduct; Improper motive; Justifiable lack of confidence; Expulsion from office; and Exclusion from participation in management**

# C. Acts / Circumstances which were considered to be Oppressive

SL. NO.	NAME OF THE CASE	ACTS OF OPPRESSION
1.	H.R Harmer Ltd , <i>Inre</i> [1959] 29 Comp Cases 305 (CA)	There may be oppression from the point of view of members-directors , where a majority shareholders (that is to say , a shareholder with a preponderance of voting power) proceeds, on the strength of his control , to act contrary to decisions of , or without the authority of, the duly constituted board of directors of the company.

SL. NO.	NAME OF THE CASE	ACTS OF OPPRESSION
2.	H.R Harmer Ltd , <i>Inre</i> [1959] 29 Comp Cases 305 (CA)	If a person , relying on majority control in point of voting power , dispenses with proper procedure for producing the result he desires to achieve , and simply insists on this or that being done or omitted, his conduct is oppressive because it deprives the minority of shareholders of their rights as members of the company to have its affairs conducted in accordance with its article of association.
3.	Binod Kumar Agrawal vs Ringroag Tea Company Private Limited [1996] 85 Comp Cases 289 (CLB)	Allotment of shares by board of directors to their own group without offering them to petitioners. Allotment results in reducing petitioners to minority is act of oppression

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
4.	Mohan Lal Chandu-Mall vs Punjab Company Ltd [1962] 32 Comp Cas 937 (Punj)	Altering the article of association of a company for purpose of depriving the non-trading members of the company of their right to attend meetings, to vote therein, to elect directors, to elect auditors & to declare dividends, even if alteration is made with a view to bringing the articles in conformity with the Forward Contracts (Regulation) Act 1952, under which company was recognized by Central Govt., would amount to oppression of non-trading members.
5.	M.M Dua vs Indian Dairy and Allied Services Pvt Ltd [1996]86 Comp Cas 657(CLB)	Where there is a provision in the article of association of a company for pre-emption by members in the matter of transfer of shares , a transfer in violation of such provision constitutes oppression

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
<b>6.</b>	Dipak G Mehta vs Anupar Chemicals (India) Pvt Ltd [1999] 98 Comp Cas 575(CLB)	Notice not received for general body meeting making meeting invalid resulting into oppression
<b>7.</b>	Dipak G Mehta vs Anupar Chemicals (India) Pvt Ltd [1999] 98 Comp Cas 575(CLB)	Issue of Shares with a view to benefit a particular shareholding group amounts to oppression.
<b>8.</b>	Dipak G Mehta vs Anupar Chemicals (India) Pvt Ltd [1999] 98 Comp Cas 575(CLB)	Removal of director and appointment of additional director without notice to directors with a view to creating majority amounts to oppression

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
9.	SMT. Namita Gupta vs Cachar Native Joint Stock Co. Ltd [1999] 98 Comp Cas 655 (CLB)	Shareholder's right to elect director denied by rejecting demand for poll amounts to oppression
10	M.M.T.C Ltd vs Indo-French Bio-Tech Enterprise Ltd [2000] 99 Comp Cas 327 (CLB)	Shareholder has statutory right to receive dividend declared , non-receipt would amount to oppression
11	Satish Chandra Sanwalka vs Tinplate Dealers Association pvt ltd [2001] 107 Comp Cas 98 (CLB)	Fresh issue reducing majority to minority amounts to oppression.

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
12	Deepak C Shriram vs General Sales Limited [2002] 109 Comp Cas 732 (CLB)	Single act having continuous effect can constitute oppression.
13	Mrs Margaret T Desor vs Worldwide Agencies (P) Ltd [1989] 66 Comp Cas 5 (Delhi)	Not to permit an enquiry into allegations of oppression and mismanagement made in the petition would itself be a gross form of oppression.
14	Kishor Kundan Sippy vs Samrat Shipping & Transport System P Ltd [2004] 118 Comp Cas 472 (CLB)	Director using information derived in official capacity to his own advantage is oppressive to shareholders and also against interest of company.

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
15	Ravi Shankar Taneja vs Motherson Triplex Tools P Ltd [2004] 119 Comp Cas 617 (CLB)	Appointment of Director contrary to provisions of articles is oppressive
16	Kmal Kumar Dutta and Another vs Ruby Reneral Hospital Ltd and Others [2006] 134 Comp Cas 678 (SC)	The directors of a company are in position of trustee. They should conform to probity and their conduct should be above suspicions. When material changes are brought about in the management to the detriment of the interest of the main promoter, they are squarely covered under clause (f) of sub-section (1) of section 397

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF OPPRESSION</b>
17	Dale and Carrington Invt. (P) Ltd and Another vs P K Prathapan and others [2004] 122 Comp Cas 161 (SC)	Anything mala fide done by the director of a company in contravention of its articles e.g purported issue of shares in favour of a director without giving an opportunity to the shareholder in majority to participate in such issue with sole object of gaining control of the company by reducing majority shareholders to minority , would be an act of oppression to shareholder in majority.

# C. Acts / Circumstances which were not considered to be Oppressive

SL. NO.	NAME OF THE CASE	ACTS NOT OF OPPRESSION
1	<i>Thomas Vettom v. Kuttanad Rubber Co. Ltd</i> ,(1992) 74 Com Cases 392 (Ker-DB)	Failure to declare dividend does not amount to oppression.
2	<i>Krishna Prasad vs Andhra Bank Ltd</i> [1983] 53 Comp Cas (AP)	A mere apprehension that the minority shareholders will be oppressed , in the conduct of company , that is to be formed in the future ,cannot be sufficient ground

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS NOT OF OPPRESSION</b>
3	Krishna Prasad vs Andra Bank Ltd [1983] 53 Comp Cas (AP)	The mere fact that the minority shareholders are being outvoted or there is attempt to acquire control of company's affairs by purchasing large blocks of shares will not constitute act of oppression
4	Krishna Prasad vs Andra Bank Ltd [1983] 53 Comp Cas (AP)	Any resolution passed at a meeting was illegal because of non-compliance with provisions of the act would , again , not be sufficient to establish oppression
5	Asoka Betelnut Co. Pvt Ltd vs M. K Chandrakanth [1997] 88 Comp Cas 274 (Mad)	Company continuously suffering losses does not necessarily amount to oppression.

**SL. NO.****NAME OF THE CASE****ACTS NOT OF OPPRESSION**

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| 6  | R Khemka vs Deccan Enterprises Pvt Ltd.<br>[2000 ]100 CompCas 211 AP                                     | An isolated act of indiscipline or indifference or even deprivation by itself would not bring home the charge of oppression. There shall have to be continuity of a burdensome , harsh and wrongful conduct. <b>NOW not relevant</b> |
| 7. | V. Shanmugasunda-Ram vs Emerald Automobiles Ltd<br>[2001] 103 Comp Cas 1108 (CLB)                        | Allegation that minutes of board meetings not prepared and that scrutiny of accounts not allowed do not necessarily amount to oppression   |
| 8  | All India Shaw Wallace Employees Federation vs Shaw Wallace and Co. Ltd<br>[2000] 102 Comp Cas 466 (CLB) | Allegations of siphoning off of funds with no proof to substantiate allegations does not amounts to oppression.  |

**SL. NO. NAME OF THE CASE****ACTS NOT OF OPPRESSION**

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|----|--|--|
| 9  | Krishna Paul vs Calcutta Chemical Co. Ltd [2002] 110 Comp Cas 336 (CLB)    | Sale of shares to outsiders for bona fide purpose when there was no pre-emptive clause in articles in favour of other shareholders held non oppressive |
| 10 | Ultrafilter (India) pvt ltd vs Ultrafilter GMBH[2002] 112Comp Cas 93 (CLB) | Merely negotiating to acquire controlling shareholding in company held non oppressive  |
| 11 | K.P Chackochan vs Federal Bank [1989] 66 Comp Cas 953 (Ker)                | Mere fact that company's affair are being conducted unwisely or inefficiently is no ground for relief  |

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS NOT OF OPPRESSION</b>
12	SMT. Nupur Mitra vs Basubani Pvt Ltd [2003] 115 Comp Cas 900 (CLB)	Allegation that shares in excess of authorized share capital had been issued and no balance sheet of company for any period showing existence of shares above authorized capital , serial number of certificate not beyond authorized number ,accounts of company not showing receipt of money for shares in excess of authorised capital. Held there is no question of ultra vires.
13	SMT. Prameela Ravindran vs Vital Instrumentation Pvt Ltd [2004] 121 Comp Cas 837 (CLB)	Company not transmitting shares of deceased for want of succession certificate does not amount to oppression

SL. NO.	NAME OF THE CASE	ACTS NOT OF OPPRESSION
14	Bangalore Turf Club Ltd vs N. Sundaraswamy [2005] 124 Comp Cas 373 (Kar)	Every act, illegal committed by a company or persons in its management need not be oppressive and every act of oppression need not be illegal
15	Needle Industries (India) Ltd asnd Others Vs Needle Industries Newey (India) Holding Ltd and Others [1981] 51 Comp Cas 743 (SC)	<p>The fact that by issue of shares the directors succeed , also or incidentally , in maintaining their control over the company or in newly acquiring it, does not amount to an abuse of their fiduciary power.</p> <p>The Person Complaining of oppression must show that he has been constrained to submit to a conduct which lacks in probity, conduct which is unfair to him and which causes prejudice to him in the exercise of his legal and proprietary rights as a shareholder.</p>

SL. NO.	NAME OF THE CASE	ACTS NOT OF OPPRESSION
16	Shanti Prasad Jain vs Kalinga Tubes Ltd [1965] 35 Comp Cas 351 (SC)	The mere fact that the offer of new shares was made to others and not to the existing shareholders cannot be said to be oppressive of the minority shareholders. It must be shown that the conduct of majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but part of consecutive story..

# **MISMANAGEMENT**

- **Section 398 ( Now 241 ) provides that where members of a company complain that the affairs of the company are being conducted in a manner prejudicial to public interest or to the interests of the company, or that a material change has occurred in the management or control of the company, whether due to change in the constitution of the board of directors, or in the ownership of the shares of the company, or in any other manner whatsoever, and that by reason of such change it is likely that the affairs of the company will be conducted in that manner, they may apply to the court for an order for bringing to an end the matters complained of or apprehended.**
- **Two facets. The first is the positive acts done by the management which result in prejudice being caused to the company; secondly, even where no action at all is taken by the management, such non-action results in prejudice being caused to the company.**

# Meaning of Mismanagement

Some of these instances which can be termed as mismanagement are:

1. Preventing Directors From Functioning;
2. Absence Of Company's Records Causing Prejudice To Company's Business;
3. Sale Of Assets At A Low Price And Without Compliance With The Act
4. Violation Of Statutory Provisions;
5. Violation Of Provisions Of Memorandum And Articles Of The Company;
6. Erosion Of Companies Substratum Due To Irregularities In Conduct Of Affairs;
7. Misuse Of Funds Etc.

# Following acts have been held constituting mismanagement of affairs so as to attract preventive jurisdiction of NCLT

- Transferring shares without first offering them to the existing members in accordance with their rights under the articles;
- Holding meetings without sending notice to members;
- Issue of shares for a consideration other than cash not represented by corresponding assets; and
- Burdening the company with additional rental by shifting the company's office. [*Akbarali A. Kalvert v. Konkan Chemicals P.Ltd., (1997) 88 Com Cases 245 (CLB)*].

# ***Removal of Director***

**Removal of existing directors and appointment of new directors cannot be challenged as mismanagement unless the new directors misconduct the affairs of the company and work to the prejudice of the company. *[Siddaramappa Bapurao Patil v. Ratna Cements (Yadwad) Ltd. 1991 70 Com Cases 27 (Kar).]***

# ***Bona fide decision***

- **Directors' bona fide decision not to declare dividend and to accumulate profits into reserves is not mismanagement. [*Thomas Vettom (V.J.) v. Kutanad Rubber Co.Ltd. (1984) 56 Com Cases 284*].**
- **No case of oppression / mismanagement is made out if alleged sale of land was made out with authority of general body in EGM and the sale price was already approved by Board. [*Shri Kishan Khariwal v. Gangasagar Industries Ltd. (2004) CLC 241 – (CLB, New Delhi)*].**

# ***Full particulars***

- **In a charge of mismanagement /improper conduct full particulars of the act must be set out in the pleading otherwise charges shall be ignored and not relied upon.**
- **The allegation that the Board's resolution for appointment of MD was of fraudulent nature was not upheld as no material was furnished in support of the allegation of fraud. *[Ramkumar Gupta v. Atal Udyog Pvt.Ltd. (2003) 3 Com LJ 266, CLB-Cal]*.**

# Acts Constituting/Circumstances which Were held to be of Mismanagement

SL. NO.	NAME OF THE CASE	ACTS OF MISMANAGEMENT
1	COL. Kuldip Singh Dhillon vs Paragaon Utility Financiers P. Ltd [1988] 64 Comp Cas 19 (P & H)	Held , on the facts that not taking action against the manager who had misappropriated huge amounts of the company amounted to mismanagement
2	MRS. Farhat sheikh vs Esemen Metalo Chemicals Pvt Ltd [1996] 87 Comp Cas 290 (CLB)	Letting out of Company's property to relatives at far below rate amount to mismanagement
3	Akbaali A. Kalvert vs Konkan Chemicals Pvt Ltd [1997] 88 Comp Cas 245 (CLB)	Issue of shares for consideration other than cash with no effect given in books of company and Shifting of office of company causing monetary loss to company, both are example of mismanagement

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF MISMANAGEMENT</b>
4	Ador-Samia Ltd vs Indocan Engineering Systems Ltd [2000] 100 Comp Cas 370 (CLB)	Allegation that directors were removed from office without notice amounts to mismanagement.
5	K. R. S. Mani vs Anugraha Jewellers Ltd [2003] 100 Comp Cas 665 (CLB)	Loans and advances made to companies from allotment money which have no benefit to company amounts to mismanagement.
6	M Mohan Babu vs Heritage Foods India Ltd (No. 1) [2002] 108 Comp Cas 771 (AP)	That funds of company misutilised , that company engaged in fraudulent transactions , that director wrongly removed on basis of forged resignation, may be grounds for seeking investigation or may constitute mismanagement

<b>SL. NO.</b>	<b>NAME OF THE CASE</b>	<b>ACTS OF MISMANAGEMENT</b>
7	Ranjan Dutta vs Nholanath Paper House Ltd [1983] 53 Comp Cas 247 (Delhi)	Continuation in office of managing director invalidly appointed is mismanagement
8	Amalkumar Mukharjee v. Clarion Advertising Service Ltd., (1980) Tax LR 2043	Forgeries and defalcation in the assets and funds amounts to mismanagement and misapplication.
9	Suresh Kumar Sanghi v. Supreme Motor Ltd., (1983) 54 Comp Cases 235 (Del)	In fighting among the directors resulting in serious prejudice to the company constitutes mismanagement.

# Acts not Constituting Mismanagement

SL. NO.	NAME OF THE CASE	ACTS NOT OF MISMANAGEMENT
1	Jaladhar Chakraborty vs Power Tools and Appliances Co. Ltd [1994] 79 Comp Cas 505 (Cal)	Allegations as to letting out of company's premises at low rent and manipulation of accounts and premium misappropriated, not supported by proof is no ground for mismanagement made out.
2	Suryakant Gupta vs Rajaram Corn Products (PUNJAB) Ltd [2002] 108 Comp Cas 133 (CLB)	Allegation of underselling goods and siphoning off of money, not substantiated by any evidence. Held no adjudication possible.
3	<i>Thomas Vettom v. Kuttanad Rubber Co. Ltd.</i> , (1984) 56 Com Cases 284 (Ker. DB)	Director's bona fide decision not to declare dividend and to accumulate available profits into reserves is not mismanagement

**SL. NO. NAME OF THE CASE****ACTS NOT OF MISMANAGEMENT**

- |   |  |
|---|--|
| 4 Anugraha Jewellers Ltd vs K. R. S. Mani [2002] 111 Comp Cas 501 (Mad) | Allegation that Company's funds siphoned off as loans and one of petitioners was signatory to cheques by which payment made, Loans caring interest and also acknowledgement received from parties<br>Held not a case of mismanagement.             |
| 5 Desein Pvt Ltd vs Elektrim India Ltd [2003] 116 Comp Cas 341 (CLB)    | Allegation that new company formed for diversion of company's business , new company formed by company which was not a shareholder , no fiduciary duty owed by it and no material showing diversion of business .<br>Held relief cannot be granted |

**SL.NO NAME OF THE CASE****ACTS NOT OF MISMANAGEMENT**

6 Ravi Shankar Taneja vs  
Motherson Triplex Tools P Ltd  
[2004] 119 Comp Cas 617 (CLB)

Trivial acts (of little value or importance) :  
Not to be considered to be acts of  
mismanagement or oppression

7 *Suresh Chandra Marwaha v.*  
*Lauls P. Ltd*, (1978) 48 Com  
Cases 110, 118 (P&H-DB)

Where directors of a company in  
financial difficulties arranged with the  
company's creditors that the creditors  
may become shareholders and directors  
instead of being creditors this was not an  
act of mismanagement.

# Applicability of Statutes

- **Matters which form subject matter of petition under Section 241 cannot be the subject matter of the arbitration. Depends on the facts.**
- **The NCLT will not grant stay of proceeding merely because there is pending petition in the court impeaching an award between two groups of shareholders.**
- **However, the NCLT may stay the petition in its discretion and refer all the issues or some of them to arbitration when the disputes raised are purely inter-parties and don't effect the rights of strangers to the proceedings.**

- **Plea of limitation does not apply to proceedings for prevention of oppression and mismanagement. [A. Kalyani v. Vale Exports P. Ltd. (2002) 40 SCL 732 (CLB—Chennai)]**
- **The NCLT has to act within the framework of the principles of natural justice and also in accordance with its own Regulations. Hence, the provisions of the Evidence Act and those of the Code of Civil Procedure do not strictly apply to proceedings before NCLT /CLB. [Rajinder Kumar & Sons Ltd. (1996) 87 Com. Cases 146 (CLB, New Delhi). Re-emphasized in Sri Ramdas Motor Transport Ltd. v. Karedla Suryanarayana, (2002) 110.]**

# ELIGIBILITY (SECTION 244)

The number of members required to make application under Section 241 is provided in **Section 244** ,It provides that:

1. Where the company has a share capital, the application must be signed by at least 100 members of the company or by  $\frac{1}{10}$ th of total number of the members, whichever is less, or by any member or members holding not less than  $\frac{1}{10}$  th of the **issued** share capital of the company. ( Call money should not be outstanding )
2. If the company has no share capital, the application has to be signed by at least  $\frac{1}{5}$ <sup>th</sup> of the total number of its members.

## **ELIGIBILITY CONTINUED...**

- **The NCLT may, however, allow any member or members to apply, if in its opinion, circumstances exist which make it just and equitable to do so.**
- **Joint holders of any share or shares are counted as one member. For example, if A, B and C hold jointly 1000 shares, all the three shareholders shall be counted as a single member and not as three members.**
- **Petition for prevention by a single director on behalf of the company without authority of board was not entertained. Invalidity was held to be not curable by subsequent ratification. (Sankaranarayanan (KN) v. Shree Consultation & Services (P) Ltd. (1994) 80 Comp. Cas. 558 (Mad.)**

# ELIGIBILITY CONTINUED...

- Applicant must hold requisite number of shares at the time of filing the petition. (Mahendra Singh Rathore v. Rajput Hotel & Resorts Pvt. Ltd. (1988) 1 Comp LJ 160.
- Once the consent has been given by the requisite number of members, by signing the application, the application may be made by one or more of them on behalf and for the benefit of all of them.
- In *Rajahmundry Electric Supply Co. v. Nageshwara Rao*, AIR 1956 SC 213 it has been held by the Supreme Court that if some of the consenting members have, subsequent to the presentation of the application, withdrawn their consent, it would not affect the right of the applicant to proceed with the application.
- Thus, obtaining of consent is a condition precedent to the making of the application and hence consent obtained subsequent to the application is ineffective. (*Makhanlal Jain v. The Amrit Banaspati Company Ltd.*)(1953) 23 Comp Cas 100 (All.)

# ELIGIBILITY CONTINUED...

- In *Kuttanad Rubber Company Ltd. v. K.T. Ittiyavirah*, (1997) 88 Comp. Cas. 438 (Ker.) it was held that it is not necessary for each of the petitioners to hold 1/10th of the shares for filing petition. If a particular individual or individuals who propose to move an application under Section 397-399 of the Act, held 1/10th of the shares then no question of anybody's consent for such a petition would arise. They by themselves would be entitled to move the petition and need not seek for anybody's consent.
- Where the petition is presented on behalf of members, the petition should accompany:
  - (i) the letter/s of consent given by the members; and
  - (ii) a statement of particulars showing names, addresses, number of shares held and whether all calls and other monies due on shares have been paid in respect of members who have given consent to the petition being presented on their behalf.
- However, the Calcutta High Court has held that it is not necessary that the consenting members must have before them a petition at the time of signing consent letters. [*Bengal Laxmi Cotton Mills Ltd.*, (1965) 35 Comp Cas 187].

# Representatives

**Where a member dies and his name being still in the register of members, his legal representatives are entitled to proceed under Sections 397 and 398 ( Now 241 ) even if their names are not yet entered in the register of members. Worldwide Agencies v. Margaret T. Desor, AIR 1990 SC 737.**

# Appeals

- **If any party to the petition under Section 241 is not satisfied with the order passed by the NCLT it can appeal to NCLAT . Appeal lies to the Supreme court against the orders of NCLT only on question of Law.**
- **An interim order passed under Section 241 is appealable .**

- **Section 247 Registered Valuers.**

- Objective is to ensure fair valuation.
- Appointment of valuer, who should be a registered valuers, would be done by audit committee or the board of directors.
- Valuer should act impartially, exercise due diligence, should follow prescribed rules and should be disinterested.
- for wrongs done by valuers - fine : minimum 25,000 maximum 1 lac.
- If Valuer commits fraud- fine : minimum 1,00, 000 upto 5,00, 000.

**THANK YOU**