

**OPPRESSION AND MISMANAGEMENT**  
**Drafting of Petitions, Stages of Cases,**  
**Court Crafts, Case Studies**

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# Oppression and mis-management

- Sec.241 (a)
- Covers continuing acts and the acts which have been concluded
- Any member of a company who complains that-
- the affairs of the company have been or being conducted in a manner prejudicial to public interest or
- in a manner prejudicial or oppressive to him or any other member or members or
- in a manner prejudicial to the interests of the company;

# Oppression and Mis-management

- Sec.397 and 398 combined into a single section
- Sec.241 deals with oppression and mis-management;
- Clause (a) deals with oppression and mismanagement;
- Clause (b) deals with mis-management likely to occur on account of change in management

# Oppression and Mis-management

- Sec.241(b)
- Any member of a company who complains that the **material change**, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company **has taken place in the management or control of the Company** whether by an alteration in the Board of Directors, or manager, or
  - in the ownership of the company's shares, or
  - if it has no share capital, in its membership 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 a manner prejudicial to **its interests or its members or any class of them**

# Oppression and Mis-management

- Sec.241(2) equivalent to Sec.401
- The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it can apply
- Sec.408 of 1956 Act is not imported into 1956 Act

# Oppression and Mismanagement

- The present perfect tense used still would not give room to raise past and concluded acts;
- Palgat Exports Private Limited Vs. T.V. Chandran (1994) 79 com cas 213 (Ker)
- Abraham Mathew and another Vs. Sungkai Plantations Private Limited and others (2007) 135 Com Cas 563 (CLB)

# Oppression and Mis-management

- Sec. 242(1) which is equivalent to Sec.397(2)
- Tribunal should satisfy itself.....;
- Now the tribunal has to be satisfied for mis-management, which includes material change in the management or control, also that the company should be liable to wound up on just and equitable grounds;
- G. Govindaraj and another Vs. Venture Graphics Private Limited and others (2004) 63 CLA 236 CLB

# Oppression and Mis-management

- Qualification to file a petition
- Sec.244 equivalent to Sec.399
- An application to tribunal instead of Central Government



# Drafting a Petition under Sec.241 of the Companies Act, 2013

- Before CLB, it was easy;
- But now it is complicated and one has to do lot of paper work;
- Petition has to be prepared in form NCLT -1 and accompanied by verifying affidavit in NCLT 6
- NCLT-1 and 6 should be accompanied by NCLT-2 – Notice of admission

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- If you seek any interim orders at the time of moving a petition, prepare an interlocutory application in form NCLT-1 accompanied by a verifying affidavit in form NCLT-6
- NCLT-1 and 6 shall be accompanied by NCLT-3, notice of admission

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- In NCLT-1, now you have to explain the grounds on which relief is sought and the legal provision relied upon
- In addition you have to prepare NCLT – 5, The relief which you ask in NCLT-5 must necessarily be ad-interim reliefs;
- In addition you have to prepare synopsis of the Petition; List of Date and Events
- All these things should be made and filed as a paper book; Rule 20 of NCLT Rules
- Rule 20(9) Every proceeding shall state immediately after the cause title the provision of law under which it is preferred.

# Drafting a Petition u/s.241

- Have a discussion with client
- Go through the MOA and AOA of the Company against which the petition is to be filed.
- Go through all communication, emails, agreement/contract entered into between the parties; Choose the documents which can be put marked as exhibits;
- Study the Annual Returns and Annual Reports for at least five years or the period during which the disputes cropped up;
- Find out the pending cases already filed or orders made between the parties

# Drafting a petition u/s.241

- Put questions to the client virtually amounting to cross examination – sometimes client may get offended
- If the client has not issued any notices, think of issuing notice, wait for some time and then prepare a petition depending on the response.
- Be honest with the client – If petition cannot be filed, tell on his face that there is no use of prosecuting the petition. If alternate remedy is there, suggest the alternate remedy;
- If certain acts have to be performed out before filing the Petition, do it meticulously
- Never promise the client that you would get the order.
- Petition under Sec.241 is to be done strategically

# Drafting a petition u/s.241 of the Companies Act, 2013

- Under the column, facts of the case
- Plead the origin of the Company, activities of the Company, how the disputes developed between the Respondents
- If the company is a non-starter, please deal with why the Company is a non starter, how the conduct of the respondents made it difficult for the company to progress.
- If the company is doing well, state how the Petitioner contributed to the growth of the Company and if the Respondents did not contribute for the growth deal how the respondents did not contribute for the growth of the Company;

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- If the Petitioner resides at a far place from the principal activities of the Company where it is carried on, will it be possible for you to say that the Petitioner contributed to the Company on daily basis
- If the Petitioners and respondents each are holding 50% and also sharing the management equally, then the averments on oppression has to be worded carefully.
- In case the company is a family company/quasi partnership state how the company is a family company/quasi partnership; whether the company has been formed under part-IX of the 1956 Act or Chapter XXI of the CA 2013;
- If the petitioner contends that the property has been sold at throw away price, obtain certified copy of sale deeds from sub-registrar office in respect of some other property in the same locality during the same period and attach it with the petition.

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- If increase of capital or allotment of shares were made without notice to petitioners, plead how it has been done clandestinely and how the increase in authorised and paid up capital has come to your knowledge; attach form 5/SH 7 and form 2/ for PAS 3. if the allotment is back dated deal with how it is back dated
- If one allotment to petitioner is done at a huge premium and other allotment to Respondents/others done at par, deal with the time period and state nothing has happened during the time period enhancing the value of the share;
- In case of allotment, plead why the allotment is unnecessary and the allotment is done only for the purpose of increasing the control.



# Drafting a Petition under Sec.241 of the Companies Act, 2013

- In case of transfer of shares, plead how the articles of the Company are violated especially in case of a private company and the respondents becoming majority shareholders on account of transfer of shares;
- In case of appointment of additional directors deal with how the appointment is not necessary for the company but only done to increase the majority control by the Board.
- In case the respondents are seeking to remove the director, state how the removal is not done in accordance with Sec.169 of the CA 2013;

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- When you don't plead a fact, evidence cannot be placed on that fact.
- Ram Sarup Gupta (dead) by Lrs. Vs. Bishun Narain Inter College and others MANU/SC/0043/1987
- Never hide any facts or other proceedings between the parties, the hiding of which would prejudice the minds of the presiding officers;
- If the petition is filed belatedly, please state the reason why the petition was filed belatedly

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- Relief portion is most important
- Visualise all the reliefs which you want as final reliefs and interim reliefs
- Make sure that interim reliefs is not sought once again in final reliefs
- There must be a nexus between the reliefs sought and the facts of the case;
- Petition under Sec.241 is different from Petition under Sec.245 of the CA 2013;

# Drafting a Petition under Sec.241 of the Companies Act, 2013

- In case of oppression, I am of the view, the Petitioner can definitely seek compensation/damages
- In case of mismanagement the Petitioner cannot compensation/damages from Respondents under Sec.241 but can seek the same from them under Sec.245 of the CA 2013;

# STAGES OF PETITION

- Petition/inter-locutory application
- Reply/counter
- Rejoinder
- **Rule 55** Pleadings before the Tribunal: No pleadings, subsequent to the reply, shall be presented except by the leave of the Tribunal upon such terms as the Tribunal may think fit.
- **Rule 42** Where the respondent states such additional facts as may be necessary for the just decision of the case, the Bench may allow the petitioner to file a rejoinder to the reply filed by the respondent, with an advance copy to be served upon the respondent.

# Reply/Counter

- Denial has to be specific and there cannot be a general denial;
- Every averment of facts, if not controverted it is deemed to be admitted;
- Put your version of facts and state how the allegations of the petitioner are not true;
- Learn to use the words, “Concocted, Vexatious, Malicious and Scandalous”

# Court Craft

- Be in the dress prescribed;
- Assess the mood of the presiding officer;
- If the mood of the presiding officer is not good, in respect of a pending matter, take adjournment voluntarily unless the authority or presiding officer himself lets to present the case

# Court Craft

- If it is a new case, presenting the case becomes all the more difficult, if the mood of the authority or presiding officer is not conducive
- Be thorough with the facts of the case
- Authority or the presiding officer knows the law very well



# Court Craft

- One can always start by referring to the reliefs sought for
- Then proceed to the facts of the case
- Present the facts coherently and cogently so that the desired order/relief could be obtained
- Then present the precedents laid down by courts of law
- Deal with how the precedents fit into the present facts and circumstances of the case

# Court Craft

- If a suggestion comes from the authority/presiding officer be receptive to the same
- At any cost don't dismiss the same at the threshold;
- One can always submit, “your lordship is right/absolutely right; however, I feel.....”

# Court Craft

- Develop a standing before the authority or at the bar
- Never mislead the authority or the presiding officer
- The authority or presiding officer should have confidence in the person appearing before it

# Court Craft

- When there is other side allow the other side to present their facts freely;
- Don't interfere unless the same is 100% absolutely necessary;
- If the other side interrupts very frequently sit down calmly by saying "let him finish; thereafter I will speak or present the case;

# Court Craft

- Never hesitate to seek an apology if erred
- This would also enhance the standing of oneself before the bar or authorities

# Court Craft

- Always try to settle matter
- If the authority or the presiding officer directs to settle the matter never shun the same
- Explore the possibility of settlement
- Remember no one likes disputes
- Report the non-settlement or the settlement

# Qualification to file a petition

- T.N.K. Govindaraju Chetty and Co. and other Vs. Kadri Mills (CBE) Ltd. and other (1999) 96 Com.Cas 871 (CLB)
- When the share holding of a petitioner is reduced below 10 percent due to further allotment of share and such allotment itself is questioned in a petition under Sec.397/398, the petition should be held to be maintainable on the strength of his holding before the further allotment of shares

# Qualification to file a Petition

- World Wide Agencies P. Ltd. and another Vs. Margaret T.Desor and others (1990) 67 Com.Cas 607 (SC);
- The legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition
- Dhananjay Pande Vs. Dr. Bais Surgical and medical Institute P. Ltd. and others (2005) 65 CLA 164 (CLB)
- By not allotting shares against the application money the respondents cannot unsuit the petitioner in the proceeding for relief against oppression/mismanagement on the ground that he is not a member of the company. The CLB is a court of equity and the matter has to be considered on equitable grounds. Therefore, even assuming that no shares were allotted to the petitioner, yet is declared to be shareholder for the purposes of the petition as if he was/he is entitled to allotment of shares against application money



# Qualification to file a petition

- Serum Institute of India Limited Vs. Inderjit Properties Private Limited & Others (2005) 66 CLA 458 (CLB)
- Even when the name of a person is not in the register of members depending on the circumstances he could be treated to be a member for the purposes of Sec.397/398. Hence where petitioner has an indefeasible right to get its name registered in the register of members its failure to apply for registration cannot give a right to respondents to unsuit the petitioner in proceedings under Sec.397/398 on the ground that the name is not in the register of members

# Qualification to file a Petition

- eFirst technologies Private Limited and others Vs. Hiperworld Cybertech Limited and others (2005) 65 CLA 151 (CLB)
- Where the request of holding company for entry of its name in the register of members of the company on account of share transferred to it by its subsidiary has been rejected on unjustifiable grounds and without sufficient cause by Board of Directors, a petition under Sec.397/398 is maintainable in the name of holding company notwithstanding the fact that the name is not in the register of members

# Qualification to file Petition

- RFB Latex Limited Vs. Union of India and another (2005) 64 CLA 38 (DEL)
- In an amalgamation of companies, the transferee company steps into the shoes of the transferor company and acquires the right to proceed with any such proceedings in any court of law and to enforce the right which can be enforced by the transferor company. Therefore, the CLB was justified in allowing substitution of the transferee company in place of the transferor company to continue the proceedings for seeking relief against oppression and mismanagement

# Qualification to file a petition

- M.L. Arora Vs. Green Valley Frozen Food Ltd. and others (2008) 142 Comp Cas 320 (CLB)
- As the original share certificates were still in the possession of the petitioner, it could not be said the the petitioner did not have the locus standi to file the petition. As the petitioner's holding was reduced below 10 percent or reduced to nil on account of illegal transfer of shares, the petition under Sec. 399 of the Act was maintainable

# Whether a member of a holding company can file a petition in the affairs of a subsidiary company

- Shankar Sundaram Vs. Amalgamations Limited [2001]104CompCas638(CLB);
- Shankar Sundaram Vs. Amalgamations limited [2002]111CompCas252(Mad);
- Amalgamations Limited Vs. Shankar Sundaram and others; [2011]168CompCas68(Mad);

# Right to file petition by filing consent of shareholders/members

- M.C. Duraiswami Vs. Sakthi Sugars Limited (1995) 2 CLJ 553 (MAD)
- Consent in writing contemplated in Sec. 399 (3) of the Companies Act is a consent to the filing of a particular petition with particular allegations for a particular relief under Sec. 397/398 or both. There cannot be a blanket consent, consenting to some other member filing a petition under Sec.397 and 398 or under both

# Right to file petition by filing consent of shareholders/members

- Kerala Chamber of Commerce and Industry Vs. Metalex Agencies and others (2008) 144 Comp cas 624 (CLB)
- Consent in writing of one-fifth of total members of section 25 company implies application of mind by persons affixing signature. Signature obtained in blank papers not valid consent to maintain petition for relief from oppression and mismanagement

# Right to file petition by filing consent of shareholders/members

- Syed Musharraf Mehdi and another Vs. Frontline Soft Ltd. and others.
- The nature of the provision of Sec. 399 (1) of the Act should be construed as mandatory and not procedural. The word 'shall' used therein is considered to be imperative in nature and it has to be interpreted as mandatory having regard to the text and context of the statute irrespective of the fact whether any prejudice is caused



# Maintainability of petition on account of membership

- M. Sreenivasulu Vs. Mansani Constructions P. Ltd. (2008) 144 Comp cas 634 (CLB)
- Where acquisition of share is in violation of articles of association, acquirer not shareholder and had no locus standi to apply under Sec.397 and 398 of the 1956 Act.

# When subscription money is not paid

- Hiren Harshadrai Desai Vs. Fori India P. Ltd. and others (2008) 142 Comp. cas 406 (CLB)
- The application would be maintainable only when all calls and other sums due on the shares held had been paid up and no dues were pending. The Petitioner became a member in accordance with section 41 of the Act by virtue of his subscription to the memorandum and his name had been entered in the register of members. Every subscriber to the memorandum was expected to pay consideration for the shares subscribed to. Payment towards consideration becomes due immediately on incorporation

# Just and equitable to wind up; whether compulsory

- Hanuman Prasad Bagri Vs. Bagress Cereals Private Limited (2001) 4 SCC 420 (SC)
- Industrial Development Bank of India Ltd. Vs. Chatterjee Petrochem (Mauritius) Co. and others (2008) 143 Comp cas 838
- M.S.D.C Radharamanan Vs.M.S.D Chandrasekara Raja and Others (2008) 143 Comp cas 97 (SC) In the matter of Bharathi Cotton Mills Ltd.

# Oppression and Mis-management

- Prejudicial to the interests of members or the company of public interest;
- Unfairly prejudicial (English Act)

Company has not been made  
respondent – whether Petition is  
liable to be dismissed

Dr.Jayaseelan Mathias Vs.Dr. Mathias  
Russeliah Morris and others (2007)  
135 Comp Cas 319 CLB

# Whether Company be Petitioner

- Sai Sugars Ltd. And others Vs. Deepak Sabharwal and others (2008) 144 Comp cas 726 (CLB)

# Meaning of Oppression

- The Oxford English Dictionary defines oppression as ‘exercise of authority or power in a burdensome, harsh or wrongful manner’. An act or omission may also amount to oppressive conduct if it is designed to achieve an unfair advantage

# Ingredients of oppression

- Justice Jenkins, L.J. in Harmer Limited (1959)  
29 Com.Cas 305 (CA)
- A person must be a member who should also show that the affairs are being conducted in a manner oppressive to some parts of the members including himself in their capacity as members

contd....



# Ingredients of oppression

- The section does not purport to apply to every case in which the facts would justify the making of a winding up order on just and equitable clause but only to those cases which have the requisite elements of oppression
  - Prima facie, the act of oppression should be continuing process and wide enough to cover oppression by any one who is taking part in the affairs of the company whether de facto or de jure
- contd...

# Ingredients of oppression

- This section does not give any guidance as to the meaning of the word 'oppressive' although it indicates that the victims must be a member. Prima facie the word oppressive must be given its ordinary sense

# Shanti Prasad Jain Vs. Kalinga Tubes Ltd. (1965) 35 com.cas 351

- It is not enough to show that there is just and equitable cause for winding up the company though that must be shown as 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 as this requires that events have to be considered not in isolation but as part of a consecutive story

# Shanti Prasad Jain Vs. Kalinga Tubes Ltd. (1965) 35 com.cas 351

- 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 conducted in a manner oppressive to some part of the members
- The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression a minority by a majority
- Must involve at least an element of lack of probity or fair dealing to member in the matter of his proprietary rights as a shareholder

# Doctrine of Legitimate Expectation

- V.S. Krishnan and others Vs. Westfort Hitech Hospital Limited and others (2008) 142 Comp cas235 (SC)
- Industrial Development Bank of India Ltd. Vs. Chatterjee Petrochem (Mauritius) Co. and others (2008) 143 Comp cas 837

# Application of partnership principles

- Quasi partnership
- Kilpest Private Limited and others Vs. Shekar Mehra (199) 87 Comp Cas 615 (SC)
- Sarabjeet Singh Mokha vs. Marble City Hospital and Research centre P.Ltd. And others (2008) 142 Comp cas 757 (CLB)

# Issue of further shares – a single act – whether oppressive

Tea Brokers Private Limited Vs.  
Hemandra Prasad Barooah (1998) 5  
CLJ 463 (CAL)

# Transfer of shares in violation of articles

- A. Arumugam and others Vs. Pioneer Bakeries P. Ltd. and others (2008) 141 Com cas 391 (CLB)
- V. Ramesh Kumar and others (2008) 141 com cas 915 (CLB)
- No member shall be entitled to transfer his shares in the company save with the previous sanction of the board of directors
- No share shall be transferred to a non member as long as any member is willing to purchase the same at a mutually agreeable value between the transferor and the transferee



# Conduction of Board Meeting without notice

- Parameshwari prasad Gupta vs. Union of India (1974) 44 Com cas 1 (SC)

# Issue of further shares to the exclusion of the minority

- Kobian Private Limited vs. Kobian India Private Limited & others (2005) 64 CLA 281 (CLB)
- Creation of a new majority is an act of oppression - Needle Industries (India) Ltd and others Vs. Needle Industries Newey (India) Holding Ltd and others 1981(3)SCC 333

# Denial of right to appoint a director

- In re: Albert David Limited 68 CWN 163

# Usurpation of office of director/managing director

- M.Moorthy Vs. Drivers and Conductors Bus Service P. Ltd. (1991) 71 com cas 136

Declaration of board and general meetings held as illegal and oppressive for want of proof of service of notices of meetings

Micromertics Engineers Private Limited Vs. S. Munusamy (2002) 38 SCL 846 (MAD)

# Act legal yet oppressive

- Dr. Kamal K. Dutta Vs/ Ruby General Hospital Limited (2000) 36 CLA 21 (CLB)

# Non declaration dividend/building reserves

- Thomas Vettom V.J. Vs. Kuttanad Rubber Company Limited (1984) 56 Com cas 284 (Ker)

# Directorial complaint

- V.M. Rao Vs. Rajeshwari Ramakrishnan (1987)  
61 Com cas 20 (MAD)



# Mismanagement

- Running the company in the interest of a group In Re Albert David (1964) 68 CWN 163
- Continuation of office without proper reappointment Sishu Ranjan Dutta Vs. Bhoola Nath Paper House Limited (1993) 53 Com cas 883 (Cal)

# Failure to protect the interest of the company and records

- Chander Krishnan Gupta Vs. Pannalal Girdharilal P. Ltd (1984) 55 Com cas 702 (DEL)

# Sale of assets at low price

- Re: Malayalam Plantation(India) Ltd. (1991) 5 CLA 361 (KER)

# Sale of whole assets

- M. Moorthy Vs. Drivers and conductors Bus Service P. Ltd. (1991) 71 Com cas 136 (Mad)

# FIDUCIARY RESPONSIBILITY OF THE DIRECTORS

- Dale & Carrington Invt.Private Limited and another Vs P.K.Prathapan & others (2004)62 CLA 245 (SC)
- Sangramsinh P. Gaekwad and others Vs. Shantadevi P. Gaekwad (Decd) by Irs. And others (2005) 123 CC 566 (SC)

**Thank you**

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