

OPPRESSION AND MISMANAGEMENT

Adv. Akshay Petkar
BSL, LLB, CS



SECTION 241 - 242

241. Application to Tribunal for relief in cases of oppression, etc.—

(1) Any member of a company who complains that— (a) 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 him or any other member or members or in a manner prejudicial to the interests of the company; or

(b) 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 members,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter. 151

(2) 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 may itself apply to the Tribunal for an order under this Chapter

RIGHT TO APPLY

244. Right to apply under section 241.— (1) The following members of a company shall have the right to apply under section 241, namely:— (a) in the case of a company having a share capital, not less than one hundred members of the company or not less than 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:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them

POWERS OF TRIBUNAL

- 242. Powers of Tribunal.—
- (1) If, on any application made under section 241, the Tribunal is of the opinion— (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and (b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.
- (2) Without prejudice to the generality of the powers under sub-section (1), an order under that subsection may provide for—
- (a) the regulation of conduct of affairs of the company in future

- (b) the purchase of shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- (d) restrictions on the transfer or allotment of the shares of the company;
- (e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
- (f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause
- (e): Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;
- (g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
- (h) removal of the managing director, manager or any of the directors of the company;
- (i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
- (j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
- (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct; (l) imposition of costs as may be deemed fit by the Tribunal;
- (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.



“OPPRESSION”

- A particular action of the directors or controlling shareholders may be in violation of any provisions of law in the sense that some particular provision of law may not have been complied with before taking such action and yet such action may be very much in the interests of the company and the shareholders. On the other hand another action of the directors or controlling shareholders may be wholly within the limits of the law and yet it may be oppressive to the minority shareholder or prejudicial to the interests of the company.”

(Mohanlal Ganpatram v. Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd., (1964) 34 Comp. Cas. 777 (Guj) at para. 25)



PREJUDICE

- Section 241 of the 2013 Act introduced additional language to suggest that a petitioning shareholder can initiate legal action if the offending shareholders conduct the company's affairs in a manner "prejudicial ... to him or any other member or members". Such a remedy that refers to prejudice suffered by shareholders was absent from section 397 of the 1956 Act.³⁶ Hence, by a legislative sleight of hand, section 241(1)(a) of the 2013 Act supplements the pre-existing oppression remedy with the newly introduced remedy of prejudice.



MISMANAGEMENT

- The mismanagement remedy applies when two conditions are fulfilled.
- **First**, there must be a material change in the management or control of the company, which could occur in various ways including alteration of the board, manager or ownership of the company (the cause).
- **Second**, such change must be the reason that the company conducts its affairs in a manner that is prejudicial to the interests of the company or its shareholders (the effect). Courts have observed that the mismanagement remedy is wider than the oppression remedy.

-



RELIEF

- Wide Powers
- Regulating the future conduct of affairs of the company, purchase of shares by a shareholder or the company and termination or modification of agreements, among others.
- Tribunal can grant relief even where they do not find a valid claim of oppression, prejudice or remedy (Needle Industries – Supreme Court)
- In Needle Industries, the Supreme Court, despite finding no evidence of oppression, called upon the respondent shareholders (in this case, the minority) to acquire the shares of the petitioning shareholders (majority)
- Tribunals are at liberty to pass orders to “put an end to matters complained of”, taking into consideration the interest of the company and the shareholders
- Exit option is available both in circumstances where there is a finding of oppression, prejudice or mismanagement or not, courts are required to mould the precise terms of the relief to align with the nature of the substantive outcome



RELIEF

- Reinstating the managing director of the company
- Setting aside the issue of shares to a shareholder that was carried out through questionable means.
- Ordinarily, reinstating a petitioning shareholder whom the company wrongly removed from a management position would only perpetuate a stalemate that could be adverse to the interest of the company without bringing to an end the matters complained of. In that sense, exit ought to be the default option unless there are compelling reasons to choose others



RECENT CASES

- Indiraben v Galaxy Enterprises and Ors – Supreme Court - Civil Appeal No(s). 3690/2023
- Tata Sons Private Limited (formerly Tata Sons Limited) v. Cyrus Investment Pvt. Ltd., Civil Appeal No(s). 263-264/2020 (order dated 24 January 2020)
- Anup Kumar Agarwal & another vs Crystal Thermotech Limited & others, CA(AT) No. 17 of 2016

Adv.Akshay Petkar

8, Peninsula House,

Dr. D.N. Road, Fort, Mumbai – 400 001

akshay.petkar@gmail.com

+91 7350017737



THANK
YOU