ARTICLE

# An Analysis of Jurisdiction of NCLT/Civil Court on Company matters – Sections 408 and 430 of the Companies Act, 2013

Section 430 of the Companies Act, 2013 (the Act), which came into force with effect from 01st June 2016, states that "civil court shall have no jurisdiction to entertain any suit or proceeding in respect of any matter which the National Company Law Tribunal (NCLT / Tribunal) or the Appellate Tribunal (NCLAT) is empowered to determine by or under this Act or any other law for the time being in force".

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## INTRODUCTION

Section 430 of the Companies Act, 2013 (the Act), which came into force with effect from 01st June 2016, states that "civil court shall have no jurisdiction to entertain any suit or proceeding in respect of any matter which the National Company Law Tribunal (NCLT / Tribunal) or the Appellate Tribunal (NCLAT) is empowered to determine by or under this Act or any other law for the time being in force".

The question whether a civil court has jurisdiction, in a company matter in which a member is the person aggrieved or whether the NCLT alone has jurisdiction is not an ordinary question with any readymade answer. This question must be studied in conjunction with the jurisdiction conferred upon the NCLT, for instance, under Sections 241 and 242 of the Act. There is no doubt that several important aspects have to be established before being entitled to invoking the jurisdiction of NCLT under the aforesaid provisions.

Section 408 of the Act is the parent section that confers powers upon the NCLT. It states that the Central Government shall constitute NCLT to exercise and discharge such powers and functions as are, or may be, conferred on it by or under this Act or any other law for the time being in force. There are several specific provisions that confer powers upon the NCLT. Sections 241 and 242 of the Act confer jurisdiction upon NCLTs to provide relief in cases of oppression.

Where the Act or any other law for the time being confers such jurisdiction upon NCLT in relation to a specific matter, a civil court could not have jurisdiction over such matter. For instance, an application for confirmation of reduction of share capital cannot be made before a civil court at all. Similarly, it is the NCLT alone which can exercise its powers under Section 98 to pass an order that a general meeting (other than an annual general meeting) shall be called and held, in cases where it becomes impracticable to call a general meeting in any manner in which meetings of the company may be called. Leaving aside questions arising under specific provisions such as Section 66 or 98 of the Act, if any question arises in relation to any matter covered by any other provision of the Act, before ruling out the jurisdiction of a civil court, it would be necessary to see if the subject matter is fit to be regarded as oppressive of rights of shareholders so as to be entitled to seeking relief from NCLT under Sections 241 and 242 of the Act.

Firstly, it is not necessary that there must be a specific reference to jurisdiction of NCLT in each and every provision or a group of provisions of the Act to answer the question whether NCLT has jurisdiction. A question challenging the validity of a resolution passed at a meeting of Board of Directors or at a general meeting of shareholders, may arise on account of purported illegality or for the reason that it allegedly violates the articles of association or any other agreement. In a given case, it may very well be a subject matter before the civil court without being hit by Section 430 of the Act. No doubt, a particular case may appear to be falling under the jurisdiction of NCLT as well as a civil court. Prior to pursuing any case before the NCLT or civil court, it is necessary to see if powers conferred upon NCLT would operate advantageously to the complaining member.

Section 241 says that any member of the company can complain 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 member.*

Apart from what has been specified under Section 241(1) of the Act, Section 242(1) says that in relation to an application under Section 241, NCLT has enormous powers to mould and grant necessary reliefs provided it is able to form the following opinion, on the basis of facts proved before it that: *the company's affairs have been or are being conducted in a manner (1) prejudicial or oppressive to any member or members; or (2) prejudicial to public interest; or (3) 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.*

In short, NCLT must be satisfied about existence of circumstances, very serious in nature constituting oppression so much so that those circumstances would justify even the making of an order for the winding up of the company on just and equitable grounds. Although, such a winding up would unfairly prejudice the interests of members of the company. Prior to granting any relief under Section 242, in pursuance of an application under Section 241 of the Act, the NCLT is duty bound to form an opinion and express the same in its decision and order that a case of oppression has been made out and grant such relief as it thinks fit to put an end to the matters complained of. It is not possible to form any firm opinion unless the Tribunal does a complete enquiry into the matter.

Let us consider a question about the validity of a resolution (allegedly) passed by a general meeting or by the Board of Directors, pursuant to or in accordance with Sections 100 to 116, or Sections 173 to 180 or Sections 181 to 203 of the Act. Such a question could be termed as oppressive of rights of shareholders in certain situations. Alternatively, it could simply be a non-compliance of any of the provisions of the Act or any regulation contained in the Articles of Association or any other contract. Therefore, at the time of admitting a petition the NCLT must be satisfied from the pleadings that a case of oppression is likely to be made out and assume jurisdiction to make necessary enquiries to find out whether the petitioning shareholders have made out a case of oppression. In other words, even for answering whether the resolution passed is oppressive or not, NCLT must assume jurisdiction in the first place. Therefore, when a complaint is preferred before NCLT in case of oppression, irrespective of outcome of the case, NCLT can be said to be having jurisdiction and consequently, in such a matter a civil court has no jurisdiction.

> It is the NCLT alone which can exercise its powers under Section 98 to pass an order that a general meeting (other than an annual general meeting) shall be called and held, in cases where it becomes impracticable to call a general meeting in any manner in which meetings of the company may be called.

For instance, the NCLAT in *Upper India Steel Manufacturing and Engineering Co. Ltd & Others Vs. Gurlal Singh Grewal & Ors [2017 SCC OnLine NCLAT 339] as well as in S.P. Velumani & Another Vs. Magnum Spinning Mills India Pvt. Ltd. [2020 SCC OnLine NCLAT 995],* held that the various instances and allegations forming part of the respective petitions in those cases did not constitute oppression. The Hon'ble NCLAT upheld the decision of the Hon'ble NCLT to hold that to invoke the provisions of oppression and mismanagement, the acts of oppression must be harsh and wrongful. Isolated incidents may not be enough for grant of relief and that continuous course of oppressive conduct on the part of the majority shareholders ought to be proved. On that basis, NCLAT had refused to grant any relief under Section 242 of the Act.

In *TATA Consultancy Services Limited Vs. Cyrus Investments Private Limited and Others [(2021) 9 Supreme Court Cases 449], the Supreme Court held that mere termination of directorship by itself without more, held cannot be projected as something that would trigger the just and equitable clause for winding up or to grant relief under Section 241/242, unless a case of oppressive or prejudicial conduct is established by the complainant*, or, the grounds for invocation of the just and equitable clause are made out".

**In the aforesaid case, the Supreme Court held as follows:**

> **17.31** Fundamentally, the object for the achievement of which, the Tribunal is entitled to pass an Order under section 242(1) of the 2013 Act, remains just the same, as in the 1956 Act. The words "the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit", found in the last limb of Sub-Section (2) of Section 397 of the 1956 Act, is also repeated in the last limb of Sub-Section (1) of Section 242 of the 2013 Act. These words also found a place in the last limb of Sub-Section (4) of Section 153C of the 1913 Act.
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> **17.32** Even Section 210 of the English Companies Act of 1948 used the very same words namely "the Court


may, with a view to bringing to an end the matters complained of, make such order as it thinks fit". Though the English Law made a paradigm shift from 'oppressive conduct' to 'unfairly prejudicial conduct' under the Companies Act, 1985, the object to be kept in mind by the Court while passing an order under section 461 of the English Companies Act, 1985 continued to be almost similar. Section 461(1) enabled the Court to make "such order as it thinks fit for giving relief in respect of the matters complained of". Section 996 of the English Companies Act, 2006 retained the very same wordings.

**17.33** Therefore, despite the law relating to oppression and mismanagement undergoing several changes, the object that a Tribunal should keep in mind while passing an order in an application complaining of oppression and mismanagement, has remained the same for decades. This object is that the Tribunal, by its order, should bring to an end the matters complained of."

Therefore, the complaining shareholder(s) will be taking a call probably on the basis of legal advice obtained by him / her / them to decide whether NCLT has exclusive jurisdiction or not. If it is a matter where it appears that both NCLT as well as civil court has jurisdiction, the question must be resolved from the point of view of the 'relief' that the litigant expects to achieve in a given matter. It must be remembered that the powers conferred upon NCLT are unique and wide and such powers are not conferred upon a civil court.

A question touching upon oppressive conduct or motive of directors may not be ordinarily a subject matter before a civil court at all. As was held in Nanalal Zaver and Another v Bombay Life Assurance Co. Ltd. and Others [AIR 1950 SC 172] that "there was no dolus malus in their minds as directors of the company, as affecting the company or its shareholders". Such questions attributing motives to a particular conduct of Directors may not form the basis for obtaining relief from a civil court. A civil court will be considering a case before from the point of illegality or breach of contract.

In such situations, useful guidance could be obtained by considering certain age-old propositions. It was held by the Gujarat High Court *in Mohanlal Ganpatram and another v Shri Sayaji Jubilee Cotton and Jute Mills Co. Ltd. and others 1964 SCC OnLine Guj 66 : AIR 1965 Guj 96 : (1964) 5 GLR 804 : (1964) 34 Comp Cas 777* that *"a resolution may be passed by the Directors which is perfectly legal in the sense that it does not contravene any provision of law, and yet it may be oppressive to the minority shareholders or prejudicial to the interests of the Company. Such a resolution can certainly be struck down by the Court under Section 397 or 398. Equally a converse case can happen. A resolution may be passed by the Board of Directors which may in the passing contravene a provision of law, but it may be very much in the interests of the Company and of the shareholders."*

Thus, in short, a mere challenge as to legality of validity of the resolution or requisition or notice or special notice or transaction or contract or arrangement or appointment or re-appointment or cessation of a Key Managerial Personnel("KMP") or any Director may not constitute oppression.

A question that usually arises in the light of Section 244 of the Act, is whether members who do not meet thresholds specified under Section 244 of the Act, would be entitled to approach the civil courts for obtaining relief against acts of oppression. It may be noted that had the legislature intended to allow such proceedings, there would not have been a stipulation laying down eligibility norms and there would not have been any need to add a provision for seeking waiver from NCLT from any or all requirements provided under Section 244 of the

Act. If such proceedings are allowed to be commenced, without any eligibility norms prescribed under Section 244, flood gates will be opened against a company and Directors and officers disrupting the normal functioning of the company. Disgruntled members may file frivolous petitions. In short, questions arising under Section 241 and 242 are matters where NCLT alone has exclusive jurisdiction and such questions are capable of being adjudicated only by NCLT provided the complaining members are eligible under Section 244 of the Act or they were able to get such requirements waived by NCLT, wholly or to some extent.

In Cyrus Investments Pvt. Ltd. & Anr. v Tata Sons Ltd. & Ors., 2017 SCC OnLine NCLAT 261, decided on 21st September, 2017, the NCLAT held that "the fact that one or other member is ineligible to apply under Section 241 relating to allegation of 'oppression and mismanagement' will not empower the Civil Court to grant such relief, as can be granted by the Tribunal under Section 242. No such power can be *(assumed to have been)* vested with the Civil Court on the ground that the member is ineligible to apply before the Tribunal for alleged act of 'oppression and mismanagement.' (Note: words *italics in this paragraph are* added by author of this Article.)

While the most important question before us, is to see if NCLT has exclusive jurisdiction, it would be interesting to note a given case could also be framed in such a way that it appears as a pure civil suit alone and not one falling under Sections 241 and 242 of the Act. While doing so, both Parties will examine respective merits and demerits especially in the light of fact that enormous powers have been conferred upon NCLT under Section 242 of the Act.

In Shashi Prakash Khemka (dead) through LR and another v NEPC Micon (now NEPC India Limited) and others, (2019) 18 SCC 569, the Supreme Court held that in view of Section 430, the jurisdiction of civil court would be completely barred in the light of the fact that it was a matter falling squarely under Section 59 of the Act. That was a case where the subject matter was one where NCLT has exclusive jurisdiction.

In Securities and Exchange Board of India v Rajkumar Nagpal and Others, 2022 SCC OnLine SC 1119, decided on 30th August, 2022, it was held that "*Section 430 of the Companies Act provides that no civil court shall have the jurisdiction to entertain any suit in respect of any matter which the National Company Law Tribunal or the National Company Law Appellate Tribunal is empowered to determine*".

In Crystal Dwellings Private Limited v Surat Singh Malhotra and 20 Others, in its decision on 4 August, 2022, the Telangana High Court held that "it is important to see if what is being urged before the civil Court is a dispute civil nature. If it is so, the civil Court has jurisdiction under Section 9 of the CPC and the jurisdiction of civil Court is not ousted by Section 241 of the Companies Act. The Telangana High Court held that "cumulatively, unless, there is specific bar excluding the jurisdiction of the civil Court on any matter, which is also traceable to Companies Act, the jurisdiction of the civil Court to decide the civil dispute is not ousted."

Having understood that the jurisdiction conferred upon NCLT is not plain and simple, it may be useful to consider an illustrative case. Let us consider the case of a public company which has granted a loan to a partnership firm in which the wife of the Managing Director of the company is a partner. Since the transaction is in contravention of Section 185(1) of the Act, it would be a transaction forbidden by law and therefore it will be hit by Section 23 of the Indian Contract Act, 1872. This transaction would be void ab initio as Section 185 of the Act creates an absolute prohibition against the granting of loans to such persons. Since Directors, who are wrong doers, are in control of the management of the company, the natural question would be whether a shareholder of the lending company would be in a position to file a suit to recover the money so lent.

A member may be able to apply under Sections 241 and 242 of the Act upon proving that the Directors have not exercised their powers for proper purposes and they have violated their fiduciary duties. A shareholder may file a declaratory suit to get the resolution as well as the transaction adjudged as illegal, void and non-est and pray for such other consequential relief(s). Section 65 of the Indian Contract Act, 1872 states that if an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

It must be remembered that in a civil court, the legality or validity of the resolution or requisition or notice or special notice or transaction or contract or arrangement or appointment or re-appointment or cessation of a Key Managerial Personnel("KMP") or any director may be the subject matter for determination. However, the question whether it is oppressive would not arise as courts are not conferred with powers, that are conferred upon the Tribunal. While the Tribunal may set aside even an action or transaction which is perfectly valid and legal on the ground that the same is oppressive, a civil court will not be able to do so.

Where oppression is not the core issue, Section 430 will not come in the way of jurisdiction of a civil court.

## CONCLUSION

It is always necessary to look at the position of the other side. Look at the Parties who are supposed to be brought in as "necessary parties" and "proper parties". For instance, in a petition for rectification of register of members, a third party who has been found to be the person who has acquired the shares which forms the subject matter of the petition should be made a party. On the other hand, if a party to a contract is a necessary party in relation to a material breach but the contract itself in no way is relevant for proving oppression, being neither a person in charge of management, directly or indirectly, nor a promoter nor a majority shareholder, cause of action may not lie at all before the NCLT at all. Mere property dispute or a subject matter of contract would not entitle a person aggrieved to invoke the jurisdiction of NCLT. In short, it cannot be said that NCLT alone has exclusive jurisdiction in all company matters. Each case turns out on its own facts.