

Managerial Liability under Companies Act and Insolvency of Corporate Debtor: Three Interventions

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In 2020, National Company Law Tribunal (**NCLT**) Ahmedabad, in [*Pradyumankumar Dwarkadas Patel v. Bhupendrabhai Dwarkadas Patel and Others* \(**Pradyumankumar**\)](#) ruled that petition under Section [241-242](#) of the Companies Act 2013 (**Act**) against the management of a corporate debtor (**CD**) will not be maintainable and would become infructuous when the application for CIRP under [Section 7](#) of the Insolvency and Bankruptcy Code 2016 (**IBC**) is admitted. In this case, the respondents relied on [*Innovative Industries Limited v. ICICI Bank and Another* \(2017\)](#), wherein the Supreme Court (**SC**) held that upon commencement of corporate insolvency resolution process (**CIRP**), [Section 17](#) of the IBC divests the erstwhile management of its powers and vests them in the interim resolution professional thereby rendering the petitions against the erstwhile management liable to be dismissed. The tribunal offered a similar rationale in its judgement observing that when a CD is undergoing CIRP, disputes with regard to oppression and mismanagement cannot be dealt with as the management itself is suspended and the affairs of the CD would never come again in their hands.

Nonetheless, subsequent National Company Law Appellate Tribunal (**NCLAT**) verdicts in [*Jagmohan Bajaj v. Shivam Fragrances Private Limited* \(2018\)](#), [*Clarion Health Food LLP v. Goli Vada Pav Private Limited and Another* \(2024\)](#), and [*Entegra Limited v. Shree Maheshwar Hydel Power Corporation Limited and Another* \(2025\)](#), despite similar legal positionalities, did not opine frustrating a Section [241-242](#) proceeding under the Act in order to effectuate a CIRP while also not overruling *Pradyumankumar* (supra).

Analysis of the Issue

The moot question then is whether proceedings under Section [241-242](#) of the Act can continue against the erstwhile management of the CD concurrent to or even beyond the insolvency proceedings against the latter? Our investigation yet does not concretely answer this. Hence, to nuance it further, it is pertinent to make three interventions:

The “have been” innovation

The history of ‘oppression’ and ‘mismanagement’ remedy provision stretches back to its introduction in the [English Companies Act 1948](#). It was imported into India through an amendment in the Indian Companies Act 1913 as Section 153-C. Subsequently, in 1956, a new company law was enacted, and ‘oppression’ and ‘mismanagement’ were bifurcated into two separate sections for the first time -- Section [397](#) and [398](#) respectively.

Remarkably, both the 1913 and 1956 Acts defined ‘oppression’ and ‘mismanagement’ as a conduct in present continuous sense of the act, by incorporating the phrase “are being conducted.” This implied that past illegal/fraudulent acts by managerial persons, which do not seep into the present, were to be ignored by the courts, and it indeed were the case. The SC and Delhi High Court decisions in [Shanti Prasad Jain v. Kalinga Tubes Limited](#), [Suresh Kumar Sanghi v. Supreme Motors Limited](#), and [Chander Krishna Gupta v. Pannalal Girdharilal Private Limited](#), only reinforced this “continuing act” positionality while rejecting past, stray conducts by managerial persons.

Had the 1956 Act been still in place, *Pradyumankumar* verdict would have made for a perfectly coherent judgement in light of the aforementioned interpretation. But the statute became defunct in 2013 with enactment of a new company law. This 2013 successor imbibed a major innovation which did away with this rigid legal positionality of “continuous” conduct. For the first time, the phrase “have been” were to complement “are being” in Section [242\(1\)\(a\)](#). Thus, Section [241-242](#) now regulated affairs which “*have been or are being*” conducted in nature of ‘oppression’ and ‘mismanagement’.

A landmark ruling by NCLT Kochi in [TP Anilkumar and Others v. Indus Motor Company Private Limited and Others](#), interpreted the phrase “have been” in [241\(1\)\(a\)](#) as encompassing both past as well as continuing acts of oppression. The Tribunal held that where a series of acts cumulatively results in oppression, even if such acts were concluded in the past, the aggrieved party is entitled to seek relief under Section 241-242. Further, in [Union of India v. Videocon Industries Limited \(Videocon\)](#), NCLT Mumbai was of the view that since a company undergoing CIRP is still alive under the resolution professional, the use of words “are being conducted” must be interpreted to include both past and present acts of mismanagement and also to contain the future acts, especially when it comes to dealing with fraudulent transactions.

Overriding the narrow strictures of *Pradyumankumar*, these rulings only strengthen the case for continuance of Section [241-242](#) proceedings against the erstwhile management, irrespective of their suspension, *concurrent* to the CIRP of CD. Thus, if a suspended management during CIRP cannot be said to conduct ‘ongoing’ oppression/mismanagement, culpability for their ‘past’ conduct would not evaporate either. Normatively, the past wrongful acts should precipitate into legal proceedings despite ongoing CIRP.

The moratorium bar clarification

The effect of moratorium envisaged under [Section 14](#) of the IBC on Section [241-242](#) proceedings under the Act become particularly relevant here. Moratorium is defined as the period in which no judicial proceedings against the corporate debtor can be initiated for recovery, enforcement of security interest, sale or transfer of assets or termination of essential contracts. Interestingly, though it estops recovery proceedings against the CD, its safeguard does not extend to its key managerial persons, and this is evidenced by key apex court decisions. In [Swiss Ribbons \(Private\) Limited v. Union of India](#), the Supreme Court held that moratorium ensures revival of the CD and protects its assets from dilution. Relying on this judgement, the apex court in [P Mohanraj and Others v. Shah Brothers Ispat Private Limited](#), while firmly holding that the moratorium bar extends to all proceedings, including quasi-criminal, observed that the determination of maintainability of an application or continuation of a proceeding must pass a twin test: *firstly*, whether the application or proceeding is against the CD and *secondly*, whether the proceeding will amount to depletion of assets of the CD. An affirmative answer to both would draw the moratorium bar under [Section 14](#).

By logic, Section [241-242](#) proceeding against the management under the Act will overwhelmingly fail this twin test and not fall foul of [Section 14](#) of the IBC. The reason for the same has been satisfactorily addressed by NCLT Mumbai in *Videocon*, involving a company undergoing CIRP. The Tribunal observed that a Section [241-242](#) proceeding is not *against* the CD but *for* the CD- the efforts ultimately ripe into restoring the assets back to the eventual victims of fraud and continue until wrong-doers are punished; thus, the second prong of the twin test remains unsatisfied. Further, in reaching this ratio, the tribunal implicitly drew a distinction between the CD, a juristic person, vis-à-vis its managerial persons who have committed fraud. Since the proceedings do not seek relief against the CD, the tribunal opined, to let the fraudulent persons get away would constitute irreparable loss and interim relief was granted; this indicates that such a proceeding would also fail the first prong of the twin test.

Ultimately, NCLT Mumbai ruled that Section [241-242](#) proceedings can be invoked at *any* stage of the CIRP. The ratio most definitely strengthens the case for continuing a Section [241-242](#) proceeding concurrently with CIRP.

An ally in avoidance transactions

Sections 43-51, 66 & 67 of the IBC lays down various transactions that may be avoided by the resolution professional and the actions that can be taken against erstwhile management for fraudulent transactions. These are of four types- preferential, undervalued, fraudulent and extortionate (**PUFE**) transactions.

In [*Tata Steel BSL Limited v. Venus Recruiter Private Limited and Others*](#), the Delhi High Court ruled that these provisions are aimed at swelling the asset pool available for distribution to creditors and prevent unjust enrichment. Court opined that proceedings for unearthing such transactions are ancillary to resolution of the CD and that since investigation and adjudication of these transactions are time-consuming, it can continue independent of resolution of the CD and survive the CIRP. Further, in [*Ms. Amita Saurabh Bihani and Others v. E&G Global Estates Limited and Others*](#), the NCLAT reiterated that CIRP and avoidance applications are separate set of proceedings and that the latter can survive the former. The rationale behind this decision hinged on the lengthy nature of such applications and ensuring assent maximization.

Given the fundamentally similar objectives of Section [241-242](#) proceedings under the Act and PUFE applications under the IBC, a purposive interpretation would vehemently underline the necessity and viability of continuance of Section [241-242](#) proceedings not just concurrent to but even beyond the CIRP.

Conclusion

It is settled wisdom that an interpretation that would do disservice to the spirit of an enactment must be discarded. Legislative intent cannot be made a victim of verbalism and judicial interpretation must weigh in for functional success of legislation. In light of the above interventions, it bears no further reiteration that a proceeding under Sections 241-242 cannot be stifled by the commencement of CIRP or the approval of a resolution plan. It thrives both within and beyond the insolvency paradigm.