
AN EXAMINATION OF THE REMEDIES AVAILABLE TO SHAREHOLDERS IN CASES OF OPPRESSION AND MISMANAGEMENT IN LIGHT OF RECENT JUDGEMENTS

Siddhanth Moirangthem & Shresth Goel, Jindal Global Law School, O.P. Jindal Global
University

ABSTRACT

The practices of Special and Ordinary resolutions as envisaged in S.114 of the Company Act, 2013 reflects Democratic arrangements in General Administrative functioning of Company, i.e. the rule of majority. In the legal context, it was the early case of *Foss v. Harbottle* which established its legitimacy and added that the Courts will not ordinarily intervene in the internal matters of the Company.¹ The understanding that all shareholders work towards maximizing the company's benefit lacks prudence in the practical realm. Decisions are rather based on number of votes received for the proposal, irrespective of the merit in the proposal.

This classic instance of Majoritarianism which suppresses the interest of minority shareholders is recognized in Company law as acts of Oppression, prejudice and mismanagement. In such circumstances, the exceptions to the rule of majority will come into force to enable the minority shareholders to exercise their remedy. In this regard, it is the pro-active role of Judiciary and statutory creation that has provided more power and protection to the claims of minority shareholders.

In the Indian Context, the majority-oriented proper plaintiff which prohibited minority shareholders from approaching the Court was held to be lacking pragmatism by the Delhi High Court. On the substantive end, the Judicial interpretation has opted for a wide definition of the terms oppression, mismanagement and prejudice. This eventually reduced the burden on the minority shareholders from making a claim in Court. Regarding the procedure to approach the Court, the NCLAT through the celebrated case of *Cyrus Investments Pvt. Ltd. & Anr. TATA Sons Ltd. & Ors* created a four-step approach for evaluation and for the Court to exercise its discretion on

¹ (1843) 2 Hare 461.

relaxing the numerical criteria as envisaged in S. 244 r/w S.241 of Company Act². Overall, devoid of the success rate of claims by Minority shareholders, what can be undeniably observed is that the rights of Minority shareholders has enhanced.

Introduction:

Similar to how a democratic nation functions based on decision-making of the majority, likewise the system of democratic corporate governance is largely prevalent amongst companies, i.e., the rule of majority in its administration. This is evident from the practices of special and ordinary resolutions as envisaged in S.114 of The Company Act, 2013³. Furthermore, in context of Judicial interpretation, it was the early case of *Foss v Harbottle*⁴ which upheld the rule of majority and stated that Courts will not generally intervene in internal matters of company.

While theoretically the common objective of all shareholders is arguably to produce maximum benefit for the company through their own set of approaches to achieve that goal. What fundamentally happens under such corporate democratic regime is that, notwithstanding the ideas which may possibly be more meritorious than the rest, an idea is translated into a binding policy based on the number of vote it receives. While such practice of decision making essentially highlights democratic values and it is not unhealthy by default, however the problem arises when this rule of majority reproduces Majoritarianism.

Consequentially, the majority undermines the interest of the minority shareholders and misuse the advantage of numbers of shareholding for their self-interest, even at the cost of company's growth. In such circumstances of what can be termed as oppression, prejudice and mismanagement amongst others, the exceptions to the rule of majority will kick in and the minority shareholders will be able to exercise their remedy. In this regard, it is the various judicial interpretation that has also provided more power and protection to the claims of minority shareholders. This also implies a shift from the unprotected position for the minority shareholders created by *Foss v Harbottle*.

² 2017 SCC OnLine NCLAT 261.

³ Section 114 of Company Act, 2013.

⁴ *Supra* n.1.

The Genesis of ‘rule of majority’: A brief background and Thesis

It was the landmark case of *Foss v Harbottle* which judicially established the unconditional legitimacy of ‘rule of majority’. This fundamentally implies that if a resolution is passed based on the required majority threshold, i.e., simple/special majority, then the Courts will not intervene. In fact, even those minority shareholders who are aggrieved by the passing of such resolutions could not approach the Court. The reason being that Company is a separate legal entity and if any wrong is done towards the company, then the entity will be the competent proper plaintiff and not any aggrieved person. From an analytical perspective, this landmark judgement literally interpreted the term majority rule devoid of the foreseeable mischief that can arise. However, in the Indian Context, arguably the minority shareholders posit certain statutory rights to protect their interest. In fact, Delhi High Court⁵ held that a literal derivation of majority rule from *Foss v. Harbottle* and applying it in India will not be an ideal practise. On this note, **the following paper will examine the scope of remedies available to shareholders in events of oppression and mismanagement in light of recent judgements, in India.** Firstly, briefly explain ‘just and equitable ground’. Thereafter, chronologically examine the scope of the terms- oppression, prejudice and mismanagement in light of the remedy for minority shareholders i.e. substantive part, and secondly comment on the procedural evolution in terms of the Court’s dealing with petitions by aggrieved minority shareholders i.e. procedural part.

Just and Equitable Ground: a Pre-requisite

Prior to framing arguments under sub-topics, the authors found it essential to mention the foremost pre-requisite mandated by section 242 for seeking relief under oppression, prejudice or mismanagement. This Section provides two-step procedure which should be considered by the court before considering any application for relief against oppression/prejudice/mismanagement by majority shareholders.⁶ Analytically, this section imposes an additional burden on the shareholder to prove that the conduct of oppressor would constitute valid ground for “just and equitable” winding up of the company. It should be noted that such requirement may make it difficult for the minority shareholders to establish the liquidation threshold to bring actions against the oppressor and seek certain remedy. Secondly,

⁵ *ICICI v Parasrampuriah Synthetics Limited* (Interim Application No. 10025 of 1997, Suit Appeal No. 2332 of 1997)

⁶ Section 242 of Company Act, 2013.

after establishing the first criteria, the other requirement which should be considered is whether such winding up decision would compromise the interest of various other stakeholders. This is important to preserve the interests of the petitioners and other stakeholders as the situation may arise where the court's decision of winding up the company may impact the oppressed shareholders more than the oppressor and thus, the court should consider the alternative remedies. The overall objective is not the liquidation of the company but to protect the interest of the minority shareholders from any kind of unfair and unlawful conduct of the majority shareholders.

Substantive aspect: Examining Oppression, Prejudice and Mismanagement

In the Indian Context, the Companies Act, 2013 does not provide any definition of the terms oppression/prejudice/mismanagement. However, section 241 accommodates all three terminologies, i.e., while S.241(1)(a) deals with 'oppression' and prejudice', S.241(1)(b) deals with mismanagement. Herein, a noteworthy analysis is that all three words have been statutorily given independent characters. Therefore, any aggrieved minority shareholder will not be compelled to approach the NCLT on all three grounds, rather relief under any one of the exceptions would suffice for approaching the tribunal according to S. 241(1). While it is unequivocal to state that various Indian Courts at different levels under the Judicial Hierarchy of India have incorporated various characters into defining oppression⁷, the following analysis will be based on the 2008 Supreme Court judgement⁸ which collectively defined oppression through six points.

“From the above decisions, it is clear that oppression would be made out:

- (a) Where the conduct is harsh, burdensome and wrong.*
- (b) Where the conduct is mala-fide and is for 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-à-vis the others.*
- (c) The action is against probity and good conduct.*

⁷ *Shanti Prasad Jain v. Kalinga Tubes*, AIR 1965 SC 1535; *Needle Industries Ltd. v. Needle Industries (India) Holding Ltd.*, 1981 AIR 1298.

⁸ *V.S. Krishnan v. WestFort Hi-tech Hospital Ltd*; (2008) 3 SCC 363.

- (d) *The oppressive act complained of may be fully permissible under law but may yet be oppressive and therefore the test as to whether an action is oppressive or not is not based on whether it is legally permissible or not since even if legally permissible, if the action is otherwise against probity, good conduct or is burdensome, hard or wrong is mala fide or for collateral purpose, it would amount to oppression under Sections 397 and 398.*
- (e) *Once conduct is found to be oppressive under sections 397 and 398, the discretionary powers given to the Company Law Board under Section 402 to set right, remedy or put an end to such oppression is very wide.*
- (f) *As to what are the facts which would give rise to or constitute oppression is basically a question of fact and, therefore, whether an act is oppressive or not is fundamentally/basically a question of fact.⁹*

Prima Facie, this judgement may seem obsolete as it is based on Company Act of 1956. In this regard, it is to be noted that the 2013 version of Company Act does not contextually contradict the judgement. Herein, the only notable change is that the platform i.e., ‘Company Law Board’ in point (e) has been replaced with NCLT. Secondly, various recent judgements have referred to it, verbatim¹⁰ which also evidences its contemporary relevancy even in 2022. Therefore, it is still enforceable. Furthermore analytically, this judgement arguably provides a strong foundation in the test of justifying oppression. Firstly, point (a) regarding conduct is reflective of the Scottish Co-operative society judgement¹¹. Reading this with point (b) i.e., mala-fide conduct and point (c) provides a very wide scope to encompass wrong actions under oppression. Secondly, point (d) implies that the petitioners will only be concerned about how oppression plays out within its company regime, and not based on what the law says in general. Subsequently, this will ease the burden of proof of the petitioners, and rather have a more restricted approach. Thirdly, the system of case-to-case basis identification of oppression established through point (f) is extremely significant. The expansive nature of this provision

⁹ Kindly note that the guidelines is not part of the word count. It had to be added for a more convenient reading of the paper.

¹⁰ *Ram Parshottam Mittal v. Hotel Queen Road Limited*, Appeal (Civil), 3934 of 2017, Judgment Date: May 10, 2019.

¹¹ *Scottish Co-operative Wholesale Society Ltd. v. Meyer*, [1959] A.C. 324 at 369.

will ensure that aggrieved minority shareholders are not compelled to always find a legal precedent to support its claim, rather even a logical explanation which suits the basic threshold would be adequate to approach the court. Subsequently, this liberty will prevent the petition from being dismissed in limine as even the tribunals would be bound to hear the grievance on this ground. However, these Supreme Court guideline arguably seems to be silent on one essential issue regarding the nature of frequency under which relief of Oppression and Mismanagement can be claimed i.e., is one isolated incident adequate to claim oppression or should it be a set of cumulative events? The landmark case of *Shanti Prasad*¹² dealt with this issue and imposed the duty upon the petitioner to show in the tribunal that the majority shareholders were acting in continuity, even until the date of petition. Prima facie this legal standing imposes a high burden on petitioners to demonstrate oppression as a cumulative act. Perhaps with the change in the wordings under section 241 i.e. “.have been or are being conducted”, one could hope for an isolated incident to be adequate to justify oppression. However, this presumption was totally defeated when NCLAT in a case provided interpretation for these terminologies. The court held that “have been” indicates an action continuing since past, and “had been” indicates action which was occurring in past, and it ended in past. Analytically, what this essential implies is despite the significant change in the wordings, the threshold for the incident to be cumulative and not isolated still remains valid. However, it does not need to happen until the day of petition, it could have happened in the past. This eases the problem of limitation for filing a complaint in tribunal for cases that have happened in recent past.

Notably, in the commencement of this section, an observation was added that all the three expressions i.e., Prejudice, Oppression and mismanagement enjoy independent claims. However, it is to be noted that, while withstanding the expression of prejudice and mismanagement, they tend to largely focus on oppression as it forms the fundamental basis for any claim. Secondly, while mismanagement enjoys its own definition i.e., significant change in administrative structure of company and such change must prejudicially affect the interest of company/shareholders. it is to be noted that oppression and mismanagement tend to be applied simultaneously. Thirdly, in regard to the expression Prejudice, this remedy is usually invoked as a subset under oppression and mismanagement or simultaneously. Perhaps, a bare reading of Section 241 and 242 suggest that prejudice also functions as a significant pre-

¹² *Shanti Prasad Jain v. Kalinga Tubes*, AIR 1965 SC 1535.

requisite. Hence, on a collective note, the next landmark case would help in filling the lacuna for the failure to exclusively comment on all three expressions to a certain extent.

Running up to 280 pages, the famous *ratan Tata v Cyrus Poonawala case*¹³ has perhaps in detail discussed various issues. One of them being minority rights. Relevantly, the Court held that removal of directorship is not adequate to claim a case of oppression and mismanagement and prejudice. Provided that the removal is not part of a larger oppressive plan or prejudice interest of certain members. Secondly, in regard to Section 241 and 242, the tribunals cannot reinstate any person to a position. Thirdly, Tribunals should confine its scrutiny only to past and present. While a bare perusal of the judgement would undoubtedly expose the restrictive scope for minority shareholders to receive substantive justice, what seemed more problematic is the systematic lacuna which could be derived from the Judiciary's strict fact-centric approach in this case. Rather than critically focusing on the aspect of oppression or prejudice, it treats the accusation by CPM as ironical merely because he represented the ownership of only 18.37% of shareholding. In larger context, this judgement would make it impossible for any Executive Chairman with such less shareholding to claim remedy of oppression and prejudice, even if the removal was part of a larger Conspiracy. This is because, the prior elevation by all the shareholders would be used as a ground to showcase absence of oppression and prejudicial modus-operandi. Perhaps this will provide a legitimate process to exercise majority rule even if the act is prima-facie prejudicial to the interest of the member or company. Overall, it reflects a narrative wherein minority shareholders ought to function under the mercy of Majority shareholders.

Procedural aspect: Approaching the NCLT and its role

An outcome of the Eradi Committee, National Company Law Tribunal was supposed to be incorporated in 2002 under the Companies Act, 1956, but due to a ten-year court battle over its constitutional legality, it was established under the section 408 of the Companies Act, 2013. It is a quasi-judicial body established to deal with civil company disputes originating under the Companies Act. Members can seek speedy remedy against the unjust actions of majority shareholders by filing an application before the Honourable National Company Law Tribunal having the right jurisdiction. With application of section 241, the members can reach the Tribunal under two major circumstances.

¹³ *Tata Consultancy Services Limited Vs. Cyrus Investments Pvt. Ltd. and Ors.*, (2021) 9 SCC 449.

- If the business activities of the company have been or are being conducted in a way that is harmful to the public interest, harmful to him or any other member or members, or harmful to the interests of the company.
- If there is a significant change in the company's management and control, whether it be a change in the board of directors, the membership, the share capital, or in another way, and the change is likely to make it so that the company's affairs or the interests of its members or any class of members are conducted in a way that is detrimental to those interests. But it won't be regarded as a major change if it's done for the benefit of creditors, debt holders, or any class of shareholders.¹⁴

Section 244 should be read in addition to 241 which talks about the members who have the qualification to reach Tribunal. This can be categorized into two parts.

1. Member/Members of a Company

- Having Share Capital
 - a minimum of 100 members, OR
 - 1/10th of its entire membership, whichever is lower, OR
 - Any member who owns at least a tenth of the issued share capital.

With respect to the above conditions, one of the most significant requirements is that the applicant or applicants have paid all calls and other payments owing on his or her shares.¹⁵

- Not having Share Capital
 - Not less than 1/5th of the total number of its members.¹⁶

Using its discretionary power, the Tribunal, on the other hand, has the authority to disregard the aforementioned numerical criteria if it thinks it's appropriate. Reference can be made to the

¹⁴ Section 241(1) of Companies Act, 2013. Kindly note that the guidelines is not part of the word count. It had to be added for a more convenient reading of the paper.

¹⁵ Section 244(1)(a) of Companies Act, 2013. Kindly note that the guidelines is not part of the word count. It had to be added for a more convenient reading of the paper.

¹⁶ Section 244(1)(b) of Companies Act, 2013.

case of *Cyrus Investments Pvt. Ltd. & Anr. v. Tata Sons Ltd. & Ors.*, where the National Company Law Appellate Tribunal ("NCLAT") created a four-step approach to evaluate whether the numerical requirement of Section 244 should be relaxed or not (refer to footnotes). And it was observed that, despite having total holding of around 2.17% which falls short of the 10% threshold when both equity and preference shares were considered, the NCLAT granted the Applicant a waiver.¹⁷ Based on the facts and circumstances of the case in hand, NCLAT called it an exceptional situation. This NCLAT decision is significant because it clarifies the considerations that the NCLT must examine before providing a relief under section 244 of the Act, given the fact that the law is silent on the subject. The decision gives hope to shareholders who are facing oppression or mismanagement but are unable to approach the NCLT since they do not meet the 10% shareholding criteria. This might include situations where significant charges of oppression or mismanagement are made, or where the petitioner's 10% ownership was diminished for the mala-fide goal of preventing them from filing a complaint. Overall, by easing the threshold at the stage of maintainability, such legal standing will ensure that substantive justice is not discounted at the cost of mere procedural non-compliance.

2. The Central Government

To be more precise, Ministry of Corporate Affairs may itself apply to seek an order from the Tribunal.¹⁸ Reference can be made to the case of *Union of India v. Delhi Gymkhana Club*, where the scope of Section 241(2) was discussed. When the Central Government makes a complaint under Section 241(2), Firstly, it must record its opinion as to whether the company's affairs are being undertaken in a manner that is prejudicial to the interest of the public and recording such an opinion is a requirement for filing a complaint with the Tribunal. Secondly, the Tribunal would not assess the sufficiency or lack thereof of material for reaching such a finding, especially where no malfeasance is linked to the Central Government. Thirdly, the public interest cannot be expanded to encompass all Indian citizens. It would be sufficient if the rights, security, economic wellbeing, health, and safety of even a small segment of society,

¹⁷ *Supra* n.2.

The Four-steps approach

1. Are the applicants members of the organisation in question?
2. Is the application under Section 241 is about 'oppression and mismanagement'?
3. Is there any information that a similar claim of 'oppression and mismanagement' was made by another member and that it was resolved?
4. Is there a compelling reason to grant a "waiver" so that members can file applications under Section 241 and other provisions?

¹⁸ Section 241(2) of Companies Act, 2013.

such as applicants seeking membership in the category of common citizen, were impacted.¹⁹ This way the Tribunal expressly states various prerequisites which acts as a minimum threshold and has to be mandatorily followed by the Central Government before filing a complaint in the Tribunal. *Deloitte Haskins & Sells LLP v Union of India*, is another case where NCLAT empowered the central government to impeach a company's auditors if the company's management was detrimental to the public interest.²⁰ The NCLAT concluded that the Tribunal's powers under Section 242 are broad, and that the Tribunal might hear any party, including the past auditors, before issuing an order to preserve the public interest or the company's interests.

There are various others significant rulings which helps us to understand the powers of tribunals with respect to the rights of the minority shareholders while putting a restraint on the misuse of powers by the majority. In the recent case of *Smt. Smruti Shreyans Shah v. The Lok Prakashan Ltd. & Ors.*, the NCLAT decided that in an application claiming conduct of oppression and mismanagement, it is necessary to determine if such acts are ongoing or completed, and if they are completed, whether they are within the stipulated time of limitation, which is three years from the date of the conduct. This was established that if they do not constitute part of a series that gives rise to a continuous cause of action, the right to apply accrues from the date of the first breach of right. It was further stated that, in the absence of proper interim relief being sought, the NCLT has the authority to shape interim remedy in accordance with the facts and circumstances of the case to ensure that the goals of justice are not subverted.²¹

Aruna Oswal v Pankaj Oswal & Ors. is another significant judgement which dealt with the issue of maintainability of the petition when the ownership of the shares in the petition is the subject matter of a pending civil suit. The honourable Supreme Court ordered that the NCLT proceedings relating to "oppression and mismanagement" be dismissed. The court held that the issue of right, title, and interest is fundamentally a civil rights dispute on the impact of nomination. The parties' rights will be governed by the verdict reached in a civil suit where parallel hearings would be inappropriate. However, after the adjudication of the existing partition litigation, Respondent was given an option to initiate a new petition if necessary.

Overall analysis and conclusion:

¹⁹ 2021 SCC OnLine NCLAT 123.

²⁰ Company Appeal (AT) No. 190 of 2019

²¹ Company Appeal (AT) No. 25 of 2018 (decided on 5th September, 2019).

After having examined both the substance of the law and the procedure to exercise that substance of the law, certain critical analysis can be made about the issue in Indian context. Firstly, that in regard to justifying the occurrence of oppression and mismanagement, the Judicial interpretation has ensured a very wide sense of definition. Therefore, making the remedy substantively accessible, at least. However, such expansive interpretation becomes futile when the Judiciary is at the same time reluctant to deviate from the existing legitimated rule of majority²². Secondly, it was observed that a polarised judicial approach is evident wherein the focus is centrally on interpreting the terms oppression and mismanagement (to certain extent). The limitation with this approach is that it is not aligned to the Legislative intention of Section 241 and 242 wherein the term prejudice was added disjunctively for it to be interpreted independently. Resultantly, hitherto the term prejudice is interpreted in the literal fashion and does not enjoy any contextual definition. Nonetheless, irrespective of the success rate of seeking a relief for oppression, mismanagement and prejudice, and considering the considering the whole regime of remedy that can be availed by the aggrieved shareholders, the majority shareholders in the companies will become more cautious in handling of internal affairs to avoid legal disputes as the company's reputation might be in jeopardy. Finally, to respond to the above-mentioned thesis statement, it can be conclusively stated that undoubtedly the Judicial interpretation has brought progress for the minority shareholders to a great extent. However, to reach a more definite conclusion, a more critical and detailed research is required. In this regard, one of the sub-issues which can be studied in future is the "Arbitrability of issues under oppression, prejudice and mismanagement".

²² *Supra* n.11.