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Action Against Oppression & Mismanagement Under Company Law

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ABSTRACT

Oppression and mismanagement are common issues faced by stakeholders in a company, leading to negative consequences for both the company and its stakeholders. Oppression refers to the abuse of power by a majority of shareholders to the detriment of minority shareholders. On the other hand, mismanagement refers to the poor administration and management of the company, leading to negative financial or operational outcomes.

Under company law, several actions can be taken to address these issues. For instance, in the case of oppression, minority shareholders can file a complaint with the court seeking relief under the provisions of the Companies Act. The court may then order the majority shareholders to rectify the oppressive actions or even appoint a new board of directors to manage the company.

Similarly, in the case of mismanagement, stakeholders can approach the court seeking the removal of the current management and appointment of a new board. Additionally, the company's articles of association may provide for alternative dispute resolution mechanisms such as arbitration or mediation to resolve disputes.

Furthermore, the Companies Act also provides for the inspection of the company's books and records by stakeholders to ensure that the management is acting in the best interests of the company and its stakeholders. If any irregularities are found, stakeholders can approach the court for appropriate relief.

In conclusion, the Companies Act provides various avenues for stakeholders to address the issues of oppression and mismanagement in a company. It is essential for stakeholders to be aware of their rights and remedies under the law to effectively address such issues and protect their interests.

Keywords: *Oppression, Mismanagement, Stakeholders, Majority, Minority.*

I. INTRODUCTION

In addition to the exceptions to the concept of majority supremacy that provide protection to minorities, current Companies Acts have additional safeguards to avoid tyranny and mismanagement.

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The purpose of such measures, which are presently found in Chapter XVI[2], is to protect the interests of investors in companies as well as the public interest. Qualified minority rights are the rights granted to shareholders under this provision. Both judicial and administrative remedies are provided in this chapter.

(A) What is oppression?

The burdensome, cruel, or unjust exercise of authority or power is known as oppression. It can also be defined as an act or occurrence of oppression, as well as the feeling of being greatly burdened, emotionally or physically, by difficulties, unpleasant situations, and anxiety.

In **Daleant Carrington Investment (P) Ltd. v. P.K. Prathapan**,[3] the Supreme Court held that increasing a corporation's share capital only for the purpose of seizing control of the firm, where the majority shareholder is reduced to a minority, is oppressive. Because the director is in a fiduciary position, he cannot issue shares to himself. The oppressor would not be allowed the opportunity to buy out the oppressed in such circumstances.

(B) Who can apply

A persecuted minority's first recourse is to file a complaint with the Tribunal. An application to the Company Law Tribunal under Section 241[4] can be submitted whenever "the affairs of a company are being conducted in a way onerous to any member or members or averse to public interest." Section 244 specifies the minimum number of members who must sign the application. If the company has a share capital, the application must be signed by at least 100 members or one-tenth of the total number of members, whichever is lower, or any member or members owning one-tenth of the company's issued share capital.

If the firm does not have any share capital, one-fifth of the total number of members must sign the application. Joint holders are treated as if they were one person. [Explanation of Section 244(1)] On application, the Tribunal may empower any member or members to suit "where conditions exist in its opinion that make it just and equitable to do so." A person applied to the company for 40% ownership of the company in exchange for a payment of Rs 20 crores. The cash was listed as "share application money pending allotment" on the company's balance sheet. The money was put towards the company's projects. The investor was treated as a shareholder or member by the company. Under Section 41(2) of the 1956 Act, the court considered him a member. in order to file a petition for the prevention of oppression The fact that there was no

[2] Companies Act, 2013.
[3] (2004) 4 Comp L.J. 1 (SC).
[4] *Supra* note 1.

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allotment or registration in the register of members was overlooked by the court in the facts of the case.[5]

After obtaining the required number of consents, one or more of them may file the application on behalf of and for the benefit of all of them. For this purpose, "consent" means an agreement on the same thing in the same sense, as defined in Section 13[6]. As a result, the Madras High Court[7] dismissed a petition since consenting members had merely been advised that their signatures were required to summon a meeting. The particular facts that are alleged to constitute oppression must be disclosed to the undersigned.

The Supreme Court concluded in **Rajahmundry Electric Supply Corpn Ltd V. A Nageshwara Rao**[8] that "if some of the consenting members withdrew their consent after the application was presented, it would not impact the applicant's right to proceed with the application." By holding that if a petition has been properly prepared, it does not cease to be maintainable merely because three of the applicants have transferred their shares and ceased to be shareholders of the corporation.

Even if the decree has not yet been enforced and the register does not show his name, a person who has obtained a decree for rectification of his company's register of members in order to have his name entered in it may apply for relief under the section. Section 210[9], which provided for relief against oppression, was interpreted to include the representatives of a deceased shareholder in **Bays water Trading Co Ltd**[10] and again in **Jermyn Street Turkish Baths Ltd**.[11] However, it appears likely that a purchaser of shares who has not yet been registered will not be entitled to relief under the section for oppression caused by the company's refusal to register his name.

Even if he had afterwards withdrawn his application money, a person who was entitled to an allotment of shares against his application money was considered competent to apply. " A nominee shareholder's petition was not dismissed. " A trustee holder of shares who was refused registration by the corporation was allowed to file a petition. A derivative action may not be initiated by a corporate director who was not a shareholder, according to the Bombay High Court. A person whose name does not appear on the business's register of members has no

[5] Umesh Kumar Baveja v. IL&FS Transportation Network, (2014) 182Comp Cas 309(Del)
[6] Contract Act, 1872.
[7] MC Duraiswamiv Sakthi Sugars Ltd, (1980) 50 Comp Cas 154 (Mad).
[8] AIR 1956SC 213:(1956) 26 Comp Cas 91.
[9] *Supra* note 1.
[10] (1970) 1 WLR 343: (1970) 40 Comp Cas 1196(Ch D)
[11] (1970) 1 WLR 1194: (1970) 3 All ER 57

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standing to claim that his company has been wronged.

The court refused to lift the veil of incorporation at his request, preventing him from demonstrating his beneficial interest in the company through a chain of inter-corporate investments. A member with locus standi to apply was one whose shares had been forfeited without authority but whose name was still on the register of members. Even if the initial petitioning member withdraws from the foray and decides not to continue the petition, he cannot force it to be dismissed. This type of representative action can nevertheless be evaluated on its own merits.

A civil suit may be filed by someone who was not a shareholder of the corporation but had a dispute about the value of the shares they were being allotted. The price was determined by a majority of shareholders and approved by the Reserve Bank under the Foreign Exchange Regulation Act of 1973. The court declined to get involved. The term "member" should be interpreted in its broadest sense to encompass people whose names are not on the register of members but who have an indisputable right to shares. As a result of the court's approval of merger schemes, shares were vested in the petitioner. It was decided that no further act or deed was required in order for him to exercise his right to petition.[12]

The Central Government has the authority to seek remedies under this law as well. The Tribunal also has the authority to allow a smaller number of members to proceed under the section if it so desires. Employees of a firm, regardless of how much they are treated as members or are members themselves, are not entitled to any relief under this jurisdiction in their capacity as employees. A petition under this clause can only be compromised or withdrawn with the Tribunal's permission once it has been heard. The compromise should be in the company's and shareholders' best interests.

II. CONDITIONS OF RELIEF (SECTION 241)

Certain preparatory requirements must be met in order for a shareholder to be eligible for relief under the clause. These conditions are written into the section's language.

(A) Meaning of oppression

An application under Section 241[13] can be brought on the grounds:

(a) that the company's affairs are being conducted in a manner that is detrimental or oppressive to a member or members, or in a manner that is harmful to the public interest or to the company's

[12] Pavan Kumar Budhia ay Bee Properties(P) Ltd, (2014) 187Comp Cas 353 (CLB).
[13] *Supra* note 1.

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interests.

(b) a material change in the company's management or control has occurred, whether through a change in the Board of Directors or the manager, or in the ownership of the company's shares or membership, or in any other way, and it is likely that the company's affairs will be conducted in a manner prejudicial to its interests as a result of such change.

If such oppression is proven, the Tribunal will "make such an order as it sees suitable with a view to bringing to an end the matters complained of." The only effective remedy against oppression before this section was a winding up order under the fair and equitable clause. However, in many cases, the cure proved worse than the sickness. The Tribunal now has the authority to impose on the party's whatever settlement it deems just and equitable in the circumstances. As a result, rather than pushing a good firm to close, an attempt is made to save it."

In **Shanti Prasad Jain v Kalinga Tubes Ltd,**[14] Wanchoo J of the Supreme Court of India noted Lord Cooper's explanation of the term "oppression" in the **Scottish case of Elder v Elder & Watson Ltd**[15] with favour. "The essence of the matter appears to be that the conduct complained of should at the very least involve a visible departure from fair dealing standards, and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely." The complaining shareholder must be subjected to an unjust, harsh, or tyrannical burden.

The outcome of Section 210, applications in different cases must be determined by the facts of each case, as the circumstances in which oppression can occur are infinitely varied and impossible to describe precisely. In certain cases, forcing new and riskier objects on an unwilling minority may be considered oppression. In **Hindustan Coop Insurance Society Ltd**[16], a similar situation arose.

Similarly, **in Harmer Ltd**,[17] the Court of Appeal granted remedy in situations where a majority controller repeatedly disobeyed the Board's decisions, committed the firm to new activity without adequate procedure, and appointed dummy directors. When a company's Chairman, who owed his allegiance to a corporation that had underwritten the company's shares, tried to oust the managing director at a time when, as a result of the managing director's efforts, the company had brought up its factory and was only waiting for more loans to enter into

[14] AIR1965 SC1535.
[15] 1952 SC 49 (Scotland).
[16] AIR 1961Cal 443.
[17] (1959) 1 WLR 62: (1958) 3 All ER 689.

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production, it was deemed to be a "oppressive policy" that was also against the public interest. In this context, "public interest" means that the corporation should function for the public benefit or for the general welfare of the community, rather than in a way that is harmful to the public good. There was enough data to suggest that if the enterprise had gone into production, it would have brought the country foreign exchange. Those who caused the delay must be held accountable for working against the public's and the company's interests.

It was ruled that removing a director who had worked for the firm for 20 years and restricting him access to the company's facilities only to prevent him from accessing the company's documents was oppressive conduct. Shareholder resolutions are not susceptible to judicial review, but their timing and the behavior of the majority in passing them can be used to determine if the current state of things is oppressive.

The issue that arises is sometimes not about the company's interests at all, but about what is fair in terms of distinct classes of shareholders. When such a situation emerges, a different test than the company's interests must be applied. The Supreme Court has proposed a solution in the form of compensation.to the harmed stockholder **Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd**[18] was the matter before the court.

On the facts, the holding firm claimed oppression. The court, however, was not convinced that there had been a consistent campaign of oppression. The scheme's ultimate goal was to Indianize 60 percent of the population. This might be accomplished by either purchasing the English company's excess stock or raising the Indian shareholding. The latter route was chosen in the company's best interests because it would provide additional funds. The English company's opportunity to participate in the rights issue was undoubtedly harmed by the lack of sufficient notice. However, even if adequate notice had been given, the English company could not have subscribed for the contract.

There was no right in the articles of incorporation for any member to relinquish his rights to shares in favour of others. In the case of a private corporation, the opportunity to renounce rights shares in favour of nominees is simply not an option because it would make it impossible for the firm to limit the number of members. The true loss sustained by the holding company was the decrease in the market value of the shares that it owned. The shares' market value was significantly higher than their nominal value. The allotment was just worth a few cents.

The loss of the holding company resulted in the "unjust enrichment" of individuals who received the block of rights shares that would have belonged to that firm if not for the policy restriction.

[18] (1981) 3 see 333.

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As a result, the Supreme Court ruled that the holders of those shares in India must compensate the holding company to the extent that the market value exceeds the nominal value.

In response to the notion that the illegality of the Board meeting should be taken as evidence of repressive policy, Chandrachud CJ stated:"[19]

III. EXISTENCE OF ALTERNATIVE RELIEF

The alternative relief of appointing inspectors under Section 209-A [now S. 207] was available where there were allegations of violations of foreign currency restrictions and inaccurate accounting. There was also the claim that auditors were not selected at the general meeting in this case. There was no respite in these sections because this was a subject that needed to be brought to the attention of the Central Government, which was the only one who could handle it. The shareholders-directors who were upset did not object at the meeting, and the same auditors were reappointed at a later meeting. In this case, it was also decided that orders of investigation are not commonly issued under these articles, particularly when it comes to a closely held business.

(A) Oppression of majority

"In an appropriate scenario, if the court is satisfied about the actions of oppression or mismanagement, relief can be granted even if the application is brought by a majority who has been rendered absolutely impotent by the unjust conduct of a minority group," says the court. Just because a petition is submitted by a majority shareholder does not mean it will be dismissed as having no plausible cause of action. As a result, Mitra J of the Calcutta High Court granted a majority group relief under the clause in **Sindri Iron Foundry (P) Ltd[20]**. "If the court finds that the company's interest is being seriously prejudiced by the activities of one or the other group of shareholders, that two different registered offices at two different addresses have been set up, that two rival Boards are holding meetings, that the company's business, property, and assets have passed into the hands of unauthorized persons who have taken wrongful possession and who claim to be the shareholders a d that the company's business, property, and assets have passed into the hands of unauthorized persons who have taken wrongful possession

(B) Oppression qua members

The aggrieved member must demonstrate that he is being oppressed as a member and not in any other capacity. A minority stakeholder of a private firm, for example, was removed from his

[19] Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd, (1981) 3 SCC 333, 367.
[20] (1963) 69 CWN 118.

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position as a working director at **Lundie Bros, Ltd, re**[21]. He would have benefited nothing as an ordinary shareholder because the company has never paid a dividend, with director's salary being the only return on investment. Because he had suffered as a director rather than a member, Y ether couldn't complain. This outcome has been planned for being unrealistic. One of the benefits of membership is the opportunity to serve on the board of directors. As a member, any denial of this privilege is a kind of tyranny.

(C) Oppression in conduct of affairs

The legitimate expectations that a person has upon joining a corporation as a member, and the denial of which may constitute oppression, must be related to the firm's affairs. The assumption that shares would be allowed to be transferred in violation of the agreement or articles has been deemed unreasonable. The requirement that shares be transferred in accordance with the articles is not oppressive. When the firm's objectives were defeated by a large majority by turning from construction and hoteling to filmmaking, the court ruled that this was an act that went against the shareholders' expectations when they joined the company. It was a form of oppression.

The court ordered the majority group to buy out the minority at a price determined by the court based on the Central Government's cost inflation index for calculating capital gains.[22]

IV. UNFAIR PREJUDICE

The necessity that facts warrant ending up on a reasonable and equitable basis has rendered the remedy ineffective "In practice, it's almost meaningless." As a result, the requirement was repealed in England in 1980, and the amendment was preserved by the 1985 Act. “Unfair bias” is now the key theme. This term has never posed any difficulties for practitioners or the courts. Prejudice suggests some type of disadvantage, but because it must be 'unfair,' it must be a form of disadvantage that would strike a businessman as unjust and inequitable. The non-controlling shareholder plays the role of an investor.

(A) Fairness of petitioner’s conduct

The petitioner's actions should be consistent with justice. There may be grounds that disqualify him, even if the others are in the wrong. As a result, if he accepts a reasonable offer before the petition is considered, the court will stay further actions in order to preserve the status quo between the parties."[23] In this case, we have the spectacle of two illustrious directors who had themselves been involved in various acts of mismanagement allegedly posing as complainants

[21] (1968) 1 WLR1051.
[22] CN Shetty v. Hillock Hotel(P)Ltd, (1996) 87Comp Cas 1 (AP).
[23] Abbey Leisure Ltd, re, 1989 BCLC 619 (Ch D).

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before the court with injured innocence. This circumstance, in and of itself, casts doubt on the veracity of the allegations made.

(B) Position of non-party

The property of a company was sold. The buyer took out a bank loan to finance the purchase. The CLB put the sale on hold. Despite the fact that civil court procedures were pending, it had the authority to do so. The information of the mortgage, however, was not brought to CLB's attention. As a result, the bank was not a party prior to CLB. As a result, natural justice principles were broken. CLB's order was overturned, and the case was remanded to CLB for the bank to be given an opportunity.[24]

V. EFFECT OF ARBITRATION CLAUSE

When a disagreement emerged between members over a breach of an agreement between them, the Company Law Board (CLB) (now Tribunal) said that such issues should be directed to arbitration under Section 8 of the Arbitration and Conciliation Act.[25] There were businesses run by a family of four brothers, which were virtually like partnerships. The family arbitration resulted in a decision. Regardless of the award, family preparations were made. The arrangements were found to be superior than the award, which had not yet been declared a court rule. Settlements took precedence over awards under the 1940 Act.

A party could not request a referral to arbitration if it has already filed a detailed response to the petition. The arbitration clause was also found to be inapplicable where all or some of the parties to the arbitration agreement were not present, and the dispute's subject matter as described in the petition differed from that in the agreement.

VI. PREVENTION OF MISMANAGEMENT [S. 241]

In circumstances of mismanagement, Section 241(l)(b) allows redress. To succeed in a petition under this section, it must be established that the company's affairs are being conducted in a manner prejudicial to the company's or public interest. If the Tribunal is convinced, it may issue any order it sees fit in order to put an end to or prevent the matter complained of or apprehended.

In **Rajahmundry Electric Supply Corporation Ltd v A Nageshwara Rao.**[26], certain shareholders filed a petition alleging that the business's directors mismanaged the company. The court found that the Vice-Chairman had mismanaged the company's affairs and had taken

[24] SB! VP Narayanasamy, 2013 SCC Online Mad 2842: (2014) 186 Comp Cas 269.
[25] Pinaki Das Gupta v Madhya Advertising (P) Ltd, (2003) 114 Comp Cas 346 (CLB).
[26] AIR 1956 SC 213: (1956) 26 Comp Cas 91.

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large sums for personal use, that large sums were owed to the Government for charges for electricity supply, that machinery was in a state of disrepair, that the directorate had become greatly attenuated and "a powerful local junta was ruling the roost," and that the shareholders outside the Chairman's group were powerless to correct the situation. This was deemed adequate proof of management failure. The court appointed two administrators for the company's management for a six-month period, vesting in them all of the directorate's responsibilities.

A similar management was provided to a company by the Calcutta High Court in **Richardson & Cruddas Ltd v Haridas Mundra.**[27]

Mismanagement should be present and continuing. Even if proven, earlier accusations of mismanagement are insufficient to establish a current injury to the company's or public interest. When directors favored objects of their choice and made a large assignment of shares for a consideration other than cash It was considered a mismanagement of affairs[28]." Mismanagement was not seen as a problem in the new business endeavor. "An investigation into a company's business to determine the fact of mismanagement may involve a look into the company's subsidiaries." When a group of lawfully chosen directors were denied the opportunity to join and function as directors, their protest was interpreted as a sign of mismanagement and was treated as such. "Relief from mismanagement benefits the company rather than any individual or group of individuals."' Second, "in circumstances of mismanagement, it is not essential for the court [now Tribunal] to determine grounds for winding up in order to give relief." Proof of prejudice to the public interest or the company's interests is sufficient. Third, the clause allows the court [now Tribunal] to assess the impact of business activity on outside interests. Because the company was engaged in specific industries required for the accomplishment of the country's plans, the Calcutta High Court refused to order the winding up of a highly mismanaged corporation and instead appointed special officers to supervise it.

(A) Powers of Tribunal [S. 242]

The Tribunal's powers under Sections 241 and 242 are fairly broad.[29] "In fact, the Tribunal has

[27] 29 Comp Cas 549 (1959) (Cal). Mismanagement was considered to be established when the group in power conspired to defraud members. Hemant D Vakil v RDI Print and Publishing (P) Ltd, 2 Comp LJ113 (1993). (CLB). Mismanagement was established when there were only two directors in a private company and one kept the other completely in the dark about the company's affairs. VB Balasundaram v. New Theatre Carnatic Talkies (P) Ltd, 77 Comp Cas 324 (1993). (Mad). A state government cannot take over a company's undertaking on the grounds that the company has been mismanaged. The provisions of the Companies Act are sufficient in and of themselves to remedy situations like that, whether at the corporate or individual level.

[28] Akbarali A Kavert v Konkan Chemicals (P) Ltd, (1997) 88 Comp Cas 245 (CLB).

[29] The Tribunal has to be satisfied that the conditions of relief exist presently and not in reference to some possible conduct in the future. Peerless General Finance & Investment Co Ltd V Union of India, (1989) 1 Comp LJ56 Cal: (1991) 71 Comp Cas 300 (Cal)

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the authority to issue any order for the regulation of the company's business on whatever terms and conditions it sees proper.[30]" Even if no evidence of oppression or mismanagement is found, the Tribunal has the authority to do justice to the parties and can issue an order for the smooth running of business. The only apparent limitation appears to be the general goal of the parts, and hence the order must be aimed toward resolving the issues raised. The CLB has the authority to offer remedy to a respondent who is no longer a member, which may include ordering him to purchase the company's shares. However, under Section 242, an attempt is made to define the Tribunal's powers. This section states that, without limiting the CLB's general powers, any order issued under Section 241 may include the following provisions:

- The future regulation of the company's business operations.
- Other members or the company purchasing the shares or interests of any of the firm's members.
- A reduction in the company's share capital as a result of the company's purchase of its own shares."
- Restrictions on the company's stock allotment and transfer.
- The Tribunal may terminate, set aside, or modify an agreement between the firm and any managerial employee on such terms and conditions as it deems just and equitable.
- Any agreement with any person be terminated, set aside, or modified, provided that due notice has been given to him and his consent has been obtained.
- Any transfer, delivery of goods, payment, execution, or other act pertaining to property made or done by or against the company within three months of the application date that would be constituted insolvency of an individual or a fraudulent preference is set aside.
- The dismissal of the company's managing director, manager, or any of its directors.
- The recovery of any undue gains made by a managing director, manager, or director during the period of his employment as such, as well as the way in which the proceeds are used, such as transfer to the Investor Education and Protection Fund or payback to identifiable victims.
- The procedure for appointing the company's managing director or management after an

[30] See, for example. Lord Krishna Sugar Mills Ltd v Abnash Kaur, (1974) 44 Comp Cas 210(Del), where the court, having constituted an interim Board of management for a company, held that it had power under S. 402 [now S. 242]to give directions and instructions from time to time so as to resolve the problems of the interim Board. See also, Gokul Chand D Moraka v Company Law Board, (1974) 44 Comp Cas 173 (Del).

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order removing the previous managing director or manager.

- The Tribunal may appoint a number of directors who will be obligated to report to it on such things as the Tribunal may specify.
- The Tribunal may impose costs if it deems it necessary.
- Any other matter for which the Tribunal believes it is appropriate and equitable to make provision, in its opinion.

In cases of irreconcilable differences, the traditional strategy has been to order rival factions to split up in the interests of the corporation and the public financial institutions with significant shares in it. Even a publicly traded company's assets can be partitioned by the Tribunal, and the company's capital can be reduced to that degree. Even if the allotment and purchase of shares by respondents was proven to be an act of oppression against the minority, the Tribunal did not cancel them because it was not in the company's best interests to declare a growth in approved share capital as illegal."[31] If the CLB orders a change to the business's memorandum or articles, the firm will not be able to introduce any provisions that are in conflict with the order. Any claim for damages or compensation for loss of office shall be barred if the order invalidates or alters any agreement with any managerial persons. Furthermore, except with the Tribunal's permission, any managerial personnel whose appointment was so set aside would be unable to serve the firm in any managerial capacity for a period of five years. The government should be informed of an application for leave so that it can have a reasonable opportunity to be heard.

The existence of an arbitration clause has no bearing on the rights granted under these clauses. However, the Tribunal may, at its discretion, refer the subject to arbitration in accordance with the parties' agreement, and only then exercise any powers. The Tribunal cannot issue such a directive in the case of matters that are not covered by the arbitration clause. There are authorities to the effect that, as a judicial authority, the CLB, now the Tribunal, was obligated under Section 8 of the Arbitration and Conciliation Act, 1996 to direct the parties to arbitrate within the framework of the arbitration agreement.[32]

Where valuing the shares of a private company as a going concern when the company has high returns and little or no assets, the court stated that "the value of the company is the capitalized sum representing future profits after making an allowance for risks." The importance of calculating the company's overall worth on the basis of the company as a going concern was

[31] Sanjiv Bhai Kirti Bhai Patel v. BioCare Remedies P.Ltd., (2017) 203CompCas5 (NCLAT).
[32] Twentieth Century Finance Corp Ltd. RFB Latex Ltd, (1999) 97CompCas 636 (CLB). Altek Lammertz Needles Ltd v Lammertz Industry Handel GmbH, (2006)129 Comp Cas 108 (CLB), refusal to refer to arbitration grievances relating to rights and benefits under the Act and articles of association.

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emphasized. As a means of assessing a company's net value, the "maintainable level of profits" takes center stage. Another form of valuing is the asset base. The methodology would differ depending on the characteristics and nature of the company's operations. When two organizations collaborated for decades and subsequently split up, it was decided that each group was entitled to a proportionate share of the business's value.

Where the articles of the corporation provided for an arbitrary or artificial method of valuation, relief can be granted by prescribing a better method of valuation. When a stratagem has been attempted, such as delaying tactics to suppress the value of shares, relief might be obtained by valuing the shares at a point before the suppressing techniques were used. Relief may also be granted if the appraiser is not anticipated to be completely self-sufficient. When the objecting member's 40 percent holding was reduced to 4% due to oppressive techniques, the court ordered that valuation be done on the basis of 40 percent strength.

An order can be issued that is contradictory to the company's articles of organization, and it can also be used to amend contractual agreements provided it is just and equitable in the circumstances. The company in question may also be told to change its name.

The powers remain in effect even after an order has been issued, at least until the orders are carried out in order to put a stop to the issues that have been raised. Section 151CPC was analogous to Regulation 44 of the CLB Regulations, 1991. The CLB was given inherent powers as a result of it. After an order was passed, the Board did not become functus officio.

Interim relief [S. 242(4)]- On the application of any party to an action, the Tribunal may impose any interim order it deems appropriate for controlling the conduct of the company's affairs on such terms and conditions as appear to be just and equitable.

Compromise- The parties can reach an agreement and consent orders can be issued as a result. The parties were held to be bound by the agreement. They were not allowed to contest the legitimacy of the settlement by claiming that the petition was not maintainable in its initial stage when they reopened a disagreement over share valuation. "It was held that the CLB had no power to enforce an agreement reached between the parties in terms of their memorandum of understanding."

Date of valuation- The court has the authority to set the date of valuation, which may or may not coincide with the order made under the provision. It could be the same as the petition's date. The managerial staff whose contract is voided will not be entitled to damages or compensation, nor will they be permitted to serve the company in any managerial role for a period of five years unless the Tribunal grants them permission.

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(B) Class action [S. 245]

Subsection (3) of this section specifies the maximum number of members or depositors who can file a class action complaint with the Tribunal. In sub-section, the grounds for action are given. If they believe the company's management or conduct of operations is harming the company's, its members', or depositors' interests, they can file an application with the Tribunal on behalf of all of them for any of the following orders:

(a) to prevent the company from acting in violation of the articles or memorandum; (b) to prevent the company from violating any provision of the company's memorandum or articles; (c) to declare a resolution altering the memorandum or articles void if it was passed in the absence of material facts or obtained by deception of members or depositors; and (d) to prevent the company and its directors from acting on such resolution; (f) to enjoin the company from acting in contravention of any resolution passed by the members; (g) to claim damages or compensation or demand any other suitable action from or against (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part; (j) the company's auditor, including the company's auditing firm, for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful, or wrongful act or conduct, or (in)any expert, advisor, consultant, or other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful, or wrongful act or conduct or any likely act or conduct on his part; (h) to seek any other remedy as the Tribunal may deem appropriate. When an audit firm is held liable, the firm as well as each partner participating in the improper act are held accountable. [Section 245(2)]

a. Who can apply [S. 245(3)]-

The requisite number of members for an application is as follows:

(a) any member or members holding not less than such percentage of the issued share capital as may be specified, or in the event of a business with a share capital, not less than 100 members or such percentage of the total number of members as may be prescribed, whichever is less. The candidates must have paid their phone bills and other obligations to the company.

(b) not less than one-fifth of the total number of members in the case of a corporation without share capital. The required number of depositors must be at least 100, or such percentage of the total number of depositors as may be prescribed, whichever is lower, or any depositor/depositors to whom the company owes such percentage of the total

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deposits as may be prescribed.

b. Factors to be considered by Tribunal [S. 245(4)]-

In considering the application for relief under the section, the Tribunal has to take into account the following factors in particular:

(a) whether the member or depositor is acting in good faith in making the application; (b) any evidence before the Tribunal as to the involvement of any person other than directors or officers of the company on any of the matters provided in Section 245(1)[33], clauses (a) to (f); (c) whether the cause of action is one that the member or depositor could pursue in his own right rather than through an order under the section; (d) any evidence before the Tribunal as to the views of the member or depositor; ; (e) where the cause of action is an act or omission that has yet to occur and whether it could have been authorized by the company before it occurs or ratified by the company after it occurs; (f) where the cause of action is an act or omission that has already occurred and whether it could be or is likely to be ratified by the company. [Section 245(4)].

Following the admission of an application, the Tribunal must consider the following: (a) on the admission of the application, a public notice should be given to all members or depositors of the class in the manner prescribed; and (b) all similar applications in any jurisdiction should be consolidated into a single application. The main applicant should be chosen by the class members or depositors. If they cannot reach an agreement, the Tribunal will have the authority to select a lead applicant to oversee the proceedings from the applicant's perspective; (c) no two class action applications for the same cause will be allowed; (d) the firm or any other person responsible for the oppressive act must cover the costs or expenditures associated with the class action application.

The company, all members, depositors, and the auditor, including the audit firm, expert, consultant, adviser, or any other person involved with the company, are bound by the Tribunal's order. If the application is deemed frivolous or vexatious, it must be refused for reasons that must be documented in writing. The applicant may be ordered to pay the opposing party costs in the amount of Rs 1,00,000, as specified in the ruling.

Any person or group of people representing the affected people may file an application under this section, as long as they follow the section's conditions. The section does not apply to a financial institution.

Penal clause [Section 245(7)] - Any corporation that fails to comply with a Tribunal ruling

[33] *Supra* note 1.

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issued under this provision is subject to a fine of not less than Rs 5,00,000 but not more than Rs 25,00,000. Every defaulting officer faces a three-year prison sentence and a fine of not less than Rs 25,000 but not more than Rs 1,000,000.

Other parts' application- Officers who commit fraud are subject to penalties under Section 337. When adequate accounts are not kept, Section 338 causes liability. Section 339 makes it illegal to do business in a false manner. Section 340 gives the Tribunal the authority to assess damages against delinquent directors, among other things. Section 341 states that liability under Sections 339 and 340 extends to partners or directors of partnerships or corporations.

Limitation- The limitation period for relief under these sections is three years from the date of the cause of action.[34]

VII. REGISTERED VALUERS

(A) Valuation by registered valuers [S. 247]

It may be essential to value any property, stocks, shares, debentures, securities, or goodwill, as well as any other assets or liabilities of a corporation, for the purposes of the Act. According to the provision, this must be done by a person with the necessary credentials and expertise, who is also registered as a valuer in the manner and under the terms and conditions that may be prescribed. In the absence of the audit committee, the company's Board of Directors should select him. The valuer must: -

(a) make an impartial, true, and fair valuation of any assets that must be valued;

(b) exercise due diligence while performing the functions of valuer;

(c) make the valuation in accordance with any rules that may be prescribed; and

(d) not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during or after valuation.

(B) Penalty provision [S. 247(3)(4)]-

A valuer who violates the section's provisions or the rules imposed under it is subject to a fine of not less than Rs 25,000 but not more than Rs 1,000,000. If he commits the violation with the intent to defraud the firm or its members, he faces a maximum sentence of one year in prison and a fine of not less than Rs 1,00,000 and not more than Rs 5,00,000. As a result of his conviction, he is obligated to repay the firm the money he got, as well as reimburse any damages

[34] Praveen Shankaralayam V. Elan Professional Appliances (P)Ltd, 2016 SCCOnLine NCLT 85: (2016)199 Comp Cas 528.

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incurred by the company or any other person as a result of his report's false or deceptive assertions of particulars.

The Tribunal stated in **Vadilal Chemicals Ltd v Vortex Ice Cream**[35] that an independent observer designated for the sale of assets has no authority of adjudication on any disputed matters that may arise during the sale process.

VIII. CONCLUSION

Large corporations and companies around the world have recently gone out of business, which has caused these entities to carefully consider their actions regarding company affairs. The use of class action lawsuits to hold management personnel accountable for their mismanagement and oppressive actions has increased accountability. According to the law regarding oppression and mismanagement, the individual shareholder of the company and the minority shareholders have the authority to take legal action against the unjustified abuse of power and authority by the managerial staff. A person has the right to apply to the tribunal and inform them of any key personnel's mistreatment of him or another shareholder of the company, as well as their oppression and mismanagement.

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[35] (2017) 2013 Comp Cas 103 (NCLT).

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