

Consulting | Oppression and Mismanagement – meaning and maintainability of the petition

Purpose of the provisions: The provisions relating to prevention of Oppression and Mismanagement aim to strike a balance between the interest of the minority shareholders and the effective control of the company. In a corporate entity, generally, the rule of the 'majority' prevails, however in certain circumstances, it overshadows the minority rights and may prejudice the public interest or oppress a certain class of shareholders, who are not in a controlling position. To curb such oppressive practices, the Companies Act, 2013 (the Act) has put in place sections 241 to 246 for safeguarding minority rights. They ensure that the interests of a company are protected and that no shareholder or member of the company faces undue bias or prejudice.

Oppression: 'Oppression' though not specifically defined under the Act, the court of law defines it as conduct that involves a visible departure from the standards of fair dealing in the affairs of the company and violation of conditions that require morality with regards to the right of shareholders.

Mismanagement: It means that the company's operations are being managed in a manner that is prejudicial to the public interest or the company's interests. Mismanagement refers to extreme negligence and cannot be interpreted as simple corporate misconduct. It is the process or practice of managing operations in an inadequate and dishonest manner.

Application to National Company Law Tribunal (NCLT) for relief in cases of oppression and mismanagement (section 241)

Any member of a company can apply to the NCLT / NCLAT under the following circumstances:

(a) the affairs of the company have been or are being conducted in a manner prejudicial to:

- a. public interest; or
- b. oppressive to him or any other member; or
- c. in a manner prejudicial to the interests of the company;

or

(b) the material change has taken place in the management or control of the company, whether by an alteration in the board of directors/managers/in the ownership of the company's shares/in its membership/in any other manner due to which, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members.

Right to apply under section 241 (section 244)

The following members of a company shall have the right to apply under section 241, viz.

1. In the case of a company having a share capital,

- a. not less than 100 members of the company or not less than 1/10th of the total number of its members, whichever is less, or
- b. any member or members holding not less than 1/10th of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

2. In the case of a company not having a share capital, not less than 1/5th of the total number of its members.

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The NCLT/NCLAT may, on an application made to it, waive all or any of the requirements specified above so as to enable the members to still apply under section 241, even if the above threshold is not maintained. This is however based on the merits of the case.

Landmark judgement on maintainability of petition under section 241: Tata Sons case

The petitioners viz., Cyrus Investments Pvt. Ltd. and Sterling Investment Corporation Pvt. Ltd. filed a petition against Tata Sons Pvt. Ltd. for oppression and mismanagement, on the reason that the BOD of Tata Sons removed Cyrus Mistry as Tata Sons' 'Executive Chairman.' The contention was that such removal was oppressive and prejudicial to minority members of Tata Sons (holding 18.37% of the total equity share capital.) However, the NCLT observed that the petitioner held only 2.7% of the 'total share capital' i.e., equity and preference share capital, taken together. Hence the petition was dismissed by NCLT.

However, the NCLAT re-instated the appeal considering the merits of the case, on the following basis, chronologically.

- The petitioner must be the member of the company in question;
- The petition u/s 241 must pertain to oppression and mismanagement;
- The allegations raised in the petition must not be earlier raised by any other member and/or had stood decided by the adjudicating authority;
- There must be an exceptional circumstance made out to grant waiver, so as to enable the members to file application u/s 241.

Thus, in this case it was observed that, even though the petition would have been dismissed on the disqualification of the threshold, it was still allowed to be made on the other merits of the case, mentioned above.

Weblink https://main.sci.gov.in/supremecourt/2020/212/212_2020_31_1503_27229_Judgment_26-Mar-2021.pdf

Therefore

The Act has provided several vital measures to safeguard the interests of the 'minority' and avoid oppressive or prejudicial conduct, however, the evil of oppression and mismanagement, if checked in a timely manner can prevent the harm to interest of the company as well as the public at large.