
ROLE OF NATIONAL COMPANY LAW TRIBUNAL (NCLT) IN RESOLVING OPPRESSION AND MISMANAGEMENT UNDER THE COMPANIES ACT, 2013

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ABSTRACT

In this paper, the author will examine how the National Company Law Tribunal (NCLT) could help resolve the issue of oppression and mismanagement by Companies Act, 2013. The NCLT is an expert quasi-judicial institution that has the authority to adjudicate corporate conflicts effectively and safeguard the interests of the stakeholders, especially those of the minority shareholders. The Act in section 241 and 242 offers solutions in the event of prejudice, oppression or actions that are harmful to the company. The paper demonstrates the difference between oppression and mismanagement and how the Tribunal grants itself broad discretionary authority to control affairs of companies, expel directors, and promote good governance. The active nature of the NCLT in avoiding the misuse of power is evidenced by important case laws such as those on joint venture and shareholder rights. Although it has been effective in enhancing corporate governance, some challenges have been experienced which include delays and backlog. The conclusion made in the paper is that institutional efficiency further reinforces the role of NCLT in transparency and accountability of corporate management.

Keywords: Oppression, Mismanagement, National Company Law Tribunal (NCLT), Corporate, Governance.

INTRODUCTION

The corporate world has witnessed tremendous growth, and with this comes the need to have a concrete way of resolving any issues that come up along the way. And this brings onto the stage the National Company Law Tribunal (NCLT) and its appellate body, the NCLAT, to provide efficient and easily accessible justice and ease of resolving cases. And the aim is crystal clear: to resolve corporate issues in an efficient manner¹. It has been observed since the formation of the NCLT and NCLAT, a wave of cases, from mergers and amalgamations to oppression, mismanagement, winding up, revival of distressed companies, and various provisions of the Companies Act, 2013, has been dealt with satisfactorily at various benches. What is striking is that a substantial amount of eighty thousand crores has been recovered from the IBC cases. In the Companies Act of 2013, the NCLT has been declared the adjudicating authority for corporate matters. Additionally, there has been an extension of some of the powers of the NCLT with this Act².

The Act offers a range of both preventive and curative measures and is a promising step that seeks to protect minority shareholders from unethical business conduct. It protects existing measures and increases the power of the judiciary to safeguard stakeholder interests. The Tribunal is empowered to stay any oppression and mismanagement and to supervise the conduct of a company's affairs.

OPPRESSION

The word Oppression or Mismanagement arises when any member of a company complains the following, then such member may apply to the Tribunal:

- The affairs of the company have been or is being conducted in a manner
 - prejudicial to public interest (OR)
 - prejudicial or oppressive to him or any other member (OR)
 - Prejudicial to the interests of the company (OR)

¹ Sumant Batra, *Corporate Insolvency 'Law and Practice'*, pp. 123, Eastern book Publication Ltd., First Edition, 2017

² 'NCLT recovers eighty thousand crores from IBC matters', accessed on 11th April, 2019, <https://cfo.economictimes.indiatimes.com/news/nclt-helps-recover>.

- The material changes not being a change brought about by or the interests of any creditors, including debenture holders/any class of shareholders/any class of shareholders of the company – has taken place in the management/control of the company –
 - whether by an alteration in the Board of Directors/Manager/In the ownership of the company's shares (OR)
 - If no share capital in its membership (OR)
 - In any other manner whatsoever o And because of this reason it is likely that the affairs of the company will be conducted in a manner prejudicial to the interests/its members/any class of members;

MISMANAGEMENT

It's the running of a company in a bad way, through incompetence, ineptitude, or even dishonesty. As discussed previously, "mismanagement" is not defined under the Companies Act. Judges decide upon the facts of the particular case whether there has been oppression or mismanagement of minority shareholders.

Common examples include:

- i. Interfering with the ability of directors to carry out their work
- ii. Infringement of statutory provisions
- iii. A breach of the Memorandum and Articles of Association.
- iv. Misappropriation of funds

A company is a legal entity independent of its owners, with the balance of management and ownership being held in a very delicate manner. Broadly, it's a group of people who come together or contribute money for a common purpose and form a distinct legal entity. The Companies Act aims to promote proper conduct of a company's affairs in the public interest and uphold the country's public image. The provision dealing with oppression and mismanagement under Companies Act 2013 is Section 241, and its corresponding sections under the erstwhile Companies Act 1956 are Sections 397 and 398.

Democracy is an integral part of Indian culture, and it is also reflected in corporations: corporations, being legal citizens, possess a power that is democratic by itself. However, as is evident from corporate democracy itself, the deciding factor is not how many constituents there are, but how many shares they hold. The rule of majority is applicable here. Decisions with respect to various matters are made either by a majority or a three-fourths majority. Once a decision is made by a majority, it is binding on all. In most cases, the courts refuse to interfere to protect minority interests which come under a majority decision. However, there is an exception: preventing oppression and mismanagement.

In short, this section can be invoked in situations of oppression faced by the minority members of a company or if mismanagement impacts the company interests. If a director of a company does not happen to be a shareholder but faces oppression, he would not be eligible for relief under this section, unless he simultaneously holds shares in the company. This section further outlines the circumstances in which the application for the relief of oppression and mismanagement before the tribunal can be made.

INSTANCES OF MISMANAGEMENT

One such case of mismanagement under Section 398 is presented in the case of *Rajahmundry Electric Corporation v. Nageshwara Rao*³, where the shareholders instituted the case against the company on the ground that it had mismanaged the affairs of the company by the directors. From the case, the court declared that the vice chairman of the company had mismanaged the affairs of the company by draining funds on personal use, thus mismanaging the company's funds. Therefore, it gave the order that two administrators were to run the company for six months, vesting them with all the powers of the directorate.

Another notable instance: when the managing directors remained in office after the end of their terms, without convening a meeting to reappoint those directors before seeking relief from the Central Government under Sec 269, their continuance was construed as mismanagement in *Sishu Ranjan v. Bholanath Paper House*⁴.

Where unauthorized persons handled the bank account. In *Kuldip Singh Dhillon v. Paragon*

³ *Rajahmundry Electric Supply Corp. Ltd. v. A. Nageshwara Rao*, A.I.R. 1956 S.C. 213 (India).

⁴ *Sishu Ranjan Das v. Bholanath Paper House*, A.I.R. 1967 Cal. 194 (India).

Utility Financers Ltd⁵., the certified copy of the resolution letter was sent to the bank allowing certain persons to deal with the account. The minutes recorded showed that there were resolutions on that date different from what was sent.

Sale of the assets for an unheard-of price without compliance with the ACT: An estate belonging to a tea and rubber plantation company was sold at a lower price to another tea plantation company without obtaining the requisite approval from the shareholders under section 293(1) of the ACT and without supplying adequate information to the shareholders as incorporated in section 173. Possession was handed over without the holding of a general meeting and in addition to accepting payment in installments. This was deemed to be the mismanagement of the company's affairs and set aside the sale. The directors along with the buyers were to explain the income generated by the estate from the delivery of the possession to the actual return to the company.

Violation of Incorporation Documents and Statutory Provisions: offering shares to new members without offering them first to existing members as provided in the articles of incorporation, holding meetings without notice to members, offering shares other than for cash consideration where there are no corresponding assets, and incurring unnecessary rent by changing the office location. (*Akbarali Kalveri v. Konkan Chemicals Ltd*⁶.)

Other examples include gross negligence in regard to the company's interests, such as selling its only asset and then ignoring the company's affairs, breaches of conditions of the memorandum, and so forth.

A well-known case of fund mismanagement and fraud in the financial statement of companies is the case of the Satyam scandal, wherein Ramalinga Raju, the Chairman of Satyam Computer Services, confessed in a letter addressed to the Board of India's biggest corporate fraud, totaling Rs. 7,000 crores.

McDonald's Case⁷: NCLT's Stand on Oppression

Of late, McDonald's India has been in the news over the closure of 43 of its 55 Delhi outlets.

⁵ *Kuldip Singh Dhillon v. Paragon Utility Financers (P) Ltd.*, (1992) 1 S.C.C. 713 (India).

⁶ *Akbarali A. Kalverti v. Konkan Chemicals Pvt. Ltd.*, (1997) 10 S.C.C. 599 (India).

⁷ *McDonald's Corp. v. Steel*, [1997] EWHC (QB) (Eng.) (commonly known as the "McLibel" case).

The trigger is the continuing dispute between Mr. Vikram Bakshi and McDonald's India Private Limited (MIPL). The case is a significant one as it describes the discretion NCLT can exercise in matters related to no oppression and mismanagement when the Joint Venture Agreement exists. In fact, the NCLT clarified that having a JVA and an arbitration clause does not injure the intervention of the tribunal; the oppression and mismanagement schema permits the Court to take into account the best interests of the company, shareholders, and, in this case, the public at large.

Vikram Bakshi was the MD of Connaught Plaza Restaurants Private Limited. CPRL was incorporated pursuant to a Joint Venture Agreement between Bakshi and MIPL in 1995, wherein both parties had an equal share of 50% each. The JVA aimed at establishing McDonald's franchises in North India, obtaining all necessary approvals, and also at conducting its operations there. Due to rising tension between them over the JVA, Bakshi filed a complaint before the NCLT on grounds of oppression and mismanagement by MIPL. On 13 July 2017, the NCLT gave its order for Bakshi on these points, whereby oppression was proved and the appellant was reinstated as MD, and Justice G.S. Singhvi as Administrator of the company was appointed, with voting rights at Board Meetings.

Facts: The Memorandum and Articles of Association would govern CPRL. Everybody had realized that over the course of 25 years, under which the JV agreement would operate, only after a decade or so would profits accrue because a brand of fast food would still be an indoctrinating phase in India. The agreement would also dawn on parties that the Board would comprise four directors: two would be appointed by Mr. Bakshi alias "Partner" and two would be appointed by McDonald's.

At the heart of the controversy is the 7(e) provision of the JVA which states that the "Board shall nominate and elect the 'Partner' as the sole managing director for a period of two years." However, re-election is dependent on three circumstances: "that the 'Partner' resides in the NCR, owns at least 50% of the shares of the Joint Venture Company, and discharge the duties faithfully and without any breach of the terms of the JVA."

In Clause 32 of the JVA, it has been mentioned that in case the service of Mr. Bakshi is terminated or he no longer acts as the Managing Director, MIPL has the right to acquire his shares. In his petition, Mr. Bakshi has alleged that in the year 2007-08, due to the emergence of profits, MIPL started pressuring him to sell his shares for an amount of \$5 million. Mr.

Bakshi countered this offer by suggesting to MIPL that, in accordance with Clause 26 of the JVA, which deals with fair market valuation, he should instead be offered \$100 million for selling his shares; however, this suggestion of Mr. Bakshi was turned down by MIPL without any proper justification. Similarly, this has happened in the year 2011 when there has been a demand on Mr. Bakshi by the West and South Franchise Partners to acquire his shares.

Thereafter, in 2013, the board of MIPL decided to end Mr. Bakshi's term as the Managing Director of CPRL and passed a resolution saying that they were ready for any litigation that might follow this action. In August 2013, Mr. Bakshi received a Note regarding the reasons for not reappointing him as the Managing Director in a CPRL Board Meeting. This was due to reasons of diversion of funds, mismanagement, and creation of pledge on his shares. Mr. Bakshi was not given an opportunity to defend himself and turned to the Company Law Board ("CLB"). MIPL claimed that the CLB would not have jurisdiction over the matter as there was a private contract with an arbitration clause. However, in 2014, the CLB dismissed the same by saying that this was an "ambush operation," that is, to simply usurp Mr. Bakshi's shares without following fair market valuation. Later in 2013, MIPL attempted to exercise their call option again to buy Mr. Bakshi's shares.

Arguments: Mr. Bakshi submitted that such attempts of arm twisting him into selling his shares are oppressive and violative of Section 397, 398, and 402 of the Companies Act, 1956. Further, MIPL submitted that the NCLT or National Company Law Appellate Tribunal ("NCLAT") would not have jurisdiction to hear this case as it was a contractual dispute and not one arising from the violation of the Companies Act; and that only the arbitration clause of the JVA would apply. They also submitted that the JVA was not incorporated into the AoA and hence the enforcement of a contractual right could not fall within the ambit of Section 397[1] of the Companies Act, 1956. MIPL also submitted that Mr. Bakshi approaching the CLB for passing orders for his continuation as the Managing Director would lead to creation of fresh terms of the Agreement and that no Court/Tribunal can grant such specific performance of private contracts.

NCLT's Decision: The NCLT decided in favour of Mr. Bakshi. In summary: – JVA was incorporated into the AoA, as the AoA includes all the supplementary agreements and modifications made to the JVA and also directly refers to the JVA (For example, in matters of appointment of the Managing Director under Article 35 of the AoA).

Although Clause 7(e) of the JVA mentioned the conditions that must be satisfied for the reappointment of the Director, the NCLT held that since the Note mentioned reasons to not reappoint Mr. Bakshi, he was financially rewarded and appreciated by MIPL, which revealed that the conditions of Clause 7(e) were unnecessary in the current controversy. Moreover, the NCLT relied on the Audit Reports of the CPRL and held that the allegations of diversion of funds and debts were untrue. The NCLT held that such activities in totality are representative of oppression under Section 397, 398, and 402 of the Companies Act, 1956, and are based on extraneous considerations, to procure Mr. Bakshi's shares.

The NCLT also held that such allegations were made only to remove Mr. Bakshi as the Managing Director and to exercise a call option to buy Mr. Bakshi's shares. Therefore, the NCLT restored Mr. Bakshi as the Managing Director and also appointed Justice Sighvi as an Administrator with a right to vote in Board Meetings by holding that under Section 402 of the Companies Act, 1956, the Tribunal is authorized to pass orders for the regulation of the company's conduct of affairs.

Analysis: Although the judgment of the NCLT in the present case explores the facts of the dispute, there is a requirement to explain the basis of jurisdiction of the Tribunal in cases of oppression based on the extent of a personal contract (in the present case, the JVA). The dispute arising out of the facts is whether private contracts fall outside the ambit of Section 397 of the Companies Act, 1956. The judgment of the NCLT in the present case reiterated that oppression under Section 397 gives rise to the jurisdiction of the CLB (now NCLT) under Section 402 of the Companies Act, 1956.

In the present case, the NCLT held that since the provisions of the JVA had, for all practical purposes, been incorporated into the AoA, any malafide action or act of oppression would amount to an act of oppression against the shareholder (in the present case, Mr. Bakshi). Further, such acts of oppression are also against the best interests of the company, thereby giving the NCLT the right to pass an order, although the dispute was arising out of a private contract. In the present case, the NCLT also referred to the interests of the public, particularly the employees who would lose their jobs because of the present dispute. Therefore, this translation of a private contractual dispute into a company law dispute is done while keeping in mind the interests of the shareholders and the company.

The incorporation of the JVA into the AoA also throws light on the joint intentions of the

parties, their fiduciary obligations towards each other, and is an evidentiary document of their joint good faith. It is in this background that the NCLT has held that although the JVA is a private contract, the actions of MIPL amount to oppression under the Companies Act, 1956 because of the incorporation of the same into the AoA. Moreover, both parties have referred to the AoA in the past (such as Article 35 – Board to appoint a director in furtherance of Clause 7 of the JVA) and it would be unjust to subsequently adopt a different construction. Therefore, the NCLT held that Clause 7 of the JVA, which provides that the “Partner” (Mr. Bakshi) must be reappointed every two years, is incorporated into Article 35 of the AoA and any act of oppression to affect the same shall fall within the jurisdiction of this Tribunal.

The key lesson from this NCLT order is based on the understanding that Section 398,398 and 402 of the Companies Act, 1956 constitutes a self-contained code for regulating the management of the company in order to ensure that there is no damage to the interests of the company or any of its shareholders. This is reflected in the wide powers conferred on the CLB (now the NCLT), resulting in the creation of its jurisdiction, even in the presence of a separate JVA (with an arbitration clause)

DIFFERENCE BETWEEN THE COMPANIES ACT 1956 AND COMPANIES ACT 2013

Sl.NO	COMPANIES ACT,1956	COMPANIES ACT,2013
1.	Section 397 to 410 dealt with Oppression and Mismanagement	Section 241 to 246 deals with Oppression and Mismanagement
2.	Member could only complain	Member can apply to tribunal to seek relief
3.	No specific provision to apply to tribunal	Section 241(2) of the act enables the central government if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to

		public interest, it may apply to the tribunal
4.	The Central Government had the power to waive the number of members who had the right to apply	The tribunal has such power
5.	The Central Government has the power to waive the threshold limit on just and equitable ground	The tribunal has such power

FORMATION AND ESTABLISHMENT OF NATIONAL COMPANY LAW TRIBUNAL (NCLT)

The idea of a forming a tribunal to handle company matters germinated with the Companies Act of 1956, through the 2002 Second Amendment Act⁸. That amendment transferred several important functions from High Courts—namely, merger and amalgamation matters, and wind-up proceedings—to a new tribunal. It also meant sending the Company Law Board (CLB), the Board for Industrial and Financial Reconstruction (BIFR), and the Appellate Authority of Industrial and Financial Reconstruction (AAIFR) into oblivion, transferring their roles to the NCLT. In other words, the NCLT was expected to integrate the roles performed by the High Courts, CLB, BIFR, and AAIFR.

The constitution of the tribunal in part drew from the Eradi Committee, headed by Justice V. Balakrishnan Eradi, a retired Supreme Court judge⁹. The committee was tasked with examining current laws, bringing them into line with contemporary corporate governance and insolvency practices, as well as proposing procedural reforms for insolvency issues.

When the Companies Act, 2013 came into force, it renovated and widened the concept of tribunals, giving greater powers to tribunals. The NCLT and its appellate counterpart, the NCLAT, were formed on June 1, 2016. The NCLT has now been vested with the status of the adjudicating authority for both the Companies Act, 2013, and the Insolvency and Bankruptcy

⁸ Companies Act, No. 1 of 1956 (India), amended by Companies (Second Amendment) Act, No. 11 of 2003.

⁹ Report of the High-Level Committee on law relating to Insolvency and Winding Up of Companies (Committee chaired by Shri Justice V. Balakrishnan Eradi or the Eradi Committee, 2000.

Code, 2016. More lately, the NCLAT was entrusted with dealing with matters arising out of the Competition Act, 2002, subsequent to the amendment in 2017¹⁰.

The constitutional validity of NCLT was debated at landmark judgments such as *Madras Bar Association v. Union of India*¹¹ and *R. Gandhi v. Union of India*¹², where it explained very well the difference between tribunals and courts. In the case of the Madras Bar Association, the Supreme Court held NCLT and NCLAT to be constitutionally valid and again brought out the requirement of setting up tribunals.

The National Company Law Tribunal (NCLT), which is sometimes shortened to the Tribunal, is the quasi-judicial government body established under the Companies Act, 2013 to settle corporate civil cases that fall under the Companies Act. It operates using the power and process of a court and is guided by a need to be objective in seeking the truth, by the need to apply “natural justice,” and to be crystal clear in what it orders to be done. It provides remedies for corporate conflicts, but the rulings can lead to the imposition of penalties or costs and can impact the legal rights, obligations, and privileges of some parties.

The NCLT falls under the Ministry of Corporate Affairs of the Central Government and aims to settle any disputes concerning companies in a relatively short period and at a lower cost. Decisions made by the NCLT can be appealed to the National Company Law Appellate Tribunal. NCLAT is an appellate authority for decisions made by the NCLT. The decisions of the NCLT can be further appealed to the Supreme Court.

NCLT or ‘Tribunal’ is the quasi-judicial authority established by the ‘Section 408¹³’ of the ‘Companies Act, 2013’, which deals with the civil disputes arising from the ‘Companies Act, 2013’. NCLT is an entity that possesses powers and procedures similar to those granted in the ‘court of law’. NCLT is bound to make an objective determination, make decisions in accordance with the ‘principles of natural justice’, and arrive at conclusions from these decisions in the form of orders. Moreover, these orders are for the purpose of ‘remedy’ for the ‘corporate disputes’, they also impose ‘penalties’ and ‘costs’ and affect the ‘legal rights’, ‘duties’, and ‘privileges’ of certain ‘parties. The ‘National Company Law Tribunal’ has been

¹⁰ ‘The NCLT and COMPAT’, accessed on 15th April, 2019 <https://www.business-standard.com/article/economy-policy/govt-to-scrap-8-appellate...>

¹¹ *R. Gandhi v. Union of India* (2004) 120 Comp Cas 510 (Madras)

¹² *Madras Bar Association v Union of India* (2015) 126 CLA 111 (SC)

¹³ Companies Act, No. 18 of 2013, Section 408 (India).

established with the 'Central Government Authority', 'Ministry of Corporate Affairs', with the 'view' of 'settling down the companies disputes within a limited frame of time and which is also estimated to be of less expensive while compared to other 'courts. The 'judgement' framed by the 'National Company Law Tribunal' can be 'appealed' in the 'National Company Law Appellate Tribunal'. The 'NCLAT' is an 'appellate authority' that has the 'powers' to 'appeal' the 'decisions' made by the 'National Company Law Tribunal', and the 'decisions' made by the 'appellate tribunal' can be 'appealed' by the 'Supreme Court'

SCOPE AND EXTEND OF POWERS OF THE TRIBUNAL IN CASES OF OPPRESSION AND MISMANAGEMENT

Under Section 242, the Tribunal has extensive powers to bring an end to the oppression and mismanagement. It has extensive discretion to make orders on these matters. The reliefs that the Tribunal may grant include stopping the entire board of directors, removing the auditors, or protecting government appointees from being taken action against by the courts, or entering strategic partnerships by allowing preferential allotment without the need to seek shareholder approval, among other powers. Section 242 gives the Tribunal the power to grant any order it deems fit to end the oppression or mismanagement. The powers include:

1. Directions regarding how the affairs of the company are to be conducted thereafter.
2. Any provisions regulating the purchase of shares or interests by other members, including the company itself.
3. Where the company purchases its own shares as above, this will then have the effect of reducing share capital.
4. Restrictions on the issue or transfer of the company's shares.
5. The tribunal may by order terminate, vary or alter any agreement entered into between the company and its managing director if it thinks just and equitable.
6. The tribunal may also terminate, cancel, or alter any arrangement between the company and another person, so far as may relate to the share of such a party in the profits of the business or to the share of such a person in the assets in the event of the winding up of the company after giving a fair chance of being heard to that party with his consent.

7. Procedure for removal of Managing Director, a manager, and any director of the company.
8. Repayment of any gains made by the Managing Director, Manager or a Director to the company within three years from the date of his appointment, details of which shall be given along with utilization thereof - whether transferred to IEPF, repayments to identifiable victims or others, etc.
9. How the appointment of the Managing Director or Manager—or the company—will take place following an order removing the appointee currently in office—and which in other words appoints someone else in his place.
10. The appointment of such number of directors which is deemed fit and proper to report back to the Tribunal with such directions as ordered.
11. The Tribunal may allow costs as it sees fit.
12. Any other matter which the Tribunal considers fair and reasonable.
13. The company shall file a certified copy of the order of Tribunal with the Registrar within thirty days.
14. The Tribunal may make an interim order if it thinks such interim order is so required to be made for enabling a just and fair regulation of the management or the business affairs¹⁴.

In other words, the provision empowers the tribunal to make such orders as may deem fit considering the matter at hand. It retains some of the provisions of the predecessor legislation, but it also encompasses some updated ones. The tribunal has the powers to deliver complete justice between the parties or pass an order to enable the functioning of the company smoothly. According to section 242(4) of the Act, if an interim order is needed, it may be passed where it is necessary for conducting the business of a company in a fair and equitable manner. This was also held in *PPN Power Generating Company v PPN Mauritius Company*¹⁵. For the purpose of deciding the issue, the tribunal may when deemed necessary pass orders essential

¹⁴ Companies Act, No. 18 of 2013, Section 242 (India).

¹⁵ *PPN Power Generating Company v PPN Mauritius Company* (2006) 129 Comp Cas 849.

to deliver proper verdict. Several crucial cases have demonstrated the nature and scope of those which are as follows- *Bennet Coleman v Union of India*¹⁶, In this case, the scope and ambit of the powers exercised by the tribunal were discussed in proper detail. These powers are invoked notwithstanding any arbitration clause, and the specified powers safeguard that the reach of the tribunal concerning its actions cannot easily be challenged in any higher forum.

PROCEDURAL ASPECTS AS PER NCLT RULES, 2016:

- **Right to file under section 245:** An application for filing under section 245(1) and section 245(3) is required to be made on Form NCLT-9, which is accompanied by the filing fee of Rs. 5,000.
- **Conducting a class action:** In evaluating whether an application is admissible, the Tribunal may:
 - Whether the class is large enough to require impractical individual joinder of each member, thus making a class action appropriate
 - Whether there are issues of law or fact common to the class.
 - Whether the claims or defences of the representative parties are typical of those of the class
 - Whether representative parties will represent the class's interest adequately and in a just manner
- **Opt-out rule:** A party who has been part of a class action suit provided under Section 245 has the right to opt out of the case at any point of time after the class action suit has been instituted, subject to the permission of the tribunal, as per the form NCLT-1.
- **Notice publication:** The Tribunal gives a public notice to all the class members via Form NCLT-13 by:
 - Publishing within 7 days from the admission of the application in the local

¹⁶ *Bennet Coleman and Co. v Union of India* (1977) 47 Comp Cas 92 (Bom)

language of that state and an English newspaper issued from that state.

- Making the company publish the notice on its website, aside from publication in the newspaper.
- **Penalties for violation:**
 - Any company not abiding by the order of the Tribunal can face a fine of no less than Rs 5 Lakhs, going up to Rs 25 Lakhs.
 - Any company officer in default may be imprisoned for a term up to 3 years and fined between Rs. 25,000/- to Rs. 1 Lakh.

APPLICABILITY OF THE LIMITATION ACT IN OPPRESSION AND MISMANAGEMENT

Before filing any case at the NCLT, it has to be ensured that the case is within the time period as prescribed under the limitation Act, 1963¹⁷ and the first cause of action has been arising within a period of three years from the date of filing the case at the NCLT. If any case is beyond the limitation period, then the bench may reject the same on the ground of time barred under the limitation Act, 1963. The case should not be barred under the limitation Act, 1963¹⁸.

CONSIDERATIONS FOR NCLT

NCLT considers some major issues while dealing with cases related to Oppression and Mismanagement. The tribunal understands whether the members are acting in good faith while making an application to the tribunal. The tribunal also sees whether there are any other individuals, apart from the directors and officers, who are dealing with the matters specified while dealing with the cases related to Oppression and Mismanagement. While considering the opinion of the depositor and the members of the company, the tribunal also sees whether there are any personal interests in the matter being dealt with. The tribunal also sees whether the cause of action involves an act or omission that has yet to occur, whether the act or omission could, in the circumstances, be authorized by the company before it occurs, or whether it could

¹⁷ Limitation Act, No. 36 of 1963 (India).

¹⁸ Nirakar Das v. Durgapur Bio Garden Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 200 of 2020 (Nat'l Co. L. App. Trib. Aug. 7, 2020) (India).

be rectified by the company after it occurs. The tribunal also sees whether there are any cases for two class action applications for the same cause of action. Moreover, the tribunal also sees the limitation period while dealing with cases related to Oppression and Mismanagement¹⁹.

THE REMEDY FOR OPPRESSION AND MISMANAGEMENT UNDER COMPANIES ACT, 2013

The term 'Oppression' means the act or an instance of unjustly exercising authority or power with an intention to abuse discretionary authority with an improper motive. The provision of this term is read under section 241(1)(a) of the Companies Act, 2013. The term has been discussed in various Supreme Court Cases in relation to the previous section 397 of the Companies Act, 1956. In the case of *V.S Krishnan v Westfort HI-Tech Hospital Ltd. and Ors*²⁰., and *'Needle Industries Ltd. v Needle Industries Newey Holding Ltd. and Ors*²¹. The term 'Oppression' has been made out where the conduct of the authority is harsh, burdensome, and wrongful, and the action is against probity and good conduct. The term has been made different in the new Companies Act, 2013 in comparison to Section 397 of the Companies Act, 1956. According to Section 241(1) of the Companies Act, 2013 the term 'have been' has been used instead of 'had' and another term has been added which is 'prejudicial to members.' The landmark case of *Shanti Prasad Jain v Kalinga Tubes Ltd*²². has been tested under the new legislation. The part of the judgement has still been made applicable which states 'Continuous acts on the part of the majority shareholders, continuing up to the date of petition, will be the ground for the oppression.'

The circumstances and consequences giving rise to mismanagement have been defined under section 241(1)(b) of the Companies Act, 2013²³. In order for the petition to be successful under this section, it must be shown that the affairs of the company are being conducted in the manner prejudicial to the interest of the company or public interest, or that, or by any change in the manner and control over the company and it is likely that the affairs of the company will be conducted in that manner. Under the new law, the test of 'winding-up on just and equitable grounds is applicable to mismanagement under the Companies Act, 2013²⁴. This was earlier a

¹⁹ U. Gayathri, 'A study of the Importance of National Company law tribunal in India', *International Journal of Pure and Applied Mathematics*, pp. 41- 55 Volume 120 No. 5, 2018.

²⁰ *V.S Krishnan v Westfort HI-Tech Hospital Ltd. and Ors* 2(2008) CLT 823

²¹ *Needle Industries Ltd. v Needle Industries Newey Holding Ltd. and Ors* (1981) 3SC 212.

²² *Shanti Prasad Jain v Kalinga Tubes* AIR 1965 SC 1535

²³ Companies Act, No. 18 of 2013, Section 241(1)(b) (India).

²⁴ Companies Act, No. 18 of 2013, Section 242 (India).

test considered for oppression which was not an essential test.

The aggrieved Shareholder can make an application under section 241 and 242 of the Companies Act for relief. An application can be made to the NCLT if the affairs are conducted in a manner prejudicial to the interest of the public or the company or it is otherwise oppressive to the members. Likewise, an application can also be made if there is a material change in the management and control of the company which makes it likely that the affairs of the company will be conducted in a manner prejudicial to its interest or its members or any class of members.

CASE ANALYSIS

1. SAS Hospitality Pvt. Ltd. v Surya Constructions Pvt. Ltd CS (COMM) 1496/2016²⁵.

It is a single judgment by the Delhi High Court. SAS Hospitals seeks the defendant's share allotment to be set aside, seeking a permanent injunction, contending that the defendant illegally allotted shares. The defendant, in defense, referred the court to the notification issued by the NCLT, stating that the court lacked jurisdiction in the case, as contended by the defendant under Sections 430 and 434(1) of the Companies Act, 2013. The plaintiff's counsel also argued that the court indeed has jurisdiction under Section 62.

The main issue examined was how the Companies Act, 2013, intersects with the National Company Law Tribunal (NCLT). The key point to note is that NCLT has vast powers to regulate and control how companies are managed. These broad powers are to regulate a company's affairs, as provided under 242(2)(a), among other specific regulatory powers. NCLT is a tribunal with exclusive authority to regulate company affairs, which includes powers beyond those of the Company Law Board.

The Delhi High Court has furthermore held that the NCLT has the authority to deal with questions of the allocation of share capital, alteration thereto, and rectification of the register of members thereof, and that civil suits are not maintainable in the High Court in this respect. Citing the 2013 Act, the High Court highlighted the fact that the NCLT is not only being entrusted with the role of the "company court" under the new regime but is further additionally empowered by the inherent powers of the High Court, including contempt powers. Given the fact that the NCLT has all the trappings of a civil court, the provisions of Section 430 are clearly

²⁵ SAS Hospitality Pvt. Ltd. v Surya Constructions Pvt. Ltd CS (COMM) 1496/2016

attracted. Moreover, the High Court further rejected the plaintiff's claim on an apex court ruling that contends the rectification of the register of the company must be by a civil court.

The case involves allegations of a breach of the conditions envisaged in Section 62 of the 2013 Act. Failure of the company to satisfy any of the conditions provided for in Section 62 amounts to mismanagement since, under Section 241, the conduct of the company must be "prejudicial" to a member or the company. Section 242 provides jurisdiction in this case for the Tribunal. Under Section 242(2), the NCLT has the jurisdiction and power to pass any order it deems necessary, including orders for the regulation of the company's running in the future. Such jurisdiction and powers are quite sweeping and far exceed the powers of the Civil Court. Even if the reliefs sought by the plaintiff are allowed after a trial, the power of passing orders governing the running of the company does not lie with the Civil Court but with the NCLT, since jurisdiction for the matter rests with the NCLT exclusively.

2. Vikram Bakshi v Connaught Plaza Restaurants Limited (2017) 140 CLA 142 (NCLT, Delhi)²⁶

In the case of *Vikram Bakshi v Connaught Plaza Restaurants Limited*, 2017, 140 CLA 142 (NCLT, Delhi), we find the NCLT amplifying the explanation of the meaning of oppression and mismanagement in India. In the case, *Vikram Bakshi and McDonald's India Private Limited* entered into a joint venture, wherein each of them would hold a 50% stake in *Connaught Plaza Restaurants Limited*, which was conferred the title of the primary franchise of *McDonald's* for 25 years and tasked with the responsibility of handling all the *McDonald's* franchises located in North India. In Clause 32 of the agreement, it was agreed that in the event *Bakshi* was not the MD, *McDonald's* would be free to purchase the shares from *Bakshi* at their fair market value, as calculated using the formula agreed upon.

In 2008, *McDonald's* proposed a money offer to *Bakshi* to buy shares at 5 million. *Bakshi*, who had based his request on fair market value, proposed 100 million. This led to *Bakshi's* termination and block of his reappointment. *Bakshi* contested the actions and reasons behind them, stating that the actions of the nominee directors of *MIPL* amounted to oppression and had malafide intentions to snatch his shares. The complaint was first filed before the Company Law Board (CLB), but it was thereafter referred to the NCLT. *MIPL* claimed before NCLT

²⁶ *Vikram Bakshi v Connaught Plaza Restaurants Limited* (2017) 140 CLA 142 (NCLT, Delhi)

that it had no jurisdiction and cited the breach of agreement, as there was a clause in their agreement to settle through arbitration.

NCLT invoked its jurisdiction and stated that the joint venture agreement was folded into the Company's Articles of Association and wholly discarded the arguments of the respondents. The case was not one of 'no mismanagement' while the company remained solvent. It found that the nominee director of MIPL acted oppressively and contaminated with malafide intent, at best aimed at exercising their right to buy out his shares upon termination. It also cited a public interest issue: that the termination of the franchise agreement would place a number of employees of the franchise in an insecure position. This conduct of prejudice and oppression by the respondents, NCLT said, was continuing. At the end, it concluded that the oppression and mismanagement took place, and as a result it reinstated him as managing director of CPRPL.

3. Cyrus Investment Pvt. Ltd. v. Tata Sons Limited, 2018 SCC Online NCLT 546²⁷.

Cyrus Mistry was dismissed as the executive chairman of Tata Sons, the key holding company of the diversified conglomerate with a revenue of around \$103 billion. He was forced to resign from the boards of all listed companies in the business conglomerate. Cyrus Investments Pvt. Ltd. and Sterling Investments Company Pvt. Ltd. held 18.4% stakes in the company. Cyrus was removed from the position of the chairman of the company without an explanation. The company stated that the decision was taken for a "loss of confidence" in the former executive chairman. In reality, the company acted in an oppressive way and through mismanagement. The case was lodged by the family companies of Cyrus against the company for its oppressive actions as a holding company.

In the matter before the NCLT Mumbai bench, the issue of maintenance of the suit—allegations of mismanagement and oppression—was played out between Tata and Cyrus Mistry. For Tata Sons, Dr. Abhishek Manu Singhvi argued that the petition of the Cyrus Mistry group was not maintainable, as the group lacked the required shareholding under section 244 of the Companies Act 2013. The Companies Act 2013 mandates that a petition for oppression and mismanagement of the company must have a minimum of 10% holding of the total issued share capital. In the instant case, the holding of the petitioners was merely 2% of the total outstanding

²⁷ Cyrus Investment Pvt. Ltd. v. Tata Sons Limited, 2018 SCC Online NCLT 546

shares. Such holding is of a determinable class of shares.

The Petitioners pointed out that the oppression and mismanagement provisions have to be revisited as the old Companies Act is repealed and the language used by the new Act is different. Section 241(1)(a) of the old Act began with “the affairs of the company have been or are being conducted in a manner prejudicial to public interest.” Under the new Act, NCLT is empowered to waive the 10% shareholding requirement for filing a petition, it is thus not necessary for the tribunal to insist on such a requirement. The petitioner pressed upon the Bench to interpret Section 244 in a purposive and beneficial manner- if a large number of shares of any particular class were affected, such shareholders should be permitted to approach the NCLT seeking redress. They said the 10% rule is directory, not mandatory.

The NCLT held that the removal of Mr. Mistry was justified as he had admitted to sharing company information with the Income Tax Authorities and leaking data to the media, besides openly opposing the Board and the Trusts-all factors inimical to the smooth running of the company's affairs. Furthermore, the advice by Mr. Tata and Mr. Soonawala did not constitute interference in running the affairs of the company. The NCLAT held that what is required at this stage is that the NCLT need not go into the merits of the application but has to record the grounds which would show that the application has in exceptional circumstances made out a case for dispensing with all or any of the requirements under clauses (a) and (b) of sub-section (1) of Section 244. This opinion is to be formed from what has been stated in the application whether the matter pertains to oppression and mismanagement.

CONCLUSION

The establishment of the National Company Law Tribunal has marked a significant transformation in India's corporate dispute resolution framework, particularly in matters relating to oppression and mismanagement under the Companies Act, 2013. By consolidating jurisdiction earlier exercised by multiple forums, NCLT has introduced a specialised, streamlined, and relatively faster mechanism for protecting minority shareholders and safeguarding corporate governance. Its equitable and remedial powers enable it to address not merely technical violations but also substantive injustice within company management.

Through its evolving jurisprudence, the Tribunal has demonstrated a balanced approach between protecting shareholder rights and ensuring business continuity. Remedies such as

regulation of company affairs, removal of directors, restriction on share transfers, and even ordering buy-outs reflect NCLT's flexible and pragmatic role. Importantly, the Tribunal emphasises prevention over punishment, aiming to restore harmony within corporate structures rather than merely penalising errant management. This restorative approach strengthens investor confidence and promotes transparency in corporate functioning.

However, despite these advancements, practical challenges continue to affect the effectiveness of NCLT. Issues such as procedural delays, infrastructure limitations, and increasing case backlogs sometimes dilute the objective of speedy justice. Further, inconsistent interpretations across benches may affect legal certainty. Strengthening institutional capacity, ensuring uniformity in decisions, and enhancing digital infrastructure are essential to enable the Tribunal to fully realise its mandate.

In conclusion, the National Company Law Tribunal plays a pivotal role in resolving oppression and mismanagement by providing accessible, specialised, and equitable remedies under the Companies Act, 2013. While the legal framework is robust, its success ultimately depends on efficient implementation and continuous institutional reform. With sustained improvements, NCLT has the potential to emerge as a cornerstone of corporate justice in India, reinforcing accountability, protecting stakeholder interests, and fostering a healthier corporate ecosystem.

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