



## **FACULTY OF JURIDICAL SCIENCES**

**Course : B.A.LL.B./BBALL.B IInd Semester**

**SUBJECT: COMPANY LAW**  
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**NAME OF FACULTY: Ms. Anjali Dixit**  
**Assistant Professor**

**FACULTY OF JURIDICAL SCIENCES**



## ***LECTURE-33***

### **PREVENTION OF OPERATION AND MISMANAGEMENT**

#### **Oppression**

Oppression is the exercise of authority or power in a burdensome, cruel, or unjust manner. It can also be defined as an act or instance of oppressing, the state of being oppressed, and the feeling of being heavily burdened, mentally or physically, by troubles, adverse conditions, and anxiety.

The Supreme Court in *Daleant Carrington Investment (P) Ltd. v. P.K. Prathapan* (2004) 4 Comp. L.J. 1 (S.C.), held that increase of share capital of a company for the sole purpose of gaining control of the company, where the majority shareholder is reduced to minority, would amount to oppression. The director holds a fiduciary position and could not on his own issue shares to himself. In such cases the oppressor would not be given an opportunity to buy put the oppressed.

### **Prevention of oppression**

Section 397(1) of the Companies Act provides that any member of a company who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members may apply to the Tribunal for an order thus to protect his /her statutory

rights.

Sub-section (2) of Section 397 lays down the circumstances under which the tribunal may grant relief under Section 397, if it is of opinion that:-

(a) the company's affairs are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members ; and

(b) to wind up the company would be unfairly and prejudicial to such member or members , but that otherwise the facts would justify the making of a winding up order on the ground that it was just and equitable that the company should be wound.

The tribunal with the view to end the matters complained of, may make such order as it thinks fit.

## Who can apply

Section 397 of the Companies Act states the members of a company shall have the right to apply under Section 397 or 398 of the Companies Act.

According to Section 399 where the company is with the share capital, the application must be signed by at least 100 members of the company or by one tenth of the total number of its members, whichever is less, or by any member, or members holding one-tenth of the issued share capital of the company. Where the company is without share capital, the application has to be signed by one-fifth of the total number of its members.

A single member cannot present a petition under section 397 of the Companies Act. The legal representative of a deceased member whose

name is again on the register of members is entitled to petition under Section 397 and 398.

Under Section 399(4) of the Companies Act, the Central Government if the circumstances exist authorizes any member or members of the company to apply to the tribunal and the requirement cited above, may be waived. The consent of the requisite no. of members is required at the time of filing the application and if some of the members withdraw their consent, it would in no way make any effect in the application. The other members can very well continue with the proceedings.

### **Conditions for Granting Reliefs**

To obtain relief under section 397 the following conditions should be satisfied:-

1. There must be "oppression" - The Punjab and Haryana High Court in Mohan Lal Chandmall

v. Punjab Co. Ltd has held that an attempt to deprive a member of his ordinary membership rights amounts to "oppression" . Imposing of more new and risky objects upon unwilling minority shareholders may in some circumstances amount to "oppression."

However, minor acts of mismanagement cannot be regarded as "oppression" . The Court will not allow that the remedy under Section 397 becomes a vexatious source of litigation. But an unreasonable refusal to accept a transfer of shares held as sufficient ground to pass an order under Section 397 of the Companies Act, 1956.

Thus to constitute oppression there must be unfair abuse of the powers and impairments of the confidence on the part of the majority of shareholders.

2. Facts must justify winding up- It is well settled

that the remedy of winding up is an extreme remedy. No relief of winding up can be granted on the ground that the directors of the company have misappropriated the company's fund, as such act of the directors does not fall in the category of oppression or mismanagement.[8] To obtain remedy under Section 397 of the Companies Act, the petitioner must show the existence of facts which would justify the winding up order on just and equitable ground.

3. The oppression must be continued in nature – It is settled position that a single act of oppression or mismanagement is sufficient to invoke Section 397 or 398 of the Companies Act. No relief under either of the section can be granted if the act complained of is a solitary action of the majority. Hence, an isolated action of oppression is not sufficient to obtain relief under Section 397 or 398 of the Act. Thus to



prove oppression continuation of the past acts relating to the present acts is the relevant factor , otherwise a single act of oppression is not capable to yield relief.

4. The petitioners must show fairness in their conduct-It is settled legal principle that the person who seeks remedy must come with clean hands. The members complaining must show fairness in their conduct. For ex-Mere declaration of low dividend which does not affect the value of the shares of the petitioner ,was neither oppression nor mismanagement in the eyes of law.

5. Oppression and mismanagement should be specifically pleaded- It is settled law that , in case of oppression a member has to specifically plead on five facts:- a) what is the alleged act of oppression ; b) who committed the act of

oppression; c) how it is oppressive; d) whether it is in the affairs of the company; e) and whether the company is a party to the commission of the act of oppression.

### **Prevention of Mismanagement**

The present Company Act does provide the definition of the expression 'mismanagement'. When the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members or against the public interest, it amounts to mismanagement.

**Section 398(1) of the Companies act provides that any members of a company who complain:-** that the affairs of the company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; or a material change

has taken place in the management or control of the company, whether by an alteration in its Board of directors, or manager or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company; may apply to the Company Law Board for an order of prejudicial to the interests of the company; may apply to the Company Law Board for an order of relief provided such members have a right so to apply as given below.

If, on any such application, the Company Law Board is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as

aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the court may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

### MCQs

**1. Oppression is the exercise of authority or power in a burdensome, cruel, or unjust manner.**

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

**2. The present Company Act does not provide the definition of the expression 'mismanagement' .**

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. Oppression and mismanagement should not be specifically pleaded.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

4. The petitioners must show fairness in their conduct-It is settled legal principle that the person who seeks remedy must come with clean hands.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

5. It is settled position that a single act of oppression or mismanagement is sufficient to invoke Section 397 or 398 of the Companies Act.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

