INDIAN JUDICIARY ON PREVENTION OF OPPRESSION AND MISMANAGEMENT VIS A VIS COMPANIES ACT 1956

Dr. Sukhvinder Singh Dari

Assistant Professor

Symbiosis Law School, Noida

Constituent of Symbiosis International University, Pune

Email – Sukhvinder.dari@gmail.com

Abstract

On analyzing Section 397 and 398 it is seen that to constitute oppression and mismanagement facts of case would be relevant and the result of a complaint would depend on situation to situation. What would be "oppression" in one situation may not be in another. Company Law Board (CLB) has power to interpret the provisions of oppression and mismanagement. Example - Increase in Share Capital by way of rights issue is not oppression at all but where the rights issue is done in a situation where there is no need of finances and knowing that minority shareholders are facing financial difficulties would definitely constitute oppression.

The paper aims to analyze role of judiciary in India with reference to oppression and mismanagement. This paper analyses section 397 and 397 of companies Act 1956, and provides interpretation of judiciary considering landmark case laws. It further provides remedy for oppression and mismanagement and jurisdiction of company law board to examine the Validity of the Arbitration Agreement. Finally the paper concludes with certain sets of recommendations that can be incorporated to effectively deal with such issues.

Keywords - **(**Oppression and Mismanagement, Judiciary, Case Laws, Company Law Board, Jurisdiction,)

JUDICIARY DISCRETION IN INTERPRTEING THE PROVISIONS RELATING TO PREVENTION OF OPPRESSION AND MISMANGEMENT

To obtain relief under S. 397 of The Companies Act, 1956 a petitioner must show that the oppression arises from the way in which the affairs of the company are conducted or is attributable to an act or omission on the part of the company. Where a shareholder repaid a loan taken by the company from its bank without informing

the company and took a transfer of the bank's security, it was held not to be oppression as the shareholder had acted in a personal capacity and the conduct did not alter the position of the company.[1] So Relief can be granted under S. 397 only against continuous acts on the part of the majority shareholders oppressive to the minority. Mere isolated acts do not amount to oppression. Where the affairs of the company are being conducted in a prejudicial manner to the interests of the company, no case of oppression under S. 397 was made out but that of management under S.398 was made out. A single act of letting out Company's premises was held to be not in the nature of continuing oppression or mismanagement.

S. 397 is not limited to cases where the company is still in active business. The object of the remedy is to bring to an end to the oppression, and this can be done even though the business of the company has come to a standstill. The same reasoning can be applied to cases falling within the purview of S. 398.[2]

There are issues of oppression of directors; i.e. the majority shareholders infringe the rights of directors. e.g. agenda of directors is not regularly sent to a director or deliberate denial of common facilities to a few directors, say car. Strictly speaking, oppression of directors is not covered by S. 397/398 and the directors have no recourse to this section. However, members could take up their case under mismanagement in a petition under section 398 but directors are incapable of doing so. This is a vital distinction between oppression of directors *per se* and oppression of members.

But a single act of oppression which has its continuous impact could also constitute oppression. Therefore, "affairs are being conducted" has been judicially interpreted to include past and concluded acts which has a continuous impact as held in *Sindhri Iron Foundry (P) Ltd*.[3]. "A majority shareholder was reduced to the position of minority by allotting the new issue of shares wholly to the minority group. The circumstances were such that if the aggrieved majority shareholder was called upon to dispose of his stake in the company to the other group, he would not be able to get adequate

[1] Re A Company (No.001761 of 1986)
[2] Hindustan Co-operative Insurance Society Ltd, In re ILR 1961cal 443

[3] Sindhri Iron Foundry (P) Ltd. *(1964) 34 Comp. Cases 510*

compensation because the business which he had build in the name of the company was of great value to him. The court said that such a single act was sufficient to constitute oppression so ac to enable the Company Law Board to exercise its powers under S. 402. The single act was capable of causing perpetual damage to the majority shareholder"[4]. His removal from directorship and allotment of new share were both set aside. A single act was capable of causing perpetual damage like removal from directorship and allotment of new shares was held to be oppressive in *Tea Brokers Pvt. Ltd. v. Hemendra Prasad Baroah*[5]

The acts of oppression must continue till the date of presentation in petition.[6]The expression employed in the section 'the affairs of the company that are being conducted' indicates , not isolated acts of oppression but a continuing process , and one continuing down to the date of the petition." It is not the law that an application under S. 397 is competent only in case where some future act is sought to be restrained. The whole basis of the application under section 397 is to show that the affairs of the company have been managed in the past and are still being managed in such an oppressive manner that it calls for interference by the court.[7] Events of oppression have to part of consecutive story and not in isolation to constitute 'oppressive' conduct of the majority as held in *Shanti Prasad Jain v. Kalinga Tubes Ltd*.[8] It has been held that isolated acts of indiscipline or indifference or even deprivation would not by themselves be taken to be of oppressive nature. There must be some continuity of acts of which it could be said that the affairs are being conducted in that manner. In this case, increase of capital which was the result of the company's internal decisions could not be interfered with unless malafide are shown to exit. Over matters of valuation the court said that ordinarily the date of valuation should be the date of petition but in the case it could be the date on which the parties agreed to settle their differences and disputes. It was held in the case *R. Khemka v Deccan Industries Private Ltd*[9]

[4] RAMAIYA, *supra* note 13
[5] Tea Brokers Pvt. Ltd. v. Hemendra Prasad Baroah *(1998) 5 Comp. LJ. 463 (Cal).*
[6] Kuldip Singh Dhillon v Pragaon Utility Financiers Pvt Ltd(1988)64 Com cases 19
[7] Manmohan Singh v Balbir Singh 1975(1)ILR(Del)427
[8] SHANTI, supra note 110
[9]R. Khemka v Deccan Industries Private Ltd (1999) 1 Comp LJ 206:

By the various interpretations of the Courts it is clear that the court should have power to impose upon the parties whatever settlement the court considers just and equitable. There must be materials to show when 'just and equitable' clause is invoked, that it is just and equitable not only to the persons applying for winding up but also to the company and to all its shareholders. The Company Law Board will have to keep in mind the position of the company as a whole and the interests of the shareholders and see that they do not suffer in a fight for power that ensures between two groups. Where the shareholding is more or less equal and there is a case of complete deadlock in the company on account of probity in the management of the company and there is no hope or possibility of smooth and efficient continuance of the company as a commercial concern, there may arise a case for winding up on the just and equitable ground. While recognizing that the court could not be expected in every case to find and impose a solution, it was thought that its discretion must be unfettered, for it is impossible to lay down a general guide to the solution of what are essentially individual cases. The company could also be ordered to purchase the minority's shares at a fair value in the facts of particular case.[10]The dominant purpose of proceedings under S. 397 and 398 is to remove oppression and mismanagement; as the case may be. For removing the oppression and mismanagement, the court can take recourse to any action, of course which is not unlawful and which may be in the interests of the company.[11]

The complaining member must Show that he is suffering from oppression in his capacity as member and not in any other capacity. 'Oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his property right as a shareholder"-*kalinga Tubes Ltd v Shanti Prasad Jain*[12]. In this case a minority shareholder of private company was removed from his position as a working director. As an ordinary shareholder he would have gained nothing as the company had never paid any dividend, director's remuneration being the only return on investment. Yet he could not complain of it because he had suffered as director not as a member. Thus to constitute oppression, persons concerned with the management of

[10] Narayan v Moni(TA) AIR 1960 Mad 338
[11] Naini Oxygen & Acetylene Gas Ltd v Bisheshwar Nath(1986) 60 Comp Cas 990 (AII)
[12] kalinga Tubes Ltd v Shanti Prasad Jain, [1965]1 Comp LJ 193, 204:air 1965 SC 1535:(1965) 35 Comp Cas 351

the company's affairs must be in connection therewith be guilty of fraud, misfeasance or misconduct towards the members. It does not include mere domestic disputes between directors and members or lack of confidence between one section of members and another section in the matter of policy or administration. Much less it covers mere private animosity between members and directors

Whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must be shown as preliminary to the application of S. 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story.

Acquisition of shares of the minority shareholders in the market cannot constitute oppression to minorities as held in *Mohta Bros. (P) Ltd. v. Calcutta Landing and Shipping Company Ltd. and Others*[13]

The proceedings under S. 397 and 398 of the Companies Act, 1956 cannot be restored to for solving a genuine deadlock in the absence of any established misfeasance and malfeasance of one group to the prejudice of the other. If the parties have lost all confidence amongst them and it is not possible for them to carry business jointly or provide for an acceptable management, the only way out seems to be to wind up the company and if necessary in the instant case to dissolve the existing partnership. The assets, if any left, will be available to the parties for distribution. S. 397 or 398 are circumscribed to situations where the interests in relation to that very company are concerned. Therefore, The Company Law Board was more than fully justified in having refused to exercise jurisdiction in respect of a distributorship agreement which was totally and completely extraneous to the main dispute.[14] The word "share" as defined under the Companies Act means a share in the share capital of the company which is tangible property. A company formed and

[13] Mohta Bros. (P) Ltd. v. Calcutta Landing and Shipping Company Ltd. and Others (1969) 2 Comp. LJ. 157 (Cal).

[14] RAMAIYA , *supra* note 13

registered under the Companies Act, is registered with a fixed amount of share capital which is further divided into shares of a fixed amount. As a logical corollary, only such companies which are registered with share capital can issue share capital. A company registered without share capital falls under the category of a guarantee company under S. 12(1) of The Companies Act, 1956. Therefore an existing company registered under the act of 1882 the share of which is neither transferable nor inheritable does not fall within the scope of a company.

Non-issue of further shares, to petitioner offered by the respondent Company, taking a plea that a joint application by several shareholders is not in conformity with provisions S. 41(2) of the Companies Act, was held as an act of oppression as provision of S.41 (2) is inapplicable to issue of shares subsequent to first allotment of shares by the company[15].

It is the duty of the Company Law Board to recognize the corporate democracy of a company in managing its affairs. It is not for the court to restrict the powers of the Board of Directors. It is not open to the court to interfere with the day to day functions, management and administration of a company unless it is established that the decisions taken by the Board of Directors are ultra vires the Companies Act or the Article of Association of the Company. It is not for the Company Law Board to dictate to the Board of Directors as to how it functions. When the matter comes before the court, the court is not concerned with inter se relationship of the parties. Where the Board of Directors in various Board resolutions appointed the executive Directors and the Chairman, the Court will not interfere in the internal management of the company or interdict the functions of the Board managed company. In a suit for restoration of powers as joint managing director by the plaintiff that the company had step by step stripped him of his powers and humiliated him .It was held that no injunction could be granted to restrain their acting as Executive Directors .If the grievance of the plaintiff was that this was a case of oppression of the minority by the majority, then he could move the Company Court for appropriate relief. The Company Law Board in *M. L. Thukral v. Kone Communication Ltd*[16] refused to interfere in a matter concerning termination of

[15] Vijay Kumar Narang v Prakash Coach Builders (P) Ltd.[2004]56 SCL 274 (CLB)

[16] M. L. Thukral v. Kone Communication Ltd. *(1996) 86 Comp. Cases 643 (CLB*

distributorship agreement which it felt was the powers of Board of Directors and outside the purview of S. 397/398.

Similarly, in *Karedla Suryanarayana v. Ramdas Motor Transport Ltd*[17] Company Law Board held that appointment of dealers is within the ambit of the Board of Directors powers and outside the purview of S. 397/398.

Illegal, Invalid and Irregular acts by themselves, unless they are oppressive to any shareholders or prejudicial to the interest of the company cannot be set aside in a petition under S. 397/398. This has been held in a number of cases Company Law Board, as for example *Allianz Securities Ltd. v. Regal Industries Ltd*.[18]The question sometimes arises as to whether an act in contravention of law is per se oppressive. In *Neeedle Industries (India) Ltd v Needle Industries Newey (India) Holdings Ltd.,*[19] Supreme Court observed as follows "The true position is that an isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a malafide intention or that such violation was burdensome, wrong and harshful. But a serious or illegal acts following upon alone another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom these acts are directed."

One of the common ways of controlling the board is to induct directors pertaining to one group. Similarly removal of directors pertaining to the other group is common. Here Company Law Board has consistently held that where is written agreements/oral understanding amongst the family members or groups, any new appointment or removal, which disturbs the parity amongst the family members or groups, was held to be "oppressive" and liable to be set aside. This is in spite of the fact that proper procedure for appointment and removal under S. 284 Companies Act 1956 has been followed. Company Law Board have time and again relied upon the principle of "quasi-partnership" as far as family owned private companies are concerned were participation of family members in the business is part and parcel of the management setup. But not

[17] Karedla Suryanarayana v. Ramdas Motor Transport Ltd (1999) 98 Comp. Cases 518 (CLB
[18] Allianz Securities Ltd. v. Regal Industries Ltd.[18] (2000) 25 SCL 349 (CLB).
[19]Neeedle Industries (India) Ltd v Needle Industries newey (India) Holdings Ltd., (1981) 3 SCC 33:(1981)51 Comp Cas 743:AIR 1981 SC1298

all increase or removal of directors has been held to oppression.

The removal from the directorship may cause suffering and As such may be oppressive to the directors concerned. A majority shareholder was reduced to the position of a minority by manipulation, issue of new shares and allotment thereof to the minority group. The director's had the majority shares. The court was of the view that if he was to sell his shares to other group he would not be Able to get adequate compensation and he may lose valuable business thereby. The public interest will also suffer because the company was running as a flourishing business in an essential commodity. The court set aside removal of director and also the new allotment of shares.[20]

Removal of director without special notice would also constitute oppression. The petitioner holding about one third of the total share capital of the company and one of three –first directors filed a petition for oppression and mismanagement contending that he and his son had been unlawfully removed from the directorship of the company. It was held that the requirement of special notice under S. 284 (2) of the Companies Act, 1956 and grant of opportunity to be heard under S.284 (3) of the same act had not been complied with. The respondents failed to send the special notice for removal of the petitioner and his son from the directorship from the company and the removal was bad in law. The CLB held that the petitioner and his son should be restored to the original position of the directors. All subsequent acts of the company were declared to be null and void. It was further held that the company should sent notice from the nearest post office or from any other post office according to its own convenience.[21]

Appointment of directors and allotment of shares by upsetting the balance of power in the Board would constitute oppression. The managing director used his casting vote for the appointment of additional director, upsetting the balance of power in the board. Further, for taking over the company, additional shares were allotted to the wife of the managing director and the shareholder who had the majority of shares in the company was removed from the post of director. The CLB held that these acts would

[20] Prasada Chandra Nair v Anandamandiram Hotels Private Ltd , (2002)110 Comp.Cas.394 (CLB)

[21] Manmohan Singh Kohli v Venture India Properties Pvt.Ltd, (2005) 123 Comp Cas. 198 (CLB)

constitute a chain of oppression against those shareholders.[22]

One of the commonest types of oppression/mismanagement is not sending notices to share holders/directors and passing resolutions thereat. These have by and large being held to be 'oppressive' to members and constitute mismanagement of companies. It will be interesting to note that 'proofs' of sending notices by 'UPC' were not relied upon by the Company Law Board as circumstances clearly pointed out to the contrary. The Company Law Board gave directions to end this oppression/mismanagement in the case *Allianz Securities Ltd. v. Regal Industries Ltd.*[23] But Company Law Board, in *Shantidevi P. Gaikwad v. Sangramsingh P. Gaikwad* [24] held that the provisions in the act regarding length of notice are directory and not mandatory and giving of shorter notice will not invalidate the meeting or cause oppression.

The issue of further capital and impropriety in these issues has given rise to a lot of litigation under S. 397/398. The Supreme Court in *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holdings Ltd*. [25]held that where a group incidentally got control was not abuse of fiduciary powers of the directors but what would be objectionable would be the use of such powers merely for an extraneous purpose of gaining control. This case acts as a benchmark for many cases.

In following instances where minority has been converted to majority by way of new issues, the same is liable to be set aside on grounds it was unfair, manipulative and oppressive. Most private companies to preserve their relationship provide in the articles or by way of separate agreements that any new issue of shares shall be offered to equity shareholders. Where such a provision exists issuing such shares to outsiders in violation of the articles/agreements would constitute oppression. In the case *Kshounish Chowdhury v Kera Rajendra Monolithics*[26] it was observed that issue of further shares for the purposes of converting a majority into a minority is a grave act of oppression. The allotment was made in haste at a meeting held without giving sufficient

[22] Prasadachandran Nair v Anandamandiram Hpotels Pvt Ltd(2000)

[23] ALLIANZE, *supra* note 166

[24] Shantidevi P. Gaikwad v. Sangramsingh P. Gaikwad (1996) 1 Comp. LJ. 72 (Gujarat)

[25] NEEDLE ,*supra* note 167

[26]Kshounish Chowdhury v Kera Rajendra Monolithics (2002) 1 CompLJ 552 (CLB-PB)

notice to NRI shareholders. The purpose seemed to have been excluding them from management of affairs. No allotment was made to them even though the company had in its hands sufficient sums for appropriating them as application money. The company was directed to purchase their shares at a valuation to be done by the statutory auditors as on the date of the balance sheet which was closest to the date of the petition and also to refund share application money to them.

Ousting from management is another ground to constitute oppression and mismanagement. Whether exclusion from management would be prejudicial would depend upon whether the complainant had a legitimate expectation to be consulted over the affairs and whether his exclusion would depress the value of his investment. In many cases it is a question of fact whether particular actions can be regarded as both unfair and prejudicial. In *re Dr Chemicals Ltd* the action of a majority shareholder in allotting shares to himself to increase his shareholding from 60 % to 96 % was regarded not only a breach of the pre-emption rules of The Companies Act but was also a 'blatant' case of unfairly prejudiced conduct. The fact that after the date of minority director/shareholder was paid no remuneration was not prejudicial since he took since he took no further part in the running of the company. Similarly, in *Re, Ringtower Holdings Plc.* [27] late presentation of accounts was regarded as non-prejudicial. Where pre-emption provisions in the articles were deleted and the company re registered as private company as part of management buyout by the majority, this was not unfair to the minority since the offer was available to them.

Rights issue, per se cannot cause oppression, as they are fair to all shareholders. But the Company Law Board in a very rare judgment in *Standard Industries Ltd. v. Mafatlal Services Ltd*.[28] held that since 48% shareholders were opposed to the move, the same is oppressive. This judgment covered several complicated facts and does not lay down the law. But even otherwise, one may respectfully differ from the view of Company Law Board.

Non-receipt of declared dividend is termed as an act of oppression/ mismanagement. Non-payment of dividend' due to a

[27] (1989) 5 BCC 82

[28]Standard Industries Ltd. v. Mafatlal Services Ltd (1994) 80 Comp. Cases 764 (CLB

shareholder could be rightly termed as an act of oppression/mismanagement. It is one of the basic statutory rights of a shareholder to receive the dividend declared and if the company fails to pay the same, a shareholder can definitely claim oppression/mismanagement.[29]

A petition was made claiming relief against oppression of the petitioner. Articles annexed were amended to provide that all the directors would be liable to retire by rotation. There was no material to show that that any director had at any point of time retired or was liable to retire by rotation as it was a family company. It was a case of oppression. The CLB gave option to the petitioner to remain as shareholder or to be brought out. The allegation relating to oppression and mismanagement was explained. In respect of grievances relating to past years no relief was granted.

WHO CAN SEEK REMEDY FOR PREVENTION OF OPPRESSION AND MISMANGEMENT

The requisite number of members who must sign the application is given in S. 399. The requirement varies with the fact as to whether the company has a share capital or not and is discussed in S. 399 of The Companies Act, 1956. The application to be valid, the applicant or applicants must have paid all calls and other sums due on their shares. Joint holders of shares shall be counted as one member. The CLB in *Kishan Khariwal v Ganganagar Industries Ltd*[30] has held that if a person's shareholding which was 10% or more gets below 10% by issue of further shares, such person can maintain the petition provided he has challenged further issue in his petition. Where the company does not having share capital, the application can be made by not less than one- fifth of the total number of the members. This criterion is based on numerical strength of the applying members. Generally S. 399 allows the right to make application to the CLB on two criteria- numerical strength of the members or shareholding strength of the members. Overriding these two sub S.(4) of S. 399 enables the central Government to authorize any members to make the application to the CLB notwithstanding that such members does not fulfill any of the criteria. The Central Government may authorize, if it is of the opinion that circumstances exit which

[29] MMTC Ltd v Indo-French Bio-tech Enterprise Ltd(1999)35 CLA 292 (CLB): (2000)3 Comp LJ 295

[30] Kishan Khariwal v Ganganagar Industries Ltd [2004] 50 SCL 567

makes it just and equitable to do and authorize any member or members of the company to apply. Sub s. 399 (4) is intended to waive the minimum requirements of S. 399(1) and, normally, it is the nature of the allegations made, rather than the number or proportion of members who make an application to it, which is considered by the Central Government while granting permission.

The question arises whether the legal heirs of a deceased shareholder whose names are not entered in the register of members, are entitled to maintain petition under S. 397 and 398 of the Act. It was contended in the case *Worltl Wide Agencies Pvt. Ltd.* v *Margaret* T. *Desor* [31] on behalf of the appellants that S. 397 and 398 of the Act must be strictly construed. To hold that the legal representatives of a deceased shareholder could not be given the same right of a member under S. 397 and 398 of the Act would be taking a hyper-technical view which does not advance the cause of equity or justice, when the member dies, his estate is entrusted in the legal representatives. When, therefore, these vesting are illegally or wrongfully affected, the estate through the legal representatives must be enabled to petition in respect of oppression and mismanagement and it is as if the estate stands in the shoes of the deceased member. We are of the opinion that this view is a correct view. It may be mentioned in this connection that succession is not kept in abeyance and the property of the deceased member vests in the legal representatives on the death of the deceased and they should be permitted to act for the deceased member for the purpose of transfer of shares under S. 109 of the Companies Act, 1956. In some situations and contingencies, the 'member' may be different from a 'holder. A 'member' may be a 'holder' of shares but a 'holder' may not be a 'member'. Admittedly in the present case, the legal representatives have been more than anxious to get their names put on the register of members in place of deceased member who was the Managing Director and Chairman of the company and had the controlling interest. It would, therefore, be wrong to insist their names must be first put on the register before they can move an application under S. 397 and 398 of the Act. This would frustrate the very purpose of the necessity of action. It was contended on behalf of the appellant before the High

[31] Worltl Wide Agencies Pvt. Ltd. v Margaret T. Desor AIR 1990 SC 737: (1990) 67 Comp Cas 607 (SC): (1990) 1 SCC 536:

Court that if legal representatives who were only potential members or persons likely to come on the register of members, are permitted to file an application under S 397 and 398 of the Act, it would create havoc, as then persons having blank transfer forms signed by members, and as such having a financial interest, could also claim to move an application under S. 397 and 398 of the Act. The High Court held that this is a fallacy, that in the case of persons having blank transfer forms, signed by members, it is the members themselves who are shown on the register of members and they are different from the persons with the blank transfer form whereas in the case of legal representatives it is the deceased member who is shown on the register and the legal representatives are in effect exercising his right. A right has devolved on them through the death of the member whose name is still on the register. In our opinion, therefore, the High Court was pre-eminently right in holding that the legal representatives of deceased member whose name is still on the register of members are entitled to petition under S. 397 and 398 of the Act.

The applicability of the Arbitration Clause in the Principal Agreement to the Disputes Arising out of the Terms of the Supplemental Agreement

No agreement can be termed as a supplemental agreement if there is no principal agreement. The supplemental agreement is nothing but an agreement containing certain amendments or additions to the principal agreement and therefore it cannot be agreed that the supplemental agreement has novated the principal agreement. In other words, both the agreements are subsisting and have to be read together. Without the principal agreement, the supplemental agreement cannot stand on its own. The principal agreement still subsists and that the supplemental agreement has to be read as part and parcel of the principal agreement and if that is done then all clauses of the principal agreement as long as they are not rescinded or modified explicitly in the supplemental agreement will continue to prevail. In the present case the supplemental agreement only modified certain clauses in the principal agreement relating to shareholding and management. No new rights or obligation *ab initio* were created in the supplemental agreement. Therefore the arbitration clause contained in the principal agreement would cover disputes arising out of and in connection

with the supplemental agreement also. The matter complained of in the petition arose out of and in connection with the said agreement. There was nothing to show that the agreement was null and void, inoperative or incapable of being performed. Therefore CLB was statutorily bound to refer the parties to arbitration in terms of S. 45 of the Arbitration and Conciliation Act, 1996.

Jurisdiction of CLB to Examine the Validity of the Arbitration Agreement?-

The power or duty to refer the parties to arbitration in terms of S. 8 would arise only when there is an arbitration agreement in terms of S. 7. In other words, the foundation for making an application under S. 8 is the arbitration agreement and unless such an agreement is in existence, the question of applying does not arise. The very purpose of filing a copy of the arbitration agreement along with the application is to satisfy the court that there is actually an arbitration agreement. As is evident from S. 8(1), the arbitration agreement should cover the matter in respect of which the action has been brought in. Therefore, the court has not only to satisfy itself that there is a valid arbitration agreement but also that that the said agreement covers the matter' before it. Therefore the CLB would have no jurisdiction to .refer the matter to arbitration in terms of S. 8 unless otherwise, there is a binding and valid arbitration agreement in existence.[32]

CONCLUSION

The rights of minority shareholders in Indian companies have substantially been protected. Minority shareholders can take recourse to the provisions of S. 397 and 398 in cases where companies indulge in oppression or mismanagement, prejudicial to the affairs of the company and the public interest. The CLB has got teeth and regularly takes action against errant company. It has been noticed from the various cases which have been discussed above that the judiciary has interpreted the terms unfair prejudice, minority interest, public interest in different manner from time to time depending on the facts of the cases. The researcher has also discussed some situations which constitute oppression and mismanagement in family companies which is very much familiar in India. It can also be seen from the above discussion that

[32] Vijay Kumar Chopra v Hind Samachar Ltd (2001) 2 CLC 867 (CLB)

mismanagement and oppression actually confined to family centered companies. It is incorrect to assume that it is only the shareholders in majority who oppress the minority. Cases in which management is hijacked and controls seized by shareholders in minority through means which are not fair or reasonable are not rare. Significantly neither Section 397 nor Section 398 mentions minority shareholders or minority interests. It is the Irani Committee which highlights the interests of minority shareholders in this context.

Bibliography

Books

- Datta,C,R . 2008. *The Company Law*. Nagpur: Wadha and company.
- Ghosh, K, M and Chandratre, K, R.2007. *Company Law with Secretarial Practice*. New Delhi: Bharat Law house.
- Gower and Davies.2001. *Principles of Modern Company Law*. London: Sweet and Maxwell.
- Kapoor,N,D. 2008. *Elements of Company Law*. New Delhi: Sultan Chand &Sons.
- Majumdar, A, K and Kapoor, G, K. 2005. *Company Law & Practice.* New Delhi (India): Taxmann Publications.
- Palmer's Company Law Manual.2000.London:Sweet & Maxwell
- Ramaiya, A .2006. *Guide to the Companies Act*. Nagpur: Wadhwa and company.
- Satyen D Israni.2008. *Handbook on Private Company*. Snow White Publication Ltd
- Singh Avatar.2005 .Company Law. Lukhnow :Eastern Book Publication

Articles

- Clement Chigbo. 2006. *An Examination of Majority Rule Principle and the Remedies Available to Shareholders*, The Bahama Journal - Bahamas News [Online] Available at www.jonesbahamas.com/?c=135&a=8793 [Accessed:24 th February 2009].
- Giridharan P.T. *Principles of Corporate Governance*. Available at: www.icai.org/.../8141**Principles**%2520of%2520**Corporate**%2520**Gov**

ernance%. [Accessed: 23 rd January 2009].

- Hallowell, Andrew. 2002. *Protecting the rights of the minority shareholder. (Legal Issues).* Set-Aside Alert. Available at www.allbusiness.com/government/government-procurement/119739-1.html[Acccessed: 6th march 2009]
- *Oppression and Mismanagement Especially in case of Family Owned Concerns*, Available at: http://dsaca.co.in/Semi/Oppression%20&%20Mismanagement.doc [Accessed: 2nd January 2009].
- Priti Suri,*Easing out Minority Shareholders*: How Easy is It?, New Delhi.Available at: www.asialaw.com/Article/689739/Article.html [Accessed:5th *march 2009]*
- Shah.S. 2008. Oppression and Mismanagement. Available at jurisonline.in/**2008**/02/**oppression-mismanagement** [Accessed 24 th march 2009]
- Singhvi .A.2007, *Minority Shareholder 'Warrants' Protection*. Business Today. Available At www.Blonnet.Com/**2007**/08/14/Stories/**2007**081450120800.Htm [Acccesed: 30 March, 2009].
- S Sivakumar, Tanuj Bhushan, Sudip Viajayan.2008. *Prevention of Oppression and Mismanagement in Companies: An Insight.* The Icfai Journal of Corporate and Securities Law, the Icfai Law School vol-1 Feb.pp.5-8

Statutes

- The Indian Companies Act, 1956
- The Indian Companies(Amendment) Act, 2000
- The Indian Companies Act, 1951
- The English Companies Act, 1948
- Arbitration and Conciliation Act, 1996
- Arbitration and Conciliation Act, 1940
- The Companies (amendment) Act, 2006
- Civil Procedure Code

Webliography

- http://dsaca.co.in/Semi/Oppression%20&%20Mismanagement.doc access date-2.1.2014,
- http://news.indlaw.com/publicdata/articles/article234.pdf[Accessed:10 the January 2014]

- http://www.Blonnet.Com/**2007**/08/14/Stories/**2007**081450120800.Htm [Acccesed: 30 March, 2014].
- http://jurisonline.in/**2008**/02/**oppression-mismanagement** [Accessed 24 th march 2009]
- http://www.asialaw.com/Article/689739/Article.html [Accessed:5th march 2014]
- http://dsaca.co.in/Semi/Oppression%20&%20Mismanagement.doc [Accessed: 2nd January 2014].