

PREVENTION OF OPPRESSION AND MISMANAGEMENT



LEARNING OUTCOMES

By the end of this chapter, you would be able to :

- ❑ Describe actions which the NCLT might take into consideration to acknowledge the fact of oppression and mismanagement in a company.
- ❑ List the persons who have the right to file the application against oppression and mismanagement.
- ❑ Ascertain remedies available to aggrieved party in case of oppression or mismanagement
- ❑ Explain the provisions relating to Class Action Suits



1. INTRODUCTION

To begin with, let us understand the basic concept hidden behind this Chapter. Firstly, we should understand that the words “**Oppression**” & “**Mismanagement**” are two different concepts. Under the Companies Act, a question arises as to why would the company law even introduce such a Chapter, when all the provisions are crystal clear and explanatory? The answer to this question is “law evaders always find loopholes to their advantage”.

We may take an **example** to understand **oppression**. Let us imagine a situation where a company Rexagon Private Limited, has seven shareholders, namely, Mr. Abhishek, Mr. Archit, Mr. Ankur, Mr. Anupam, Mr. Himanshu, Mr. Manas and Mr. Rajan. Out of these, Mr. Abhishek, Mr. Archit and Mr. Ankur hold around 94% shares of the company. At the general meeting of Rexagon Private Limited when any resolution is required to be passed whether as ordinary or special, such resolution shall be passed in the favour of these three shareholders if they vote in the favour of resolution since they have majority shareholding of the company. Therefore, the voice of the minority shareholders *i.e.* Mr. Anupam, Mr. Himanshu, Mr. Manas and Mr. Rajan will be oppressed whether individually or jointly.

This is because the corporate law works on the principle of democracy and it becomes more vulnerable as it is reckoned with the number of shares and not with the number of individuals involved. This is known as the famous ‘**Rule of Majority**’ or which is also called the ‘**Foss v. Harbottle**’ Rule. It is a landmark judgement in the history of company law. It states that the ones who hold majority of shares “rule” the company (*Foss v. Harbottle (1843) 2 Hare 461*). The judgement held that if the majority shareholders have made a decision to take or not to take a certain action, it shall be respected. Also, the courts are not expected to ordinarily intervene to protect the minority interest affected by the resolutions passed by the majority.

Rule of majority

The case of *Foss v. Harbottle* is explained below:

In this case, two shareholders commenced legal action against the promoters and directors of the company alleging that they had misapplied the company’s assets and had improperly mortgaged the company’s property. The Court rejected the two shareholders’ plea and held that a breach of duty by the directors of the company was wrong done to the company for which it (*i.e.* the company) alone could sue. In other words, the proper plaintiff in that case was the company and not the two individual shareholders. Thus, the case of *Foss v. Harbottle* derives two major rules or principles of company law – first, a company is a legal entity separate from its shareholders; and second that the Court will not interfere with the internal management of companies acting within their powers. Therefore, where an ordinary majority of members can ratify the act, the Court will not interfere.

However, the said rule has four exceptions detailed as under:

- *Ultra-vires* or illegal acts;

- Transactions requiring special majorities;
- Personal Rights; and
- The “fraud on the minority”.

This Chapter focuses on the last exception *i.e.* “fraud on the minority” . As per the said exception, majority of shareholders cannot use their powers to defraud the minority. 'Fraud on minority' means taking of decisions and passing resolutions which would discriminate between majority shareholders and minority shareholders, so as to give an undue advantage to the majority shareholders.

For **Example** - majority shareholders are passing a resolution, purpose of which is to compulsory acquire the shares of minority shareholders though showing that such action will be advantageous to the company.

From the provisions of the Companies Act, 2013, it can be ascertained that legislative intent to safeguard the minority interest is quite comprehensive. The Companies Act, 2013 contains various rights applicable to such minority shareholders with a view to protect their interest in the company and also to address issues of abuse by the majority shareholders who control the companies. The Act also provides various benefits to the minority shareholders that were not provided under the old Act *i.e.*, under the Companies Act, 1956. Following are the rights and benefits of the minority shareholders:

- (1) **Right to appoint Small Shareholders' Director:** Section 151 enables small shareholders, who are also minority shareholders, to appoint a small shareholders' director in the company.
- (2) **Right to file an application to NCLT in cases of Oppression and Mismanagement:** Minority shareholders have right to move National Company Law Tribunal (NCLT) to report any acts of oppression and mismanagement by the board or management of the company. These rights are provided under Section 241 of the Act.
- (3) **Right to file a Class Action Suit:** The Companies Act, 2013 provides opportunity to minority shareholders to file a class action suits. Group of persons with a common interest may approach NCLT against the company, its board or the management.
- (4) **Right for Reconstruction and Amalgamation of Companies:** In specific, the Act, through Section 235 and 236 offers protection to the interests of minority shareholders. These sections deals with the concerns of interests of minority shareholders being suppressed in implementation of schemes of mergers, amalgamations and reconstruction.
- (5) **E-voting Process:** Through Section 108 of the Act, certain companies can offer e-voting facility to shareholders to vote at the meetings of on shareholders. This provision has empowered minority shareholders to exercise their voting rights without attending the meetings in person.
- (6) **Change of concept from majority rule to minority rule :** Section 188 of the Companies Act, 2013 which deals with related party transactions, mandates companies to undertake such transactions only after receiving approval from the majority of non-interested parties. Since majority

shareholders are usually the interested parties, the minority shareholders are naturally considered as non-interested parties. Hence, it is the minority shareholders that get to approve such transactions.

Rights and Benefits of Minority Shareholders

Right to appoint small shareholders' director

Right file application with NCLT in cases of oppression and mismanagement

Right to file Class Action Suit

Protection of interest in case of reconstruction, amalgamation and merger of companies

Emergence of e-voting

Change of concept from majority rule to minority rule

Chapter XVI of the Companies Act, 2013 covering sections 241 to section 246 relating to the provisions of protection to shareholders against oppression and mismanagement of those who are in control of the company.

Oppression

Let us understand the meaning of 'oppression' as used in the Act. The meaning of the term "oppression" as explained by Lord Cooper in the Scottish case of *Elder vs. Elder & Watson Ltd.* was cited with approval by Wanchoo J. of the Supreme Court of India in the case of *Shanti Prasad Jain vs. Kalinga Tubes*. He said that the conduct complained of, should at least involve a visible departure from the standards of their dealing and violations of conditions of fair play on which every shareholder who entrusts his money to company, is entitled to rely.



The complaining member must show that he is suffering from oppression in his capacity as a member but not in any other capacity.

To constitute oppression, persons concerned with the management of the company's affairs must, in connection thereof, 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 set of members and others.

It was observed in the case of *Rao (V.M.) vs. Rajeshwari Ramakrishnan* that the oppression complained off must affect a person in his capacity or character as a member of the company, harsh or unfair treatment in other capacity, e.g., as a director or a creditor is outside the purview of this chapter.

There must be a continuous acts constituting oppression up to the date of the petition.

The events have to be considered not in isolation but as a part of a continuous suffering.

The conduct complained of, can be said to be "oppression" only when it could be said that it is burdensome, harsh and wrongful; involves at least an element of lack of probity and fair dealing to a member in matters of his proprietary right as a shareholder.

How Act explained oppression and mismangement:

The Act defines that

- (i) **If affairs of a company** have been or are been conducted **prejudicial to public interest** or in a manner **prejudicial or oppressive to any member** or **prejudicial to the interest of company**, there is a case of oppression.
- (ii) **Any material change** that has taken place **in management or control of a company** and that by reason of such change it is likely that the **affairs of a company** will be conducted **prejudicial to interest of its member** or **company**, that would also be considered as mismanagement.



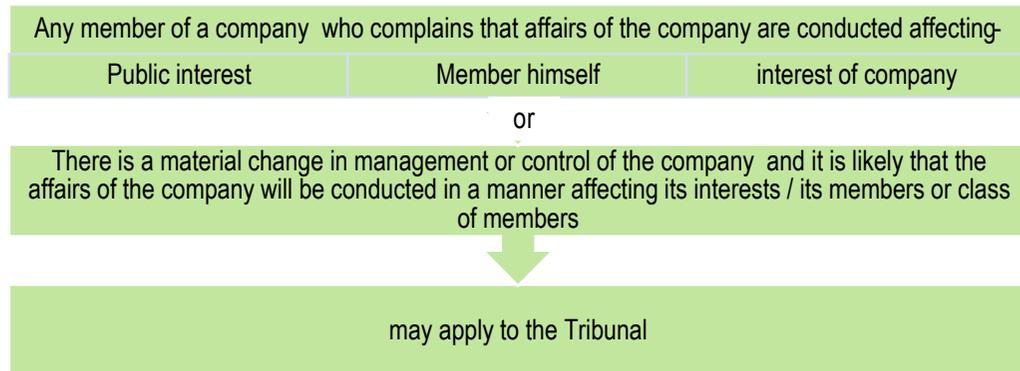
2. APPLICATION TO TRIBUNAL FOR RELIEF IN CASES OF OPPRESSION, ETC. [SECTION 241]

Section 241 of the Companies Act, 2013 states the circumstances in which an application may be made to the Tribunal by any member of a company or by the Central Government for relief from oppression and mismanagement.

- (1) **Right of member to apply to the Tribunal:** Any member of a company who complains that—
 - (a) the **affairs of the company** have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the company; or
 - (b) the **material change**, not being a change brought about by, or in the interest of, any creditors, including debenture holders or any class of shareholders of the company,

has taken place in the management or control of the company, whether by an alteration in the 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 any reason of such change, it is 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,

may apply to the Tribunal, provided such member has a right to apply under section 244, for an order under this Chapter.



Section 241(1) addresses complaints with respect to the conduct of the company's affairs, which could be prejudicial to public interest and prejudicial or oppressive to the members or the company itself.

The provision gives right to the members to move to the Tribunal not only in case of complaints of oppression but also in case of complaints that the conduct of the affairs of the company has been 'prejudicial' to them.

Section 241(1)(a) also provides for past acts of oppression.

This section also provides remedy for mismanagement in the affairs of the company. It states that a member may complain that "the affairs of a company are being conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company".

A member of a company may also complain in case there is a material change in the management and such change is likely to be prejudicial to the interests of the company or its members or any class of members.

Material change in the management may occur if there is:

- (a) an alteration in the Board of Directors or manager; or
- (b) an alteration in the ownership of the company's shares; or
- (c) an alteration in the membership, if the company has no share capital; or
- (d) an alteration in any other manner, whatsoever.

A change will not be considered material change if it has been brought about by, or in the interests of, any creditors, including debenture-holders or any class of shareholders of the company.

- (2) **Central Government may apply suo moto to the Tribunal:** 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 itself apply to the Tribunal for an order under this Chapter.

Provided that the applications under this sub-section, in respect of such company or class of companies, as may be prescribed, shall be made before the Principal Bench of the Tribunal which shall be dealt with by such Bench.

- (3) **Initiation of case by CG:** Where in the opinion of the Central Government there exist **circumstances** suggesting that—

- (a) **any person** concerned in the **conduct and management of the affairs of a company** is or has been in connection therewith **guilty of fraud, misfeasance, persistent negligence or default** in carrying out his obligations and functions under the law or of **breach of trust**;
- (b) the **business** of a company is **not or has not been conducted and managed** by such person in accordance **with sound business principles or prudent commercial practices**;
- (c) a **company** is or has been **conducted and managed by such person** in a manner which is likely to cause, or has caused, **serious injury or damage to the interest of the trade, industry or business** to which such company pertains; or
- (d) the **business** of a company is or has been **conducted and managed by such person** with **intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose** or in a manner **prejudicial to public interest**,

the Central Government may initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

- (4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.
- (5) Every application under sub-section (3)-
- (a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry; and
 - (b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

Examples

1. In an application filed to the Tribunal, claiming oppression, a shareholder who is also the director of the company cannot claim compensation by way of salary paid to other directors. Shareholders can share the dividend of the company, if it is declared but cannot seek directions to be compensated. The payment of salary is a question that concerns the Board of Directors and not the Tribunal.
2. Failure to declare dividend does not amount to oppression. (*Thomas Veddon V.J. vs. Kuttanad Robber Co. Ltd.*)
3. A legal heir of a deceased shareholder filed a petition. Such legal heir was in the position of a minority shareholder. Can the application filed by the legal heir to the Tribunal, be maintainable in court?

Here, the legal heir of the deceased shareholder with minority status is entitled to file the petition even his name is not on the register of members of the company.
4. In a case where a person, without being so appointed, was acting as a Managing Director and discharging his functions with or without the knowledge of the members, a member can not file an application with the Tribunal claiming it as an act of oppression.
5. While obtaining relief from Tribunal, continuous losses cannot be regarded as oppression by itself (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).
6. Section 241 contains the words “Any member of a company who complains....” which implies that only a shareholder can seek remedy under section 242 by filing an application with Tribunal. In view of the wordings of Section 241, the Apex Court in *Tata Consultancy Services Ltd. v. Cyrus Investments (P) Ltd.* [(2021) 9 SCC 449] clarified that even a director’s removal cannot be held to be oppressive / prejudicial.

The Supreme Court of India in *Mahima Datla vs. Dr. Renuka Datla* April 6, 2022 passed an order in the light of Section 241, read with section 242, of the Companies Act, 2013. According to the facts, an application was filed to Tribunal for relief. Here Respondent was director in a company which was started by her husband late 'V'. Respondent's case before CLB was that one 'X' having resigned from post of director of company had convened board meetings wherein appellants, daughters of 'V', were appointed as directors and shares standing in name of 'V' were transferred in favour of appellants although a will was executed by 'V' bequeathing all his shares in her favour.

Though, CLB had denied interim relief prayed for, High Court by impugned order held meeting of Board of Directors as null and void and set aside all resolutions passed therein. It also granted exclusive benefit of transmission of one fourth of disputed shares in favour of respondent.

Since 'X' had never seized to be a director as he had withdrawn his resignation prior to its acceptance, meetings conducted by 'X' were held valid.

Since issue related to inheritance of shares was subject matter of Civil Suit pending before Civil Court, it was held that High Court should not have dwelled into such issue and granted one fourth shares in favour of respondent. As no iota of evidence was placed by respondent that affairs of company were being conducted in a manner prejudicial to public interest, impugned order passed by High Court was held to be set aside.



3. RIGHT TO APPLY UNDER SECTION 241 [SECTION 244]

Section 244 of the Companies Act, 2013 is linked to section 241. It states the eligibility of members as to who all possess the right to file an application for oppression and mismanagement under Section 241 with the Tribunal. The eligibility criterion provided in section 244 ensures that only the persons with sufficient interest in the affairs of the company can file the petition under section 241 of the Act.

(1) **Members having right to apply:** The following members of a company shall have the right to apply under section 241, namely:—

(a) **In the case of a company having share capital-**

Members eligible to apply shall be the lowest of the following-

- 100 members; or
- 1/10th of the total members; or
- holding 1/10th of total issued share capital.

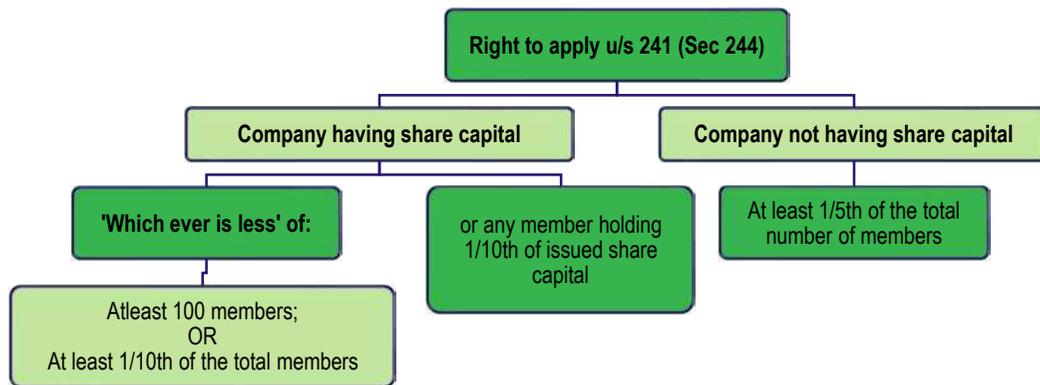
subject to the condition that the applicant or applicants has or have paid all calls and other sums due on their shares;

(b) **in the case of a company not having share capital-** at least 1/5th of the total number of its members:

Provided that on the application made to tribunal, The Tribunal may waive all or any of the requirements specified in clause (a) or clause (b) to enable the members to apply under section 241.

Explanation—For the purposes of this sub-section, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) **Entitlement to members to make an application:** Any one or more members may make an application under subsection (1) to the Tribunal on behalf of all the members by obtaining the written consent of other member.



Examples

1. In a case of oppression where the shareholding of the petitioner has been reduced below 10 per cent due to fresh issue/allotment of shares, though the maintainability of the petition would be reduced after determining the validity of the issue of allotment but the petition shall still be maintainable and the petitioner shall be entitled to relief.
2. The requirement of shareholding upto the prescribed percentage is mandatory. It must be shown with the help of documentary evidences. Possession of share certificates is a prima facie proof that the petitioner is a shareholder. There is a presumption that a share certificate is a valid title to shares.
3. Shareholding and membership is reckoned not on the basis of the subscribed or paid-up share capital, but on the basis of the 'issued' share capital. For instance, a company may have issued a share capital of 50 lakh rupees divided into 50,000 shares of face value of 100 rupees each, but only 45,000 shares may have been subscribed for. The remaining shares will be left to be disposed of in such a manner as the Board of Directors think best in the interests of the company. 'Issued' share capital would include both equity and preference share capital.
4. The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R. (1956) Sc. 2013.*]
5. The National Company Law Tribunal, Chennai Bench in *John S. Dorai v. Church of South India Trust Association* held that where petitioner alleged that articles of association was illegally amended and some properties were sold away in respect of a charitable company, petition filed under section 241 was not maintainable as petitioner was neither a member nor a shareholder of said company.



4. POWERS OF TRIBUNAL [SECTION 242]

National Company Law Tribunal (NCLT) has been given wide powers under section 242 of Companies Act, 2013 to solve the matter judicially, on receipt of an application complaining oppression and mismanagement. NCLT will hear the matter and will pass suitable order. Procedure to be followed after NCLT issues order is also specified in section 242 of the Companies Act, 2013.

(1) Order passed by the Tribunal: If, on any application made under section 241, the Tribunal is of the opinion—

- (a) that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
- (b) that to wind up the company would unfairly prejudice 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 up,

the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

(2) Nature of orders that can be passed by the Tribunal: Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

- (a) the regulation of conduct of affairs of the company in future;
- (b) the purchase of shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- (d) restrictions on the transfer or allotment of the shares of the company;
- (e) the termination, setting aside or modifications, of any agreement, how so ever arrived at, between the company and the managing director, any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;
- (f) the termination, setting aside or modifications of any agreement between the company and any person other than those referred to in clause (e):

Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

- (g) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application made under this section, which would, if made or

done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

- (h) removal of the managing director, manager or any of the director of the company;
 - (i) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
 - (j) the manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause (h);
 - (k) appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
 - (l) imposition of cost as may be deemed fit by the Tribunal;
 - (m) any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.
- (3) **Filing of copy of order of Tribunal:** A certified copy of the order of the Tribunal, shall be filed by the company with the Registrar within 30 days of the order of the Tribunal.
- (4) **Interim order:** The Tribunal may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company. [Sub-section 4A]

- (5) **Alteration in Memorandum or Articles through order of Tribunal:** Where an order of the Tribunal makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power (except to the extent, if any, permitted in the order) to make, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles without the leave of the Tribunal. [Sub-section 5]
- (6) **Altered provision shall apply: The alterations made by the order in the memorandum or articles of a company shall have the same effect in all respects as if they had been duly made by the company in accordance with the provisions of this Act and the said provisions shall apply accordingly to the memorandum or articles so altered.**

- (7) **Filing of certified copy of order altering the Memorandum or Articles with the Registrar:** A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall be filed by the company with the Registrar who shall register the same within 30 days after the making thereof.
- (8) **Punishment in case of contravention:** If a company contravenes the provisions of sub-section (5), the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Examples

1. Mere lack of confidence among members themselves resulting in certain acts of irregularities or illegalities cannot be held to be oppressive per se. A case of oppression as well as mismanagement has to be made out by the petitioners substantiating that the acts complained of have caused prejudice to the interest of the company and its members and shareholders to have a cause of action to attract the provisions of the Act.
2. The matter of selection and appointment of dealers of the company's products, is not within the ambit and scope of the proceedings under section 241 (erstwhile section of the Act). In a tripartite agreement with the government, a project was assigned to the company. In this case, the right to manage the affairs of the company is vested in the majority of the shareholders and not in the person who might have procured the project for the company.
3. The decision relating to the operation of the company's bank accounts is a part of the managerial power of the directors. The mere fact that a director is not being associated with the operation of the company's bank accounts, does not constitute oppression or mismanagement. (*Sudha M. Singh vs. Eagle Cones Pvt. Ltd (2000) 36 CLA 189*)
4. The decision of the Board of Directors of the company to write-off bad debts is a commercial decision and does not require any judicial interference.
5. The members of the company, Minions Private Limited have filed an application for oppression in the company. To prove their facts, the members have requested for the inspection of documents of the company. However, the company denied to provide the same. Discuss, whether this amount to oppression under the provisions of this Act?

The right to inspection of documents and books of account of a company is not limited to the Board of directors. In order to prove allegations made in a petition under section 241 (erstwhile section of the Act), the shareholders are entitled to be allowed inspection of the books of account and other relevant papers of the company. However, mere denial of inspection, whether during the pendency of the petition or before it, does not amount to an act of oppression as held in the case of *Lalita Rajya Lakshmi v. Indian Motor Co. (Hazaribagh)*

Ltd. (1962) 32 Com Cases 207.

If a petitioner cannot make out a case of mismanagement and oppression because he was unable to collect materials for the purpose, it is not for the court to direct the directors of the company to offer inspection of the company's books and accounts so as to enable a petitioner to collect materials for the petition under the Act.

6. In deciding an application under section 241 and 242 (erstwhile section of the Act), a single act of renting out the premises of the company without the knowledge of the members cannot be termed as oppression or mismanagement. In other words, the act of oppression must be a continuing one.
7. The power to issue shares should be exercised bona-fide in the interest of the company and not for benefiting the directors or any other group. The directors are in a fiduciary position with the company and must exercise their power to issue the shares for the benefit of the company. If the power is exercised solely for their personal benefits, the Tribunal may interfere and prevent the directors from doing so. The act of issue of further shares by the directors of a company for the purpose of converting a majority into minority is a grave act of oppression.



5. CONSEQUENCES OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS [SECTION 243]

- (1) **Consequence of termination or modifications of certain agreements by an order passed by the Tribunal:** Where an order made under section 242 terminates, sets aside or modifies an agreement such as is referred to in sub-section (2) of that section,—
 - (a) **such order shall not give rise to any claims** whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;
 - (b) **no managing director or other director or manager** whose agreement is so terminated or set aside shall, **for a period of five years** from the date of the order terminating or setting aside the agreement, **without the leave of the Tribunal, be appointed, or act,** as the managing director or other director or manager of the company:
- (1A) **Disqualified to hold office:** The person who is **not a fit and proper** person pursuant to sub-section (4A) of section 242 shall **not hold the office of a director or any other office** connected with the conduct and management of the affairs of any company for a period of **five years** from the date of the said decision:

Provided that the Central Government may, with the leave of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

- (1B) **No Compensation for loss / termination of office:** Notwithstanding anything contained in any other provisions of this Act, or any other law for the time being in force, or any contract, memorandum or articles, on the removal of a person from the office of a director or any other office connected with the conduct and management of the affairs of the company, that person shall **not be entitled to, or be paid, any compensation** for the loss or termination of office.

Provided that the **Tribunal shall not grant leave** under this clause unless **notice of the intention to apply for leave** has been served on the Central Government and that Government has been given a reasonable opportunity of being heard in the matter.

- (2) **Penalty:** Any person who knowingly acts as a managing director or other director or manager of a company in contravention of clause (b) of sub-section (1) or sub-section (1A), and every other director of the company who is knowingly a party to such contravention, shall be punishable with fine which may extend to five lakh rupees.

6. CLASS ACTION [SECTION 245]

Section 245 of the Companies Act, 2013 introduces the concept of class action by shareholders and depositors of a company with substantive remedies. According to this section, members and depositors, or an individual member or depositor, can file a petition for reliefs, if they are of the opinion that the affairs of the company are being managed or conducted in a manner prejudicial to the interests of the company, its members or depositors.



- (1) **Filing of application before the Tribunal on behalf of the members or depositors [Sub-section (1)]:**

Such number of **member or members, depositor or depositors or any class of them**, as the case may be, as are indicated in sub-section (3) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner **prejudicial to the interests of the company or its members or depositors**, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders, namely:—

- (a) to **restrain the company** from committing an **act** which is **ultra vires** the articles or memorandum of the company;
- (b) to **restrain the company** from committing **breach of any provision** of the company's memorandum or articles;
- (c) to **declare a resolution** altering the memorandum or articles of the company **as void** if the resolution was **passed by suppression of material facts or obtained by mis-statement** to the members or depositors;
- (d) to **restrain** the company and its directors from **acting on such resolution**;

- (e) to **restrain** the company from **doing an act** which is **contrary to the provisions** of this Act or any other law for the time being in force;
- (f) to **restrain** the company from **taking action contrary to any resolution passed** by the members;
- (g) to **claim damages or compensation or demand any other suitable action** from or against—
 - (i) the company or its directors for any **fraudulent, unlawful or wrongful act or omission or conduct** or any likely act or omission or conduct on its or their part;
 - (ii) the auditor including audit firm of the company for any **improper or misleading statement of particulars made in his audit report** or for any fraudulent, unlawful or wrongful act or conduct; or
 - (iii) any expert or advisor or consultant or any other person for any **incorrect or misleading statement** made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- (h) to **seek any other remedy** as the Tribunal may deem fit.

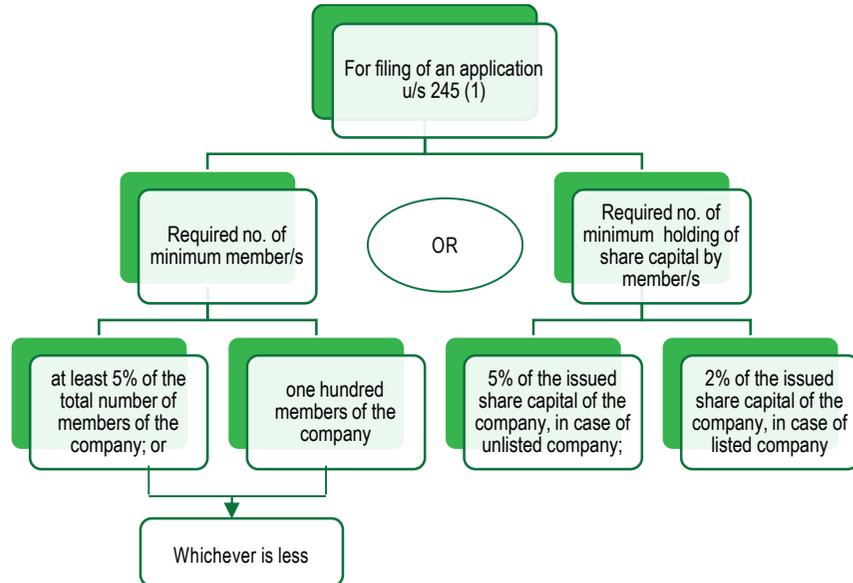
(2) Liability of Audit Firm and its Partners [Sub-section (2)]:

Where the **members or depositors** seek any damages or compensation or demand any other suitable action from or against an **audit firm**, the liability shall be of the **firm** as well as of **each partner** who was involved in making any improper or misleading statement of particulars in the audit report or who acted in a fraudulent, unlawful or wrongful manner.

(3) Requisite number of members to apply [Sub-section (3)]:

- (i) The **requisite number of members** provided in sub-section (1) shall be as under:—
 - (a) **in the case of a company having a share capital**, not less than **one hundred members** of the company or not less than such **percentage of the total number of its members** as may be prescribed, **whichever is less**, or any member or members holding not less than such **percentage of the issued share capital of the company** as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

In case of a company having a share capital, the requisite number of member or members to file an application under section 245 (1) shall be as given hereunder –



- (b) **in the case of a company not having a share capital**, not less than **one-fifth of the total number of its members**.
- (ii) **The requisite number of depositors** provided in sub-section (1) shall not be less than **one hundred depositors** or not less than such **percentage of the total number of depositors** as may be prescribed, **whichever is less**, or any depositor or depositors to whom the company owes such percentage of total deposits of the company as may be prescribed.

The **requisite number of depositor or depositors to file an application** under sub-section (1) of section 245 shall be -

- (i) (a) at least five percent of the total number of depositors of the company; or
 (b) one hundred depositors of the company,
 whichever is less; or;
- (ii) depositor or depositors to whom the company owes five percent of total deposits of the company.

(4) Requirements for consideration of application [Sub-section (4)]:

In considering an application under sub-section (1), the Tribunal shall take into account, in particular—

- (a) whether the member or depositor is acting in **good faith** in making the application for seeking an order;
- (b) any evidence before it as to the **involvement** of any person other than directors or officers of the company on any of the matters provided in clauses (a) to (f) of sub-section(1);

- (c) whether the cause of action is one which the member or depositor could pursue in his **own right** rather than through an order under this section;
- (d) any evidence before it as to the **views** of the members or depositors of the company who **have no personal interest**, direct or indirect, in the matter being proceeded under this section;
- (e) where the cause of action is an act or omission that is **yet to occur**, whether the act or omission could be, and in the circumstances would be likely to be—
 - (i) authorised by the company before it occurs; or
 - (ii) ratified by the company after it occurs;
- (f) where the cause of action is an act or omission that has **already occurred**, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

(5) In case of admission of application [Sub-section (5)]:

If an application filed under sub-section (1) is admitted, then the Tribunal shall have regard to the following, namely:—

- (a) **public notice shall be served** on admission of the application to all the members or depositors of the class in such manner as may be prescribed;
- (b) all **similar applications** prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to **choose the lead applicant** and in the event the members or depositors of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side;
- (c) **two class action applications** for the **same cause of action** shall **not** be allowed;
- (d) the **cost or expenses** connected with the application for class action shall be **defrayed** by the company or any other person **responsible for any oppressive act**.

(6) Order of Tribunal to be binding [Sub-section (6)]:

Any order passed by the Tribunal shall be **binding** on the company and all its members, depositors and auditor including audit firm or expert or consultant or advisor or any other person associated with the company.

(7) Punishment for non-compliance [Sub-section (7)]:

Any **company** which fails to comply with an order passed by the Tribunal under this section shall be **punishable with fine** which shall be at least five lakhs rupees but which may extend to twenty-five lakhs rupees and **every officer of the company** who is in default shall be punishable with **imprisonment** for a term which may extend to three years **and with fine** which shall be at least twenty-five thousand rupees but which may extend to one lakh rupees.

In addition to this punishment, penalties given under sections 337 to 341 (both inclusive) shall also apply.

(8) Application filed is found to be frivolous/vexatious [Sub-section (8)]:

Where any application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, **reject the application** and make an **order** that the **applicant shall pay** to the opposite party such **cost**, not exceeding one lakh rupees, as may be specified in the order.

(9) Exemption to banking company [Sub-section (9)]:

Nothing contained in this section shall apply to a **banking company**.

(10) Application may be filed on behalf of affected persons [Sub-section (10)]:

Subject to the compliance of this section, an application may be filed or any other action may be taken under this section by any person, group of persons or any association of persons representing the persons affected by any act or omission, specified in sub-section (1).



7. APPLICATION OF CERTAIN PROVISIONS TO PROCEEDINGS UNDER SECTION 241 OR SECTION 245 [SECTION 246]

The provisions of sections 337, 338, 339, 340 and 341 related to winding up, shall apply *mutatis mutandis*, in relation to an application made to the Tribunal under section 241 or section 245.

- Penalty for Frauds by Officers [Section 337]
- Liability where Proper Accounts not Kept [Section 338]
- Liability for Fraudulent Conduct of Business [Section 339]
- Power of Tribunal to Assess Damages Against Delinquent Directors, etc. [Section 340]
- Liability Under Sections 339 and 340 to Extend to Partners or Directors in Firms or Companies [Section 341]

In other words:

- The section seeks to provide that the provisions of the section 337 to 341 relating to power to punish for contempt of Tribunal shall apply in relation to a fraudulent application made to the Tribunal for oppression and mismanagement.
- The provisions of section 337 to 341 deal with offences by officers, contributories and promoters of a company after its winding up and provide for penalties and recompense for falsification of books, frauds committed by officers, failure to keep proper accounts, fraudulent conduct of business, and the power to assess damages against such delinquent officers, including partners and directors where a firm or a body is involved.

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. *Due to the impending recession, the profits of Super Star Car Manufacturers Limited decreased considerably for the financial year 2020-2021 and therefore, its Board of Directors did not recommend any dividend for the year. At the Annual General Meeting of Super Star Car Manufacturers Limited, a group of shareholders objected to the Board's decision of not recommending any dividend and coerced the directors to reverse such decision. On refusal by the Board, the disappointed members felt oppressed and filed a complaint with the National Company Law Tribunal (NCLT) against the action of the Board. In the given scenario, which option out of the four mentioned below, is the most appropriate:*
 - (a) *The contention of the shareholders of Super Star Car Manufacturers Limited who filed a complaint with NCLT against the action of the Board for not recommending dividend shall be tenable.*
 - (b) *The action of the Board of Directors of Super Star Car Manufacturers Limited, not to recommend any dividend shall amount to oppression and mismanagement.*
 - (c) *The action of the Board of Directors of Super Star Car Manufacturers Limited who acted in the interest of the company by not recommending any dividend shall not amount to oppression and mismanagement.*
 - (d) *Both (a) and (b).*

2. *The shareholders of Viable Plastic Industries Limited passed a special resolution at the Extraordinary General (EGM) of the company to alter the Articles of Association and empower Board of Directors to transfer the shares of any shareholder who competes with the business of the company. Mr. Akshat, one of the minority shareholders of Viable Plastic Industries Limited who was carrying on a competing business of manufacturing plastic bottles and containers as well as marketing them, challenged the validity of the alteration to be made in the Articles of Association and claimed such action as oppression against minority. Which of the option from the following four is applicable in the given situation?*
 - (a) *The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered after following the due process of law.*
 - (b) *The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is not valid since the Articles are being altered in the interest of the company.*
 - (c) *The action of Mr. Akshat challenging the validity of the alteration to be made in the Articles of Association and claiming such action as oppression against minority is valid since the act complained of is oppressive and prejudicial to the interest of the company.*
 - (d) *Both (a) and (b)*

3. *Meenu Automotive Private Limited, whose issued and paid-up share capital is ₹ 1,00,00,000 consisting of 1,00,000 lakh equity shares of ₹ 100 each, has 150 shareholders as per its Register of Members. Some of the shareholders are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement. Which of the following options correctly indicates as to who can apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement happening in a company having share capital:*
- (a) *In the above case such shareholders who are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum one hundred and twenty five or not less than one-fifth of the total number of members, whichever is more, or any member or members holding at least one-fifth of the issued share capital on which all the calls have been paid.*
 - (b) *In the above case such shareholders who are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum fifty or not less than one-tenth of the total number of members, whichever is more, or any member or members holding at least one-fifteenths of the issued share capital on which all the calls have been paid.*
 - (c) *In the above case such shareholders who are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum seventy five or not less than one-fifth of the total number of members, whichever is less, or any member or members holding at least one-twentieth of the issued share capital on which all the calls have been paid.*
 - (d) *In the above case such shareholders who are contemplating to file an application before the National Company Law Tribunal (NCLT) alleging various acts of fraud and mismanagement must be minimum one hundred or not less than one-tenth of the total number of members, whichever is less, or any member or members holding at least one-tenth of the issued share capital on which all the calls have been paid.*
4. *The issued and paid-up equity share capital of Golden Kalash Clothes Private Limited is ₹ 1,00,00,000 (10,00,000 equity shares of ₹ 10 each) which is held by ten shareholders. Jasmine holds 80,000 equity shares worth ₹ 8,00,000. Sensing oppression and mismanagement in the company, she is contemplating to apply to the National Company Law Tribunal (NCLT) for relief. Out of the following four options which one is applicable in the given situation:*
- (a) *Jasmine being a single member cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 60% of total shareholders must apply for such relief i.e. at least 6 shareholders in the present case.*
 - (b) *Jasmine cannot apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement since she is holding 80,000 equity shares worth ₹*

- 8,00,000 which is less than one-tenth of the issued and paid-up equity share capital of Golden Kalash Clothes Private Limited.
- (c) Jasmine, being one-tenth of the total number of shareholders, can apply to the National Company Law Tribunal (NCLT) for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited.
- (d) Jasmine, being a single member, cannot apply for relief against oppression and mismanagement propagated by Golden Kalash Clothes Private Limited since at least 50% of total shareholders must apply for such relief i.e. at least 5 shareholders in the present case.
5. For the past five years Mr. Rohtash was the holder 5,500 shares of Delta Software Solutions Ltd. which has issued share capital of ₹ 5,00,000 divided into 50,000 shares of ₹ 10 each. Mr. Rohtash was in the knowledge of some material changes that had taken place in Delta Software Solutions Ltd. and according to him they were prejudicial to the interest of members as well as the company. To contain the directors from continuing with unjustified changes, he wanted to make an application to the jurisdictional National Company Law Tribunal (NCLT) under Section 241 of the Companies Act, 2013. However, before Mr. Rohtash could proceed further and file the application with NCLT, he expired within one hour because of severe heart attack. Immediately thereafter, his only son Umang, a child specialist working in the Government Hospital, inherited his 5,500 shares. Is it possible for Umang to file an application with the jurisdictional National Company Law Tribunal (NCLT) highlighting the conduct of the affairs of the company in a manner which is prejudicial to the interest of members as well as the company. Choose the correct option from those given below whether Umang can proceed further:
- (a) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed six months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
- (b) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed four months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
- (c) Though Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT) but his son Umang cannot file the application because he has not yet completed three months as holder of the shares which he inherited after the death of his father Mr. Rohtash.
- (d) Since Mr. Rohtash was eligible under Section 244 of the Companies Act, 2013 to make an application to the jurisdictional National Company Law Tribunal (NCLT), his son Umang can also file the application because he has inherited the 5,500 shares after the death of his father Mr. Rohtash.

6. *Mr. Derek Jonathan, a majority shareholder, represented himself to be the Managing Director of Floyd Ceramics Ltd., and also discharged the functions in the capacity as Managing Director. However, he was not formally appointed as Managing Director of Floyd Ceramics Ltd. A group of six members, holding 1/12th of the issued share capital, which amounted to 1/10th of paid-up share capital of the company filed an application with the National Company Law Tribunal (NCLT) claiming that such an act of Mr. Derek Jonathan constituted oppression. The total number of members of Floyd Ceramics Ltd. are seventy-two. Which of the following statements is the most appropriate one in the above-mentioned situation?*
- (a) *The group of six members cannot file an application with National Company Law Tribunal (NCLT) as the strength of members is less than 1/10th of total number of members of Floyd Ceramics Ltd. However, after filing the application with NCLT, it is within the discretion of NCLT to allow the application to be filed even with fewer number of members.*
 - (b) *The group of six members cannot file an application with National Company Law Tribunal (NCLT) since the members hold less than 1/10th of the issued share capital of the company.*
 - (c) *The group of six members cannot file an application with the National Company Law Tribunal (NCLT) since the given fact pattern does not constitute oppression.*
 - (d) *Since the group of six members holds 1/10th of the paid-up share capital of the company, they can file an application with the National Company Law Tribunal (NCLT).*

Descriptive Questions

1. *ABC Private Limited having share capital has eight shareholders. Can a member holding less than one-tenth of the share capital of the company apply to the Tribunal for relief against oppression and mismanagement? Give your answer according to the provisions of the Companies Act, 2013.*
2. *The issued and paid up capital of MNC Limited is ₹ 5 crores consisting of 5,00,000 equity shares of ₹ 100 each. The said company has 500 members. A petition was submitted before the Tribunal signed by 80 members holding 10,000 equity shares of the company for the purpose of relief against oppression and mismanagement by the majority shareholders. Examining the provisions of the Companies Act, 2013, decide whether the said petition is maintainable. Also explain the impact on the maintainability of the above petition, if subsequently 40 members, who had signed the petition, withdrew their consent.*
3. *A group of shareholders consisting of 25 members decide to file a petition before the Tribunal for relief against oppression and mismanagement by the Board of Directors of Fly By Night Operators Ltd. The company has a total of 300 members and the group of 25 members holds one-tenth of the total paid-up share capital accounting for one-fifteenth of the issued share capital. The main grievance of the group is that due to mismanagement by the Board of Directors, the company is incurring losses and the company has not declared any dividends even when profits were available in the past years for declaration of dividend. In the light of*

the provisions of the Companies Act, 2013, advise the group of shareholders regarding the success of (i) getting the petition admitted and (ii) obtaining relief from the Tribunal.

4. A group of members of XYZ Limited has filed a petition before the Tribunal alleging various acts of oppression and mismanagement by the majority shareholders of the company. The Petitioner group holds 12% of the issued share capital of the company. During the pendency of the petition, some of the petitioners holding about 5% of the issued share capital of the company wish to disassociate themselves from the petition and they along with the other majority shareholders have submitted before the Tribunal that the petition may be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act, 2013.
5. A group of members holding 380 lakh issued share capital in Zolo Tech Ltd. a listed public company having total issued share capital of 15000 lakhs as per latest financial statements alleged that company Board of Directors is conducting an act which is ultra vires the Articles or Memorandum of the company without altering the Memorandum or Articles of the company. They make an application to Tribunal (NCLT) to restrain the company from doing such ultra-vires act. With reference to the provision of Companies Act, 2013 ascertain whether the application will be admitted by tribunal (NCLT).

ANSWERS

Answer to Multiple Choice Questions

1.	c	2.	d	3.	d	4.	c	5.	d
6.	c								

Answer to Descriptive Questions

1. According to Section 244 of the Companies Act, 2013, in the case of a company having share capital, the following member(s) have the right to apply to the Tribunal under section 241:
 - (a) Not less than 100 members of the company or not less than one-tenth of the total number of members, whichever is less; or
 - (b) Any member or members holding not less than one-tenth of the issued share capital of the company provided the applicant(s) have paid all the calls and other sums due on the shares.

In the given case, there are eight shareholders in ABC Private Limited. As per the condition (a) above, 10% of 8 i.e. 1 member can apply to the Tribunal. Therefore, a single member can present a petition to the Tribunal, regardless of the fact that he holds less than one-tenth of the company's share capital.

2. As per the provisions of Section 244 of the Companies Act, 2013, in the case of a company having share capital, members eligible to apply for oppression and mismanagement shall be lower of the following:

100 members; or

1/10th of the total number of members; or

Members holding not less than 1/10th of the issued share capital of the company.

The share holding pattern of MNC Limited is as follows:

₹ 5,00,00,000 equity share capital held by 500 members

The petition alleging oppression and mismanagement has been made by some members as follows:

(i) No. of members making the petition – 80

(ii) Amount of share capital held by members making the petition – ₹ 10,00,000

The petition shall be valid if it has been made by the lowest of the following:

100 members; or

50 members (being 1/10th of 500); or

Members holding ₹ 50,00,000 share capital (being 1/10th of ₹ 5,00,00,000)

As it is evident, the petition made by 80 members meets the eligibility criteria specified under section 244 of the Companies Act, 2013 as it exceeds the minimum requirement of 50 members in this case. Therefore, the petition is maintainable.

The consent to be given by a shareholder is reckoned at the beginning of the proceedings. The withdrawal of consent by any shareholder during the course of proceedings shall not affect the maintainability of the petition [*Rajamundhry Electric Corporation Vs. V. Nageswar Rao A.I.R.*].

3. Section 244 of the Companies Act, 2013 provides the right to apply to the Tribunal for relief against oppression and mis-management. This right is available only when the petitioners hold the prescribed limit of shares as indicated below:

(i) In the case of company having a share capital, not less than 100 members of the Company or not less than one tenth of the total number of its members whichever is less or any member or members holding not less than one tenth of the issued share capital of the company, provided that the applicant(s) have paid all calls and other dues on the shares.

(ii) In the case of company not having share capital, not less than one-fifth of the total number of its members.

Since the group of shareholders do not number 100 or hold 1/10th of the issued share capital or constitute 1/10th of the total number of members, they have no right to approach the Tribunal for relief.

However, the Tribunal may, on an application made to it waive all or any of the requirements specified in (i) or (ii) so as to enable the members to apply under section 241.

As regards obtaining relief from Tribunal, continuous losses cannot, by itself, be regarded as oppression (*Ashok Betelnut Co. P. Ltd. vs. M.K. Chandrakanth*).

Similarly, failure to declare dividends or payment of low dividends also does not amount to oppression. (*Thomas Veddon V.J. vs. Kuttanad Robber Co. Ltd*).

Thus, the shareholders may not succeed in getting any relief from Tribunal.

4. The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintability is not correct. The proceedings shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry Electric Corporation vs. V. Nageswar Rao, AIR (1956) SC 213* that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Tribunal to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.
5. According to section 245 of Companies Act, 2013, such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, file an application before the Tribunal on behalf of the members or depositors for seeking an order, to restrain the company from committing an act which is ultra-vires the Articles or Memorandum of the company.

Requisite number of members to make Application under Section 245 (1) for Class Action for depositors is as prescribed in Rule 84 (4) of the National Company Law Tribunal Rules, 2016. Accordingly, in case of a company having a share capital the requisite number of member or members to file an application under section 245 (1) shall be:-

- (a) at least five per cent. of the total number of members of the company; or
- (b) one hundred members of the company, whichever is less; or
- (c) In case of a listed company, member or members holding not less than two per cent. of the issued share capital of the company.

In the above case, members holding 2.53% ($380/15000 \times 100$) of issued share capital of Zolo Tech Ltd. which is a listed company make an application before Tribunal (NCLT). Hence as members meet condition of 2% of issued share capital, therefore their application can be admitted by the NCLT.

