



## POWERS OF NATIONAL COMPANY LAW TRIBUNAL IN CASES OF OPPRESSION AND MISMANAGEMENT

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### Introduction

There has been tremendous growth that has taken place in the corporate sector necessitates a sound mechanism to deal with issues and disputes that may arise in its working. The National Company Law Tribunal (NCLT) were set up to provide an instant remedy, speedy justice and simpler way to access Tribunals to have an efficient free flow of company management. The aim of the National Company Law Tribunal is to dissolve the corporate dispute.<sup>1</sup> With the establishment of NCLT and NCLAT (appellate authority) numerous litigations before various Tribunal benches for Merger, Amalgamation, Oppression and Mismanagement of Investors, Winding Up of Companies, Revival or Rehabilitation of sick companies and other applicable provisions of Companies Act, 2013 and Insolvency proceedings have commenced and are dealt efficiently. The NCLT has recently recover eighty thousand crores from IBC cases.<sup>2</sup>

The adjudicating authority of the Companies Act, 2013 is NCLT. By virtue of Companies

Act, 2013, certain powers for National Company Law Tribunal (NCLT) have been increased. The Companies Act, 2013 made several changes to the corporate framework to fortify the investor protection regime.<sup>3</sup> It was enacted with several provisions which safeguards the investors and strengthen corporate democracy. The method that are used in the Act are of two types preventive and curative method.<sup>4</sup> To protect the rights of the minority shareholders from abusive actions certain effective means of redressal was essential to frame in the judicial system. The Companies Act, 2013 has retained this remedy and inserted additional powers in the judiciary to protect stakeholders' interest.<sup>5</sup> The Tribunal is given freedom to bring an end to the Oppression and Mismanagement. It has been vested with certain powers to regulate the conduct of affairs of company.<sup>6</sup>

### Formation and Establishment of National Company Law Tribunal (NCLT)

The concept of formation of the Tribunal for dealing with various activities of Companies was first introduced in the Companies Act, 1956 by the Companies (Second Amendment) Act, 2002.<sup>7</sup> As a result of the said amendment the jurisdiction exercised by the High Courts in the areas of Merge and Amalgamation of the Companies, Winding Up of the Companies were to be transferred to the Tribunals.<sup>8</sup> The Company Law Board (CLB), Board of Industrial and Financial Reconstruction (BIFR) and Appellate

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

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

<sup>3</sup> Ibid.

<sup>4</sup>U. Gayathri, 'A study of the Importance of National Company law tribunal in India', *International Journal of Pure and Applied Mathematics*, pp. 41-55 Volume 120 No. 5, 2018.

<sup>5</sup> Ibid.

<sup>6</sup> Section 242 of the Companies Act, 2013.

<sup>7</sup> Companies (Second Amendment) Act, 2002.

<sup>8</sup> Ibid.



Authority of Industrial and Financial Reconstruction (AAIFR) were to be abolished and transferred to NCLT.<sup>9</sup> In short, the NCLT was to supposed to combine the work of certain powers of High Court, CLB, BIFR and the AAIFR. The setting up of tribunal was proposed to be established partly as a result of the recommendation of Eradi committee.<sup>10</sup> Justice V. Balakrishnan Eradi was a retired Judge of Hon'ble Supreme Court of India. the purpose of this committee was to examine existing laws and to remodel it in line with the latest development and innovation in the corporate laws and governance and to suggest reforms to procedures which are followed in insolvency proceedings.<sup>11</sup>

In the Companies Act, 2013, the concept of Tribunals was introduced again, however, the powers and scope of the tribunals was made much wider under this law. The NCLT and NCLAT (appellant authority) were constituted on 1<sup>st</sup> June, 2016.<sup>12</sup> The NCLT is the adjudicating authority of the Companies Act, 2013, The Insolvency and bankruptcy Code, 2016 and currently the NCLAT (appellant authority) has started making matters under Competition Act, 2002 as per the amendment brought in 2017.<sup>13</sup> The validity of the NCLT was challenged in the

case of *Madras Bar Association v Union of India* and in the case of *R. Gandhi v Union of India*<sup>14</sup> the distinction was between the Tribunal and the Court by the Supreme Court.<sup>15</sup> In the *Madras Bar Association Case* the Supreme Court held that the NCLT and NCLAT are constitutionally valid and also stated the necessity of establishing tribunals.<sup>16</sup>

The NCLT or 'Tribunal' is the quasi-judicial authority under Section 408 of the Companies Act, 2013 to handle corporate civil disputes arising under this Act.<sup>17</sup> It is an entity that has powers and procedures like those vested in court of law. NCLT is obliged to objectively determine facts, decide cases in accordance with the principles of natural justice and draw conclusions from them in the form of orders.<sup>18</sup> Furthermore, such orders are a remedy to corporate disputes, it also impose legal penalties/costs and may affect the legal right, duties or privileges of certain parties. The National Company Law Tribunal is established under Central Government Authority, Ministry of Corporate affairs with the view of settling down the companies dispute within a limited frame time and which is also estimated to be of less expensive while compared to other

<sup>9</sup> CS. Ajay Kumar, National Company Law Tribunal & National Company Law Appellate Tribunal (Practice and Procedure), pp. 3-5, S. 2<sup>nd</sup> Edition, Bharat Law House Pvt. Ltd, 2017.

<sup>10</sup> Report of the High-Level Committee on law relating to Insolvency and Winding Up of Companies (Committee chaired by Shri Justice V. Balakrishnan Eradi or the Eradi Committee, 2000.

<sup>11</sup> Prachi Manekar, Insights into the New Company Law, lexis Nexis, 2018.

<sup>12</sup> CS. Ajay Kumar, National Company Law Tribunal & National Company Law Appellate Tribunal (Practice and Procedure), pp. 3-5, S. 2<sup>nd</sup> Edition, Bharat Law House Pvt. Ltd, 2017.

<sup>13</sup> 'The NCLT and COMPAT', accessed on 15<sup>th</sup> April, 2019  
<https://www.business-standard.com/article/economy-policy/govt-to-scrap-8-appellate...>

<sup>14</sup> R. Gandhi v. Union of India (2004) 120 Comp Cas 510 (Madras)

<sup>15</sup> Madras Bar Association v Union of India (2015) 126 CLA 111 (SC)

<sup>16</sup> Ibid.

<sup>17</sup> Section 408, the Companies Act, 2013.

<sup>18</sup> Prachi Manekar, Insights into the New Company Law, lexis Nexis, 2018.



courts. The judgement framed by the National Company Law Tribunal can be appealed to National Company Law Appellate Tribunal (NCLAT). The NCLAT is an appellate body which has the power to appeal the decision of National Company Law Tribunal but the decisions of the appellate tribunal can further be appealed by the Supreme Court.<sup>19</sup>

### The Remedy for Oppression and Mismanagement Under Companies Act, 2013

The term 'Oppression' means the act or an instance of unjustly exercising authority or power with an intention to abuse discretionary authority with an improper motive.<sup>20</sup> The provision of this term is read under section 241(1)(a) of the Companies Act, 2013.<sup>21</sup> It has been discussed in various Supreme Court Cases with respect to the previous section 397 of the Companies Act, 1956. In the case of *V.S Krishnan v Westfort HI-Tech Hospital Ltd. and Ors.*<sup>22</sup>, and '*Needle Industries Ltd. v Needle Industries Newey Holding Ltd. and Ors.*<sup>23</sup>. The term oppression is made out as where the conduct of the authority is harsh, burdensome and wrongful and the action is against probity and good conduct.<sup>24</sup> The language of the current provision is different from Section 397 of the companies Act, 1956. According to Section 241(1) of the Companies Act, 2013 the term 'have been' has used instead of 'had' and another ground has been added which is

'prejudicial to members'. The landmark case of *Shanti Prasad Jain v Kalinga Tubes Ltd.*<sup>25</sup> has been tested under the new legislation. Some part of the judgement has still made applicable which states '*Continuous acts on the part of the majority shareholders, continuing up to the date of petition,*' will be the ground for the oppression.<sup>26</sup>

The circumstances and effect giving rise to mismanagement has been specified under section 241(1)(b) of the Companies Act, 2013. For the petition under this section to succeed, it must be established that the affairs of the company are being conducted in the manner prejudicial to the interest of the company or public interest, or that, or by any change in the manner and control over the company and it is likely that the affairs of the company will be conducted in that manner.<sup>27</sup> Under the new law the test of 'winding-up on just and equitable grounds' is applicable to mismanagement under the Companies Act, 2013<sup>28</sup>. This was earlier a test considered for oppression which was not an essential test.

The aggrieved Shareholder can file an application under section 241 and 242 of the Companies Act to get relief. An application can be made to the NCLT if the affairs are conducted in a manner prejudicial to the interest of the public or the company or it is otherwise oppressive to the members. Similarly, an application can also be made when there is a material change in the

<sup>19</sup> U. Gayathri, 'A study of the Importance of National Company law tribunal in India', *International Journal of Pure and Applied Mathematics*, pp. 41-55 Volume 120 No. 5, 2018, (<https://acadpubl.eu/hub/2018-120-5/1/5.pdf>)

<sup>20</sup> Black's Law Dictionary, 9<sup>th</sup> Edition

<sup>21</sup> Section 241(1)(a) of the Companies Act, 2013

<sup>22</sup> *V.S Krishnan v Westfort HI-Tech Hospital Ltd. and Ors* 2(2008) CLT 823

<sup>23</sup> *Needle Industries Ltd. v Needle Industries Newey Holding Ltd. and Ors* (1981) 3SC 212.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Shanti Prasad Jain v Kalinga Tubes* AIR 1965 SC 1535

<sup>26</sup> *Ibid.*

<sup>27</sup> Section 241(1)(b) of the Companies Act, 2013

<sup>28</sup> Section 242 of the Companies Act, 2013



management and control of the company which makes it likely that the affairs of the company will be conducted in a manner prejudicial to its interest or its members or any class of members.<sup>29</sup>

### **Eligibility to Apply for Prevention of Oppression and Mismanagement**

The eligibility criteria have been mentioned under Section 244 of the Companies Act, 2013.<sup>30</sup> It mentions members have a right to apply under section 241 of the Act. The member and government can apply under section 241(2). The criteria for company having share capital is hundred members or one-tenth of the total number of its members whichever is less, any member or member holding not less than one tenth of the issued share capital of the company. The criteria for company not having share capital is one-fifth of the total number of its members. A representative suit can also be filed by a member or members with the written consent from other members. However, if the tribunal considers a case it can waive or relax the eligibility criteria based on the facts of the case.<sup>31</sup>

### **Applicability of Limitation Act in Oppression and Mismanagement**

Before filing any petition at the NCLT, one should take care that the application is within the time period as prescribed under the limitation Act, 1963 and the first cause of action has been arising within a period of three years from the date of filing the petition at the NCLT.<sup>32</sup> If any matter is beyond the limitation period then the bench may reject the same on the ground of time barred under

the limitation Act, 1963. The matter should not be barred under the limitation Act, 1963.<sup>33</sup>

### **Scope and Extend of Powers of the Tribunal in Cases of Oppression and Mismanagement**

The powers of the Tribunal under Section 242 of the Act are fairly wide. The tribunal has been granted complete freedom to bring an end to the oppression and mismanagement. The tribunal are given wide power to pass an order in such type of cases. The relief that can be granted are suspension of the entire board and removal of auditors, conferring immunities of the nominees of the board, restraining the judicial forums from taking any action against the government nominee, introducing a strategic partner by making a preferential allotment without the consent of the shareholders etc.

As per the provision of Section 242 of the Act, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

The powers of Tribunal are as follows:

1. *"The regulation of conduct of affairs of the company in the future.*
2. *The purchase of shares/interests of any members of the company by other members thereof/by the company.*
3. *In the case of purchase of its shares by the company as aforesaid, the*
4. *consequent reduction of its share capital.*
5. *Restrictions on the transfer/allotment of the shares of the company.*
6. *The termination, setting aside or modification, of any agreement between, the*

<sup>29</sup> CS. Ajay Kumar, National Company Law Tribunal & National Company Law Appellate Tribunal (Practice and Procedure), pp. 3-5, S. 2<sup>nd</sup> Edition, Bharat Law House Pvt. Ltd, 2017.

<sup>30</sup> Section 244 of the Companies Act, 2013.

<sup>31</sup> Section 244 of the Companies Act, 2013.

<sup>32</sup> Limitation Act, 1963.

<sup>33</sup> Nirakar Das v Durgapur Bio Garden Private Ltd.



- company and the managing director, in the opinion of the Tribunal be just and equitable.*
7. *The termination, setting aside or modification of any agreement between the company and any other person, provided no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned.*
  8. *Removal of the Managing Director, Manager or any of the directors of the company.*
  9. *Recovery of undue gains by an Managing Director, Manager or Director during the period of appointment and the manner of utilization of the recovery including transfer to IEPF or repayment of identifiable victims.*
  10. *Manner in which the Managing Director or Manager or the Company may be appointed subsequent to an order removing the existing Managing Director or Manager of the company. (Appointing another person in his place)*
  11. *Appointment of such number of persons as directors to report to the Tribunal as it may direct.*
  12. *Imposition of costs as may be deemed fit by the Tribunal*
  13. *Any other matter, in the opinion of the Tribunal is Just and Equitable.*
  14. *A certified copy of Tribunal order shall be filed by the company with the Registrar*
  15. *within 30 days of the order.*
  16. *The Tribunal may make an Interim order if it thinks fit for regulating the conduct of company's affairs to be just and equitable.*<sup>34</sup>

#### **Analysis:**

The above provision explains that the Tribunal is empowered to make any order for

the regulation of the conduct of the company's affair upon such terms and conditions as it deems fit.<sup>35</sup> There are certain 'existing powers' which has been continued from the previous legislation and new legislation consist of modified powers. The Tribunal has power to provide complete justice to the parties and pass the order for the smooth functioning of the Company. Under section 242 (4) of the Act<sup>36</sup>, the Tribunal can pass an interim order if it thinks fit for regulating the conduct of the business to be just and equitable which has been discussed in *PPN Power Generating Company v PPN Mauritius Company*<sup>37</sup>.

The Tribunal may, with a view to bringing to an end the matters complained of, make such orders as it thinks fit.<sup>38</sup> The nature and powers of the tribunal has been discussed in various cases. It has been stated in various noteworthy cases such as in the *Bennet Coleman v Union of India*<sup>39</sup>, the nature scope and extent of this powers was analysed in great detail. The powers under these provisions are not affected by the existence of an arbitration clause. The powers that are enumerated in this section, ensure that the scope of power of Tribunal at least as regards such matters with respect to the action taken by tribunal, prevents questioning in higher forum.

#### **Considerations for NCLT**

The NCLT looks into certain essential aspects while dealing in matters of Oppression and Mismanagement. The Tribunal understands whether the members

<sup>34</sup> Section 242 of the Companies Act, 2013.

<sup>35</sup> *Peerless General Finance v Union of India* (1989) 1 Comp LJ 56 Cal.

<sup>36</sup> Section 242 (4) of the Companies Act, 2013.

<sup>37</sup> *PPN Power Generating Company v PPN Mauritius Company* (2006) 129 CompCas 849.

<sup>38</sup> Section 242 of the Companies Act, 2013.

<sup>39</sup> *Bennet Coleman and Co. v Union of India* (1977) 47 Comp Cas 92 (Bom)



are acting in good faith while making an application to the Tribunal.<sup>40</sup> It sees whether there is any involvement of persons other than directors or officers of the company of any matters specified. While taking into consideration the views of the depositor and members of the company, it checks that there no personal interest in the matter being proceeded. It sees whether in the cause of action is an act or omission that is yet to occur, whether the act or omission could be, in the circumstances would likely to be authorised by the company before it occurs or it can be rectified by the company after it occurs. The tribunal should prevent two class action application for the same cause of action. Furthermore, it should look into the limitation period while dealing with Oppression and Mismanagement.<sup>41</sup>

### Procedural Aspect as per NCLT Rules, 2016

The procedure for seeking relief against Oppression and Mismanagement is provided in Rule no. 81 of NCLT Rules, 2016. The form NCLT-I of the Rules shall be accompanied with the documents if the consent letter of consenting shareholders is to be attached in the application. The application shall state whether the applicant has paid all calls and all other sum due. If the company and concerned person against whom the orders are sought fails to appear, the Tribunal can dispose the application.<sup>43</sup> Moreover, if the circumstances of the case required, the Tribunal may hold a trial and

asses the nature and weight of evidence produced before it.<sup>44</sup> It may call for witnesses, appoint commissions for recording evidence as may be required. If the evidence is required to be led, then the evidences read with the NCLT rules must apply.<sup>45</sup> The application to tribunal cannot be withdrawn with the leave of the Tribunal. The Tribunal can take steps to execute the orders. The parties at any time can seek interim relief as per the Act.<sup>46</sup>

### Case Analysis

#### 1. SAS Hospitality Pvt. Ltd. v Surya Constructions Pvt. Ltd CS (COMM) 1496 2016.

This was the Delhi High Court Judgement of a Single Bench. The SAS Hospitals had filed suit seeking declaration that the allotment of shares in favour of the defendant is null and void and was seeking permanent injunction. The suit was filed on the basis allegation that the defendants were allotted shares of the company in the illegal manner. The defendants contended based on the notification of NCLT, that the court had no jurisdiction to try and entertain in section 430 and 434(1) of the Companies Act, 2013. The counsel for the plaintiff submitted that court has jurisdiction which is covered under 62 of the Act. In this case of the issue that the court dwelled into was to analyse the scheme of Companies Act, 2013 along with constitution of NCLT. The court stated that *'NCLT has been vested with powers that are far reaching in respect of management and administration*

<sup>40</sup> U. Gayathri, 'A study of the Importance of National Company law tribunal in India', *International Journal of Pure and Applied Mathematics*, pp. 41-55 Volume 120 No. 5, 2018.

<sup>41</sup> Ibid..

<sup>42</sup> Rule 81, National Company Law Tribunal Rules, 2016.

<sup>43</sup> Rule 81(2), National Company Law Tribunal Rules, 2016.

<sup>44</sup> Rule 81(9), National Company Law Tribunal Rules, 2016.

<sup>45</sup> ibid

<sup>46</sup> Rule 81(10), National Company Law Tribunal Rules, 2016.



*of the companies. The said powers include as broad as 'regulation of conduct of affairs of the company' under section 242(2)(a) as also various other specific powers. NCLT is a tribunal which has been constituted to have exclusive jurisdiction in the conduct of the affair of the company and its power can be contrasted with that of CLB<sup>47</sup>*

The Delhi High Court has also held NCLT is empowered to decide the issues relating to allotment of share capital, alteration and rectification of the register of members and a civil suit before the High court would not be maintainable. The court, referring to provisions of Company Act, 2013, observed that the NCLT is not merely exercising the jurisdiction of a company court under the new Act, but is also vested with inherent powers and powers to punish for contempt. It said that the NCLT having being vested with all the trappings of a civil court, with the amendments which have now been carried out, the bar under Section 430, however, is definitely triggered. The court also rejected the argument of the plaintiff company who had relied on an apex court judgment to contend that, if the matter required rectification of the register of the Company, it is to be adjudicated before the civil court.

*"The allegations in the present case relate to non-compliance of the stipulations in Section 62 of the 2013 Act. The non-compliance of any conditions contained in Section 62 of the 2013 Act also constitutes mismanagement of the company, inasmuch as under Section 241 of the 2013 Act, the conduct of affairs of the company "in a manner prejudicial" to any member or "in a manner prejudicial to the interest of the company", would be governed*

*by the same. The jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass "such order as it thinks fit", including providing for "regulation of conduct of affairs of the company in future". These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company.<sup>48</sup>*

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

NCLT, has further expanded and elaborated the concept of Oppression and Mismanagement in this case. The NCLT gives clarity of position of oppression and mismanagement in India. In this case Vikram Bakshi and McDonalds India private limited entered into a joint venture agreement by which they each held 50% of equity stake in Connaught plaza Restaurants Limited. This restaurant was appointed as the primary franchise for McDonalds for a period of 25 years and was given the right to manage all of McDonalds franchise in North India. The agreement specified that the board of director would have four people of which each party got to nominate two members. Clause 32 of the agreement stated that if Bakshi was not the MD, then McDonalds would have the

<sup>47</sup> AS Hospitality Pvt. Ltd. v Surya Constructions Pvt. Ltd CS (COMM) 1496/2016.

<sup>48</sup> AS Hospitality Pvt. Ltd. v Surya Constructions Pvt. Ltd CS (COMM) 1496/2016.



option to purchase his shares as per fair market value determined by the formula specified in the joint venture agreement. In 2008, McDonalds had offered to his shares at 5 million. However, on the basis of fair market value, Mr. Bakshi demanded 100 Million. This led to his termination, blocking his reappointment. Mr. Bakashi disputed the fact and the basis on which such allegations were made. He stated that the action by the nominee directors of MIPL was oppressive in nature and done with Malafide intentions of purchasing his shares in the company. The matter was approached to CLB and soon was transferred to NCLT. The MIPL contended that the NCLT lacks jurisdiction and has violated the clause of the agreement. The MIPL had invoked that the arbitration clause in the agreement.

The NCLT took the decision that it had jurisdiction in the present case as joint venture agreement was incorporated into the AoA of the Company. the NCLT rejected the contention of the respondents completely. It held that this case was not for mismanagement of the company. Since the company was financially stable. The tribunal held that the acts of the nominee director of MIPL was an act of oppression and was done with the malafide intentions of availing the benefits of their right to purchase his shares upon his termination. The tribunal also relied on the fact that the action of MIPL was detrimental to public interest as several employees of the franchise in the balance owing to the decision to terminate the franchise agreement. The NCLT stated that this was an continuing trend of respondents' prejudice and oppression towards. It held that this is a case of oppression and mismanagement, the NCLT also reinstated him as the managing director of CPRPL.

### 3. **Cyrus Investment Pvt. Ltd. v Tata Sons Limited 2018 SCC Online NCLT 546.**

In this case Cyrus Mistry was ousted as executive chairman of Tata Sons, holding outfit of the approximately \$103 billion (revenues) Tata conglomerate, was made to resign from the boards of all listed Tata companies after his removal as chairman by the Board. Cyrus Investments Pvt. Ltd. and Sterling Investments Co. Pvt. Ltd. had 18.4% stake in Tata Sons. The board of directors without even asking any explanation from him, removed Mr. Mistry arbitrarily as executive chairman, which is a clear act of oppression coupled with mismanagement of the affairs of the company. The purported reason for such removal was, the board of directors had "lost the confidence" in the leadership of Mr. Mistry. The case against Tata Sons was filed by Mistry's family firms at the NCLT alleging that there was oppression of minority shareholders and mismanagement in the company. In this corporate battle, the contentions by Mr. Mistry regarding the oppression faced by him on the grounds of 'loss of confidence'.

At the NCLT Mumbai bench, the Tata and Cyrus Mistry saga, regarding the maintainability of the suit on charges of mismanagement and oppression. The Counsel for Tata Sons, Dr. Abhishek Manu Singhvi argued that the petition filed by Cyrus Mistry group is not 'maintainable' as the petitioner does not have the requisite shareholding under section 244 of the Companies Act, to initiate oppression and mismanagement proceedings. The prescribed holding for initiating the petition is 10% as laid down under section 244(1) of Companies Act, 2013. The 10% of 'issued share capital'



threshold ought to be read as 10% shareholding of a particular class of shares and not in totality of the shareholding and the actual issued shares were 2 percent.

The core of Petitioners argument was that the sections relating to oppression/mismanagement have to be looked at afresh, as old companies act has been repealed and in the new act the wordings are different. Sec. 241 (1)(a) of the Companies Act which started with the words “the affairs of the company have been or are being conducted in a manner prejudicial to public interest”. The new act gave NCLT the power to waive off the requisite of 10% shareholding for the filing of the petition, and therefore, it is not mandatory for the tribunal to abide by it. He recommended the Bench to give beneficial and purposive interpretation to Section 244 for allowing substantial number of shares of a particular class of shareholders are affected then they should be allowed to file the petition in the NCLT for redressal of their grievance. They cited this ratio to argue that the 10% rule is only directory, not mandatory.

NCLT held that the removal of Mr. Mistry is substantiated by reasons because he admittedly sent the company information to Income Tax Authorities and leaked the company information to media and openly come out against the Board and the Trusts, which hardly augurs well for smooth functioning of the company. As well as the advice given by Mr. Tata & Mr. Soonawala giving advices and suggestions does not amount to interference in administering the affairs of the company. The National

Company Law Appellate Tribunal (NCLAT) held that, “*The NCLT is not required to decide the merit of application at this stage but required to record grounds to suggest that the application has made out some exceptional case for waiver of all or any of the requirements specified in clauses (a) and (b) of sub-section (1) of Section 244 and such opinion required to be formed on the basis of application and to form an opinion whether application pertains to oppression & mismanagement.*”<sup>49</sup>

The arguments presented by the respondents are negated with Mr. Mistry’s good performance in his tenure, he stated that the company portfolio investment over performed BSE sensitive index by over 5% for the last three years, the profit after tax of Tata group companies grew by 34.60 % annually over the past three years, the Tata Brand value has increased by USD 5 billion, without increasing net debt, the Tata Group in the last three years, undertook capital expenditure by approx. This is clearly evident that the respondent company has practiced oppression on Mr. Mistry and there is no instance of losing the confidence in him with his consecutive good performance. The act of removing him as the executive chairman was not substantiated by reasons and this proves to be an arbitrary action taken by the company.

### Conclusion

The National Company Law Tribunal was established by the Central Government with the view of settling down the companies dispute within a limited frame time and which is also estimated to be of less expensive while compared to others. The

<sup>49</sup> 3. Cyrus Investment Pvt. Ltd. v Tata Sons Limited 2018 SCC Online NCLT 546.



Companies Act 2013 in many ways ensures that the rights of the minority shareholders are protected in every possible manner. The aggrieved Shareholder can file an application under section 241, 242 and 244 of the Companies Act to get relief. The procedure for seeking relief against Oppression and Mismanagement is provided in Rule no. 81 of NCLT Rules, 2016. The NCLT looks into certain essential aspects while dealing in matters of Oppression and Mismanagement. The Tribunal has power to provide complete justice to the parties and pass the order for the smooth functioning of the Company. The Tribunal may, with a view to bringing to an end the matters complained of, make such orders as it thinks fit.

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