Legal Analysis on Oppression under Companies Act

Oppression and mismanagement under the Companies Act is generally read complimentary to each other, but these two concepts are very distinct from each other. There can be situations where both provisions are attracted, but nonetheless, they are not two sides of the same coin.

Section 397 of the Act deals with the concept of 'oppression'. There are basically two very important ingredients involved.

1) Affairs of the company are conducted in a manner prejudicial to the public at large, or oppressive to any member therein; and
2) To wind up the company would result in unfairly prejudicing the members, but the facts and circumstances otherwise suggest that winding up of the company would be the right course of action.

A plain reading of the provision shows a very close connection with the provisions of winding up of companies. There is a close nexus between winding up and oppression under the Act. The connection lies in the fact that all or any circumstances which can warrant a winding up order should exist when an application against oppression is made against a company; the only distinction being that the circumstances should show that if a winding up order is given, it would unfairly prejudice the members.

It would be more convenient to understand the concepts in light of a few judgements.

In *Shanti Prasad Jain v. Kalinga Tubes Ltd.*[1] oppression has been defined where the Court holds

> ***Although the word 'oppressive is not defined, it is possible, by way of illustration, to figure a situation in which majority shareholders, by an abuse of their predominant voting power, are' treating the company and its affairs as if they were their own property' to the prejudice of the minority share-holders-and in which just and equitable grounds would exist for the making of a winding- up order..... but in which the 'alternative remedy' provided by Section 210 by way of an appropriate order might well be open to the minority shareholders with a view to bringing to an end the oppressive conduct of the majority.***

The court also held that since the term oppression is not defined, it is the discretion of the court, according to the facts and circumstances to decide if a particular conduct amounts to oppression.

[1] AIR 1965 SC 1535

The landmark judgement in this area came in the Needle Industries Case[2], where the Supreme Court dealt with the question in totality. An important observation was:

> ***Coming to the law as to the concept of ' oppression ', Section 397 of our Companies Act follows closely the language of Section 210 of the English Companies Act of 1948. Since the decisions on Section 210 have been followed by our Court, the English decisions may be considered first. The leading case on 'oppression ' under Section 210 is the decision of the House of Lords in Scottish Co-op. Wholesale Society Ltd. v. Meyer,. Taking the dictionary meaning of the word ' oppression ', Viscount Simonds said at page 342 that the appellant-society could justly be described as having behaved towards the minority shareholders in an 'oppressive' manner, that is to say, in a manner "burdensome, harsh and wrongful". The learned Law Lord adopted, as difficult of being bettered, the words of Lord President Cooper at the first hearing of the case to the effect that Section 210 "warrants the court in looking at the business realities of the situation and does not confine them to a narrow legalistic view". Dealing with the true character of the company, Lord Keith said at page 361 that the company was in substance, though not in law, a partnership, consisting of the society, Dr. Meyer and Mr. Lucas and whatever may be the other different legal consequences following on one or other of these forms of combination, one result followed from the method adopted, "which is common to partnership, that there should be the utmost good faith between the constituent members". Finally, it was held that the court ought not to allow technical pleas to defeat the beneficent provisions of Section 210 (page 344, per Lord Keith; pages 368-69, per Lord Denning).***

This shows that the Court has discretion in deciding the scope of the term oppression according to the facts and circumstances of the case. The essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to a company is entitled to rely. Thus a *prima facie* case should exist showing an existence of oppression, for the court to take cognizance of the matter.

It is very important to note that oppression and mismanagement are often read and interpreted complimentary to each. Section 398, in dealing with the concept of mismanagement also highlights two basic concepts, they being:

1) Conduction of the affairs of the company in a manner prejudicial to public interest; and

2) Material alterations in the company, in whatever manner, that would result in the affairs of the company being conducted in a manner prejudicial to the public.

[2] AIR 1981 SC 1298

Though similar, it is pertinent to note that in a claim of mismanagement, there is no requisite of a situation of winding up being evidently present. This is a very important distinction that needs to be made.

The remedy for oppression lies in Section 402 of the Act, and Section 399 of the Act provides for who can apply for oppression or mismanagement.

Thus, oppression is a concept which remains open to interpretation as a strict interpretation of the same has not been provided in the Act. It is however favourable that such an interpretation is not provided for; as such an interpretation would restrict the scope and applicability of the concept. It is also important to note that without establishing a requisite situation to show a winding up as the right course of action, and the reasons why winding up would amount to a prejudice against the members, a petition of existence of oppression is not maintainable.