

Rights of members to oppose against the oppression and mismanagement to company

1) Oppression and Mismanagement

1.1 The concept of oppression and mismanagement is not defined in the Companies Act, 2013, but provisions regarding the same are enshrined in chapter 26 (section 240-250).

1.2 The Supreme Court first defined the term oppression in the **Needle Industries v. Needle Industries Newey, 1981 AIR 1298** case where it held that: "Oppression means a lack of probity and fair dealing in the affairs of the company to the prejudice of some portion of its members.

1.3 The court in **Sidhartha Gupta and Ors Vs. Getit Infoservices Private Limited and Ors CA. No. 128/C-II of 2014 & CP. No. 64(ND) of 2014** held that only violation of rules and articles of the company is not act of oppression and management.

2) Conditions required to be fulfilled to initiate proceedings under Section 241 of company law

In case of company having Share Capital

- ★ Prior consent of 100 members or 1/10 members of the total members whichever is less
- ★ All dues regarding shares should be Paid

In case of company without Share Capital

- ★ Prior consent of 1/5 members of the total members

3) Grounds for filing application seeking reliefs on ground of oppression and mismanagement

The following grounds are available to the aggrieved person from oppression and mismanagement against the company :

- ★ If affairs of company are against the **interest of public**
- ★ If affairs of company are against the **interest of members**
- ★ If affairs of company are against the **interest of company itself.**

4) Persons or entitled to file application seeking relief on ground of oppression and mismanagement

4.1 As per section 241 of the company law following persons or institution are entitled to file application:

- ★ Members to company

- ★ Depositors
- ★ Central Govt

4.2 The Supreme Court (“SC”) has in its judgment dated July 6, 2020 (“Judgment”) in the matter of Aruna Oswal v. Pankaj Oswal and Others [Civil Appeal No. 9340 of 2019], held that disputes pertaining to **inheritance of shares cannot be pronounced upon in proceedings initiated under Sections 241 and 242 of the Companies Act, 2013 (“CA 2013”)**.

5) Statutory Limitation for filing application for oppression and mismanagement

3.1 The application for seeking relief on ground of oppression and mismanagement should be filed **within 3 years from the date of first cause of action arose**.

3.2 NCLAT in **Dhananjay Krishnanath Gaikwad vs Tuljabhavani Cold Storage Pvt., 2019** held that the period of limitation starts when the first violation of right occurs or is discovered.

6) Time limit to dispose the application pertaining to oppression and mismanagement to company

As per section 422 of the Companies Act 2013 NCLT shall dispose the matter within a period of **90 days extendable up-to another 90 days from the date of admission** to application about the oppression and mismanagement to company.

7) Provision regarding Class action or representative action by any sole member to company

7.1 As per section 245 of the company act, 2013 any member or depositor of company can bring class action against the oppression or mismanagement to company representing other members or depositors subject to fulfilment following conditions :

- ★ There should be minimum 100 members or 5 percent of the total members
- ★ All dues regarding respective shares should be duly paid
- ★ Not less than 5 percent of the total members to company (in case of company having without share capital).
- ★ Two class action for the same cause of action can't be initiated.

7.2 The representative or class action can be initiated against the following persons:

- ★ Company or Director for fraudulent, wrongful or unlawful conduct, act or omission.
- ★ Auditor or Auditor firm for making misleading or improper statement in audit report for wrongful or unlawful conduct to company
- ★ Expert advisor or consultant for giving misleading or improper advice to company or for fraudulent or wrongful conduct

8) The competent authority to adjudicate the application regarding oppression and mismanagement

The NCLT is the competent authority to decide the application for seeking reliefs on ground of oppression and mismanagement and the NCLAT to decide appeals arising from orders passed by the former.