Title: - Can there be oppression in a company where members have equal shareholding?

Abstract

In this written piece the authors have tried to derive the actual meaning of oppression under Companies Act, 2013 by interpreting the sections of the statute and taking aid of judicial precedents. Oppression as generally understood in the legal field has the elements of majority and minority attached to it whereas if the sections are analysed, they show no hint of having an element of majority or minority. Reading in such words hamper the functioning of companies with equal shareholding which according to the general definition do not fall under the ambit of oppression. The research question of this written piece arises due an issue which is often faced by members of a company where there is equal shareholding. The issue is that whenever there is a dispute in the members of such companies, the courts have shown the tendency of winding up the company terming the act of one of the members as deadlock and it is a very serious concern since the courts have very wide powers under the Companies Act, 2013 through which the court can strive to amicably resolve the issue.

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Introduction

Under the Indian Company law, the guiding principle being followed for decision making in a company is the rule of majority. It is obvious that in a company having multiple shareholders, the opinion of each and every shareholder on a particular issue cannot be the same. In order to make sure that this conflict in opinions of shareholders does not hinder the functioning of a company and it functions effectively, the rule of majority is followed.[1] But, strictly following this rule of majority can be deleterious at times. Unbridled power given in the hands of the majority shareholders could be misused to such extent that it would undermine the interests of the minority shareholders. Such acts which undermine the interests of the minority shareholders would amount to oppression. In case of companies where there is equal shareholding amongst the members, certain acts of one or more of the members can also be prejudicial to the interest of other members. Chapter XVI of the Companies Act, 2013[2] (referred to as 'the Act' hereinafter) deals with 'Prevention of oppression and mismanagement'. S.241[3] provides a fair idea as to when an act could be called oppression whereas s.244[4] explains who can apply under s.241 for oppression. S.242[5] further talks about the powers of the tribunal and delineates what reliefs can be given by the tribunal.

Oppression defined

Before arriving at the conclusion of whether there can be oppression in a company with equal shareholding among members, it would be pertinent to understand what actually a company with equal shareholding is. A company with equal shareholding would be one wherein all the shareholders have equal share in the company which has been agreed upon in the shareholders'

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[1] Foss v. Harbottle, (1843) 2 Hare 461 (England).
[2] The Companies Act 2013, No.18, Acts of Parliament, 2013 (India).
[3] The Companies Act 2013, § 241, No.18, Acts of Parliament, 2013 (India).
[4] The Companies Act 2013, § 244, No.18, Acts of Parliament, 2013 (India).
[5] The Companies Act 2013, § 242, No.18, Acts of Parliament, 2013 (India).

agreement. Equal shareholding signifies that there would be no majority or minority in the company. Here comes up the important question for consideration that in the absence of any member/s who can be termed as either majority or minority, can a case of oppression be made out? At the outset, the answer seems to be negative since according to our general understanding of oppression, there must be a majority and a minority. Oppression as defined in the case of "**Elder v. Watson**"[6] means "*Oppression is a misdemeanour committed by majority shareholders who under the colour of their majority power, wrongfully inflict upon the minority shareholder or minority shareholders any harm of injury*"[7]. Also, in "**Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad**"[8], the Apex court observed "*The expression 'Oppression' complained of, thus, must relate to the manner in which the affairs of the company are being conducted and the conduct complained of must be such as to oppress the minority members. By reason of such acts of oppression, it must be shown that the majority members obtained a predominant voting power in the conduct of the company's affairs*"[9]. But, does our Indian company law contemplate a similar kind of understanding of what oppression is.

Interpreting the statute

To understand this, it would be pertinent to look at s.244 delineating who has the right to apply under s.241. Sub-section 1 of section 244 reads: -

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

(a) in the case of a company having a share capital, not less than one hundred 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, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

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[6] Elder v. Watson, (1952) SC 49 (Scotland).
[7] *Id.*
[8] Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314 (India).
[9] *Id.*

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or clause (b) so as to enable the members to apply under section 241."[10]

Clause (b) deals with the rights in cases of companies not having a share capital and it is not relevant to discuss this clause for the purpose of this paper. Clause (a) provides for two conditions, one on the basis of strength of the member/s and one the basis of shareholding of the member/s. If either of the conditions is fulfilled, the member/s shall be eligible to file a case under s.241. The two conditions are: -

i. minimum 100 members or 1/10th of total number of members, whichever less, are required

OR

ii. should be a member/s holding not less than 1/10th of the issued share capital

The words majority or minority are not even mentioned in this section dealing with right to apply for oppression. So, for example in a company where there is equal shareholding amongst the members and there are only two members in the company, although there might be no majority or minority due to equal shareholding, but one of the member should be eligible to apply under Section 241 since he would be fulfilling not only one but both the conditions, i.e., he would comprise of more than 1/10th of the total number of members in the company and would have more than 1/10th shareholding in the company. This marks a shift from the general understanding of what oppression is, which includes the elements of majority and minority. Following the literal rule of interpretation, meaning that the language of a statute shall be read as it is until and unless there in an ambiguity or vagueness, the words majority and minority shall not be read into the sections.[11] In the case of "**Indian Dental Association, Kerala v. Union of India**"[12] it was held that "*It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the Legislature intended something which it omitted to express. A construction which would leave without effect any part of the language of a statute will normally be rejected*". Further in the case of "**M/s. Hiralal Ratanlal vs. STO**"[13], the court observed "*It may be*

[10] *Id.* at 4.
[11] Taxmann, *Brief Overview of Rules for Interpretation of Statutes*, TAXMANN (Feb. 27, 2023), https://www.taxmann.com/post/blog/brief-overview-of-rules-for-interpretation-of-statutes-an-overview/.
[12] Indian Dental Association, Kerala v. Union of India, (2004) 1 Kant. LJ 282 (India).
[13] Hiralal Ratanlal v. STO, AIR 1973 SC 1034 (India).

mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute". Therefore, on plain reading of the statute and following the literal rule of interpretation of statutes, there is no quintessential requirement of having a majority and minority to make out a case for oppression under Section 241 and establishing this makes it clear that there can be oppression in a company where the members have equal shareholding. Looking at Section 241 brings in more clarity since the words majority and minority are absent in this section as well and further the words "oppressive to him or any other member or members" signify that oppression can be against an individual member as well and that member may or may not be a minority shareholder. Further, the proviso to s.244 provides that even the conditions given in the clauses can be waived if the tribunal is satisfied that such conditions exists and this widens the scope of this section.

What is the judiciary's stance?

In order to look at what the judiciary has observed with respect to oppression in a company with equal share holding, it would be pertinent to look at some case laws. In the case of "**Col (Retd) Dalip Singh Sachar v. Maa Karni Coal Carriers (P.) Ltd. and Others**"[14] while holding that a case of oppression was made out, the erstwhile Company Law Board observed, "*this Board has taken a view that in case of family companies and those which are in the nature of quasi-partnership wherein more or less equal shareholding and equal participation in the management have been agreed and acted upon or provided in the articles, the exclusion of any of the shareholders from the management could be considered an act of oppression justifying winding up of the company on just and equitable grounds***".** Further in the case of "**Ms. Pushpa Prabhudas Vora and others v. Voras Exclusive Tools Pvt. Ltd. and others**"[15], the court held that in cases of family company where members have equal shares or a company run on the partnership principle, transfer of shares and appointment of additional directors without the presence of one of the members can be held to be an act of oppression**.** Both of the above cases sufficiently conclude that a case of oppression can be made out in a family company where the members have equal shares or a company to which partnership principle applies. But what about companies other than those mentioned above? This contention could be sufficiently answered by looking at another case law. In the case of "**Bhubaneshwar Singh and Another v. Kanthal India Ltd. and Others**",[16] it was argued that in a company where before incorporation of the company

[14] Dalip Singh Sachar v. Maa Karni Coal Carriers, (2004) SCC OnLine CLB 89 (India).
[15] Pushpa Prabhudas Vora v. Voras Exclusive Tools, (1999) SCC OnLine CLB 32 (India).
[16] Bhubaneshwar Singh v. Kanthal India, (1982) SCC OnLine Cal 199 (India).

there existed a partnership, or where the shares are held more or less equally, the partnership principle will apply. This argument was held to be valid and was accepted in full and a case of oppression was made out even though the opposition party argued that there is no minority since both the shareholders had equal shareholding. A company can also be treated as a family company depending on the facts and circumstances. A part of the "**Delstar Commercial and Financial Ltd. and others v. Sarvottam Vinijaya Ltd and Others**"[17] discusses when can a company be treated as a family company. Further, landmark English cases including "**Ebrahimi v. Westbourne Galleries Ltd**"[18] and "**Symington v. Symington's Quarries Ltd**"[19] also followed the same route of applying partnership principle to a company and holding that a case for oppression was made out.

The need to redefine 'Oppression'

Oppression interpreted as defined in the statute along with above mentioned case laws would not be limited to an act of majority over minority but would extend to an act of equals over equals as well. Although most of the cases in which oppression was made out in companies with equal shareholding leads to winding up of the company, courts in some of the cases have also granted other suitable reliefs. There is a very thin line between oppression and deadlock in such companies and both must not be confused with. Oppression would be an act by one of the member/s that is prejudicial to the other member/s whereas a deadlock would be when it becomes impossible to carry out the functions of the company due to a tussle between the members. The general trend shows that whenever there is a dispute between members having equal shareholding in a company, the courts tend to term it as deadlock between the members which eventually leads to winding up, following the principle laid down in "**Ebrahimi v. Westbourne Galleries Ltd"**[20]. This hampers the functioning of a company when the courts instead of exercising its powers under s.242 and ordering a suitable amicable solution, orders the winding up of a company. It is a well-established principle that mere dissatisfaction between members of a company shall not be termed as deadlock. Also, acts which fall under the scope of oppression under s.241 are very different from acts which can termed as deadlock. Including an aspect of majority and minority in the definition of oppression narrows down the scope of this section and to avoid any uncertainty in such cases,

[17] Delstar Commercial and Financial Ltd v. Sarvottam Vinijaya, (2001) SCC OnLine CLB 31 (India).
[18] Ebrahimi v. Westbourne Galleries Ltd, (1972) 2 All ER 492 (United Kingdom)
[19] Symington v. Symington's Quarries Ltd, (1905) 8 F. 121(Scotland).
[20] *Id.* at 18.

oppression should be redefined, moving away from the general definition and sticking to the one having the intended meaning given by the statute.