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COMPANY LAW

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I INTRODUCTION

IN THE year under survey, the judicial decisions of the apex court and various high courts have covered majority of the important areas pertaining to company law. One of the significant developments taken place in the field of Company law in 2016 was the establishment of National Company Law Tribunal (NCLT) in 2016 by virtue of section 408 of Companies Act, 2013 to resolve various issues pertain to Company law. The NCLT dissolved the Company Law Board (CLB) which was established to resolve the disputes on company matters. In this year, it has been noticed that shareholders disputes are increasing day by day and so are the cases handled by the various high courts, apex court and the NCLT on issues of oppression and mismanagement. It has been emphasized in a number of decisions that the courts are entitled to give wider interpretations of the provisions of the Act for protecting the interests of the members of a company.

II OPPRESSION AND MISMANAGEMENT

There is no conceptual clarity exists about term 'oppression' as the existing law does not define 'oppression' and it is left to the courts to decide. Section 397of the Companies Act, 1956 provides for a right to the members of a company who comply with the conditions of section 399 to apply to the court for relief under section 402 of the Act or such other reliefs as may be suitable according to the circumstances of the case, if the affairs of the company are being conducted in a manner oppressive to any member or members of the company. When members are aggrieved by oppression and mismanagement of a company, two alternative options are available to them. They may either invoke the powers of the court or the powers of the Central Government for prevention of oppression and mismanagement of the company. The object of section 397 of the Act deals with 'oppression and mismanagement' is to ascertain whether the conduct complained as oppressive or not. It is not the purpose

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of section 397 to decide whether the conduct complained of by the petitioner is valid in law or in compliance with a statutory provision of law or not. The courts in many cases have clarified that the object of section 397 is not to examine and give a verdict on whether an act is lawful or unlawful but it is whether an act is 'oppressive 'or not.

N.R. Harikumar v. *W.W. Apparels (India) Pvt. Ltd.,*[1] is a landmark judgment on 'oppression and management' wherein reversing the order of the CLB, the High Court of Madras held that the appellant is entitled to file a petition before the CLB claiming reliefs under sections 397 and 398 of the Companies Act, 1956. In this case, the appellant was the shareholder and director of a private company registered in India and was a subsidiary company of a foreign company registered in England. The issue arose when the foreign company sold the entire shares held by them to another director of the Indian company for a meager amount of British pound. Against this the appellant filed a complaint before the CLB. The CLB dismissed the complaint on the ground that the appellant is not entitled to file complaint under sections 397 and 398 of the Companies Act, 1956 for oppression and management. The CLB found that 'this was not a case where oppression and mismanagement had been *prima facie* established'. When the matter came before the High Court of Madras, the court reversed the order of the CLB and decided that the appellant is entitled to apply for oppression and mismanagement under these sections. By setting aside the sale of the shares held by the foreign company in favor of the second respondent on the ground that the second respondent was an interested person and the decisions of the Board of Meeting in which he had participated and had not furnished any information about the sale consideration with the foreign company wherein the decisions of the board of meetings would bind the appellant.

In *Sanjal Dutta* v. *Ruby General Hospital Ltd.*,[2] the court held that every instance of non-compliance with law *per se* would not become oppressive and as to the question of whether an act is oppressive or not depends not only on the temporary factual situation, but also on the history of facts leading to causation of the act impugned. The CLB must consider 'whether the acts complained of are just or unjust, equitable or inequitable, fair or unfair or the case is only one of resentment-of the minority at being out voted on some issues or domestic front. The bottom line for adjudication of a case is whether any act has been done with an oblique motive to solely cause harm to the other, or done in ordinary course of action to fulfill the obligations and commitments already entered into or to comply with past obligations'.

In *ABRO Technologies Pvt. Ltd.* v. *Delhi Warehousing Pvt. Ltd*.,[3] the NCLT dismissed the petition filed for oppression and mismanagement under sections 397 of the Companies Act on the ground of delay and latches as the petitioner failed to

1 [2016] 196 Comp Cas 0011 (Mad): (2016) 126 CC 0892: (2016) 134 SCL 0174.

2 [2016] 194 Comp Cas 16 (CLB).

3 MANU/NC/0148/2016: [2017] 136 CLA 169.

furnish sufficient reasons for delay. In *Arvind Parasramka* v. *Calcutta Investment Co. Ltd*.,[4] the *locus standi* of the petitioner was challenged on the ground that they are not the members of the Company. Hence the maintainability of the petition under section 397 and 398 of the Companies Act, 1956 was challenged. The court held that the petitioners were not entitled to file the complaint for oppression and mismanagement as the petitioners were not the members of the Company as they are only transferee of shares of the Company hence not authorized to file a petition. The court also noted the fact that the petitioners are not entitled to file the petition under section 397/398 of the act since the total shareholding of the petitioners comes to less than ten percent of the total shareholding of the company. Under section 111[5] of Companies Act, 1956, only the members of the company can file petition for 'oppression and mismanagement'. The High Court of Bombay in a significant judgment[6] held that where shares were not allowed contrary to the petitioner's entitlement under a shareholder's agreement and the petitioner's name was not entered on the register, yet he could file a petition under section 397/398 of the Companies Act, 1956.

In *Yusuf Kagzi* v. *Avigo Trustee Co.Pvt. Ltd*.,[7] the High Court of Calcutta decided that the act of the allotment of shares to the newly appointed additional directors constitutes the act of oppression and management under the Companies Act. As per the facts of the case, new additional directors were appointed by the company which was challenged by the petitioners. The court held that the act of appointing new additional directors by altering the articles of association of the company with the object of completely upsetting the control and management of the company's affairs constitutes an act of oppression. In *Ayoli Abdulla* v. *Meezan Realtors Pvt. Ltd.*,[8] the High Court of Kerala allowed the appeal and dismissed the order of the CLB as the petition is not maintainable and ordered to vacate the interim orders of CLB and the matter is remanded to the NCLT for fresh consideration of the question of *locus standi* of the appellant to maintain the company petition, with reference to the original minutes of the meetings of the board of directors respondent company. The court further observed: [9]

> Section 194 of the Act provides that, the minutes of meetings kept in accordance with the provisions of Section 193 shall be evidence of the proceedings recorded therein. Section 195 of the Act provides further

4 [2017] 139 SCL 153: [2017] 138 CLA (NCLT).

5 Companies Act, 1956, s. 111 provides for free transferability of the shares and debentures of the public limited company.

6 [2016] 194 Comp Cas 258.

7 *Jayantakumar* v. *Astha Nursing Home Private Limited*, 2016 (4) CALLT 550 (HC): (2016) (5) CHN (CAL) 515.

8 [2016] 199 Comp Cas 85 (Ker).

9 *Id*., para.28.

> that, where minutes of the proceedings of any general meeting of the Company or of any meeting of its Board of Directors or of a committee of the Board have been kept in accordance with the provisions of Section 193, then, until the contrary is proved, the meeting shall be deemed to have been duly called and held, and all proceedings thereat to have duly taken place, and in particular, all appointments of directors or liquidators made at the meeting shall be deemed to be valid.

In *Mohan Mahavirprasad Shah* v. *Indian Silk Manufacturing Co. Private Ltd*.,[10] the appellants challenged an order passed by the CLB in a company application directing the appellants to make payment of gratuity to the respondent. By dismissing the petition, the high court held that 'the CLB was entitled to accept the calculation of the gratuity made by the respondent and no error of law can be found with respect to the same'. Likewise in *Bobby Kuriakose* v. *St. Mary's Hotel's Pvt. Ltd*.,[11] a resolution passed for the transfer of shares was challenged before the CLB on the ground that due to transfer of shares, the majority shares of the company got transferred into minority shares. The CLB by upholding the validity of transfer of the shares and aggrieved by this the petitioners moved the High Court of Kerala by way of an appeal under section 10F[12] of the Companies Act, 1956. The high court, notwithstanding the fact that the challenge before it pertained only to the transfer of 2, 20,000 shares set aside the entire of the resolution and the effect of which was that the decisions with regard to transfer of shares to members of other branches of the family, which were not questioned before the CLB and hence the high court, were also set aside. When the matter came before the Supreme Court it held that: [13]

> Having considered the grounds on which the High Court had thought it proper to reverse the decision of the CLB, details of which have been set out herein above, we are of the view that the exercise of jurisdiction under section 10F of the Companies Act, 1956 by the High Court to interfere with the order of the CLB cannot be faulted. If the subject matter of the appeal before the High Court was Limited to the validity of the transfer of 2, 20,000 shares from Bobby Kuriakose to T.O. Abraham, the interference made with the entire of the Resolution dated 17.04.2002 thereby invalidating the other share transfers, not under challenge before the High Court, was clearly an error apparent on the face of the record. The correction made in the exercise of the review jurisdiction was, therefore, justified and will not call for any interference.

10 *Mohan Mahavirprasad Shah* v. *Indian Silk Manufacturing Co. Private Ltd*, [2016] 194 Comp Cas 285 (CLB).

11 [2016] 194 Comp Cas 364 (Ker).

12 *Supra* note 5, s.10F provides for appeals against the orders of the Company Law Board.

13 *Supra* note 11, para.6.

III WINDING UP OF COMPANIES

Section 536(2) of the Companies Act, 1956 provides that in case of winding up, any disposition of the property of the company, and any transfer of shares of the company or alteration in the status of its members, made after the commencement of the winding up shall, unless, the court otherwise orders, be void. Although the section stipulates that any disposition of the property of the company made after the commencement of the winding up is void. In *Indian Oil Corporation Ltd*.,[14] the court held that the *bona fide* disposition of the property in the interest of the creditors would not be effected and has transferred in the interest of the company in liquidation, the companies courts are having the powers to protect the dispositions made even before the winding up orders are passed. Likewise, according to section 445(3) of the Companies Act, 1956 a winding up order shall be deemed to be notice of discharge to the officers and employees of the company, except when the business of the company is continued. This provision clearly provides for discharge of the employee and termination of the employment.

The High Court of Andhra Pradesh in *Reliance Infocom Ltd*. v. *Sheetal Refinaries Pvt Ltd*.,[15] held that winding up petitions on the ground of 'inability to pay debts' under section 271 (1) of the Companies Act, 2013 means the company's existing assets are not sufficient to meet the existing debts. In the similar vein in *Steel Authority of India Limited* v. *M/s. Shiv MahimaIspat Private Ltd*.,[16] the court ordered for the winding up of the respondent company on the ground of inability to pay debts. The court further held that from the facts and material on record, it is fully established that goods were indeed supplied to the respondent company and admittedly receipted and the payment by way of a cheque issued was being dishonored.

In *Re: Budhia Auto Associate Pvt. Ltd*.,[17] the High Court of Chhattisgarh in a winding up petition has held that 'If the company is unable to pay its debt, does not necessarily entitle the court to order winding up of the company as the discretion to pass such an order, even in the case of the inability of a company to pay its debt, is by section 433[18] vested in the court and that discretion has to be exercised judiciously'. The court observed:[19]

> While exercising the judicial discretion, apart from the non-availability of entire facts regarding the assets and liabilities of the current business

14 *Indian Oil Corporation Ltd*. v. *Southern Petrochemical Industries Corporation Ltd*., [2011] 163 Comp Cas 81 (Mad).

15 142 Comp Cas 170 (A.P).

16 MANU/RH/1107/2016.

17 2016 (IV) MPJR 17.

18 *Supra* note 5, s. 433: which say the company may be wound up by the court, if the court is of opinion that it is just and equitable that the company should be wound up.

19 *Supra* note 17, para.14.

> of the company, it is also to beseen that in the stay application the company made a statement that an amount of Rs.75,65,998/- has already been paid to the State Government, therefore, it is not a fit case where this Court should exercise its judicial discretion to proceed further in the company petition to direct publication or to appoint the provisional liquidator.

In *Kotak Mahindra Bank Limited* v. *Hari Ugam Marketing and Distribution Company Pvt. Limited,*[20] the high court by admitting the petition for winding up the company held that 'it is *prima facie* evident that the respondent company has neglected to pay its due debt to the petitioner bank despite its obligation and notice, and therefore *per se* is deemed to be insolvent. In the similar vein the court observed:[21]

> In the context of aforesaid enunciation of law by the Hon'ble Supreme Court, and the facts of the instant case detailed hereinabove, it is prima facie established that the respondent company has neglected to pay its due debt to the petitioner Bank despite its obligation and the statutory notice, and therefore the respondent company is deemed to be insolvent. The loan obtained by the respondent company has not be repaid. Cheques issued by the respondent company have been admittedly dishonored. The amount there against remains unpaid despite statutory notice.

In *A. Talukdar and Co. (Fertilizer) (P.) Ltd*.,[22] appellant company was directed to be wound up and the entire property of the appellant came in the custody of the company court under section 456 of the Companies Act, 1956. During pendency of the proceedings, the premises of the appellant were being occupied by five other entities. Subsequently, winding up order was recalled and only respondent was directed to hand over the possession, whereas occupants claimed the right to continue in possession. Appellant contended that the company court should have restored possession of entire premises of company and not merely of asset which was in possession of the respondent. It was held that the occupants got the possession after winding up order was issued when assets of appellant were in the custody of the company court, as no arrangement, after winding up order, without permission of the company court could be recognised in respect of assets of the appellant, therefore, the occupants were liable to be evicted so as to restore the possession of the assets of the appellant, after the winding up order was recalled.

20 MANU/RH/1851/2015: [2016] 133 SCL 424 (Raj).

21 *Id*., para.12.

22 *A. Talukdar and Co. (Fertilizer) (P.) Ltd*.v. *Official Liquidator, High Court of Calcutta* (2016) 137 SCL 0253.

The court in *J. R. Srinivasa*,[23] clarified that if a pendency of civil suit prevails, the winding up cannot be ordered on the ground of inability of pay debts. The court in *Inega Model Management Private Limited* v.*GNT Media Private Limited,*[24] clarified that a company should not wound up merely because certain cheques issued by the respondent have been dishonored for want of funds. The court clarified that if the balance sheet does not indicate that the company deserves to be wound up for non-payment of lesser amount allegedly due. The court ruled that:[25]

> A creditor's winding up petition, in certain situations, implies insolvency or financial position with other creditors, banking institutions, customers and so on. Publication in the Newspaper of the filing of winding up petition may damage the creditworthiness or financial standing of the company and which may also have other economic and social ramifications. Competitors will be all the more happy and the sale of its products may go down in the market and it may also trigger a series of cross-defaults, and may further push the company into a state of acute insolvency much more than what it was when the petition was filed. The Company Court, at times, has not only to look into the interest of the creditors, but also the interests of public at large. A Company Court, therefore, should act with circumspection, care and caution and examine as to whether an attempt is made to pressurize the company to pay a debt which is substantially disputed. A Company Court, therefore, should be guarded from such vexatious abuse of the process and cannot function as a Debt Collecting Agency and should not permit a party to unreasonably set the law in motion, especially when the aggrieved party has a remedy elsewhere.

IV JURISDICTION OF NCLT

The establishment of NCLT under section 410 of the Companies Act, 2013 and the power of the NCLT to handle the litigations on company law was a matter of disputes in a number of decisions. In majority of the cases, the court clarified that NCLT have jurisdiction to handle the cases already been filed before the CLB since the CLB stood dissolved with the establishment of NCLT in the year 2016.

In *West Hills Realty Private Ltd. and Ravi Ghai* v. *Neelkamal Realtors Tower Pvt. Ltd.,*[26] with regard to the question of NCLT territorial jurisdiction over the winding up petition which is pending before the high court, the court held that only the petition

23 *J. R. Srinivasa* v. *Sree Gururaja Enterprises (P.) Ltd.,* [2016] 198 Comp Cas 322 (Kar).

24 (2016) 127 CC 0204.

25 *Id*., para.35.

26 (2017) 3 CompLJ 225 (Bom); 2017(3) Mh LJ 384.

which are in the pre-admission stage and have not been served on the respondent will be transferred to the tribunal and for the petitions for which the notice of hearing has not been served will not be transferred to the tribunal and such petitions will be continue to be dealt by the high court.

V DIRECTORS OF THE COMPANY

Section 313 in The Companies Act, 1956 provides for the appointment and term of office of alternate directors. Section 313(2) provides that an alternative director appointed may hold the office for the permissible period only and has to vacate the office if and when the original Director returns to the state in which meetings of the board are ordinarily held. The alternate director is essentially appointed during the absence of the original director appointing him from the State in which the meetings of the board are ordinarily held. The High Court of Delhi in *Raj Sekhar Agrawal* v. *Union of India*[27] for the appointment of directors of a company the petitioners have to follow certain procedure and guidelines under 167 (3)[28] of the Companies Act, 2013. The court rejected the contentions of the petitioner's that as promoters of the company they had a special right under section 167 (3) of the Companies Act, 2013 to appoint the directors of a company.

VI SECURITIES AND EXCHANGE BOARD OF INDIA

The issue in *Securities and Exchange Board of India*[29] was related to the degree of proof required to hold brokers liable for manipulating practices under the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. As per the facts of the case, the main broker made a deal with the sub-broker relating to illiquid shares which are shares in which trading is minimal creating unnatural voluminous trading in such shares. In the meanwhile, the Bombay Stock Exchange issued a circular on the 'unnatural trading in illiquid scrip. When the sub-broker put through some shares through the terminal of main broker a member of SEBI ordered penalty of suspension of registration of the respondent as a broker for a period of four months. The securities appellate tribunal ruled that the charges cannot be established in the absence of any direct evidence substantiating the involvement of the sub-broker in the unnatural inflation of the price of the scrip. The Supreme Court restored the orders and the

27 [2016] 194 Comp Cas 511 (Del).

28 Companies Act, 2013, s. 167(3) provides for the mode and procedure for appointment of directors of a company.

29 *Securities and Exchange Board of India* v. *Kishore R. Ajmera,* [2016] 196 Comp Cas 181 (SC).

penalty imposed on the respondent brokers by the orders of the member of SEBI. In *SEBI* v. *Sahara India Real Estate Corpn Ltd.,*[30] with regard to the total amount payable by Saharas Company towards the liquidation of the outstanding liability the court directed that Saharas shall reconcile the figures with SEBI and file a joint statement as to the amount already deposited.

In *RDB Rasayans Ltd.* v. *Securities and Exchange Board of India*[31] the appellants were charged with violating Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009. It was held against the appellants is that by suppressing material facts from the investors in the IPO, the appellants have violated Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) Regulations, 2009[32] (ICDR Regulations) and by misutilizing the IPO proceeds, the appellants have violated the Securities and Exchange Board.

VII COMPANY MEETINGS

As per section 171(1) of the Companies Act, 1956 'a general meeting of a company may be called by giving not less than twenty-one days' notice in writing'. In *Sanjal Dutta* v. *Ruby General Hospital Ltd.*[33] the CLB held that the failure to give an explanatory statement under section 102 of the Companies Act, 2013[34] will not make the meetings and resolutions void as the shareholders already knew about the general meeting. Section 103 of the Companies Act, 2013 stipulates that where any item or special business is to be transacted at a general meeting it should be annexed with the notice of the meeting as an explanatory statement. The intention behind this section is to protect the rights of the shareholders to form their judgment with sufficient information about the all material facts concerning all items of business including the interest of every manager or director.[35] In the present case, the petitioners were already known about the material facts though an explanatory notice was not served to them along with the general notice for the meeting.

30 MANU/SCOR/43206/2016.

31 MANU/SB/0286/2016: [2016] 138 SCL 162 (SAT).

32 "SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision. (2) Without prejudice to the generality of sub-regulation (1): (a) the red-herring prospectus, shelf prospectus and prospectus shall contain: (i) the disclosures specified in Schedule II of the Companies Act, 1956; and (ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

33 [2016] 194 Comp Cas 16 (CLB).

34 *Supra* note 5, s. 173.

35 Companies Act, s.17, *Mohallal Ganpatram* v. *Shri Sayaji Jubilee Cotton and Jute Mills*, [1964] 34 Comp Cas 777: (Guj): (1964)10 GLR 804.

In *Sanjiv Gupta* v. *Getit Info services (P.) Ltd.,*[36] the permission to hold a board meeting on an urgent basis was rejected by the court on the ground that the application merits acceptance. The court has taken note of the fact that the petitioner holds 0.06 shares and there is a serious preliminary objection raised under section 244(1) of the Companies Act, 2013 with regard to maintainability of the petition that the petitioners cannot interfere with the daily affairs of the company.

VIII COMPANY LAW BOARD

The CLB is a statutory board established under the Companies Act, 1956 as an adjudicatory body and under section 10F of the Companies Act, 1856, a decision taken by CLB is final and an appeal to the high court is permissible only on question of law. The power of the CLB to grant an interim order during the pendency of proceedings under sections 397 and 398[37] of the Companies Act, 1956 was examined by the court in *Calcom Cement India Ltd* v. *Binodkumar Bawri.*[38]The proceedings before the High Court of Guahati arose in an appeal filed by the appellants the Dalmia group under section 10F of the Companies Act, 1956, against the interim order of the CLB issued in proceedings under sections 397 and 398 of the Companies Act. The CLB directed by an interim order parties to maintain the status quo regarding shareholding in the company and the composition of the board of directors besides restraining both the rival groups creating third party interest over the fixed assets of the company without the leave of CLB.

In *St. Mary's Hotel (P) Ltd.* v. *T.O. Aleyas*[39] the Supreme Court set aside the order of the CLB which uphold the validity of transfer of 2,20,000 shares from Bobby Kuriakose to T.O. Abraham. Aggrieved by this the Aleyas Group moved to the High Court of Kerala by way of an appeal under section 10F of the Companies Act, 1956. The high court set aside the entire of the resolution the effect of which was that the decisions with regard to transfer of shares to members of other branches of the family, which were not questioned before the CLB and hence the high court, were also set aside.

IX SHARES OF A COMPANY

Section 62[40] of the Companies Act, 2013 provides for the 'rights shares' wherein shares offered to the existing shareholders of the company which gives them pre-

36 (2016) 4 Comp L J 359: [2017] 136 CLA 104.

37 These sections provides for oppression and mismanagement of companies.

38 [2016] 196 Comp Cas 130 (Gau).

39 (2016) 10 SCC 680.

40 Companies Act, 2013, s. 62: shares should be issued to the existing shareholders through right issue only in the proportion of shares already held by them.

emptive rights to subscribe to these shares. It further gives a right to the existing shareholders of a company to get the shares of a company on priority basis or the company should offer the newly purchased shares firstly to the existing shareholders of the company on certain proportion. These shareholders who have the pre-emptive rights to shares can even renounce this right to other persons. The right for the subscription and renunciation of shares is a right which is exclusively available to the existing share holders of the company under section 62 of the Companies Act, 2013. But the Act does not define the term 'issue of further shares' specifically. But section 62 of the Companies Act, 2013 clarifies that persons who are not shareholders of the company are not entitled to subscribe to the rights shares.

In *Sajal Dutta* v. *Ruby General Hospital Ltd.,*[41] the CLB had to interpret section 62 of the Companies Act, 2013. In this case the issue was relating to the interpretations of sections 62[42] and section 8(1)[43] of the Companies Act, 2013. The CLB held that 'if subscription has already been made in the past on some arrangement and if the previous arrangement says that the shares shall be allotted to that subscription the company cannot say that the shares will not be allotted unless section 81 (1) is complied with. In *CIT* v. *AMCO Power Systems Ltd*[44] the High Court of Karnataka had to interpret shares carrying voting power beneficial held' under section 79[45] of the Income Act, 1961. Giving a wider interpretation to the above mentioned section, the court held that 'if there was no change in control of voting power , even though there was a change in the share holding, clause (a) of section 79 would apply'. The court further clarified that in the present case 'there was a change in the shareholding and the company which held earlier 51 percent of the assessee company's share capital came to hold only six percent'. The shareholding pattern is different from the voting power of a company. In *Messer Holdings Ltd* v. *Shyam Madanmohan Ruia*[46] the issue was relating to the validity and enforceability of share transfer by companies. In an appeal from the High Court of Bombay, the apex court imposed exemplary costs on the parties as they wasted the time of the courts in litigating for more than 18 years without framing issues in suits. The court ruled:[47]

> This case should also serve as proof of the abuse of the discretionary Jurisdiction of this Court under Article 136 by the rich and powerful in the name of a 'fight for justice' at each and every interlocutory step of

41 [2016] 194 Comp Cas 16(CLB).

42 *Supra* note 40.

43 Companies Act, 2013, s. 8(1) stipulates for the increase of the capital of a company according to its needs.

44 [2016] 194 Comp Cas 146 (Karn).

45 Income TAX Act, 1961, s. 79: provides that the case of a company if a change in shareholding has taken place in a previous year no loss incurred in any year prior to the previous year shall be carried forward or set off against the income of the previous year.

46 [2016] 196 Comp Cas 258 (SC).

47 *Id.,* para 45.

> a suit. Enormous amount of judicial time of this Court and two High Courts was spent on this litigation. Most of it is avoidable and could have been well spent on more deserving cases. We therefore, deem it appropriate to impose exemplary costs quantified at Rs.25,00,000.00 (Rupees Twenty Five Lakhs only) to be paid by each of the three parties … The said amount is to be paid to National Legal Services Authority as compensation for the loss of judicial time of this country and the same may be utilized by the National Legal Services Authority to fund poor litigants to pursue their claims before this Court in deserving cases.

X SCHEME OFAMALGAMATION

In *Re : Fine Mining (Granite) Private Limited,*[48] by allowing the company petition the court held that since nothing prejudicial to the interest of the creditors, members of both transferor companies and the transferee company or to public interest prevails in the scheme of amalgamation and all required procedures had been followed the court sanctioned the scheme of amalgamation and declared the same to be binding on creditors and equity shareholders of transferor companies. In *Sucon India Limited* v. *Akriti global traders Limited,*[49] the High Court of Punjab and Haryana sanctioned the scheme of amalgamation on the ground that all the assets and liabilities of the transferor company shall stand vested in the transferee company and the transferor company shall be dissolved without being wound up. In *Maruti Insurance Business Agency Limited* v. *Maruti Suzuki India Limited,*[50] the High Court of Delhi approved the scheme of amalgamation with the directions to dispense with the requirement of convening the meetings of their equity shareholders and creditors to consider and approve, with or without modification, the proposed scheme.

In *Re: Siddhi Vinayak Tradelink Private Limited* [51] the scheme of amalgamation is sanctioned subject to the order that in clause 13.4 of the scheme, the word and change in the object clause shall stand deleted. It is further directed that the petitioner Transferor companies shall preserve their books of accounts, papers and record and shall not to dispose of the records without the prior permission of the Central Government under section 396 A of the Companies Act, 1956.Similarly in *Re Aatrey Buildcon Private Limited,*[52] the High Court of Gujarat sanctioned the scheme of amalgamation after considering the relevant documents on record. The court finds it appropriate to grant sanction to the proposed scheme of amalgamation. It is, however, directed that the petitioner transferor companies shall preserve their books of accounts,

48 MANU/RH/1150/2016.
49 2016 (12) TMI 1562.
50 2016 (12) TMI 1361.
51 2016 (12) TMI 1303.
52 2016 (12) TMI 1252.

papers and records and shall not dispose of the records without the prior permission. In *Re Indigo Jewelers Private Limited*[53] the court sanctioned the scheme of arrangement between composite scheme of arrangement in the nature of amalgamation on the ground that it does not appear to be any impediment to the grant of sanction to the scheme of arrangement, in as much as from the material on record and on perusal of the Scheme, the scheme appears to be fair and reasonable and is not violative of any of public policy.

In *Hill County Properties* v. *Goman Agro Farms*[54] the Telenghana and Andhra Pradesh High Court confronted with the question of sanctioning a scheme of amalgamation objected by the Income Tax department on the ground of 'tax avoidance exercise'. In this case the *locus standi* of the Income tax department to raise the objections about the scheme of amalgamation was challenged by the appellants. The high court held that 'the court should not decline to sanction a scheme of arrangement or compromise comes to the conclusion that the scheme is not unfair, unjust and unreasonable or is not contrary to the provisions of law or it does not violate any public policy. If a transaction is entered into with a view to circumvent tax laws and evade taxation the court will not approve such transaction. However if document and transaction is bona fide and not sham in the traditional sense and even if the purpose and object of the transaction was to avoid tax such transaction cannot invalidated unless an anti avoidance provision to that effect exist'.

In *Re :Ranjeet Electric Private Limited*[55] the High Court of Gujarat sanctioned the scheme of amalgamation on the ground that the scheme of arrangement is in the interest of the shareholders and creditors of all the companies as well as in the public interest and the same deserves to be sanctioned' the court also directed the petitioners shall preserve their books of Accounts, papers and records and shall not dispose of the records without the prior permission of the Central Government under section 396A of the Companies Act, 1956.A similar view was taken by the same court in *Re :Oswal Infrastructure Limited* [56] the scheme of amalgamation was sanctioned by the court as the scheme of arrangement was in the interest of the shareholders and creditors of all the companies as well as in the public interest and directed that the petitioners to preserve their books of Accounts, papers and records and shall not dispose of the records without the prior permission of the Central Government under section 396A of the Companies Act, 1956.

In *Modern Insulators Limited* v. *Modern Poly Tex Limited*[57] dismissing the petition for sanctioning the scheme the court held that the requirement under section 391 (2) was not met in the case of demerged company. In the present case, an

53 2016 (11) TMI 28.
54 (2016) 194 Comp Cas 214 (T & AP).
55 2016 (2) TMI 280.
56 2016 (2) TMI 177.
57 [2016] 196 Comp Cas 503 (Raj).

arrangement under the company's act under the scheme a unit of the demerged company was to be hived off and transferred to the resulting company. The court ruled that section 391 (2)[58] of the companies act casts a twin requirement for an approval of the arrangement. In another case[59] the court sanctioned the scheme of amalgamation on the ground that the scheme appears to be genuinely in the interest of the shareholders and creditors. Allowing the company petition, the court held that 'it appears that the requirements of the provisions of sections 391 to 394 of the Companies Act, 1956 are satisfied for sanctioning the scheme of amalgamation'.

XI LIFTING OF CORPORATE VEIL

In *Bhatia Industries and Infrastructure Limited* v. *Asian Natural Resources (India) Limited (formerly Bhatia International Limited) and Vitol S. AA company incorporated*[60] the question before the High Court of Bombay was whether the concept of lifting of corporate veil was available even in execution proceedings and whether any interference was called for in the finding recorded by the single judge? The court held that the concept of corporate veil is applicable not only in the cases of holding of subsidiary companies or in the case of tax evasion but can be equally applied in execution proceedings. The court further observed that 'the corporate veil can be lifted in cases where the court from the material on record comes to the conclusion that the judgment debtor is trying to defeat the execution of the award which is passed by the court against him'.

XII MISCELLENOUS

In *Rajni Sanghi* v. *Western Indian State Motors Ltd.,*[61] the issue was whether the family arrangement arrived at after a dispute was referred to arbitration would prevail over the arbitration award. The apex court held that the object of family arrangement is to sink their differences and disputes and resolve their conflicting claims to buy peace of mind and bring about complete harmony and goodwill in the family. The court observed: [62]

> We find that the remand order is not on the basis of any defect in the agreements or supplementary agreements but on account of certain

58 *Supra* note 5, s. 391(1) : provides that where a compromise or arrangement is proposed between company and its creditors or any class of them or between company and its members or any class of them, the court may on the application of the company or any creditor or member of the company or liquidator order a meeting of creditors or class of creditors or members or class of members, as the case may be, to be called, held and conducted in such manner as it directs.

59 *Re: Aditya Birla Nuvo Limited*, 2016 (3) TMI 979.

60 2016 (6) ABR 132: [2016] 138 SCL 282 (Bom).

61 [2016] 194 Comp Cas 486 (SC).

62 *Id.,* para 28.

technical requirements which should have been ignored when the issues had been settled by all the stake holders by reaching amicable agreement. The companies of family of four brothers are almost like partnerships and when all were agreeable, interest of justice was best sub served by recognizing even the supplementary family settlement of 1995 in favour of Rajni Sanghi as well as the original family arrangement of 1994 accepted by the Company Judge. In that view of the matter the order of remand under challenge at the instance of Rajni Sanghi is set aside and both the family arrangements indicated above are affirmed. If any party fails to act as per those arrangements within three months, the aggrieved party will be free to initiate appropriate proceedings including those of contempt before the concerned High Court or seek execution of the agreements through other appropriate proceedings'. There is no hindrance in law in upholding the family arrangements made before the High Court at Rajasthan as well as judgment of the Bombay High Court which has attained finality. They deserve to have pre-eminence over the award in question.

XIII CONCLUSION

The establishment of NCLAT can be treated as new era in the company law litigations and a step forward on legal reforms in company matters. The Companies Act, 2013 replaced the CLB with the NCLT and the question of the effect of the proceedings pending at the CLB was considered by the courts in a number of cases. The establishment of the NCLT deal with company law matters is a welcome step as it is aimed at providing a speedy and efficient disposal of the company law matters. Hopefully it lessens the burden of high courts. The analysis of the landmark cases pertaining to company law reveals that in the year under survey more cases were on the topics like amalgamation, oppression and management, scheme of arrangements and company meetings *etc*. As far as the issue of 'oppression and mismanagement' is concerned which is a common issue consistently been raised before the various courts on company law in every year has been settled by the court with the ruling that 'the remedy provided under section 397 is an equitable remedy and an equitable consideration are to be superimposed on the legal rights'.