IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY THE 03rd DAY OF OCTOBER 2019

THE HON'BLE MR. JUSTICE K.KALYANASUNDARAM

C.S. No.539 of 2019
and
O.A. No.835 of 2019
and
A. Nos.6819 & 7448 of 2019
and
C.S. No.575 of 2019
and
O.A.No. 885 of 2019
and
A.No.7449 of 2019

C.S. No.539 of 2019

1. Mr.Vummidi Udaykumar,
Founder & Past-Chairman GJIE
& Past VP, MJDMA, 86,
Daveraj Mudali St.,
Chennai-600 003.

2. Yogesh J. Shah,
Vice President, MJDMA & Past-Chairman, GJIE,
36/2, Veerappan Street, Swarnashree Complex,
2nd Floor, Shop No.201, Chennai-600 079.

3. HLM.Sultan Mohideen,
Vice-President MJDMA & Vice-Chairman, GJIIE,
30/57, TTK Road, Alwarpet,
Chennai-600 018.

4. Rajesh Vummidi,
Chairman, GJIIE & Member, Executive Committee,
118, Nageswara Road, T.Nagar, Chennai-600 017.

5. S.Prasanna,
131, Pondy Bazaar,
T.Nagar, Chennai-600 017.

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6. T.M.Sreenivaasalu,
Joint Treasurer, MJDMA,
No.136/224, Govindappa Naicken St.,
Chennai-600 001. ... Plaintiffs/Applicants
(in O.A. No.835 and A. No.6819 of 2019)

-Versus-

1. The Madras Jewellers & Diamond Merchants Association,
having its registered office at
10, Car Street, NSC Bose Road,
Chennai-600 079.

2. Jayantilal I Challani, President, MJDMA,
10, Car Street, NSC Bose Road, Chennai-600 079.

3. MJF Ln S.Santhakumar,
Honorary Secretary, MJDMA,
10, Car Street, NSC Bose Road,
Chennai-600 079. ... Defendants/Respondents
(in O.A. No.835 and A. No.6819 of 2019)

C.S. No.539 of 2019:-

Civil Suit praying that this Hon'ble Court be pleased to pass the judgment and decree:-

a) for permanent injunction restraining the defendants from conducting "Gem and Jewelry India International Fair / exhibition" using the first defendant name.

b) to declare that the office post of President presently held by the second defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to 2016 as invalid.

c) to declare that the office post of honorary secretary presently held by the third defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to

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2016 as invalid.

d) to appoint a retired judge of the High Court as an administrator to conduct elections with the respect to the executive committee of the first defendant association and submit a report before this Hon'ble Court.

O.A. No.835 of 2019:-

Original Application praying that this HOn'ble Court be pleased to an ad-interim injunction restraining the respondents/defendants herein from conducting and participating the exhibition under the name and style of "Gem and Jewellers India International Fair" to be conducted on 13, 14 and 15th September 2019 or any other date pending disposal of the suit.

A. No.6819 of 2019:-

Application praying that this HOn'ble Court be pleased to appoint a retired high court Judge to act as an Interim Administrator to manage and run the Internal Affairs of 1st respondent/defendant Association until the elections are conducted pending disposal of the above suit.

A. No.7448 of 2019:-

MJF Ln S.Santhakumar,
Honorary Secretary, MJDMA,
10, Car Street, NSC Bose Road,
Chennai-600 079. ... Applicant/3rd Defendant

-Versus-

1. Mr.Vummidi Udaykumar,
   Founder & Past-Chairman GJIE
   & Past VP, MJDMA, 86,
   Daveraj Mudali St.,
   Chennai-600 003.

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2. Yogesh J. Shah,
Vice President, MJDMA & Past-Chairman, GJIE,
36/2, Veerappan Street, Swarnashree Complex,
2nd Floor, Shop No.201, Chennai-600 079.

3. HLM.Sultan Mohideen,
Vice-President MJDMA & Vice-Chairman, GJIIE,
30/57, TTK Road, Alwarpet,
Chennai-600 018.

4. Rajesh Vummidi,
Chairman, GJIIE & Member, Executive Committee,
118, Nageswara Road, T.Nagar, Chennai-600 017.

5. S.Prasanna,
131, Pondy Bazaar,
T.Nagar, Chennai-600 017.

6. T.M.Sreenivaasalu,
Joint Treasurer, MJDMA,
No.136/224, Govindappa Naicken St.,
Chennai-600 001. ... Respondents 1 to 6/Plaintiff

7. The Madras Jewellers & Diamond Merchants Association,
having its registered office at
10, Car Street, NSC Bose Road,
Chennai-600 079.

8. Jayantilal I Challani, President, MJDMA,
10, Car Street, NSC Bose Road,
Chennai-600 079. ... Respondents 7 & 8/Defendants 1 & 2

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Application praying that this Hon'ble Court be pleased to reject the plaint in C.S. No.575 of 2019 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

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C.S. No.575 of 2019 and O.A.No. 885 of 2019 and A.No.7449 of 2019

C.S. No.575 of 2019

1. Yogesh J Shah
Vice-President, MJDMA & Past-Chairman, GJIE
Proprietor of Sheetal Diamonds
36/2, Veerappan Street,
Swarnashree Complex, 2nd Floor,
Shop No. 201, Chennai 600 079.

2. Rajesh Vummidi
Chairman, GJIIE & Member, Executive Committee
Representing Partner, VBC Jewellers
118, Nageswara Road, T.Nagar, Chennai 600 017.

3. T.M.Sreenivaasalu
Joint Treasurer, MJDMA
Proprietor of T.Manickam Chetty & Son
No.136/224, GovindappaNaicken St,
Chennai 600 001.

4. M.Jahufar
Proprietor of Fareedha Jewellers
212/1, Rohini Flats
Anna Nagar West Extension
Chennai 600 101. : Plaintiffs/Applicants
(in O.A.No.885 of 2019)

Versus

1. The Madras Jewellers & Diamond Merchants Association,
having its registered office at
10, Car Street, NSC Bose Road,
Chennai-600 079.

2. Jayantilal I Challani, President, MJDMA,
10, Car Street, NSC Bose Road, Chennai-600 079.

3. MJF Ln S.Santhakumar,
Honorary Secretary, MJDMA,
10, Car Street, NSC Bose Road,
Chennai-600 079.

4. Sri.Pravin M Mehta

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5. Sri.N.Anantha Padmanaban

6.Sri Babu Emmanuel
4 to 6 are having office at
Madras Jewellers & Diamond Merchants Association
No.2, Car Street, N.S.C.Bose Road,
Chennai 600 079. ... Defendants/respondents
(in O.A.No.885 of 2019)

C.S. No.575 of 2019:-

Civil Suit praying that this Hon'ble Court be pleased to pass a judgement and decree:

(a) To declare the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 and 17.09.2019 proposing to conduct elections on 09.10.2019 as null and void;

(b) permanent injunction restraining the defendants and their men or servant or any person acting on their behalf from in any way conducting elections in violation of the Articles of Association and the Provisions of Companies Act and the undertaking given by the defendants 1 to 3 dated 05.10.2015 in C.P.No.156 of 2015, in pursuance of the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 an 17.09.2019 proposing to conduct elections on 09.10.2019 or on any other date.

O.A. No.885 of 2019:-

Original Application praying that this Hon'ble Court be pleased to grant an ad interim injunction restraining the Respondents/Defendants and their men or servants or any person acting on their behalf from in any way conducting the Extra ordinary general meeting dated 09/10/2019

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including the conduct of elections in violation of the Articles of Association and the Provisions of companies Act and the undertaking given by the Respondents/Defendants 1 to 3 dated 05/10/2015 in C.P.No.156 of 2015 and seeking the appointment of statutory auditors to audit the accounts of the 1st Respondent among other things in pursuance to the notice for extraordinary general body meeting dated 12/09/2019 posted on 14/09/2019 and served on the Applicants/Plaintiffs 1-3 only on 16/09/2019 and 17/09/2019.

A.No.7449 of 2019:

MJF Ln S.Santhakumar,
Honorary Secretary, MJDMA,
10, Car Street, NSC Bose Road,
Chennai-600 079. : Applicant/Defendant No.3

-vs-

1. Yogesh J Shah
Vice-President, MJDMA & Past-Chairman, GJIE
Proprietor of Sheetal Diamonds
36/2, Veerappan Street,
Swarnashree Complex, 2nd Floor,
Shop No. 201, Chennai 600 079.

2. Rajesh Vummidi
Chairman, GJIIE & Member, Executive Committee
Representing Partner, VBC Jewellers
118, Nageswara Road, T.Nagar, Chennai 600 017.

3. T.M.Sreenivaasalu
Joint Treasurer, MJDMA
Proprietor of T.Manickam Chetty & Son
No.136/224, GovindappaNaicken St,
Chennai 600 001.

4. M.Jahufar
Proprietor of Fareedha Jewellers
212/1, Rohini Flats
Anna Nagar West Extension
Chennai 600 101. : Respondents 1 to 4/Plaintiffs

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5. The Madras Jewellers & Diamond Merchants Association,
having its registered office at
10, Car Street, NSC Bose Road,
Chennai-600 079.

6. Jayantilal I Challani, President, MJDMA,
10, Car Street, NSC Bose Road, Chennai-600 079.

7. Sri.Pravin M Mehta

8. Sri.N.Anantha Padmanaban
9.Sri Babu Emmanuel

7 to 9 are having office at
Madras Jewellers & Diamond Merchants Association
No.2, Car Street, N.S.C.Bose Road,
Chennai 600 079. ... Respondent No.5 to 9/
Defendants 1,2, 4 to 6

Application praying that this Hon'ble Court be pleased to reject the plaint in C.S.No.575 of 2019 under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

These Civil Suits along with applications coming on this day before this Court for hearing, the Court made the following order:

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The third defendant in C.S.Nos.539 and 575 of 2019 has filed these Applications to reject the plaints under Order VII Rule 11(d) of C.P.C.

2.1. The prayer in C.S.No.539 of 2019 would run thus:-

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(a) For permanent injunction restraining the defendants from conducting "Gem and Jewelry India International Fair / exhibition" using the first defendant name.

(b) To declare that the office post of President presently held by the second defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to 2016 as invalid.

(c) To declare that the office post of honorary secretary presently held by the third defendant in the executive committee of the first defendant as null and void even after the expiry of the period from the year 2014 to 2016 as invalid.

(d) To appoint a retired judge of the High Court as an administrator to conduct elections with the respect to the executive committee of the first defendant association and submit a report before this Court;

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(e) and pass such other further orders;

2.2. The reliefs sought for in C.S.No.575 of 2019 are as follows:-

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(a) To declare the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 and 17.09.2019 proposing to conduct elections on 09.10.2019 as null and void;

(b) permanent injunction restraining the defendants and their men or servant or any person acting on their behalf from in any way conducting elections in violation of the Articles of Association and the Provisions of Companies Act and the undertaking given by the defendants 1 to 3 dated 05.10.2015 in C.P.No.156 of 2015, in pursuance of the notice for extraordinary general body meeting dated 12.09.2019 posted on 14.09.2019 and served on the plaintiffs 1 to 3 only on 16.09.2019 an 17.09.2019 proposing to conduct elections on 09.10.2019 or on any other date

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(c) and pass such other further orders;

3. In both the suits, parties are one and the same. Since the issues involved in these applications are same, they are taken up together and disposed of by this common

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order.

4. Before dealing with the applications filed by the third defendant under Order VII Rule 11(d) of C.P.C. for rejection of the plaints, it would be appropriate to extract the averments made in the plaints and hence, the averments made in the plaints, in nutshell, are set out hereunder:-

4.1. According to the plaintiffs, the first defendant was established on 11.02.1938 and incorporated as a Non Profit Company Limited by guarantee on 04.03.1941 to promote jewellery exports by providing export survey certification to all exporters, conduct activities for the benefit of the members and to enable participation of members in exhibitions and conferences, in order to enhance the business opportunities and prospects of its members, who are all jewelers and diamond merchants in Chennai. As such, for the past about 75 years, the first defendant has successfully improved business prospects of its members through various activities, including conducting exhibition in the name of Gem & Jewellery India International Exhibition in Chennai, since 2005.

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4.2 The plaintiffs would further state that as per Article 19 of the Memorandum of Articles of Association of the first defendant, the Executive Committee shall consist of a President, two Vice Presidents and 27 members and as per Article 23, the members of the first defendant would elect the Executive Committee once in two years at the Annual General Body Meeting. In September 2010, the second defendant was elected as President and the plaintiffs 2 and 3 were elected as Joint Vice Presidents. The first plaintiff was the erstwhile Vice President and Chairman of the first defendant and the fifth plaintiff is a Member of the Executive Committee. It is further stated that the tenure of the Executive Committee expired in 2012 by virtue of Article 19, however the first defendant was re-elected as a President till September 2014. Subsequently no election was conducted to the Executive Committee.

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4.3. It is alleged that the second defendant has not conducted any AGM after 2014-2015 in blatant violation of the Companies Act; The second defendant has not conducted elections for the Executive Committee in accordance with Clause 19 read with 23 of Articles of the Association; the

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second defendant has not placed the finalized account of the first-defendant Company from the year 2014-15 to 2018-19. In view of the above violations, a Company Petition under Section 237 was filed before the High Court and the same was transferred to the National Company Law Tribunal and the same is pending. It is further averred that on 03.03.2017, an undertaking was given by the respondents before the High Court in the Company Petition, but subsequently they conducted exhibitions in the month of September 2018 and April 2019, without informing the plaintiffs and they also proposed to conduct exhibition on 13, 14, 15th September 2019 and hence, C.S.No.539 of 2019.

4.4. In C.S.No.575 of 2019, it is further alleged that in C.C.No.539 of 2019, plaintiffs sought for interim injunction and on 13.09.2019, the counsel for the defendants appeared and took time for filing counter and hence, it was adjourned to 20.09.2019. But, even before filing the counter, they issued a notice dated 12.09.2019 to convene Extraordinary General Body Meeting on 09.10.2019. The notice is pre-dated and was posted only on 14.09.2019, the plaintiffs 1 to 3 received the notice on 16.09.2019 and 17.09.2019 respectively and the fourth

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defendant has still not received the notice dated 12.09.2019. The Agenda of EGM to be conducted on 09.10.2019 are to appoint a statutory auditor to audit the accounts of the first defendant for the financial year 2014-15 to 2019-20 and to conduct elections for the new office bearers for the year 2019-2021. It is a case of the plaintiffs that the notice to convene proposed Extraordinary General Body Meeting contravenes the provisions of the Companies Act and the Articles of Association of the first defendant and hence, the suit in C.S.No.525 of 2019.

5. These applications to reject the plaints have been filed on the sole ground that the institution of the suits are barred under Section 430 of the Companies Act.

6. It is relevant to mention that the plaintiffs have also filed two applications under Order 39 Rule 1 CPC, viz., O.A.No.835 of 2019 in C.S.No.539 of 2019 for ad interim injunction, restraining the defendants from conducting or participating the exhibition to be conducted on 13, 14, and 15th September 2019. O.A.No.885 of 2019 in C.C.No.575 of 2019, has been filed for grant of ad interim

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injunction, restraining the defendants from in any way conducting the Extraordinary General Body Meeting on 09.10.2019. The plaintiffs have also filed Application No.6819 of 2019 in C.S.No.539 of 2019, to appoint a retired High Court Judge to act an Interim Administrator to manage and run the International affairs of the 1st respondent / 1st defendant Association until the elections are conducted. Even before the applications were taken up for hearing, the third defendant has filed these applications for rejection of the plaints.

7. Mr.P.H.Arvindh Pandian, learned Senior Counsel appearing on behalf of the applicant / third defendant would urge that without prejudice to the applicant to file his response on the merits of the case and presuming without admitting the averments in the plaints are true, the institution of the suits are barred by Section 430 of the Companies Act. It is the submission of the learned Senior Counsel that the entire allegations of the plaintiffs are directly relate to management and affairs of the Company. Since the issues are directly relating to conduct of the affairs of the Company and its management and elections to be conducted to the Company, they are to be dealt with by the National Company Law Tribunal under

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Sections 241 and 242 of the Companies Act. In support of his contentions, the learned Senior Counsel has relied upon the following decisions:-

(i) ***Viji Joseph Vs. P.Chander & others*** *[O.S.A.Nos.29 & 30 of 2019, dated 26.04.2019]*

(ii) ***SAS Hospitality Pvt. Ltd., & Anr. Vs. Surya Constructions Pvt. Ltd., & Ors*** *[C.S (COMM) No.1496 of 2016, dated 16.10.2018]*

(iii) ***Shashi Prakash Khemka Vs. NEPC Micon Ltd.,*** *[Manu/SC/0187/2019]*

8. The learned Senior Counsel by placing reliance on the decision of the Bombay High Court in ***Mukund Ltd. Vs. Mumbai International Airpot & Ors.*** *[A.No.1167 of 2010, dated 15.02.2011]* submitted that since the defendants, questions the maintainability of the suits in the applications filed under Order 7 Rule 11, until a decision is taken to the maintainability of the suits, the plaintiffs are not entitled for interim injunction. Though the decision is based on Section 9A of C.P.C. (Maharashtra Amendment Act), the principle can be applied to the instant case.

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9. Mrs.Hema Sampath, learned Senior Counsel and Mr.V.Raghavachari, learned counsel appearing on behalf of the respondents submitted that in view of paucity of time, no counter has been filed in these applications, but the averments made in the plaints can be treated as counter to the applications filed by the third defendant.

10. According to the learned counsels, the management and affairs of the first defendant is not being conducted in consonance with the Articles of Association, especially, Articles 19 and 23. Since the Articles of Association have not been followed by the defendants and there are blatant violations, the suits are maintainable under Section 9 of C.P.C. It is further submitted that the plaintiffs want election to be conducted for the Executive Committee of the first defendant, but it should be in accordance with the Bye-laws of the first defendant. It is further contended that the term of the office of the Executive Committee expired as early as in the year 2014 and thereafter, the Committee has become defunct and unless an order is passed under Section 97 of the Companies Act, the defendants have no authority to conduct the meeting. Admittedly, the

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income and expenditure of the first defendant was not submitted by the second defendant since 2015 and unless accounts are submitted before the AGM as per the Articles of Association, an auditor cannot be appointed in the EGM. It is further submitted that the Extraordinary General Body Meeting can be convened on a representation of 1/10 of the shareholders as per Section 111 of the Companies Act, but admittedly without any requisition, an attempt is being made to convene EGM. In support of their contentions, the decision of the Delhi High Court in the case of ***Jai Kumar Arya & Ors Vs. Chhaya Devi and another*** *[FAO (OS)No.253 of 2017 & CM No.33724 of 2017, dated 07.11.2017]* and a judgement of this Court in the case of ***N.Ramji Vs. Ashwath Narayan Ramji & another*** *[Indian Kanoon - http://indiankanoon.org/doc/87805377/]* have been relied upon.

11. In reply, the learned Senior Counsel for the applicant Mr.P.H.Arvindh Pandian, submitted that election to the Executive Committee could not be conducted in view of non co-operation of the plaintiffs and even though Mr.Justice K.Govindaraj was appointed as an Election Officer on consensus in the year 2015, but the plaintiffs

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failed to cooperate for conduct of the election. He further added that the defendants filed an application under Section 97 of the Companies Act for convening AGM, but filing counter affidavit, it was vehemently opposed by the plaintiffs and eventually, it was dismissed by the Company Law Board, by stating that there is no bar under the Companies Act for the President to convene a meeting, and Section 100 of the Companies Act empowers the board to convene EGM.

12. Since the issue arises for consideration in these applications is the question of law simpliciter, elaboration of facts any more is not required.

13. In the case of ***Viji Joseph Vs. P.Chander & others [Presidency Club]*** *(supra)*, the Division Bench had an occasion to consider whether the proceedings before the Company Law Tribunal are summary in nature and complex issues and an election dispute could be adjudicated before the Tribunal. In that case, the plaintiffs challenged the election of the Club by contending that a fraud and manipulation have been committed. The application filed by one of the defendants in the suit to reject the plaint in view of the bar under Section 430 of the Companies Act was

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dismissed by me by observing that the complex issues and election dispute necessarily to be adjudicated before the civil Court. On an appeal, the Division Bench, after elaborately considering the changes brought into Companies Act, 2013 in threadbare and the powers of the Tribunal under Section 242 and by following the decisions of the Apex Court in ***Shanthi Prasad Jain vs. Kalinga Tubes Ltd.,*** *[MANU/SC/0368/1965, dated 14.01.1965]* and in ***Shashi Prakash Khemka and Others Vs. NEPC Micon Ltd., and others*** *[Manu/SC/0187/2019]*, held as follows:-

" *8. PROVISIONS:-*

8.1. Section 241 of the Act comes under Chapter XVI which in general deals with prevention of oppression and mismanagement. This Chapter deals with an oppression made in the mismanagement done already while endeavour to prevent such activities. Therefore it is remedial as well as preventive. Invocation can be done by any member by way of a complaint. It is thus, a right conferred under the Act.

8.2. The word oppression is to be given a wider interpretation. It has not been specifically defined under the Act. What constitutes an oppression in a given case is for

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the Tribunal to decide.

8.3. In this connection, it is appropriate to refer the celebrated judgment of the Apex Court in Shanti Prasad Jain Vs. Kalinga Tubes Ltd., (MANU/SC/0368/1965 dated 14.01.1965), wherein it has been held as under.

> *" 15. It gives a right to members of a company who comply with the conditions of S. 399 to apply to the court for relief under s. 402 of the Act or such other reliefs as may be suitable in the circumstances of the case, if the affairs of a company are being conducted in a manner oppressive to any member or members including any one or more of those applying. The court then has power to make such orders under s. 397 read with s. 402 as it thinks fit, if it comes to the conclusion that the affairs of the company are being conducted in a manner oppressive to any member or members and that wind up the company would unfairly prejudice such member or members, but that otherwise the facts might justify the making of a winding up order on the ground that it was just and equitable that the company should be wound up. The law however has not defined what is oppression for purposes of this section, and it is left to courts to decide on the facts of each case whether there is such oppression. as calls for action under this section.*
>
> *16. We may in this connection refer to four cases where the new s. 210 of the English Act came up for consideration, namely, (1) Elder v. Elder and Watson,*

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(1), (2) George Meyer v. Scottish Cooperative Wholesale Society Ltd.(2), (3) Scottish Co-operative Wholesale Society Ltd. v. Meyer and another (3), which was an appeal from Meyer's case (2), and (4) Re. H.R. Harmer Limited. Among the important considerations which have to be kept in view in determining the scope of s. 210, the following matters were stressed in Elder's case (1) as summarised at p. 394 in Meyer's case (2) :-

"(1) The oppression of which a petitioner complains must relate to the manner in which the affairs of the company concerned are being conducted; and the conduct complained of must be such as to oppress a minority of the members (including the petitioners) qua shareholders.

(2) It follows that the oppression complained of must be shown to be brought about by a majority of members exercising as shareholders a predominant voting power in the conduct of the company's affairs.

(3) Alt hough the facts relied on by the petitioner may appear to furnish grounds for the making of a winding up order under the 'just and equitable' rules, those facts must be relevant-to disclose also that the making of a winding up order would unfairly prejudice the minority members qua shareholders.

(4) 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

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if they were their own property' to the prejudice of the minority shareholders- 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 S. 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.

(5) The power conferred on the Court to grant a remedy in an appropriate case appears to envisage a reasonably wide discretion vested in the Court in relation to be order sought by a complainer as the appropriate equitable alternative to a winding-up order."

19. In Harmer's case (1), it was held that "the word 'oppressive' meant burdensome, harsh and wrongful". It was also held that "the section does not purport to apply to every case in which the facts would justify the making of a winding up order under the 'just and equitable' rule, but only to those cases of that character which have in them the requisite element of oppression". It was also held that "the result of applications under s. 210 in different cases must depend on the particular facts of each case, the circumstances in which oppression may arise being so infinitely various that it is impossible to define them with precision". The circumstances must be such as to warrant the inference that "there had been, at least, an unfair abuse of powers and an impairment of confidence in the 'probity with which the company's affairs are being conducted, as distinguished from mere resentment on the part of a minority at being outvoted on some issue of domestic policy". The

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phrase "oppressive to some part of the members" suggests 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. ... But, apart from this, the question of absence of mutual confidence per se between partners or between two sets of shareholders, however relevant to a winding up seems to have no direct relevance to the remedy granted by S. 210. It is oppression of some part of the shareholders by the manner in which the affairs of the company are being conducted that must be averred and proved. Mere loss of confidence or pure deadlock does not come within s. 210. It is not lack of confidence between shareholders per se that brings s. 210 into play, but lack of confidence springing from oppression of a minority by a majority in the management of the company's affairs, and oppression involves at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder."

20. These observations from the four cases referred to above apply to s. 397 also which is almost in the same words as s. 210 of the English Act, and the question in each case is whether the conduct of the affairs of a company by the majority shareholders was oppressive to the minority shareholders and that depends upon the facts proved in a particular case. As has already been indicated, it is not enough to show that there is just and equitable cause for winding up the company, though that must

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be shown as preliminary to the application of s. 397. It must further be shown that the conduct of the majority shareholders was oppressive to the minority as members and this requires that events have to be considered not in isolation but as a part of a consecutive story. There must be continuous acts on the part of the majority shareholders, continuing up to the date of petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members. The conduct must be burdensome, harsh and wrongful and mere lack of confidence between the majority shareholders and the minority shareholders would not be enough unless the lack of confidence springs from oppression of a minority by a majority in the management of the company's affairs, and such oppression must involve at least an element of lack of probity or fair dealing to a member in the matter of his proprietary rights as a shareholder. It is in the light of these principles that we have to consider the facts in this case with reference to s. 397.

8.4. There may be different categories of mismanagement or oppression as the case may be. However, an election to the helm of affairs and to the post of office bearers by allegedly using other means would certainly come within the purview of mismanagement. It would become oppression when it goes against the interest of the company and the members including others, who complain. It would also amount to mismanagement as they involve a process of fraud and collusion

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affecting the management as a whole. Thus, all the decisions emanated from such wrongly elected office bearers would become by-product of such an election.

8.5. Section 242 deals with the powers of the Tribunal. This provision has to be seen contextually and co-existing with Section 241. On a complaint, power is to be exercised towards redressal. Prejudice may either to a member, group of the company or the public at large.

8.6. A complaint touching upon the election conducted to the management of the company would go to the root. Such a challenge is to the very right to manage the affairs. A wrong election would certainly have a cascading effect on the affairs in the form of decisions and functioning of a company. Thus, it cannot be said that Section 241 of the Act would only involve a complaint touching upon the other affairs as against the process of election. As discussed above, the challenge is to the very election itself and therefore, there is no authority available to the office bearers to act and decide on behalf of the company if held bad. Certainly such a challenge would come within the purview of oppression and mismanagement. A technical view contrary to that will make the entire object behind Section 241 of the Act as redundant.

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8.7. Section 242(h) of the Act also provides for removal of Managing Director, Manager or any other Directors of the Company. As discussed above, to understand Section 241 of the Act, a little peep into Section 242 of the Act would be necessary. To put it differently, it can never be accepted that on a complaint involving an act of oppressiveness or mismanagement, a Managing Director, Manager or any other Directors of the company can be removed as against their alleged wrongful entry to function in the said capacity. Can it be ever said that an election dispute of a company would never come within the purview of Section 241 of the Act and therefore, no power can be exercised under Section 242 of the Act. In our considered view, the answer will have to be in the negative. Section 242(h) of the Act cannot be read in isolation. When a power is given to exercise to act, it has to be related to the core section, which provided for such an exercise. In our considered view, the learned single Judge has not considered the scope and object behind Sections 241 and 243 of the Act.

8.8. We may also note that Section 242(k) of the Act also gives a larger power to the Tribunal in appointing such number of persons as Directors. Therefore, the power of the Tribunal in giving effect to an order passed on a

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complaint under Section 241 of the Act is quite exhaustive, keeping in mind the interest of the company. After all, every provision of a statute has to be given its meaning and therefore, can never be ignored.

8.9. Chapter XXVII deals with National Company Law Tribunal and the Appellate Tribunal. If we have a cursory glance at the provisions governing the qualification and constitution along with the procedure, we can certainly appreciate the role required to be played.

8.10. The President of the Tribunal shall be a person, who is or has been a Judge of the High Court for five years, a very high qualification indeed. It does not stop with the mere eligibility of a High Court Judge, but it adds experience along with it. The judicial member also shall be the Judge of the High Court or District Judge for five years or 10 years as an Advocate. Obviously, higher qualification has been fixed as qualification for the Chairperson and Members of the Appellate Tribunal. Removal of members is to be done only after consultation with the Chief Justice of India on certain contingencies satisfied.

8.11. Section 424 of the Act deals with the procedure to be adopted by the Tribunal and the

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Appellate Tribunal. The forums are given liberty to go beyond the Code of Civil Procedure by applying principles of natural justice and subject to other provisions governing. Thus, they are not bound by the Code, which is obviously a procedural one. They can also formulate their own procedure.

8.12. Under Sub Clause (2) of 424 of the Act, the Tribunals are vested with the powers of the Civil Court as granted under the Code of Civil Procedure. Sub Section (3) gives sanctity to an order passed by the Tribunal or the Appellate Tribunal by elevating to it that of a decree. Sub Section 4 makes the position clear by deeming the Tribunal as a Civil Court though for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

8.13. The functioning of the Tribunal also has the protection for its action taken in good faith under Section 428 of the Act. The Tribunal can also seek assistance of Chief Metropolitan Magistrate etc., while taking custody of the properties, books of account or other documents of the said company.

8.14. Section 430 of the Act provides for an absolute bar to a Civil Court to entertain any suit or proceedings, which the Tribunal is

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empowered to do so under the Act. This provision starts with a negative covenant and thus, makes the intention of the legislature very clear. The object is to decide the disputes of the company. This section gives power to the Tribunal to determine, enforce law qua the company for any violation. Law includes any other law also. Therefore, it is certainly a peremptory provision. This provision has to be read along with other provisions in Sections 241, 242 and 424 to 429.

8.15. The powers of the Tribunal cannot be termed as summary per se. A summary proceedings would come into place when a Court acts upon a common law principle as against a different procedure authorised by law. However, a proceeding cannot be termed as a summary when further procedural strengthening was done by the enactment along with the common law principles. As discussed above, common law principles are not given a go-by in the proceedings of the Tribunal, but it can go beyond. Once this position is made clear, then it is very easy to understand the scope and ambit of Section 241. The intendment of the legislature is to redress the disputes, more particularly, internal ones of a company within the four walls of the Tribunal. Therefore, the contention that complex or disputed issues to be adjudicated upon only through the Civil Court

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would never arise at all. Though, summary proceeding may be required by the Tribunal in a given case, the Tribunal is not meant to follow it in all cases. Such a leverage and flexibility is conferred on the Tribunal either act as a regular or a special Court depending upon the nature of the complaint behind it.

9. We accordingly conclude that Sections 241 and 242 on the one hand and along with Sections 424 to 430 of the Act on the other hand, an election dispute would not lie before the Civil Court, but only before the Tribunal"

14. The Delhi High Court in the case of ***SAS Hospitality Pvt. Ltd., & Anr. Vs. Surya Constructions Pvt. Ltd., & Ors*** *(supra)* has taken a similar view. The relevant paragraphs are extracted hereunder:-

" 10. Before going into the question as to whether this Court has the jurisdiction to entertain and try the present suit and grant reliefs prayed for, it is necessary to analyze the scheme of the Companies Act, 2013, along with the constitution of the NCLT. The NCLT has been vested with powers that are far reaching in respect of management and administration of companies. The said powers of the NCLT include powers as broad as "regulation of conduct of

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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 affairs of a company and its powers can be contrasted with that of the CLB under the unamended Companies Act, 1956.

11. In the 2013 Act, Sections 407 onwards deal with the constitution of the Tribunal. Section 420 has vested the Tribunal with powers to 'pass such orders thereon as it thinks fit'. The Tribunal is also vested with the power of review. Under Section 424 of the Companies Act, 2013, the Tribunal also has the same powers and functions as are vested with a Civil Court. In addition to the above, the Tribunal also has the power to punish for contempt which was hitherto not available with the CLB. In various ways, 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 is in this background that the court has to decide the issue of jurisdiction, which has been raised by the Defendant.

14. Section 430 of the 2013 Act, which bars the jurisdiction of the Civil Court, has to be given effect to in this background, and reads as under:

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"Section 430: Civil court not to have jurisdiction.

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal."

15. The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceedings" which the NCLT is "empowered to determine". The NCLT in the present case would be empowered to determine that the allotment of shares in favour of the Defendant Nos. 5 to 9 was not done in accordance with the procedure prescribed under Section 62 of the 2013 Act. The NCLT is also empowered to determine as to whether rectification of the register is required to be carried out owing to such allotment, or cancellation of allotment ordered, if any. The NCLT can also determine if in the interregnum, the Defendant Nos. 5 to 9 ought to exercise any voting rights. The NCLT would be empowered to pass any such orders as it thinks fit, for the smooth conduct of the affairs of the company, which would include an injunction order protecting the assets of the Defendant No. 1 Company. The NCLT would also be empowered to oversee and supervise the working of the company, and also appoint such persons as it may deem necessary to

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regulate the affairs of the company."

15. In the case of ***Shashi Prakash Khemka Vs. NEPC Micon Ltd., & others*** *(supra)*, the appellant therein raised a serious dispute as to the title and the Company Law Board relegated the appellant to Civil Court. Though the cause of action for approaching the Company Law Board arose prior to the Company Law Amendment Act, 2013 and the bar of the suit under Section 430 of the Companies Act came into force from 2013, the Apex Court taking note of the fact that in view of the subsequent developments, permitted the appellant to avail remedy before the National Company Law Tribunal under the Companies Act, 2013.

16. The Division Bench of Delhi High Court in ***Jai Kumar Arya & others Vs. Chhayal Devi and another*** *(supra)* held that since reliefs claimed in the suit does not fall under Section 241 of the Companies Act, Civil Suit is maintainable. The relevant paragraphs would run thus:-

"68.18. The amplitude of the words used in Clause (a) of Section 241(1) of the Act are undoubtedly wide and expansive. They cover all cases, where a complaint that the affairs of a

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company being conducted in a manner prejudicial to public interest, or in a manner to the complaint, or oppressive to the complaint, or prejudicial, or oppressive, to any other member or members, or prejudicial to the interests of the company, is made.

....

68.23. Adverting, now, to Section 242, clauses (a) to (g) and (i) to (l) thereof are obviously inapplicable. Clause (h) would, in fact, indicate that the reliefs prayed for in CS (OS) 285/2017 were outside the jurisdiction of the Tribunal, as the said clause empowers the NCLT to pass an order providing for removal of the managing director, manager or any of the directors of the Company. If one were to apply the expression unius est exclusion alterius principle, by inference, it would not be open to the NCLT to adjudicate on the validity of a notice calling for a meeting, of the Board, to decide whether to convene an EGM proposing to remove one of the Directors of the Company. For that reason, such a relief may not, properly, even be sought under clause (m) of Section 242 (2), despite the expensive wording of the said clause. That apart, clause (m) of Section 242 (2) would, in our opinion, have appropriately to be read ejusdem generis with the preceding clauses of the said subsection, and a species of case which is impliedly excluded from one of the said

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preceding clauses could not be, by implication, brought into clause (m). Any attempt to do so may amount to doing violence to the legislative intent.

68.24. We are constrained, therefore, to observe that it is not possible to accept Mr. Chandhiok's submission that the reliefs claimed by the plaintiffs in CS (OS) 285/2017 fall, statutorily, within the purview of jurisdiction of the NCLT."

17. The learned Single Judge of this Court in the case of ***N.Ramji vs. Ashwath Narayan Ramji and another*** *[supra]* held that since the issue of title is involved, the suit is maintainable. It is relevant to note that Section 430 of the Companies Act was inserted and came into force from 01.06.2016, but the suit in that case was filed on 07.03.2016.

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18. The learned counsels appearing on behalf of the respondents sought to distinguish the judgment of the Division Bench in the case of ***Viji Joseph Vs. P.Chander & others [Presidency Club]*** *(supra)*, by contending that in that case, the suit came to be filed after the election

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process was over, but in the case on hand, the plaintiffs challenge the very notice itself and there are blatant violations in convening the meeting. The learned Senior Counsel for the applicant submitted that the decision would apply both for remedial and preventive and that ground it was not distinguished. I agree with the view of learned Senior Counsel for the applicant. In fact, the Division Bench has observed in para 8.1, the relief under Section 241 of the Companies Act is a remedial as well as preventive.

19. Since the cause of action ventilated by the plaintiffs would fall within Chapter XVI of the Act, the decision of the Division Bench in the case of ***Viji Joseph Vs. P.Chander & others [Presidency Club]*** *(supra)*, would squarely apply to the case on hand. The decisions cited by the learned counsel for the respondents are factually distinguishable and do not help the respondents.

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20. In that view, Application Nos.7448 & 7449 of 2019 are allowed and the both the suits are rejected, leaving the plaintiffs to avail their remedy in accordance with law before the National Company Law Tribunal. Consequently,

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other applications in O.A.Nos.835 of 2019 in C.S.No.539 of 2019, O.A.No.885 of 2019 in C.S.No.575 of 2019 & A.No.6819 of 2019 in C.S.No.539 of 2019 are dismissed. No costs.

Sd./-M.K.K.S.J
03.10.2019

Certified to be true copy//
Dated at Madras this the day of 2019.

JJ 03/10/2019

COURT OFFICER(O.S.)

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