

*Commercial's*

# LAW RELATING TO PREVENTION OF OPPRESSION AND MISMANAGEMENT OF COMPANIES

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D.P. MITTAL

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Phones: 43502007, 43502008, 43011562, 43452009

e-mail: commercialhouse@yahoo.co.in

naveen.commercialhouse@gmail.com

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In the loving memory of  
my wife

**PREM LATA MITTAL**







## Preface

The powers of the majority are supreme in matters of internal management of a company. But the minorities are not without protection. The Companies Act provides for the protection of minorities in three ways: (i) by giving them a right to complain against oppression, (ii) by permitting them to act on behalf of the company when it is wound up, as in the case of misfeasance proceedings, and (iii) by enabling them to obtain remedies through investigation. Investigation of affairs of the company and prevention of oppression and mismanagement of the company have been understood as a statutory exception to the rule in *Foss v Harbottle* (1843) 2 Hare 461, that the internal affairs of a company is a matter for the majority, and dissatisfied minority cannot seek outside interference. Chapter XVI of the Companies Act, 2013 deals with emergent situations or extraordinary circumstances where the corporate management of the company through directors in normal circumstances, has failed and has run into oppression or mismanagement justifying winding-up of company on just and equitable grounds and steps to be taken to avoid winding up if possible and keep the company going while at the same time relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest. With that objective, the Tribunal have been given power to interfere with the normal corporate management of the company, as wide as to make orders as it thinks fit as also the power to make orders for the regulation of the conduct of the company's affairs in future, overseeing and supervising the working of the company and the power to supplant the entire corporate management by resorting to non-corporate management which may take the form of appointing an administrator or a special officer or a committee of advisers, etc., who could be in charge of the affairs of the company.

The Companies (Amendment) Act, 2019 brought in the concept of investigation under "Prevention of Oppression and Management" by

introducing sub- section (3) under section 241 for the Tribunal to investigate on a complaint by the Central Government a person guilty of fraud, misfeasance, persistent negligence or default in carrying on the business and debar him for five years, if found guilty, to hold the post of a director or a post of responsibility

The Chapter XVI with a heading “Prevention of Oppression and mismanagement” (sections 241 to 246) is a Code unto itself and whose texture and landscape are different from other civil cases. Ample power has been provided to the Tribunal - akin to a civil court - the powers and functions as are vested with a Civil Court , the power of issuing injunction, the power of review, etc. In various ways, the Tribunal is not merely exercising the jurisdiction of a Company Court under the Act, but is also vested with inherent powers and powers to punish for contempt.

A new section is introduced for the first time with no corresponding provision under the Companies Act, 1956 . Section 245 embodies the concept of class action or derivative claim which allows for the initiation of a class action suit by a member or a depositor on behalf of the members or depositors of a company. It is a procedural device for enabling the Tribunal to do justice to a company controlled by miscreant directors or shareholders. The cause of action for relief is not prejudicial or oppressive conduct of the majority shareholders but the wrong and fraud committed by the directors against the company by conducting the affairs of the company in a fraudulent, unlawful or wrongful manner.

All these are discussed in 13 chapters with the help of the decisions of the Indian and foreign courts , with an introduction explaining the concept of corporate governance, the genesis and the scheme of the said Chapter XVI of the Companies Act, 2013 and also explaining that while dealing with cases thereunder, doctrines and concepts routinely applicable to dealing with other civil cases are not normally applied. Enough reference material has been provided as annexures. Detailed subject index in the end would facilitate reference to the text.

It is hoped that the corporate world, advocates, chartered accountants, company secretaries, Tribunal and judges and students would find the book useful.

**D.P. Mittal**

C- 57, Vivek Vihar, Delhi – 110095

e-mail [dpmittal05@yahoo.com](mailto:dpmittal05@yahoo.com); [dpmittal57@gmail.com](mailto:dpmittal57@gmail.com)



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# LAW RELATING TO PREVENTION OF OPPRESSION AND MISMANAGEMENT OF COMPANIES

Edition  
2023

The book deals with measures as an alternative to winding up of a company to prevent mismanagement and oppressive conduct of majority shareholders which is burdensome, harsh and wrongful, lacking probity, unfair to the member, and causing prejudice to him in the exercise of his legal and proprietary rights as shareholder and the Tribunal regulating, overseeing and supervising the working of the company and making such orders as it thinks fit, relieving the minority shareholders from acts of oppression and mismanagement or preventing its affairs being conducted in a manner prejudicial to public interest. It consists of 13 chapters

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- Chapter 12 deals with concept of class action or derivative claim which allows for the initiation of a class action suit by a member or a depositor on behalf of the members or depositors against directors for conducting affairs of the company in a fraudulent, unlawful or wrongful manner;
- Chapter 13 deals with penalty for fraud by delinquent directors, liability for fraudulent conduct of business, assessment of damages against them, etc.

**D. P. Mittal**, B.Sc., BA (Economics), L.L.B is an advocate, tax and business law consultant. He has a long experience in administering tax laws as an officer of Indian Revenue Service and in advising investors and entrepreneurs on legal, commercial and tax aspects of investment in India as an advocate now and previously as a senior adviser in the Indian Investment Centre, New Delhi (a Government of India Organization). He has authored widely acclaimed books - Principles of Constitutional and Administrative Law; Interpretation of Statutes, Wills and Deeds; Law Dictionary; Principles of Business and Commercial Laws; Competition Law; Law relating to Limited Liability Partnership; Administrative Law; Arbitration Law; Law of Trademarks, Passing Off and Geographical Indications; Law of Patents; Information Technology Law; Law of Benami Transactions; Law relating to Formation of Companies; Law relating to Company Meetings and Resolutions; Law relating to Corporate Financing; Law relating to Corporate Governance; Law relating to Investigation, SFIO and Fraud; Mergers and Acquisition; Indian Double Taxation Agreements and Tax laws in India; GAAR; Law of Transfer Pricing in India; Treatise on Direct Tax Code; Law of Sick Industries; Offences and Prosecution; and many more, besides more than two hundred research articles in various Journals and magazines.

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