

Companies Act, 1956

Chapter 6 - Prevention of Oppression and Mismanagement

A. Powers of 1[Tribunal]

1.Substituted by Act 31 of 19 65, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

Section 397 - Application to Tribunal for relief in cases of oppression

397 . Application to 1[Tribunal] for relief in cases of oppression. -

(1) Any member of a company who complain that the affairs of the company 2[are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members (including any one or more of themselves) may apply to the 1[Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the court is of opinion -

(a) that the company's affairs 2[are being conducted in a manner prejudicial to public interest or] in a manner oppressive to any member or members; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would 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 1[Tribunal] may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.

1. Substituted by Act 31 of 19 65 , Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board". .

2.Substituted by Act 53 of 1963, Section 10, for "are being conducted" (w.e.f. 1-1-1964).

Section 398 - Application to Tribunal for relief in cases of mismanagement

398. Application to 1 [Tribunal] for relief in cases of mismanagement. -

(1) Any members of a company who complain -

(a) that the affairs of the company 2[are being conducted in a manner prejudicial to public interest or] in a manner prejudicial to the interests of the company; or

(b) that a material change not being a change brought about by, or in the interests of, any creditors including debenture holders, or any class of shareholders, of the company) has taken place in the management or control of the company, whether by an alteration in its Board of directors,³^{***}⁴ [or manager],⁵^{***} or in the ownership of the company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company⁶ will be conducted in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company;

may apply to the¹ [Tribunal] for an order under this section, provided such members have a right so to apply in virtue of section 399.

(2) If, on any application under sub-section (1), the¹ [Tribunal] is of opinion that the affairs of the company are being conducted as aforesaid or that by reason of any material change as aforesaid in the management or control of the company, it is likely that the affairs of the company will be conducted as aforesaid, the¹ [Tribunal] may, with a view to bringing to an end or preventing the matters complained of or apprehended, make such order as it thinks fit.

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44, for "Company Law Board".

2. Substituted by Act 53 of 1963, Section 11, for "are being conducted" (w.e.f. 1-1-1964).

3 . The words "or of its managing agent or secretaries and treasurers," omitted by Act 53 of 2000, Section 178 (w.e.f. 13-12-2000).

4 . Inserted by Act 65 of 1960, Section 153 (w.e.f. 28-12-1960).

5 . Certain words omitted by Act 53 of 2000, Section 178 (w.e.f. 13-12-2000).

6 . Substituted by Act 53 of 1963, Section 11, for "will be conducted" (w.e.f. 1-1-1964).

Section 399 - Right to apply under sections 397 and 398

(1) The following members of a company shall have the right to apply under section 397 or 398:-

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less or any members or members holding not less than one-tenth of the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares;

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

(2) For the purposes of sub-section (1), where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(3) Where any members of a company are entitled to make an application in virtue of sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

(4) The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the¹ [Tribunal]

under section 397 or 398, notwithstanding that the requirements of clause (a) or clause (b), as the case may be, of sub-section (1) are not fulfilled.

(5) The Central Government may, before authorising any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the 1[Tribunal] dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board". .

Section 400 - Notice to be given to Central Government of applications under sections 397 and 398

The 1[Tribunal] shall give notice of every application made to it under section 397 or 398 to the Central Government, and shall take into consideration the representation, if any, made to it by that Government before passing a final order under that section.

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31- 5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board". .

Section 401 - Right of Central Government to apply under sections 397 and 398

The Central Government may i t self apply to the 1[Tribunal] for an order under section 397 or 398, or cause an application to be made to the 1[Tribunal] for such an order by any person authorised by it in this behalf.

1.Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31- 5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

Section 402 - Powers of Tribunal on application under section 397 or 398

Powers of 1[Tribunal] on application under section 397 or 398

Without prejudice to the generality of the powers of the 1[Tribunal] under section 397 or 398, any order under either section may provide for -

- (a) the regulation of the conduct of the company's affairs in future;
- (b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;
- (c) in the case of a purchase of its shares by the company as aforesaid, [he consequent reduction of its share capital;

(d) the termination, selling aside or modification of any agreement, howsoever arrived at, between the company on the one hand; and any of the following persons, on the other, namely: -

(i) the managing director,

(ii) any other director,

[2](#)[***]

(v) the manager,

upon such terms and conditions as may, in the opinion of the [1](#)[Tribunal], be just and equitable in all the circumstances of the case;

(e) the termination, setting aside or modification of any agreement between the company and any person not referred to in clause (d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under section 397 or 398, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;

(g) any other matter for which in the opinion of the [1](#)[Tribunal] it is just and equitable that provision should be made.

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

2. Sub-clauses (iii) and (iv) omitted by Act 53 of 2000, Section 179 (w.e.f. 13-12-2000).

Section 403 - Interim order by Tribunal

403. Interim order by [1](#)[Tribunal]

Pending the making by it of a final order under section 397 or 398, as the case may be, the [1](#)[Tribunal] may, on the application of any party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable.

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

Section 404 - Effect of alteration of memorandum or articles of company by order under section 397 or 398

(1) Where an order under section 397 or 398 makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power

except to the extent, if any, permitted in the order to make without the leave of the¹[Tribunal] any alteration whatever which is inconsistent with the order, either in the memorandum or in the articles.

(2) Subject to the provisions of sub-section (1), the alterations made by the order shall in all respects have the same effect as if they had been duly made by the company in accordance with the provisions of this Act; and the said provisions shall apply accordingly to the memorandum or articles as so altered.

(3) A certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within²[thirty] days after the making thereof, be filed by the company with the Registrar who shall register the same.

(4) If default is made in complying with the provisions of sub-section (3), the company, and every officer of the company who is in default, shall be punishable with fine which may extend to³[fifty thousand rupees].

1. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31- 5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".2. Substituted by Act 31 of 1965, Section 62 and Schedule, for "fifteen" (w.e.f. 15-10-1965).

3 . Substituted by Act 53 of 2000, Section 180, for "Five thousand rupees" (w.e.f. 13-12-2000).

If the managing director or any other director¹[***] or the manager, of a company, or any other person, who has not been impleaded as a respondent to any application under section 397 or 398 applies to be added as a respondent thereto, the²[Tribunal] shall, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

1. The words "the managing agent, secretaries and treasurers," omitted by Act 53 of 2000, Section 181 (w.e.f.13-12-2000).

2 . Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31- 5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

Section 406 - Application of sections 539 to 544 to proceedings under sections 397 and 398

In relation to an application under section 397 or 398, sections 539 to 544, both inclusive, shall apply in the form set forth in Schedule XI.

Section 407 - Consequences of termination or modification of certain agreements

(1) Where an order¹[***] made under section 397 or 398 terminates, sets aside, or modifies an agreement such as is referred to in clause (d) or (c) of section 402, -

(a) the order shall not give rise to any claims whatever against the company by any person for damages or for compensation for loss of office or in any other respect either in pursuance of the agreement or otherwise;

(b) no managing or other director,²[***] or manager whose agreement is so terminated or set aside³[***] shall, for a period of five years from the date of⁴[the order terminating or setting aside the agreement] without the leave of the⁵[Tribunal] be appointed, or act, as the managing or oilier director²[***] or manager of the company.

(2) (a) Any person who knowingly acts as a managing or other director,²[***] or manager of a company in contravention of clause (b) of sub-section (1);

⁶[***]

(c) every other director or every director, as the case may be, of the company, who is knowingly a party to such contravention;

shall be punishable with imprisonment for a term which may extent to one year, or with fine which may extend to⁷[fifty thousand rupees] or with both.

(3)⁸[No leave shall be granted] under clause (b) of sub-section (1) unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

1. The words "of a Court" omitted by Act 31 of 1988, Section 67 (w.e.f. 31-5-1991).

2. The words "managing agent or secretaries and treasurers," omitted by Act 53 of 2000, Section 182 (w.e.f. 13-12-2000).
3. The words "managing agent, secretaries and treasurers," omitted by Act 53 of 2000, Section 182 (w.e.f. 13-12-2000).
4. Substituted by Act 65 of 1960, Section 154 for "the order terminating the agreement" (w.e.f. 28-12-1960).
5. Substituted by Act 31 of 1988, Section 67, for "Court" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".
6. Clause (b) omitted by Act 53 of 2000, Section 182 (w.e.f. 13-12-2000).
7. Substituted by Act 53 of 2000, Section 182, for "five hundred rupees" (w.e.f. 13-12-2000).
8. Substituted by Act 31 of 1988, Section 67, for "No Court shall grant leave" (w.e.f. 31-5-1991).

Section 408 to 409 - B. Powers of Central Government

Section 408 - Powers of Government to prevent oppression or mismanagement

1 [(1) Notwithstanding anything contained in this Act, the Central Government may appoint such number of persons as the 2 [Tribunal] may, by order in writing, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interests to hold office as directors thereof for such period, not exceeding three years on any one occasion, as it may think fit, if the 2 [Tribunal], on a reference made to it by the Central Government or on an application of not less than one hundred members of the company or of the members of the company holding not less than one-tenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest:

Provided that in lieu of passing an order as aforesaid, the 2 [Tribunal] may, if the company has not availed itself of the option given to it under section 265, direct the company to amend its articles in the manner provided in that section and make afresh appointments of directors in pursuance of the articles as so amended, within such time as may be specified in that behalf by the 2 [Tribunal].

(2) In case the 2 [Tribunal] passes an order under the proviso to subsection (1), it may, if it thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, such number of persons as the 2 [Tribunal] may, by order, specify as being necessary to effectively safeguard the interests of the company, or its shareholders or the public interest, shall hold office as additional directors of the company and on such directions, the Central Government shall appoint such additional directors.]

(3) For the purpose of reckoning two-thirds or any other proportion of the total number of directors of the company, any director or directors appointed by the Central Government under sub-section (1) or (2) shall not be taken into account.

3 [(4) A person appointed under sub-section (1) to hold office as a director or a person directed under sub-section (2) to hold office as an additional director, shall not be required to hold any qualification shares nor his period of office shall be liable to determination by retirement of directors by rotation; but any such director or additional director may be removed by the Central Government from his office at any time and another person may be appointed by that Government in this place to hold

office as a director or, as the case may be, an additional director.

(5) No change in the Board of directors made after a person is appointed or directed to hold office as a director or additional director under this section shall, so long as such director or additional director holds office, have effect unless confirmed by the [4](#) [Tribunal].]

[5](#) [(6) Notwithstanding anything contained in this Act or in any other law for the time being in force, where any person is appointed by the Central Government to hold office as director or additional director of a company in pursuance of sub-section (1) or sub-section (2), the Central Government may issue such directions to the company as it may consider necessary or appropriate in regard to its affairs [6](#) [and such directions may include directions to remove an auditor already appointed and to appoint another auditor in his place or to alter the articles of the company, and upon such directions being given, the appointment, removal or alteration, as the case may be, shall be deemed to have come into effect as if the provisions of this Act in this behalf have been complied with without requiring any further act or thing to be done].

(7) The Central Government may require the persons appointed as directors or additional directors in pursuance of sub-section (1) or sub-section (2) to report to the Central Government from time to time with regard to the affairs of the company.]

1. Substituted by Act 31 of 1988, Section 54, for sub-sections (1) and (2) (w.e.f. 15-6-1988).

2. Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

3. Inserted by Act 65 of 1960, Section 155 (w.e.f. 28-12-1960).

4. Substituted by Act 31 of 1988, Section 54, for "Central Government" (w.e.f. 15-6-1988) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

5. Inserted by Act 41 of 1974, Section 31 (w.e.f. 1-2-1975).

6. Added by Act 31 of 1988, Section 54 (w.e.f. 15-6-1988).

Section 409 - Power of Tribunal to prevent change in Board of directors likely to affect company prejudicially

409. Power of [1](#) [Tribunal] to prevent change in Board of directors likely to affect company prejudicially.-

(1) Where a complaint is made to the [1](#) [Tribunal] by the managing director or any other director [2](#) [3](#) [***] or the manager], or a company that as a result of a change which has taken place or is likely to take place in the ownership of any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the [1](#) [Tribunal] may, if satisfied, after such inquiry as it thinks fit to make that it is just and proper so to do by order, direct that [4](#) [no resolution passed or that may be passed or no action taken or that may be taken] to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the [1](#) [Tribunal]; and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors of the company.

(2) The [1](#) [Tribunal] shall have power when any such complaint is received by it, to make an interim order to the effect set out in sub-section (1), before making or completing the inquiry aforesaid.

(3) Nothing contained in sub-sections (1) and (2) shall apply to a private company, unless it is a subsidiary of a public company.

1.Substituted by Act 31 of 1988 , Section 67, for "Central Government" (w.e.f. 31-5-1991) and again Substituted by Act 11 of 2003, Section 44 for "Company Law Board".

2.Substituted by Act 65 of 1960, Section 156, for "or the secretaries and treasures".

3.The words "the managing agent, the secretaries and treasurers," omitted by Act 53 of 2000, Section 183 (w.e.f. 13-12-2000).

4.Substituted by Act 65 of 1960, Section 156, for "no resolution passed or action taken" (w.e.f. 28-12-1960).