

Claim of Minority to Buy Majority Shares - Section 397/398 of Companies Act, 1956

Settling or putting an end to the disputes among shareholders by the Company Law Board under section 397/398 of the Companies Act, 1956 is a complicated job. When there exist serious differences of opinion among the minority and majority shareholders in a Private Limited Company, it would really be difficult for the Company Law Board to put an end to the matters complained of or to regularize the affairs of the Company. It is not easy to apply the settled legal principles or to give effect to the literal meaning of section 397/298 of the Companies Act, 1956 and the connected provisions. While a petition alleging Oppression and Mismanagement under section 397/398 of the Companies Act, 1956 is pending, the controlling shareholders in the Company continue to do certain acts and it is not easy for the Company Law Board to pass a blanket order on the controlling shareholders that they should not transact any business in the Company while the Petition is pending. Technically, the majority shareholders may continue to file various forms with the Registrar of Companies (ROC) as required, may get the accounts audited and can very well contend that the Company is being managed in accordance with the provisions of the Companies Act, 1956. But, the minority shareholders may apprehend or may know as to how the Company is being mismanaged. These are all various complications in dealing with a Petition under section 397/398 of the Companies Act, 1956.

There tend to be problems in all closely held companies whether it is Private or the Public Limited Company. In most of the cases of oppression and mismanagement, either there can be out of court settlement or settlement before the Board. Even in the absence of any settlement, the Company Law Board, after following the procedure for ascertaining the value of shares, can ask a group to buy another group on the ground that either there exist a dead lock or it can justify that the order of buying one group by another is the only solution to put an end to the matters complained of. While it is true that there are cases where the minority in the Company may unreasonably struggle despite the legal protection, the minority group may also force the majority to come to terms through litigation and especially by filing a Petition under section 397/398 of the Companies Act, 1956 asking for various relief including investigation into the affairs of the Company at times. The certain basic concepts of law pertaining to oppression and mismanagement under the Companies Act, 1956 have changed in the recent past; it has only benefited the minority. For example, earlier a proceeding under section 397/398 of the Companies Act, 1956 is seen as an extraordinary remedy and the Petitioners should establish that the alleged acts of oppression and mismanagement are really “harsh and burdensome”. Now, no petition under section 397/398 of the Companies Act, 1956 is getting dismissed on technical grounds and I have seen a judgment that where the Court has said that the Company Law Board can pass orders in a Petition under section 397/398 of the Companies Act, 1956 even if the oppression and mismanagement has not proved in *strict senso*.

When it comes to the claim of minority shareholders to buy-out majority, it is normally not accepted unless the majority favours the decision by its omissions and commissions during the proceeding before the Company Law Board. It is often seen where the majority is asked to buy minority shares at the agreed price or the price determined by the Board. This is an interesting issue to discuss as to whether the minority can claim that they be allowed to buy majority with the sanction of the Company Law Board. In my personal opinion, at times, based on the typical facts and circumstances of the case and based on the threat to the rights of the minority

shareholders, the Company Law Board can ask the minority to buy-out majority if the majority is not willing to buy the minority. There can be cases where the majority may say that they do not have money to buy the shares of minority and they may say that they have no objection to allow the minority shareholders to sell their shares to any outsider. But, the fact remains that no outsider will come and agree to buy the shares of the minority in a closely held Private Company.

The issue of claim of minority to buy majority and the authority of the Company Law Board to ask the majority to sell their shares to the majority would always remain complicated and it all depends upon the facts and circumstances of each and every case and there can not be any hard and fast rule.

Elaborately dealing with the issue in the light of similar provisions in the company legislations of other countries, and dealing with the essentials for maintaining a petition under section 397/398 of Companies Act, 1956, the Hon'ble High Court of Madras in **K.R.S.Narayana Iyengar Vs. T.A.Mani reported in 1960 AIR (MAD)** was pleased to discuss and opine as follows:

“(15) There are as yet few English decisions on this S. 210. The Scottish and South African cases referred to below are the principal sources of elucidation. The equivalent south African section is 111 of the South African COMPANIES ACT. In Marshall v. Marshall (Poty) Ltd. , (1954) 3 SA 571 at p. 580 an order was made because one of three directors and shareholders in a private company had justifiably lost confidence in one of the others, who had behaved with obvious impropriety, but whose removal was blocked by the second. In Taylore v. Welkon Theatres Ltd. , (1954) 3 SA 339, it was held similarly, as in the Scottish case of Elder v. Elder and Watson Ltd. , 1952 SC 49 that the section was designed to put an end to a continuing state of affairs and the oppression must be in the affairs of the company and not the independent conduct of some other company or individual and not to give monetary compensation for a wrong no longer continuing and the society can be ordered to purchase the minority shares at a fair value. In Irvin and Johnson, Ltd. v. Oelofse Fisheries Ltd., (1954) 1 SA 231 it was held that an order could only be made if it could effectively enable the company to survive. In 1952 SC 49 (Ibid), Lord Cooper laid down a useful working rule about the meaning of oppression in this context, saying that the essence of the matter seems to be 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. More succinctly it has been stated that the complaining shareholder must be under a burden which is unjust or harsh or tyrannical. A persistent and persisting course of unjust conduct must be shown. In the only United Kingdom case in which this section has been successfully invoked, Mayer v. Scottish Textile and Manufacturing Co. , 1954 SC 381, it was held that if the allegations on which the petition was filed could be sustained, the society would be ordered to purchase the minority's shares at a fair value. (15-A) Bearing these principles in mind, if we examine the facts of this case, the only just and equitable solution which can be imposed in the context of this case is to ask the respondents to buy up the shares of the petitioners. The reliefs asked for, which would practically tantamount to ruining this company and the interests of the majority shareholders and achieve for minority shareholders what they would not have achieved either in the civil suits or by winding up, cannot be granted. But in regard to buying up, this solution need not be imposed by me, because there is a suit already pending in the Sub Court,

Tiruchirapalli, for that purpose and as a matter of fact the respondents are ready and willing to pay even more than what they have stipulated for to buy up the shares of the petitioners. But so emboldened have the applicants become by their obstructive tactics of harassing the respondents that they are now claiming right to buy up the majority shareholders. In short it has become a case of not the dog wagging the tail but the tail wagging the dog.”

[Note: the views expressed are author’s personal point of view.]