

## Civil Court Vs NCLT in adjudicating the Company Law Matters: The Debate Continues

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Recently, the Supreme Court of India in *Shashi Prakash Khemka V. NEPC Micon & Others*<sup>[1]</sup>, while determining the question as to whether an issue relating to transfer of shares should fall under the jurisdiction of Civil Court or that of the Company Law Board, held that the matters in which power has been conferred on the National Company Law Tribunal, the jurisdiction of the Civil Courts is completely barred. In the said case, it was alleged that the dispute that was in question was the title of shares and therefore the Civil Courts should have the power to adjudicate the matter. The Court, while, setting aside the judgment given by the Madras High Court observed that relegating the parties to the civil suit would not be an appropriate remedy since Section 430 of the Companies Act, 2013 ("Act") is widely worded.

This judgment assumes significance for the reason being there is historically a dispute between the Civil Courts and the courts empowered under the Indian Companies Act in terms of jurisdiction when it comes

to adjudication of the company law matters. The Article explores these differences

and tries to shed light on the position under the Companies Act 2013. While doing so, the Article specifically analyses the disputes involving (questioning) the appointment and removal of directors.

DR J.J. IRANI COMMITTEE REPORT ON COMPANY LAW, 2005

Report of the Expert Committee on Company Law 2005, recommended institutional structure changes to have a quick corporate resolution.

The report pointed out that the time taken in the existing framework needs to be reviewed particularly so in the context of rehabilitation, liquidation and winding up. It welcomed the Companies (Second Amendment) Act, 2002 which the Government has envisaged setting up of the National Company Law Tribunal and the National Company Law Appellate Tribunal, the single forum with specialization to deal with corporate issues.

### CIVIL COURT AND ITS JURISDICTION

Section 9 of the Code of Civil Procedure, 1908 ("CPC") has the jurisdiction to try all

suits of a civil nature excepting suits of which cognizance is either expressly

or impliedly barred. Accordingly, though, the proper forum to adjudicate on

an issue is the Civil Court, section 9 of the CPC excludes suits of civil nature which is being empowered by the Special Act on the Tribunal. It is pertinent to draw the reference of the wordings of Lord Thankerton in the case *The Secretary of State v Mask And Co*[2] where he explained the scope of the exclusion clause in the following words: *"It is settled law that the exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well settled that even if jurisdiction is so excluded, the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure"*.

The Supreme Court in the case of *Dhulabhai v. State of Madhya Pradesh and others*[3] (Constitutional Bench) laid down seven principles to be applied for deciding whether a suit is barred under Section 9 CPC. The summary of the principles of the primary indicia, which would govern determination of the question whether the jurisdiction of Civil Courts is, in any particular case, ousted, or not, would appear to be (i) whether the decision of the tribunal, on which jurisdiction is conferred, is also attributed finality by the statute, and (ii) whether such tribunal can do what the Civil court would be able to do and is, therefore, an efficacious alternative to the Civil Court.

In the case of *Abdul Gafur v. State of Uttarakhand* [4], the Supreme Court, while taking recourse to the jurisdiction of Civil Court, has observed the right to bring a suit of civil nature of one's choice, at one's peril, howsoever frivolous the claim may be, unless it is barred by a statute. From the aforementioned judgments above, it is clear that the Civil Court can adjudicate upon all the suits of civil nature unless its jurisdiction is expressly or impliedly barred. While doing so, the courts were unanimous in holding that the term 'impliedly' should not be given liberal interpretation rather strict approach should be adopted and clear implication from the statute is mandatory for ousting the jurisdiction of Civil Court.

#### JURISDICTION OF COMPANY LAW BOARD QUESTIONING OF APPOINTMENT AND REMOVAL OF DIRECTOR

The Companies (Second Amendment) Act 2002, brought out new forum namely "National Company Law Tribunal and National Company Law Appellate Tribunal" to take a complete jurisdiction of the existing then Company Law Board and to a very large extent that of the Civil Courts and High

Courts. The

Act provides for the creation of the similar forums where National Company Law

Tribunal ("NCLT") has been vested

with powers that are far-reaching in respect of management and administration of companies. The provisions were upheld by the constitutional bench of the Supreme

Court in *Union of India v R. Gandhi*<sup>[5]</sup>.

The powers of the NCLT include powers as broad as "regulation of conduct of affairs of the company" under Section 242(2)(a), and also various other specific powers. It is pertinent to note that the jurisdiction of the Civil Court

over the company law matters has always been a debatable issue. The main contention

put forth against the Civil Court's jurisdiction is that the position of Company Law Board has been kept at par with that of Civil Court because of which the appeal against any decision or order of Company Law Board is to be filed before High Court. It is always debated that, since a special body has been established to adjudicate over the matters related to company law, it automatically ousts the jurisdiction of the Civil Court.

In *Vithalrao*

*Narayanao Patil vs Maharashtra State Seeds Corporation Limited*<sup>[6]</sup>, it was held that except where the jurisdiction has been specifically conferred on the District Courts by the Central Government, the High Court by the virtue of section 10 of 1956 Act is the proper court to entertain any dispute in respect of the affairs of the company. Accordingly, the court of the

civil judge has no jurisdiction to entertain the suit filed by a director challenging his removal.

A similar view was taken by the Andhra Pradesh High

Court in *Nizamabad Corn Products P. Ltd*

*vs Vasudev Dalia*<sup>[7]</sup> so as to hold that Civil Court has no jurisdiction in such matters. In

this case, a director who was removed was seeking injunction declaring that the

resolution passed at the AGM for his removal was not valid.

On the other hand, in *Santhosh Poddar vs Kamal Kumar Poddar*<sup>[8]</sup>, the Court held that there is no ouster of jurisdiction of a Civil Court

in the cases where the provisions of the Companies Act may be attracted. It is

only in respect of those proceedings which are expressly contemplated under the

Act under any specific provision that the court which is referred to in that section would be the special court, namely the High Court or the notified District Court. In all other cases, ordinary Civil Courts would continue to have the jurisdiction. The precise result of the network of the provisions is not clear.

In *Avanti*

*Explosives (P) Ltd vs Principal Subordinate judge*<sup>[9]</sup>, a civil suit was filed involving disqualification of the director of

the Company. The question was whether the suit was maintainable. The Court

held

that due to some regulatory provisions in the Act, the general right of the suit

cannot be taken away. Accordingly, a suit for declaration that the plaintiff is

and continues to be the Managing Director of the Company, that the Board meeting is null and void and for the injunction to restrain the respondents from interfering with the office of the plaintiff as a Managing Director is maintainable.

In connection with the right of shareholders to elect directors and to remove them, proceedings involving identical issues were

instituted both before the Civil Court and before the Company Law Board. The question was whether the cases should be transferred to the Company Law Board.

The Court took it to be settled law that Civil Courts can entertain matters and

deal with the same in relation to the rights of individual shareholders.

Relief

of declaration that meeting of directors and resolutions passed at it are invalid, is a matter of common law and therefore the Civil Court has jurisdiction over such matters. The meeting of the board of directors was called at the time when certain directors were absent and the specific purpose

was to take advantage of that fact for passing certain resolutions. This was a

fraudulent purpose which vitiated the meeting. *T.M. Paul (Dr) vs. City Hospital P. Ltd*[10].

The issue of jurisdiction as to whether a Civil Court or the National Company Law Tribunal (NCLT) under the Act came up for consideration before the Delhi High Court in *SAS*

*Hospitality Pvt Ltd v Surya Constructions Pvt Ltd*[11]. The Court in its order found that the NCLT has exclusive jurisdiction. In the said suit, the plaintiff, SAS Hospitality, filed a suit seeking a declaration that the allotment of shares by Surya Constructions in favour of five investors is null

and void. The defendants in the suit challenged the jurisdiction of the Civil Court

in adjudicating the matter and instead argued that the NCLT was the appropriate

forum. While the Court held that the NCLT is the proper forum to adjudicate the

matter, it made significant observations in regard to the aspects of jurisdiction. It stated that,

*"The bar contained in Section 430 of the 2013 Act is in respect of entertaining "any suit", or "any proceeding" which the NCLT is "empowered to determine". 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. 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 regulate the affairs of the company. The

jurisdiction to go into these allegations, vests with the Tribunal under Section 242 of the 2013 Act. Under Section 242(2), the NCLT has the power to pass "such order as it thinks fit", including providing for "regulation of conduct of affairs of the company in future". These powers are extremely broad and are more than what a Civil Court can do. Even if in the present case, the Court grants the reliefs sought for by the Plaintiff, after a

full trial, the effective orders in respect of regulating the company, and administering the affairs of the company, cannot be passed in these proceedings. Such orders can only be passed by the NCLT, which has the exclusive jurisdiction to deal with the affairs of the company. Moreover, the powers of the NCLT being broader and wider than what can be exercised by this Court in exercise of civil jurisdiction under Section 9 CPC. The NCLT is a specialised Tribunal constituted for the purpose of speedier and effective regulation of the affairs of the companies.

The Jammu & Kashmir High Court in *Bakshi Faiz Ahmad v. Bakshi Farooq Ahmad & Ors*<sup>[12]</sup>.

while dealing with an appeal from the Trial Court seeking vacation of an interim order, has observed that if there are issues of fraud and collusion or

any other complicated questions, the NCLT would not have the jurisdiction to adjudicate the same.

In *Chiranjeevi*

*Rathnam & Ors. v. Ramesh & Ors*<sup>[13]</sup>

where an injunction was sought to restrain the conduct of the EGM, the Court held that the Civil Court has no jurisdiction and the suit would be barred under Section 430. The Court held that the word employed in Section 430 of the

Act is matter, which Tribunal or Appellate Tribunal is empowered to determine by or under the Act. Thus, NCLT alone is empowered to consider complaints of oppression or conduct of the Company found to be prejudicial to the interest of

the company or to the public and redress the same. The Court is of the opinion that the word 'member'

employed in Section 241 of the Act cannot be given a restricted meaning. If restricted meaning is given, it may lead to abuse of the process law. Hence, it

applied the doctrine of reading down to make the provisions under Chapter XVI of the Act purposeful.

In *N. Ramji v. Ashwath Narayan Ramji & Ors*<sup>[14]</sup>, the learned Single Judge of Madras High Court has held that if the issue of title of shares is raised, the same cannot be decided by the NCLT, but by the Civil Court.

In

*Jai Kumar Arya & Ors. vs Chhaya Devi*

*& Anr*<sup>[15]</sup>, the

Division Bench of this Court, dealing with the bar under Section 430 of the 2013

Act, held that, "While examining the merits of these rival contentions, we

are

fully aware of the interpretative principle, now trite in law, that provisions

which operate to exclude the ordinary jurisdiction of civil courts are to be strictly construed, and exclusion of such jurisdiction is not to be lightly inferred. The principle of exclusion of jurisdiction is, moreover, never absolute.”

Conclusion: Thus, from the aforementioned analysis, one can witness a clear divergence of views under the Companies Act 2013. While one set of judgements seems to be in favour of Civil Courts for having the jurisdictions over the Company Law Matters, the courts have interpreted differently in few other cases while holding that NCLT is the proper forum to adjudicate the company related matters. The Supreme Court of India had an opportunity to clarify this in *Shashi Prakash Khemka V. NEPC Micon & Others* but understandably did not discuss many pertinent questions including the jurisdictional aspect in the issue of appointment or removal of directors. Till it is being taken up, it is likely that the position (and thus the debate) would be continued.

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- [1] CA 1965-66/2014 available at <https://indiankanoon.org/doc/150033550/>
  - [2] AIR 1940 PC 105, 110
  - [3] A.I.R. 1969 S.C. 78
  - [4] 2008 (10) SCC 97.
  - [5] MANU/SC/0378/2010: (2010) 11 SCC 1
  - [6] 1990 68 Com Cases 608 (Bom)
  - [7] 1992 3 ALT 303, 305 (AP)
  - [8] (1992) 3 BCR 310 (Bom – DB)
  - [9] (1987) 62 Com Cases 301 (AP)
  - [10] (1999) 97 Com Cases 216: (1999) 39 CLA 164 (2000) 2 Comp LJ 84 (Ker).
  - [11] MANU/DE/3791/2018
  - [12] [CIMA No. 08/2018 and MP No. 01/2018 decision dated 18th April, 2018]
  - [13] MANU/TN/2216/2017: 2017 (6) CTC 568,
  - [14] 2017] 140 CLA 13 (Mad.)
  - [15] (2018) 142 CLA 365