1.9 · Prevention of Oppression and Mismanagement P13 · Module 1 · s.241–246 + Foss v. Harbottle

SM pp. 150–157 (8 pages). 29 marks in 7 papers, asked in 6. Long questions in 4, **but only MCQs in the last two**. The eligibility rule (s.244) is asked again and again.

Paper	What was asked	Marks
Jun'23	Q3(a) petitioners hold **12%**; members holding 5% withdraw mid-way and ask for dismissal: maintainable?	4
Jun'24	Q2(a) **class action** (s.245) and the remedies	7
Dec'24	Q5(b) 600 members; **90 members** holding 10,000 of 5 lakh shares file: maintainable? 40 withdraw? fewer than required: **waiver**?	7
Jun'25	Q7(a) **exceptions to Foss v. Harbottle**	7
Dec'25	MCQ: who may apply under s.241 (= MCQ bank 97)	2
Jun'26	MCQ case: can a **12%** minority apply?	2

DEC'26 PREDICTION

Tier **B**, **2–9 marks**: an MCQ or a 7-marker. The likely 7-marker is **"who can apply; waiver; withdrawal of consent"** (asked in Jun'23 and Dec'24, and in ICMAI's PTP). The **Tribunal's powers (s.242)** have never been asked.

MAP

1. Majority rule and Foss v. Harbottle; exceptions ★★
2. Oppression: meaning, who applies (s.241, 244) ★★★
3. Powers of the Tribunal (s.242, 243) ★
4. Class action (s.245) ★★
5. Model answers · MCQs · numbers

1 Majority rule, Foss v. Harbottle and its exceptions · Jun'25 Q7(a)

THE RULE

- **Majority rules:** a resolution of the majority at a properly held meeting, on a matter within the company's powers, **binds the minority** (*North-West Transportation v. Beatty*). Where a **special resolution** is needed, a three-fourths majority is required (*Edwards v. Halliwell*). [SM 151]
- **Foss v. Harbottle (1843):** courts do **not interfere in internal management**. For a wrong done to the company, the **company is the proper plaintiff**, not an individual member (*Gray v. Lewis*). The reason: a member agrees to accept the majority's will. [SM 151]

EXCEPTIONS (common law): A MEMBER MAY SUE

a. **ultra vires or illegal acts**: an injunction to restrain them
b. **fraud on the minority**
c. **wrongdoers in control**, who would never let the company sue (*Birch v. Sullivan*; *Edwards v. Halliwell*)
d. a **special-majority act passed by a simple majority**, or a special resolution on insufficient notice (*Baillie v. Oriental Telephone*)
e. **personal rights**: to vote, have the vote recorded, stand for election (*Nagappa Chettiar v. Madras Race Club*; *Salmon v. Quin & Axtens*)
f. **breach of duty** by directors and the majority, even without fraud (*Daniels v. Daniels*: land sold to a director's wife for £4,250 and resold for £1,20,000)

[SM 151–152]

Statutory exceptions (the Companies Act): relief against **oppression and mismanagement** (s.241–244), **class action** (s.245), and the Central Government's power to apply. These are parts 2–4 below. [SM 151]

2 Oppression and mismanagement: meaning, grounds, who may apply (s.241, s.244)

WHAT IT IS "**Oppression**" and "**mismanagement**" are **not defined** in the Act (MCQ bank 250). Oppression is conduct showing **"a visible departure from the standards of fair dealing"** on which every shareholder is entitled to rely (*Elder v. Elder & Watson*, approved in *Shanti Prasad Jain v. Kalinga Tubes*). The burden on the shareholder must be **unjust, harsh or tyrannical** (*Scottish Co-op v. Meyer*). [SM 152–153]

GROUNDS (s.241(1)): A MEMBER MAY APPLY WHERE

a. the company's affairs are conducted **prejudicially to the public interest**, or **oppressively or prejudicially** to him or other members, or prejudicially to the company; or
b. a **material change in management or control** (Board, manager, share ownership, membership) makes such conduct likely

... provided he has the **right to apply under s.244**. Applications go to the **Tribunal (NCLT)**. [SM 153]

Central Government: may itself apply if affairs are prejudicial to the **public interest** (before the **Principal Bench**). Since the 2019 amendment it may also refer cases of **fraud, misfeasance, persistent negligence or breach of trust**, unsound business practice, injury to the trade, or an intent to defraud creditors or members (s.241(3)). [SM 153–154]

WHO MAY APPLY (s.244): LEARN THESE NUMBERS

Company with share capital	at least **100 members**, OR at least **one-tenth of total members**, **whichever is less**; OR members holding at least **one-tenth of the issued share capital**. All calls and dues on their shares must be paid
Without share capital	at least **one-fifth** of total members
Waiver	the Tribunal may, on application, **waive any or all** of these requirements
On behalf of all	one or more eligible members may apply with the **written consent of the rest**

[SM 153]

⚠ WITHDRAWAL OF CONSENT MID-WAY (Jun'23 Q3(a), Dec'24 Q5(b)(ii)): NOT IN THE SM

The Supreme Court held in *Rajahmundry Electric Supply Corp. v. A. Nageswara Rao* (1956) that the **validity of the petition is judged on the facts at the time it is filed**. If the consenting members met the s.244 requirement on that date, **later withdrawal of consent by some of them does not make the petition non-maintainable**. The case is from the old Act (s.399, 1956), but the principle is applied under s.244.

3 Powers of the Tribunal (s.242) and termination of agreements (s.243): never asked yet

If the Tribunal finds the affairs oppressive or prejudicial, and that **winding up would unfairly prejudice** the members although the facts would justify a "just and equitable" winding up, it may make **any order it thinks fit** to end the matters complained of, including: [SM 154]

1. **regulating** the company's future conduct
2. **purchase of shares** of members by other members or by the company, with the consequent **reduction of capital**
3. **restrictions** on transfer or allotment of shares
4. **terminating, setting aside or modifying agreements** with the MD, directors or manager, or (with notice and their consent) with others
5. **setting aside transfers, payments or acts** within **3 months** before the application that would be a **fraudulent preference** in insolvency
6. **removing the MD, manager or directors**, and deciding how a new MD is appointed
7. **recovering undue gains** of managerial persons
8. **appointing directors** who report to the Tribunal
9. **costs**, and anything else just and equitable; **interim orders**

The certified order is filed with the ROC within **30 days**. If the order alters the MOA or AOA, the company **cannot make inconsistent alterations**. [SM 155] (SM MCQ 78: powers in s.242.)

s.243: a terminated agreement gives **no claim** to damages or compensation for loss of office. The person may **not be appointed or act** as MD, director or manager of the company for **5 years** without the Tribunal's leave (with notice to the CG). A person held **unfit** under s.242(4A) cannot hold office for **5 years** without CG and Tribunal approval. Acting in breach: fine up to **₹5 lakh**. [SM 155]

4 Class action (s.245) · Jun'24 Q2(a)

WHAT IT IS Members or depositors (or a class of them) who think the company's affairs are conducted **prejudicially to the company, its members or depositors** may file **one application before the Tribunal on behalf of all of them**. Any person, group or association representing those affected may file it.

[SM 155–157]

REMEDIES THAT MAY BE SOUGHT

1. restrain an act **ultra vires** the MOA or AOA, or a breach of them
2. **declare void** a resolution altering the MOA or AOA passed by **suppressing material facts** or misstatement, and restrain acting on it
3. restrain acts **contrary to the Act or any law**, or contrary to members' resolutions
4. **damages or compensation** from: the company or directors (fraudulent, unlawful or wrongful acts); the **auditor or audit firm** (misleading audit report); any **expert, advisor or consultant** (misleading statements)
5. any other remedy the Tribunal thinks fit

[SM 155–156]

WHO, AND HOW THE TRIBUNAL HANDLES IT

- **Members:** at least **100**, or the prescribed % of members (whichever is less), or holders of the prescribed % of issued capital, with calls paid. Without share capital: **one-fifth**. **Depositors:** at least **100**, or the prescribed %, or those owed the prescribed % of deposits. [SM 156]
- On admission: **public notice** to the class · similar applications **consolidated**, with a **lead applicant** chosen by the class or appointed by the Tribunal · **no two class actions on the same cause** · **costs** borne by the company or the wrongdoer. [SM 156]
- The order **binds** the company, members, depositors, auditors, experts and advisors. [SM 157]
- **Non-compliance:** company **₹5 lakh to ₹25 lakh**; officers up to **3 years** in jail and a fine of **₹25,000 to ₹1 lakh**. [SM 157]
- Does **not apply to banking companies**. Sections **337–341** (fraud and damages) apply to s.241 and s.245 proceedings (s.246). [SM 157]

5 Model answers

MODEL ANSWER 1 · WHO CAN APPLY, WITHDRAWAL, WAIVER (DEC'24 Q5(b)) · 7 MARKS

Facts: a public company has **600 members** and issued capital of ₹5 crore (**5 lakh shares** of ₹100). **90 members** holding **10,000 shares** petition the Tribunal against oppression and mismanagement. (i) Is it maintainable? (ii) What if 40 members later withdraw consent? (iii) If the members are fewer than required, can they still apply?

1. **Law (s.244):** in a company with share capital, at least **100 members or one-tenth of the members, whichever is less**, OR members holding at least **one-tenth of the issued capital**, with calls paid, may apply under s.241. The Tribunal may **waive** the requirements. [SM 153]
2. **(i)** One-tenth of 600 = **60**, which is less than 100, so **60 members** suffice. The 90 petitioners exceed 60, so the petition is **maintainable**, even though their 10,000 shares are only 2% of capital. Either test is enough.
3. **(ii)** If 40 withdraw, 50 remain, below 60. But maintainability is judged **on the date of filing**; on that date 90 members had consented. Later withdrawal **does not make the petition non-maintainable** (*Rajahmundry Electric Supply v. Nageswara Rao*, SC). The Tribunal continues.
4. **(iii)** Yes. Under the **proviso to s.244(1)**, the Tribunal may, on an application, **waive all or any of the requirements** so that the members can apply under s.241. [SM 153]

MODEL ANSWER 2 · THE 12% CASES (JUN'23 Q3(a); JUN'26 MCQ (iv))

Jun'23: petitioners hold **12%** of issued capital; some, holding **5%**, withdraw and join the majority asking for dismissal. At filing, 12% was at least **one-tenth of the issued capital**, so the petition was validly filed. On the *Rajahmundry* principle, the **later withdrawal does not affect maintainability**, and the contention of the withdrawing group and the majority **fails**. [SM 153]

Jun'26 MCQ: can a 12% minority apply? **(B) Yes, directly under s.241**. 12% exceeds the one-tenth test, so no waiver or permission is needed. Option (C), "with the Tribunal's permission", applies only when the s.244 numbers are **not** met. [SM 153]

SM exercise / MCQ bank on 1.9

74 powers of the majority are subject to	**the Act, common law, MOA: all**	78 the Tribunal's powers are in section	**242**
75 an act beyond the directors' authority	**ultra vires**	bank 97: who may apply under s.241 ★	**any of the above**
76 an oppression application may be made on	**fraud on minority, ultra vires, breach of duty: any or all**	bank 250: oppression and mismanagement are defined in	**none (not defined)**
77 relief against oppression is sought from	**the Tribunal (NCLT)** ⚠	bank 251: may also apply if affairs prejudice the public interest	**Central Government**

⚠ The MCQ bank's key for SM MCQ 77 says "ROC". That is wrong: s.241 and s.244 applications go to the **Tribunal (NCLT)**, as the SM text says.

R Revision: every number in 1.9

Rule	Number	Rule	Number
s.244: members (share capital)	100 or 1/10, less	s.243 bar on re-appointment	5 years
s.244: share capital held	≥ 1/10 of issued	s.243 fine	≤ ₹5 lakh
s.244: no share capital	1/5 of members	class action: members / depositors	100 (or prescribed %)
fraudulent preference look-back	3 months	s.245 company fine	₹5–25 lakh
s.242 order to ROC within	30 days	s.245 officer: jail / fine	3 yrs / ₹25,000–₹1 lakh
special resolution majority	¾	s.246 applies sections	337–341