IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under and in terms of Sections 224,225 and 521 of the Companies Act, No.07 of 2007, read together with the provisions of the High Court of the Provinces (special Provisions) Act No.10 of 1996.

SC APPEAL NO. 58/16

HC (Civil) 59/2014/CO

Institute of Data Management (Private) Limited No.13, Lauries Place, Colombo 04.

PETITIONER

VS.

1. IDM Nations Campus (Pvt) Ltd.
   No.23, Daisy Villa Avenue, Colombo 04.

2. Janagan Vinayagamoorthy
   No. 3, 4/4 Fredrica Road, Colombo 06.
   And
   No.16, 42nd Lane, Colombo 06.

3. Subyahewa Rathnasiri
   Paddawala Road, Madakumbura,
   Karandeniya
   And
   No.16, 42nd Lane, Colombo 06.

4. K. L. Management Consultants (Private) Limited
   No.15-1/1, Kirillapona Avenue,
   Kirillapona, Colombo 05.

5. IDM Nations Campus Lanka (Pvt) Ltd.
No.15 Lauries Place, Colombo 04.

RESPONDENTS

And now between

Institute of Data Management (Private)
Limited No.13, Lauries Place, Colombo 04.

PETITIONER-PETITIONER

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RESPONDENTS-RESPONDENTS

BEFORE : **B.P ALUWIHARE, PC, J.**
L.T.B DEHIDENIYA J. AND
S. THURAIRAJA, PC, J

COUNSEL : Dr. Harsha Cabral, PC, with Kushan Illangathilake and Sasheen Arsecularatna for the Petitioner – Petitioner

Charaka Jayaratne and Amila Perera instructed by for the Respondent – Respondent

ARGUED ON : 7th August 2020.

WRITTEN SUBMISSIONS : Petitioner on 10th August 2020 and 28th March 2016.
Respondent on 10th August 2020 and 7th August 2020.

DECIDED ON : 18th December 2020

S. THURAIRAJA, PC, J.

Introduction

The Petitioner-Petitioner (hereinafter referred to as the "Petitioner") filed an application by Petition dated 15th December 2014 in the High Court of the Western Province Sitting in Colombo in the Exercise of Its Civil Jurisdiction (hereinafter referred to as the "High Court") against the Respondent-Respondent (hereinafter referred to as the "Respondent") for a claim of Oppression and Mismanagement under Section 224,

225 and 521 of the Companies Act No.07 of 2007(hereinafter referred to as the "Companies Act"), seeking *inter alia* the granting of Interim Orders requested as prayed for in paragraph 32 of the Petition dated 18th December 2015.

Upon the parties making written submissions and subsequent oral submissions, the learned Judge of the Commercial High Court delivered an Order on 3rd December 2015 refusing to grant the Interim Orders sought by Petitioner based on laches on the part of the Petitioner.

Being aggrieved by the decision of the High Court, the Petitioner appealed to the Supreme Court seeking *inter-alia* the following reliefs;

a) Grant the Petitioner Leave to Appeal against the Order of the Learned Judge of the High Court of the Western Province Sitting in Colombo in the Exercise of its Civil Jurisdiction dated 03rd December 2015, marked **'Y17'**;
b) Set aside the Order of the Learned Judge of the High Court of the Western Province Sitting in Colombo in the Exercise of its Civil Jurisdiction dated 03rd December 2015, marked '**Y17'**;
c) Issue Interim Orders as prayed for in prayers (j), (k), (l), (m), (n) and (o) of the Petition dated 15th December 2014 in the said action bearing No. HC (Civil) 59/2014 (Co).

Pursuant thereto, after hearing the Counsel for the parties on 11th March 2016 and 14th March 2016, leave to appeal was granted precisely on the questions of law set out in paragraphs 38(c), (h) and (j) of the Petition namely;

c) The Learned Judge of the Commercial High Court has misdirected himself by failing to recognize that a duty to approach Court for relief against the affairs of a company being conducted in a manner oppressive to a shareholder and/or mismanagement does not arise until the commission of a series of acts

h) The Learned Judge of the Commercial High Court has misdirected himself by failing to consider the series of acts of oppression and/or mismanagement, in addition to the removal of said Dr. Bandusena Ranasinghe from being a Director of the 1st Respondent Company, referred to in the Petition and the entitlement of the Petitioner for the grant of the interim orders prayed for in the Petition on the basis thereof:

j) The Learned High Court Judge has misdirected himself in failing to appreciate that the fundamental complaint of the Petitioner is that the affairs of the 1st Respondent Company have been conducted in a manner oppressive to the Petitioner and/or mismanaged and the interim orders are required for the protection of the interests of the 1st Respondent Company and the Petitioner as a minority shareholder thereof

Both parties have filed their written submissions and have advanced their oral arguments. I find it pertinent to set out the material facts of the case prior to addressing the questions of law before us.

Background to this application

The now Petitioner and now 2nd Respondent are the two shareholders of the now 1st Respondent Company and each holds 50% of the issued shares thereof. The 2nd Respondent and now 3rd Respondent are currently Directors of 1st Respondent Company and the 4th Respondent is the Company Secretary. As the Petitioner is an artificial person, its interests as a 50% shareholder were represented in the Board of Directors by Director Dr. Bandusena Ranasinghe, who happens to be the Chairman of the Petitioner Company.

It is the Petitioners allegation that Dr. Bandusena Ranasinghe was irregularly and unlawfully removed from the Board of Directors of the 1st Respondent Company by the 2nd Respondent. The Petitioner submits Form 20 dated 31st January 2014, marked as 'Y6', in order to demonstrate that the Registrar-General of Companies was informed of such removal by the 4th Respondent that the said Dr. Bandusena

Ranasinghe has resigned from the Board of Directors of the 1st Respondent Company on or around 10th October 2013. This document is signed by the 4th Respondent and mentions the 2nd and 3rd Respondents to be the remaining Directors of the company while the 4th Respondent remains as the Company Secretary. Form 20 is submitted as Section 223(2) of the Companies Act requires such document communicating the change of Directors.

However, The Respondents have failed to comply with the requirements of Section 223 as the Section states as follows:

(2) The company shall ensure that notice in the prescribed form of—

(a) a change in the directors or the secretary of the company..

is delivered to the Registrar for registration."

And further that:

"(3) A notice under subsection (2) shall—

(a) specify the date of the change;

(c) be delivered to the Registrar within twenty working days of—

(i) the change occurring, in the case of the appointment or resignation of a director or secretary;"

Additionally, Form 20 in itself, as evidenced by 'Y6', states at the end of the 2nd page the following:

"Notice should be delivered to the Registrar of Companies, within 20 working days of the change occurring"

'Y6' mentions the 10th of October 2013 to be the date Dr. Bandusena Ranasinghe ceased to hold office. Taking public holidays in the year 2013 into account, the 20 working days would elapse on or around the 8th of November 2013. Despite this, the document 'Y6' was only submitted to the registrar on

the 31st of January 2014, after well over 3 months of the purported date of Resignation. If Form 20 were to be an authentic document as the Respondent insists, the 1st - 4th Respondents would be liable to pay a fine upon conviction as stated in 223(3) as follows:

(4) Where a company fails to comply with this section—

(a) the company shall be guilty of an offence and be liable on conviction to a fine not exceeding one hundred thousand rupees; and

(b) every officer of the company who is in default shall be guilty of an offence and be liable on conviction to a fine not exceeding fifty thousand rupees.

The above inconsistency by the Respondents' negligence is rather ironic as it is the Respondent in this case that wishes to continue to emphasize the importance of delay and timeliness in following procedure. Further, there is no evidence before this court to believe that the Registrar of Companies has taken any action regarding the above violation of Section 223.

Further, it must be noted that despite Article 8 of Articles of Association requiring an appointment of a director to be made in replacement of Dr. Bandusena Ranasinghe in order to represent the interests of the Petitioner, the annexed Form 20 in itself does not make any replacement and there have been no further steps taken by the 2nd,3rd or 4th Respondent to make such replacement. For this reason, there are no directors representing the interest of the Petitioner in the 1st Respondent company as at present.

In order to contest Form 20, the Petitioner submits the Annual Return Form of the 1st Respondent Company filed as at 31st December 2013 (marked as 'Y3', signed by Dr. Bandusena Ranasinghe, the 2nd Respondent and 3rd Respondent.) Additionally, the Petitioner also files a cheque signed by Dr. Bandusena Ranasinghe dated 21st November 2013 marked 'Y7a' and the Bank Statement indicating the realization of

specified cheque, annexed as 'Y7b' in order to demonstrate that Dr. Bandusena Ranasinghe had not resigned as indicated by Form 20. Additionally, the Petitioner alleged the existence of a fraudulent letter, which was the basis of Form 20 in the instant case, however it must be noted that the Petitioner has not taken any steps to produce such a letter.

The Petitioner also submits a letter dated 1st July 2014 annexed as 'Y9', sent by the said Dr. Bandusena Ranasinghe and Mr. Darshana Srinath Ranasinghe (The second shareholder of the Petitioner company along with Dr. Bandusena Ranasinghe), denying that the said Dr. Bandusena Ranasinghe resigned as a Director of the 1st Respondent Company and without prejudice thereto, nominating three persons including the said Dr. Bandusena Ranasinghe, to be appointed to the Board of Directors of the 1st Respondent Company in terms of Article 8(B)(I) of the Articles of Association of the 1st Respondent Company (as indicated in document annexed as 'Y4(b)')

The 2nd Respondent has proceeded to incorporate a company (the 5th Respondent) under the name of "IDM Nations Campus Lanka (Pvt) Ltd" of business registration number PV98554, incorporated on 13th May 2014 (Form 18 annexed as 'Y10b'), with the 2nd Respondent as the sole shareholder, the 2nd and 3rd Respondent as Directors and the 4th Respondent as Company Secretary (as mentioned in Form 1 annexed as 'Y10a' and Form 18 annexed as 'Y10b' respectively).

Subsequently, the Petitioner has submitted a letter dated 6th June 2014 (annexed as 'Y11(a)') to the Registrar of Companies bringing to attention the concerns of the Petitioner in the incorporation of the 5th Respondent Company, requesting for the Registrar of Companies to not permit the incorporation of the 5th Respondent. Thereafter, the Registrar of companies has responded directing the Petitioner to file an action by letter dated 30th June 2014 annexed as 'Y11(b)', following which the Petitioner has preferred to the Commercial High Court by petition dated 15th December 2014, leading to the action bearing No. HC (Civil) 59/2014 (CO).

The learned Judge of the High Court discussed the matter of Form 20 as the act upon which the petition is based and issued an Order dated 03rd December 2015 refusing the grant of interim orders for the reason of laches on the part of the Petitioner, in having delayed approximately 5 months in approaching the court, deeming such delay to be unjustified and unreasonable.

The learned Judge also relies on the conduct of the Petitioner in failing to exercise the remedy available under Section 483 of the Companies Act, in not having made a complaint to the Police or the Registrar of Companies to obtain an order by a Magistrate for the inspection or production of the suspected document alleged by the Petitioner, when the Act expressly provides this remedy for such offence as is alleged by the Petitioner.

Thereafter, the Petitioner has made an application to the Supreme Court by way of petition dated 18th December 2015 and I hereby address the questions of law abovementioned as follows:

Oppression and mismanagement.

The Petitioner makes claims under Section 224 for Oppression, Section 225 for Mismanagement whilst seeking for relief under Section 521 of the Companies Act. In the matter of oppression, Section 224 of the Companies Act reads as follows:

> *"(1) Subject to the provisions of section 226, any shareholder or shareholders of a company who has a complaint against the company that the affairs of such company are being conducted in a manner oppressive to any shareholder or shareholders (including the shareholder or shareholders with such complaint) may make an application to court, for an order under the provisions of this section.*
>
> *(2) Where on any application made under the provisions of subsection (1), the court is of the opinion that the affairs of a company are being conducted in a manner oppressive to any shareholder or shareholders of*

the company, the court may with a view to remedying the matters complained of, make such order as it thinks fit.

(3) Pending the making by it of a final order, the court may on the application of a party to the proceedings, make an interim order which it thinks is necessary for regulating the conduct of the company's affairs, upon such terms and conditions as appear to it to be just and equitable. The provisions of section 521 shall apply to any interim order made hereunder."

The provisions for Oppression were introduced in order to allow for the protection of Shareholders and it entitled them as of a right, to be treated without oppression as a right, regardless of whether they are minority shareholders. The need for such a remedy was made apparent by the increasing number of claims for winding up based on prejudicial conduct against shareholders despite companies being solvent, as it was the only remedy available to shareholders when faced with such difficulty. It was observed that this position was detrimental to the interests of all parties involved given the finality in the recourse of winding up. Thus is 1948 it could be seen that the United Kingdom (UK) was compelled to introduce a satisfactory remedy that incorporated the long-term interests of both the shareholders and company by providing justice and continuity respectively despite the oppressive conduct in issue. Further, such remedy allowed a shareholder to approach the courts in the event the majority shareholders deviated from the best interests of the company

Section 210 of the UK Companies Act 1948 introduced a provision for Oppression whereby members of a company were to make an application to court in the event of oppressive conduct. This was less drastic and allowed courts to offer a large range of remedies as it was to be what was deemed just and equitable by the Courts. Upon its introduction in the United Kingdom, such remedy was considered to be novel, however, the judgements of the UK courts and the 1948 legislation laid the framework countries were to follow in the years to come. For instance, in the case of **Scottish Co-**

op Society v Meyers 1959 AC 324 it was considered that the question was not one of whether the shareholder had been oppressed, but rather whether the "affairs of the company had been conducted oppressively". This approach was adopted by both India and the Sri Lanka.

India not only recognized Oppression but introduced a provision for 'mismanagement' through the 1956 Act. This did not have a counterpart in the UK legislation. Sri Lanka followed suit by enacting the Companies (Amendment) Act No.15 of 1964 and introduced the provisions for Oppression and Mismanagement based on the Indian Companies Act, which was framed as alternative remedies to winding up. Subsequently, the Companies Act no. 17 of 1982 carried forward the provisions of oppression and mismanagement while approaching the remedies as a means of recognizing and addressing the rights of shareholders, granting general powers to Courts to remedy such conduct, as opposed to alternatives to winding up under the previous regime.

In this backdrop, when the Companies Act no.7 of 2007 came into being, the provisions were retained unaffected by the change in the UK as the Companies Act 2007 diverted from following the UK legislation. The alteration in phrasing of the provision for Oppression from the word "oppression" to "unfairly prejudiced" following the Companies Act 1980 under the UK law did not faze law makers in Sri Lanka in adopting the express words Oppression and Mismanagement as part of the Companies Act in 2007.

Thus, in light of the current position in the UK, it is appropriate to refer to the jurisdiction of India which retains the concept of *"Prevention of Oppression and Mismanagement*" in their current Companies Act of 2013.

Section 225 of the 2007 Companies Act in relation to Mismanagement reads:

" (1) Subject to the provisions of section 226, any shareholder or shareholders of a company, having a complaint—

(a) that the affairs of the company are being conducted 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 interest 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 or of its agent or secretary or in the constitution or control of the firm or body corporate acting as its agent or secretary or in the ownership of the shares of the company or in any other manner whatsoever, and that by reason of such change it is likely that the affairs of the company may be conducted in a manner prejudicial to the interests of the company, may make an application to court for an order under the provisions of this section."

It is important to note the distinction between Sections 224 and 225. Section 224 concerns acts oppressive towards shareholders whilst the focus of Section 225 is the Company itself. Further, there are two limbs to Section 225, namely whether the affairs of the company are being conducted in a manner prejudicial to the interests of the company as well as changes to board structure that affects or is likely to affect conduct in such a prejudicial manner.

The second subsection recognizes the power of court to make such order as may be suitable for the circumstances of each application if the court deems oppression exists.

However, the third subsection is of importance in terms of this instant case as it recognizes the power of courts to issue interim Orders in line with Section 521 in lieu of a pending decision, in order to regulate conduct "*upon such terms and conditions as appear to it to be just and equitable."* Thus, this Court is empowered to decide upon

this matter of the issuance of Interim Orders prayed for under Sections 224,225 and 521.

Further, it is uncontested that the Petitioner fulfills the requirement of Section 226 and is thereby entitled to make such application for claims of Oppression and Mismanagement in exercising his rights as a shareholder of the 1st Respondent Company.

While there is no specification in the provision, it is generally accepted practice that an isolated act of oppression does not entitle a shareholder to make an application to the Court for relief on the basis that the affairs of a company are conducted in a manner oppressive to a shareholder of a company. Rather, a series of such acts of oppression are required for a shareholder to be entitled to make such application to Court.

This is substantiated by the case of ***Needle Industries (India) Ltd v Needle Industries Newey (India) Holding Ltd. AIR 1981 SC 1298*** in which The Supreme Court of India took the view that:

> *"An isolated act, which is contrary to law, may not necessarily and by itself support the inference that the law was violated with a mala fide intention…But a series of illegal acts following upon one another can, in the context, lead justifiably to the conclusion that they are a part of the same transaction, of which the object is to cause or commit the oppression of persons against whom those acts are directed"*

In the United Kingdom, the interpretation afforded to Section 210 of the English Act of 1948, the final English Company Act to use the express word "oppression", was of a much narrower scope, as opposed to the broader phrasing "unfairly prejudicial" adopted in 1980 and used as at present in the Companies Act 2006 in Section 994 and 995. For an application for a claim of oppression under the former Act, it was insufficient to put forward a singular isolated incident.

Relying on the leading treatise of **Company Law by Dr. Kang-Isvaran and Wijayawardane**, that the Respondent themselves rely on in their written submissions, **page 517 reads thus,**

> *"Early decisions of court expressed the opinion that isolated acts or an act of the past cannot be challenged under the rubric of 'oppression'. This view was criticized both in England and India as being too "onerous"."*

This cannot be construed to mean that an isolated incident is sufficient. On the contrary, it is accepted in UK, India and Sri Lanka that whilst an isolated incident is insufficient, there must in the least, be sufficient events that may be considered as part of a continuing series of events, accumulating to a continuing story leading to the date of Petition, even if there are no multiple disconnected events.

This is supported in the case of ***S. P. Jain vs Kalinga Tubes Ltd on 14 January, 1965 AIR 1535*** in which Justice K Wanchoo held the following:

> *"There must be continuous acts on the part of the majority shareholders, continuing up to the date of the petition, showing that the affairs of the company were being conducted in a manner oppressive to some part of the members."*

It must be noted that unlike the jurisdictions of India or the United Kingdom, Sri Lanka does not have as an extensive or comprehensive guide of interpretation that may be followed in instances of Oppression and Mismanagement. Udalgama J in ***Ratnam and others v Jayathileka (2002) 1 Sri LR 409*** supported this stance. He went on to state that:

> *"when all the events are considered as part of the continuing story as opposed to an individual event in isolation, that on a balance of probability the affairs of the company appears to have been conducted in a manner oppressive to the respondent"*

Justice Udalgama arrived at this conclusion after being influenced by the definition of the term oppression as given in the case of **Re Harmer Ltd [1958] 3 All ER 689** where the courts held that the oppression includes acts or conduct which are 'burdensome', 'harsh' and 'wrongful'. Further it could also be seen that as proposed by the Australian courts in **Re Bright Pine Mills Pty Ltd [1969] VR 1002** oppression could also be by inertia. In this case it was seen that the directors ignored business opportunities the company could have taken up so that another business in which they were interested could take advantage of them.

The view taken by the Court of Appeal in the Ratnam case is correct as they have recognized that oppression could not be an isolated act but one that is part of a continuing story. It could also be seen that such an inactivity for it to be a considered as oppression as envisaged by the Companies Act. This ensures that all acts must be considered collectively and no act of oppression is disregarded based on a scale of importance relative to the other acts of oppression present, while allowing for a holistic view on the entirety of the circumstances surrounding any given case, as opposed to focusing on a singular act.

Thus, it is established law that a singular isolated occurrence does not always fulfill the threshold required for a claim of oppression and I will continue to uphold this view. The requirement is such that there must be a series of which are caused by acts at the very least which are burdensome, harsh, wrongful and/or due to an inactivity.

Upon examination of the facts and circumstances of this case, I am of the opinion that there exists a *prima facie* case established by the Petitioner, upon examination of evidence, based on a series of events amounting to oppression against the Petitioner as a Shareholder and this conduct appears to amount to multiple acts of Mismanagement of the company as provided for by Section 224 and 225 respectively.

As submitted, the Articles of Association of the 1st Respondent Company dated 27th June 2011 annexed as 'Y4(b)' was amended on 7th March 2013 by way of board

resolution on 5th March 2013, in regards to which the Registrar of Companies has been informed by Secretary of company, the 4th Respondent, by Form 39 on 14th March 2013. It is observed that while the resolution is titled as being "on 5th March, 2013 at 11:00 am", the Company Secretary has signed, filed and dated the document at the footer as "Colombo, Dated: 7th March, 2012". Following the amended Articles of Association and the Companies Act No.7 of 2007, breaches would arise, should the conduct be proven upon further investigation by the High Court.

Firstly, the matter of the alleged fraudulent Form 20, should it be so proven, would amount to an act of Oppression against the Petitioner as a shareholder. Secondly the non-appointment of a director following the removal of resignation in order to represent the interests of the 50% shareholder would amount to oppression against the Petitioner and Mismanagement prejudicial to the interests of the company. Further, this is a violation of Article 8(A)(I) of the amended Articles of Association as it requires for a Director of Group "A" to be appointed at the capacity of Chairman/Deputy Chairman of the 1st Respondent company. Non-compliance with this would, in essence, amount to a violation of Section 188 of the Companies Act by the 2nd and 3rd Respondent as well as violation of Section 16 of the Companies Act.

Additionally, it is a requirement of Article 8(G) (III) to promptly inform the bank of any changes to authorized signatures. If such requirement is complied with, the resignation is questionable given a cheque dated 11th November 2013, signed by both Dr. Bandusena Ranasinghe and the 2nd Respondent (annexed as 'Y7(a)') has been realized as according to the ordinary conduct of business (refer to document annexed as 'Y7(b)'), allowing for the impression that the signature continued to be an authorized signature.

Finally, the incorporation of the 5th Respondent Company bearing a name, logo and business activities largely similar to the 1st Respondent company, the diversion of business from the 1st Respondent company to the 5th Respondent company and the confusion caused by the above to the general public, must all be assessed as acts of

mismanagement given that each of the above is detrimental to the 1st Respondent Company.

For reasons inclusive of the above concerns, the Petitioner has sufficiently established a *prima facie* case based on multiple acts of alleged oppression and mismanagement, leaving reason for this court to consider the questions of law and interim orders as prayed for by the Petitioner.

In the judgement by the learned High Court judge, reference is only made to a single act of oppression of the alleged forceful removal of Dr. Bandusena Ranasinghe. Therefore, I direct the High Court to revisit this matter paying due attention to the existence of a series of claims of oppression and mismanagement.

Laches

The learned High Court judge has set aside the petition based on laches on the part of the Petitioner based on the delay of a period of approximately 5 months between the Petitioner being directed to approach the court by letter dated 30th June 2014 ('Y11(b)') and the Petition dated 15th December 2014 in the High Court. However, the source of any requirement of promptness or a period of time within which a claim must be made is not made clear in the judgement by the learned High Court judge.

In examining the Sections 224, 225 and 521 of the Companies Act, Section 224 and 225 merely state that an aggrieved shareholder or shareholders

> *"may make an application to court for an order under the provisions of this section."*

Section 521 does not specify a time frame within which a party must make an application for interim orders. Therefore, this claim of undue delay is not based on statutory grounds. In order to derive a time limit within which a claim must be brought, we must refer to the basis of the present Companies Act. As discussed in **Company Law by Dr. Kang-Isvaran and Wijayawardane** at **page 12,** one among the key objectives of the introduction of a new Companies Act in 2007 was in order to bring

clarity to the law regarding companies. Many of the processes were simplified and streamlined while minority shareholder rights were pertinently taken into account as the previous legislation had failed to do. In this process of bringing clarity, time limits for most processes have been introduced. For instance, in reference to the delay by the Respondents, the time limit of 20 working days for the notice of resignation of a Director, which the 1st-4th Respondents have failed to comply with as enumerated above, is an express statutory time limit imposed by the Company Act, this Section further stands evidence to the fact that the basis of the current Companies Act is to provide clarity and streamline the process of the functioning of a company. For this reason, it is not simple oversight by the legislators through which a time limit has not been imposed on applications for oppressions and mismanagement

Examining the jurisdiction of India which retains the Section on Oppression and upon judgements of which the Respondent bases a defense of laches on, the time limit is not imposed directly through the Indian Companies Act 2013 but is imposed by Section 137 of the Limitations Act of 1963. The section states applications must be made within a period of *3 years*. Such limit is to be considered "*as the case may be*" according to Section 433 of the Indian Companies Act 2013. Even in relation to the time bar of 3 years, there is therefore uncertainty as to its application as it is not directly through the Companies Act 2013 of India, and the same act allows for discretion in the application of this limitation and thus, in many cases this requirement is waived based on circumstances of the case.

Further, as demonstrated in the case of **A Brahmaraj vs. Sivakumar Spinning Mills Pvt. Ltd., Tirunelveli-6 & Others (1984) 1 MLJ 376**, it was considered in the Madras High Court that:

> "*There could, therefore, be no doubt that the oppression or the conduct of the affairs of the company in a manner prejudicial to the public interest has to be continuous and shall have persisted up to the date of the filling of the petition under s.397 and/or 398 of the Act. If the state of affairs existing on*

the petition is the main criterion for invoking the jurisdiction under Ss. 397 and 398 and the oppression complained of or the conduct of the affairs complained of, should be existent on the date of the petition as in the case of a continuing wrong and the relief asked for is only with a view to put an end the matters complained of, we are unable to see how any question of limitation could arise at all."

Thus, if the act of oppression and/or mismanagement complained of is continuing in the state of affairs to the date of the petition, there is no reason for a limitation to be imposed as the act of oppression has not concluded, despite isolated trigger events being discussed.

Additionally, even in the cases where laches was seen as a ground for applications to be barred by limitation, the laches were in the period of an extensive number of years, as opposed to a number of months as in the instant case.

In the case of **Shri Raj Kumar Gupta vs. D.P Gupta & Co. (P) Ltd. & others (2008) 84 CLA 390 (CLB)** the delay of 10 years was considered abnormal and such delay was to be considered important regardless of the Limitations Act. In the case of **S. Sukhdeep Singh Jhikka vs S. Ajit Singh Deogan And Others (2009) 93 SCL 212** a period of 9 years was considered to be too lengthy and the court upheld the limit of 3 years. Hence it could be see that the court in India have applied the laches rule subjectively after carefully considering each scenario.

In the United Kingdom, under the previous Act through which claims for Oppression could be brought forward, it was considered that while laches could act as a deterrent to claims, even a period of 4 years between the mentioned continuing act and the petitioner making an application would not amount to laches limiting the rights of the petitioner, as according to Peter Gibson J in **Re a company (No 005134 of 1986), ex parte Harries, [1989] BCLC 383.**

Therefore, considering the practical instances of delay or laches acting as a deterrent to applications of Oppression, the periods considered to amount to laches was in a span of a number of years as opposed to months while even the statutory limit entertains applications made within 3 years in other jurisdictions.

One must also keep in mind the detriments of imposing a strict time limit for applications under the provisions for Oppression and Mismanagement. A strict numerical time limit, should it be so imposed, discourages resolution of conflict outside of the system of courts as aggrieved shareholders would be inclined to resort to legal redress through claims, in place of exercising any other remedies available to them, both practically in the given circumstances and statutorily. It would not be feasible for shareholders to waste time attempting to resolve conflict outside court at the expense of the claim being time barred thereafter, should such attempts fail. It is not in the best interest of Companies, shareholders or even of court to promote such a view.

Additionally, any short period of time does not allow for the parties to further investigate matters, gather evidence, resort to negotiation or further substantiate their claim. It also creates the dilemma of the shareholders questioning the exact number of claims that should exist to make a claim under Oppression and mismanagement as one act is insufficient, but waiting for the commission of multiple or continuing acts may limit the claim due to delay. This would be contrary to the basis of the Companies Act in attempting to bring clarity to company law in Sri Lanka.

For this reason, it is my belief that the standard that must be adopted in assessing the period of time in which a party is expected to bring a claim must take into account the circumstances of each individual case, as opposed to a rigid numerical standard. A standard of "a reasonable period of time in the given circumstances" is more apt for the given purpose. This encompasses the standard of *"as the case may be"* while not accommodating for extensive delays in terms of years having elapsed following the commission of such activity in contravention of Section 224 or 225.

Thus, I am in no way refusing to acknowledge that laches and/or delay may be a ground to refuse remedy under Section 521, however, such refusal must only be resorted to where unjustifiable, unreasonable, or abnormal extensive delay exists. This is in line with the lack of a statutory guideline of a numerical value of time, upon which courts may take the facts of each case into account, in weighing reasonable circumstance against legal principles.

In examining the instant case, I am of the view that this delay in application is in no way an unjustifiable, unreasonable or abnormal extensive period of time, being of 5 months, and thus does not amount to laches or complicity on the part of the Petitioner.

Additionally, I am inclined to respectfully defer to the judgment by the learned Judge of the High Court on multiple grounds. Firstly, as discussed above, the Petitioner is not guilty of laches taking into account the period of delay in the instant case. Secondly, the learned High Court judge has referred only to one of the claims made by the petitioner and I am of the view that all relevant claims must be taken into consideration in assessing the interim orders to be granted as such series has been alleged and put forward by the Petitioner. Thirdly, the learned High court refers to "interim injunctions" in the Order dated 3rd December 2015 whereas the Petitioner expressly prays for Interim Orders, recognizing the distinction between the remedies.

Finally, I am of the view that the Petitioner's claims are supported by evidence additional to the claim of a forged letter which the Petitioner has failed to produce. While I am in agreement with the learned High Court Judge in the fact that the Petitioner has not sought redress through the remedies available under Section 483, I defer in that this is attributable the larger claim of laches in relation to the series of events claimed and the evidence produced in addition to Form 20.

Therefore, as enumerated above, I am of the view that the Petitioner is entitled to remedies available under Section 521 of the Act.

Jurisdiction to grant interim orders

As enumerated above, both Section 224(3) and 225(3) allow for the court to exercise its powers as provided for by Section 521 of the Companies Act, which states as follows:

> *"(1) Subject to the provisions of subsections (2) and (3), pending the making of a final order in any application or reference to court made under this Act, the court may on the application of a party to the proceedings, make such interim order, including a restraining order, as it thinks fit."*

In the instant case the Petitioner has made an application to the High Court requesting for the grant of interim orders, which was refused. However, in examining the present case, taking all above circumstances into account, I am of the view that certain interim Orders as prayed for are justified in the interest of justice, and in compliance with Section 225(3) in making an order that is "just and equitable".

However, I wish to clarify the standard of intervention given the concern of interference with the internal affairs of a company by a Court, being too intrusive. It is my understanding that courts are cautious, and rightfully so, in exercising its powers to intervene in the conduct of any Company. However, The Courts as a regulatory body and as of bearing the obligations of upholding justice, must exercise such powers where there is a lapse of such fairness or equity in such a manner that the Company itself and stakeholders are threatened, Mismanaged and oppressed for the personal benefit of those in control of the powerful tool that is a Company of a separate legal personality.

This contention that the court does not have jurisdiction to interfere with the internal affairs of the company has been addressed previously. For instance, in the case of **Burland and Others v. Earle and Others (1902) AC 83,** it was held that it is an elementary principle that a court has no jurisdiction to interfere with the internal management of companies acting within their powers. Another case is that of **Lee v.**

Chou Wen Hsein and Others (1985) B CLC 45, where a Director was expelled by his fellow Directors it was held that even if one or more Directors acted from ulterior motives the expulsion would be effective; presumably this is because the act of the other Directors if improperly motivated is voidable not void.

However, the stance in Sri Lanka was confirmed by the case of **Unipak Ltd. And Others V. Amarasena 2002 3 SLR 173** in which A. M. Somawansa, J. in the Court of Appeal were to decide on a case with the material facts bearing certain similarities to the instant case. The Learned Judge upon discussing the prior mentioned cases **Burland and Others v. Earle and Others** and **Lee v. Chou Wen Hsein and Others** further mentioned the case of **Re the Langham Skating Rink Company (1877) 36 CT 605** and stated as follows:

> *"However, it appears to me that another elementary principle originates from these decisions and that is that if the acts complained of are ultra vires its powers then the court will interfere. This principle was recognized in Re The Langham Skating Rink Company where it was observed that the power to manage the affairs of a company vests with the Directors and it is settled law that a court will not interfere with such power unless strong grounds are shown for doing so."*

In the Unipak case, it could be seen that the petitioner-respondent has shown strong grounds for the court to interfere. One being her unlawful removal from the Board of Directors on or about 27th December, 1984, by the 2nd and 3rd respondents-appellants. In the petition of appeal as well as in the written submissions filed by the respondents-appellants it is contended that the respondents-appellants acted well within the powers conferred on them by the Articles of Association in removing the petitioner-respondent from the Board of Directors. Unfortunately, except for the bare statement that they acted well within the powers conferred on them by the Articles of Association the respondents- no appellants have failed to adduce any evidence to establish this fact. No evidence as to the procedure adopted was in conformity with

the powers conferred on them by the Articles of Association or in fact that they adopted any procedure other than informing the Registrar of Companies that the petitioner-respondent has been removed from the Board of Directors. In fact, there is no evidence that the removal was communicated to the petitioner-respondent.

As in the above mentioned facts, there is no reasons upon examination of the *prima facie* case to believe that the Respondents proceeded to remove Director Dr. Bandusena Ranasinghe in an exercise of powers intra vires or for the best interests of the Company. There is no reason as at present, based on the arguments by the Respondents, to believe that the 2nd – 4th Respondents incorporated the 5th Respondent Company or continued to conduct business in competition with the 1st Respondent Company for the best interest of the 1st Respondent Company or the Petitioner. Thus, I am of the view that there exist strong grounds to grant Interim orders as necessary, upon such terms and conditions as appear Just and Equitable in the instant case, as required by sections 224(3) and 225(3).

Conclusion

With the aforementioned circumstances, I answer the question of law raised by the Petitioner affirmatively.

On careful analysis of the materials that was produced before the learned High Court Judge, I am of the view that the finding of the learned High Court in order dated 03.12.2015 in case no. 59/2014/Co is incorrect. Accordingly, I grant the following interim orders:

a) an Interim Order setting aside the resignation of Dr. Bandusena Ranasinghe from the position of Director of the 1st Respondent Company, as enumerated in the submitted Form 20.

b) an Interim Order restraining the 5th Respondent from engaging in any business activity in competition with the 1st Respondent Company except to the extent contractually obligated as at the date of this petition.

Appeal allowed

JUDGE OF THE SUPREME COURT

B.P ALUWIHARE, PC, J.

I Agree.

JUDGE OF THE SUPREME COURT

L.T.B DEHIDENIYA J.

I Agree.

JUDGE OF THE SUPREME COURT