PREVENTION OF OPPRESSION AND MISMANAGEMENT – S.397 – 409 OF THE ACT

S.397 – Application to the Tribunal for relief in case of OPPRESSION – Any member who complains that the affairs of the company are being conducted in a manner prejudicial to public interest or in an oppressive manner can apply to the Tribunal provided he has the right to apply U/s 399.

If based on the above application Tribunal is satisfied affairs are managed oppressively or prejudicial to the interest of any of the members or it thinks winding up would unfairly prejudice such member or winding up order is justified it may pass appropriate order

S. 398 – Application to Tribunal for relief in case of MISMANAGEMENT – Any members of a company who complain that affairs of the company are being conducted prejudicially OR that a material change has taken place in the control of the company by a change in the BOD or ownership of the company, can apply provided right to apply U/s 399 is present. (Note – Change in management does not include change in interest of any creditors, debenture holders or shareholders)

S. 399- Right to apply U/s 397 and 398 – COMPANIES HAVING SHARE CAPITAL - (1)

100 MEMBERS OR NOT LESS THAN 1/10TH OF TOTAL NUMBER OF ITS MEMBERS WHICHEVER IS LESS

OR ANY MEMBER/MEMBERS HOLDING NOT LESS THAN 1/10TH OF THE ISSUED CAPITAL provided there are no calls in arrears

COMPANIES WITHOUT SHARECAPITAL – 1/5th of Total number of members.

In case of Joint holding it will counted as 1. Where any members are entitled to make the application, any one of them can obtain consent from others and make application on their behalf. C/G if circumstances require, can authorize members to apply for U/s 397 and 398 NOTHWITHSTANDING THAT CONDITIONS OF NUMBER OF MEMBERS in (1) TO APPLY IS LESS THAN NEEDED. (ie. Less than 100 members or 1/10th…). Before authorizing such member, C/G require such member to give security .

S.400 – NOTICETO BE GIVEN TO C/G OF APPLICANTS U/s 397 AND 398

S. 401 – RIGHT OF C/G TO APPLY U/s 397 AND 398

S.402 – POWERS OF TRIBUNAL ON APPLICATION U/s 397 OR 398 – Tribunal can provide for a) the regulation of the conduct of the company b) purchase shares or interests of the company c) in case of purchase as mentioned in (b) consequent reduction of capital d) termination or setting aside or modification of an agreement between company and M/D or director or manager e) modification of agreement between company and any other person after giving due notice to the party concerned f)setting aside any transfer, delivery of goods, payment etc relating to property made or done within 3 months from the date of application U/s 397 or 398 which would if done by or against an individual, be deemed in his insolvency to be a fraudulent preference. (Note – To understand what is fraudulent preference, refer to S.531)

S. 403 – INTERIM ORDERS BY THE TRIBUNAL –

S. 404 – EFFECT OF ALTERATION OF MEMORANDUM OR AOA BY ORDER U/s 397 OR 398 – Alteration not to have effect unless sanctioned by the Tribunal

S.405 – ADDITIONS OF RESPONDENTS TO APPLICANTS U/s 397 OR 398 – IF M/D, Manager or Director is not added as a respondent – with permission of Tribunal can be added

S. 407 – CONSEQUENCE OF TERMINATION OR MODIFICATION OF CERTAIN AGREEMENTS – A) Order shall not result in a damages or loss for compensation of office B) No M/D, Manager whose agreement has been set aside shall for a period of 5 years without of the consent of the Tribunal be reappointed

S. 408 – POWERS OF GOVT TO PREVENT OPP AND MISMGT – NOTWITHSTANDING ANYTHING CONTAINED IN THIS ACT, The Tribunal on recommendation of the C/G shall appoint directors for a period not exceeding 3 years if application to the above is made by NOT LESS THAN 100 MEMBERS OR PERSONS HOLDING NOT LESS THAN $1/10^{TH}$ OF THE SHARE CAPITAL.

If the company has not availed the OPTION TO ADOPT PROPORTIONAL REPRESENTATION FOR APPOINTMENT OF DIRECTORS U/s 265, company can make the proposed appointments within the time allowed by the Tribunal.

Additional Directors can also be appointed. For calculating the $2/3^{rd}$ (U/s 265) or any other proportion Directors and Additional Directors appointed under this section shall not be taken into account. Directors or Addl Directors appointed under this section need not hold any qualification shares. If the Directors/ Addl Directors recommend to the C/G that the auditors needs to be removed or appoint some other auditor in his place, C/G can issue such directions and provisions of the Act shall be deemed to have been complied with.

S.409 – POWER OF TRIBUNAL TO PREVENT CHANGE IN BOD LIKELY TO EFFECT COMPANY PREJUDICIALLY