

CS-Professional, Module-II

RESOLUTION OF CORPORATE DISPUTES, NON COMPLIANCES AND REMEDIES

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(Module-II)



RESOLUTION OF CORPORATE

# DISPUTES

NON COMPLIANCES AND REMEDIES

CS Muskan Gupta

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## **SUMMARISED VERSION (CHART FORM)**

*(This page has been left to summarize the chapter in the chart form. The chart formed, would help you to recall the chapter in a simpler and more convenient manner)*

CS Muskan Gupta

# 1. SHAREHOLDER'S DEMOCRACY & CORPORATE DISPUTE

## 1) SHAREHOLDER'S DEMOCRACY

### ❖ INTRODUCTION:

The concept of shareholders' democracy in the present day corporate world denotes the shareholders' supremacy in the governance of the business and affairs of corporate sector either directly or through their elected representatives. The Government of India has been endeavoring to disperse the shareholding as widely as possible to avoid concentration of ownership in few hands. It is a widely acclaimed fact that in any corporate enterprise the shareholders are the owners. But in fact they are seldom able to exercise any ownership rights. In order to protect the rights of shareholders and enable them to have control over the affairs of the company, the concept of shareholder's democracy has been introduced. Shareholders, through general meeting can appoint board of directors, who then manages the day to day affairs of the company. Hence, Shareholders are not active participants in the governance of the corporate process, still the directors, as per law, are answerable to the shareholders because shareholders are directly concerned with the economic viability of the investee company.

### ❖ MEANING:

Democracy means the rule of people, by people and for people. In that context the shareholders democracy means the rule of shareholders, by the shareholders', and for the shareholders' in the corporate enterprise, to which the shareholders belong. Precisely it is the ability of the shareholders to directly or indirectly manage the affairs of the company.

### ❖ CONCEPT OF SHAREHOLDER'S DEMOCRACY:

In order to provide authority to the shareholder's and enable them to exercise control over the affairs of the company there has been a clear demarcation between the powers of board of directors and that of shareholders. Shareholders cannot encroach upon the powers of board of directors and vice versa.

Some powers of shareholders are as following:

1. Alteration of Memorandum of Association and Articles of Association.
2. Further issue of share capital.
3. To transfer some portions of uncalled capital to reserve capital to be called up only in the event of winding up of the company.
4. To reduce the share capital of the company.
5. To shift the registered office of the company outside the state in which the registered office is situated at present.
6. To decide a place other than the registered office of the company where the statutory books, required to be maintained may be kept.
7. Payment of interest on paid-up amount of share capital for defraying the expenses on Construction when plant cannot be commissioned for a longer period of time.
8. To appoint auditors
9. To approach Central Government for investigation into the affairs of the company.
10. To allow Related Party Transaction
11. To allow a director, partner or his relative to hold office or place of profit.
12. Payment of commission of more than 1% of the net profits of the company to a managing or a whole-time director or a manager.
13. To make loans, to extend guarantee or provide security to other companies or make investment beyond the limit specified.
14. To borrow money and to charge out the assets of the company to secure the borrowed money.
15. To appoint directors.
16. To increase or reduce the number of directors within the limits laid down in Articles of Association.
17. To cancel, redeem debentures etc.
18. To make contribution to funds not related to the business of the company.

Some of the powers of board of directors are as following:

1. Make calls on shareholders.
2. Authorise the buyback of securities and shares.
3. Issue securities and shares.
4. Borrow monies.
5. Investing the funds.
6. Grant loans.
7. Approve the financial statement.

Section 179 of the Companies Act 2013 provides a general power to the Board of directors subject to restriction that powers cannot be exercised for the matters suppose to be decided by shareholders. Thus, in order to protect rights of shareholders, Companies Act has tried to demarcate the area of control of directors as well as that of shareholders so that shareholder’s can indirectly participate and manage the affairs of the company by exercising powers like, electing directors, altering AOA and MOA and etc.,.

The courts have further determined two broad duties to be performed by a director:

1. Duties of utmost care and skill in managing the affairs of the company or else be liable for damages.
2. Fiduciary duties to act bona fide in the interest of the company, not to exercise powers for collateral benefit and not to earn profit from the position as a director.

**PRACTICAL SCENARIO:**

- Despite the powerful weapons handed over to the shareholders by the Companies Act, the shareholders have not been able to use them and most of the provisions remain dead. Consequently, the Board of directors of a large number of companies are elected only by a few shareholders who attend the Annual General Meetings.
- The shareholders democracy is dependent upon the voting strength of shareholders and also to a great extent on the availability of members attending their General Meetings either by themselves or through their proxy. However, the shareholders do not have enough time to spare from their busy schedules to concern themselves with the affairs of the company in which they have invested. Although the concept of shareholders’ democracy has been enshrined in the Companies Act, yet, because of the aforementioned deficiencies and flaws in the general body of shareholders as a whole, it is not reflected in the constitution of the Boards of directors of many companies in India.
- The Companies Act provided an opportunity to shareholders to participate in the decision making process by introducing provisions relating to passing of resolutions in respect of certain matters through e-voting.
- For achieving the shareholders’ democracy, the shareholders have to unite and organise themselves on national, state and district levels and get their associations registered under the Societies Registration Act or any other applicable statute so that their voice is heard and they can assert themselves and safeguard the interests of their members.

## 2) MAJORITY POWERS AND MINORITY RIGHTS

### ❖ INTRODUCTION

- Majority shareholders are those who own more than 50% shares of the Company. A company being an artificial person with no physical existence, functions through the instrumentality of the Board of directors who is guided by the wishes of the majority. It is a cardinal rule of company law that *prima facie* a majority of members of a company are entitled to exercise the powers of the company and generally to control its affairs. The resolution of a majority of shareholders, passed at a duly convened and held general meeting, upon any question with which the company is legally competent to deal, is binding upon the minority and consequently upon the company. Thus, the majority of the members enjoy the supreme authority to exercise the powers of the company and generally to control its affairs.
- Since the majority of the members are in an advantageous position to run the company according to their command, the minorities of shareholders are often oppressed. Hence, company law provides adequate protection for the minority shareholders when their rights are trampled or violate by the majority. There are two very important limitations to the powers of majority-
  1. Firstly, the powers of the majority of members is subject to the provisions of the Company's memorandum and articles of association. A company cannot legally authorise or ratify any act which outside the ambit of the memorandum of the company.
  2. Secondly, the resolution of a majority must not be inconsistent with the provisions of the Act or any other statute or constitute a fraud on minority depriving it of its legitimate rights.
- However, minority shareholders can express their grievances only when the acts of majority are beyond the scope of AOA and MOA of the company. In other words, the articles are the protective shield for the majority of shareholders.

### ❖ PRINCIPLE OF NON-INTERFERENCE

- Principle of non-interference has been laid down in the famous case of **Foss v. Harbottle**. That no action can be brought by a member against the directors in respect of a wrong alleged to be committed to a company because the company itself is the proper party of such an action. It provides that though adequate protection is provided to the minority when their rights are violated by the

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majority, but the protection of the minority is not generally available when the majority does anything in the exercise of the powers for internal administration of a company.

- The court will not usually intervene at the instance of shareholders in matters of internal administration and will not interfere with the management of a company by its directors so long they are acting within the powers conferred on them under the articles of the company. Court follows principle of noninterference in the matters of the company if they are within the scope of memorandum or articles of the company.

### ❖ **JUSTIFICATIONS FOR THE PRINCIPLE**

Principle laid down in Foss v. Harbottle is justified and advantageous for following reasons:

1. **Recognition of the separate legal personality of company:** If a company has suffered some injury, and not the individual members, it is the company itself that should seek to redress because the company is a legal entity separate from its members.
2. **Need to preserve right of majority to decide:** The principle in Foss v. Harbottle preserves the concept of majority rule which provides right to majority to decide how the affairs of the company shall be conducted.
3. **Multiplicity of futile suits avoided:** Clearly, if every individual member were permitted to sue anyone who had injured the company through a breach of duty, there could be as many suits as there are shareholders. Legal proceedings would never cease, and there would be enormous wastage of time and money.
4. **Litigation at suit of a minority futile if majority does not wish it:** If the irregularity complained of is one which can be subsequently ratified by the majority it is futile to have litigation about it except with the consent of the majority in a general meeting.

### ❖ **EXCEPTIONS TO THE RULE OF NON-INTERFERENCE**

The cases in which rule of majority will not apply are called as exceptional cases and these cases protect the rights of minority.

Cases in which principle laid down in Foss v. Harbottle does not apply are as following:

1. **ULTRA VIRES ACT:** When the shareholders perform any act which is beyond the scope of MOA or AOA i.e. ultra vires then rule in Foss v. Harbottle will not apply and minority can make an application to the tribunal. Shareholder has the right to obtain restraining orders or orders of injunction from the court.
2. **FRAUD ON MINORITY:** When an action of shareholders amounts to fraud on minority, shareholder can individually make an application to the tribunal. Though there is no clear definition of the expression "fraud on the minority", but the court decides a particular case according to the surrounding facts. The general test which is applied to decide whether a case falls in the category of fraud on the minority or not is whether a resolution passed by the majority is "bona fide for benefit of the company as a whole".
3. **RESOLUTIONS REQUIRING SPECIAL MAJORITY PASSED BY SIMPLE MAJORITY:** If a resolution requires a special majority and resolution is passed by simple majority, then shareholder can individually make an application to the tribunal.  
**Example-** when a special resolution was required to be passed at the general meeting and resolution is passed without serving proper notice to the shareholders then shareholder can make an application to the Tribunal.
4. **BREACH OF DUTY:** The minority shareholder may bring an action against the company, where although there is no fraud, there is a breach of duty by directors and majority shareholders to the detriment of the company.
5. **WRONGDOERS IN CONTROL:** If the wrongdoers are in control of the company, the minority shareholders' representative action for fraud on the minority will be entertained by the court because if the minority shareholders are denied the right of action, their grievances in such case would never reach the court, for the wrongdoers themselves, being in control, will never allow the company to sue [*Edwards v. Halliwell*].
6. **PERSONAL ACTIONS:** Individual membership rights cannot be invaded by the majority of shareholders. An individual member is entitled to all the rights and privileges appertaining to his status as a member. In case there is an individual wrong, the individual can file a suit which is maintainable.
7. **PREVENTION OF OPPRESSION AND MISMANAGEMENT:** When majority shareholders are guilty of oppression and mismanagement then members of the company can make an application to the Tribunal and principle of non-interference will not be applied.

*(Oppression and mismanagement has been dealt in detail further)*



### 3) OPPRESSION AND MISMANAGEMENT

#### ❖ MEANING

Oppression and Mismanagement has not been defined specifically. However, when majority shareholders either pass any resolution which violates the rights of minority or departs from standards of fair dealing then, taking into consideration the circumstances, they may be held guilty of oppression and mismanagement.

Cases:

➤ Exercising of authority wrongfully by the majority amounts to oppression

In **Re Hindustan Co-operative Insurance Society Ltd** it was observed

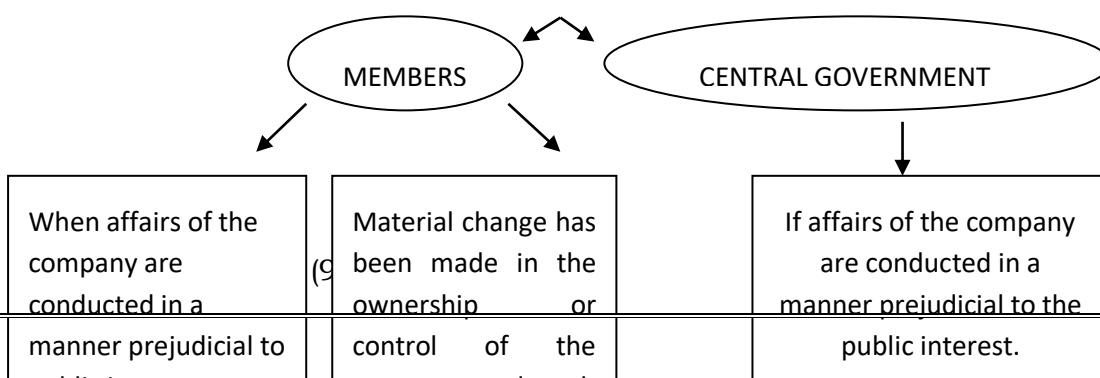
“The majority exercised their authority wrongfully, in a manner burdensome, harsh and wrongful. They attempted to force the minority shareholders to invest their money in different kind of business against their will. The minority had invested their money in a life insurance business with all its safeguards and statutory protections. But they were being forced to invest where there would be no such protections or safeguards”

Hence, the majority was held guilty of Oppression.

➤ Minor acts of mismanagement are not to be regarded as oppression

In **Lalita Rajya Lakshmi v. Indian Motor Co.**, the petitioner alleged that the Board of directors were guilty of certain acts detrimental to the minority of the shareholders. The allegations were that the income of the company was deliberately shown less by excessive expenditure; that passengers travelling without ticket on the company’s buses were not checked; that petrol consumption was not properly checked; that second hand buses of the company had been disposed of at low price, that dividends were being declared at too low a figure. It was held that even if each of these allegations were proved to the satisfaction of the court, there would have been no oppression.

#### ❖ WHO CAN MAKE AN APPLICATION TO TRIBUNAL (Section 241)



❖ **RIGHT TO MEMBERS TO APPLY (Section 244)**

According to section 244, members can apply under section 241 only if :

- In case of company having share capital:
  - not less than **one hundred members** of the company or
  - not less than **one-tenth of the total number of its members**, whichever is less,
  - or **any member or members holding not less than one tenth of the issued share capital of the company**, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- In case company having no share capital: **not less than one-fifth** of the total number of its members:  
**Important:** the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements so as to enable the members to apply
- Section 244(2) provides that where any members of a company are entitled to make an application under sub-section (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

❖ **POWERS OF TRIBUNAL**

According to section 242, tribunal will pass orders relating to:

- a) The regulation of conduct of affairs of the company in future;
- b) The purchase of shares or interests of any members of the company by other members thereof or by the company;
- c) In the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
- d) Restrictions on the transfer or allotment of the shares of the company;

- e) The termination, setting aside or modification, of any agreement, arrived at, between the company and the managing director, any other director or manager, which in the opinion of the Tribunal, be just and equitable;
- f) The termination, setting aside or modification of any agreement between the company and any person other than those referred to above. However, no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;
- g) The setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under this section, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference;
- h) Removal of the managing director, manager or any of the directors of the company;
- i) Recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilisation of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;
- j) The manner in which the managing director or manager of the company may be appointed subsequent to an order removing the existing managing director or manager of the company made under clause(h);
- k) Appointment of such number of persons as directors, who may be required by the Tribunal to report to the Tribunal on such matters as the Tribunal may direct;
- l) Imposition of costs as may be deemed fit by the Tribunal;
- m) Any other matter for which, in the opinion of the Tribunal, it is just and equitable that provision should be made.

If tribunal has ordered for alteration in MOA or AOA, the company cannot make any alterations, without the permission of the tribunal, which are inconsistent with the order

If Tribunal has passed any order for alteration or termination or modification of any agreement then such order shall not give rise to any claims either against the company by the person suffering damages and no MD or other directors, whose agreement is so terminated or set aside shall, for a period of five years from the date of the order terminating or setting aside the agreement, without the leave of the Tribunal, be appointed, or act, as the managing director or other director of the company:

- Before passing any orders tribunal will take into consideration following:
  - that the company's affairs have been or are being conducted in a manner prejudicial or oppressive to any member or prejudicial to public interest or in a manner prejudicial to the interests of the company; and
  - that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up.

a certified copy of every order altering, or giving leave to alter, a company's memorandum or articles, shall within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same.

- **Punishment for contravention:**

If the company contravenes the order of the Tribunal the company shall be punishable with fine which shall **not be less than one lakh rupees** but which may **extend to twenty-five lakh rupees** and **every officer** of the company who is in default shall be **punishable with imprisonment** for a term which may **extend to six months or with fine** which shall **not be less than twenty-five thousand rupees** but which may **extend to one lakh rupees, or with both.**

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## **4) CLASS ACTION SUITS**

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### **❖ INTRODUCTION**

- A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances.
- In a class action suit, a large group of people, having same or similar injuries caused by the same person, collectively bring a claim to court, represented by one or more persons. This form of lawsuit is also called a representative action.
- Class action suits would allow individuals to hold some of the world's most powerful companies and organizations accountable for their actions. These lawsuits cover a wide range of issues including the mismanagement of monies invested with a company, securities law related fraud, malfunctioning of

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accounts, restraining company to act ultra vires or in breach of the articles of association of the Company, etc. The new mechanism will not only protect the interest of investors but will also deter the promoters to enrich themselves at the cost of small shareholders. Class action suits will be taken as a lesson to wrong doers which will deter them as well as others to take such actions.

- The provisions of class action come under the head of oppression and mismanagement but there are some differences between the remedies sought under class action under Section 245 and under the general provisions of oppression and mismanagement under Section 242. While under Section 242 the NCLT can order acquisition of the company's shares, restrict transferability or allotment of shares, removal of managing director and other directors of the company, in class action, the orders will mainly be restraining orders. These restraining orders could be in the nature of restraining a company from committing an act which is beyond the scope of the company's memorandum of association or articles of association, declaring a resolution altering the charter documents as void if such resolutions are passed upon suppression of material facts or through a misstatement.
- An added advantage of the provisions on class action suit is that they cover depositors also. The provision enables representative action on behalf of similarly affected people, or for those who don't have the required numbers to file a case before the tribunal.

#### ❖ **FILING OF APPLICATION BEFORE THE TRIBUNAL**

Members, depositors and any class of them can make an application to the tribunal for following orders-:

- a) to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- b) to restrain the company from committing breach of any provision of the company's memorandum or articles;
- c) to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- d) to restrain the company and its directors from acting on such resolution;
- e) to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;

- f) to restrain the company from taking action contrary to any resolution passed by the members;
- g) to claim damages or compensation or demand any other suitable action from or against—
  - a) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
  - b) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct or
  - c) any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful act or conduct or any likely act or conduct on his part;
- h) to seek any other remedy as the Tribunal may deem fit.

❖ **WHO CAN FILE AN APPLICATION?**

- Following set of classes are recognized under the Act to file class action suits
  - a) members
  - b) depositors and
  - c) any class of them.
- According to companies act, 2013 members of the company means:
  - a) The subscriber to the memorandum of the company who shall be deemed to have agreed to become member of the company, and on its registration, shall be entered as member in its register of members;
  - b) Every other person who agrees in writing to become a member of the company and whose name is entered in the register of members of the company;
  - c) Every person holding shares of the company and whose name is entered as a beneficial owner in the records of a depository.
- Depositors are defined under deposit of companies rule as under:
  - a) Any member of the company who has made a deposit with the company in accordance with the provisions of sub-section (2) of section 73 of the Act, or
  - b) Any person who has made a deposit with a public company in accordance with the provisions of section 76 of the Act.

- **Further**, the phrase other classes of them under Section 245 of the Act refers to different classes of members and depositors viz. equity shareholders, preference shareholders, equity shareholders having different voting right, amongst preference shareholders convertible, non-convertible, cumulative non-cumulative, and bearing different rate of dividend; amongst depositor with different rate of return, different term of maturity, etc.

❖ **AGAINST WHOM APPLICATION CAN BE FILED**

Various persons/ entities against whom such actions can be taken are:

1. A company or its directors for any fraudulent, unlawful or wrongful act or omission;
2. An auditor including audit firm of a company for any improper or misleading statement of particulars made in the audit report or for any unlawful or fraudulent conduct.
3. An expert or advisor or consultant for an incorrect or misleading statement made to the company.

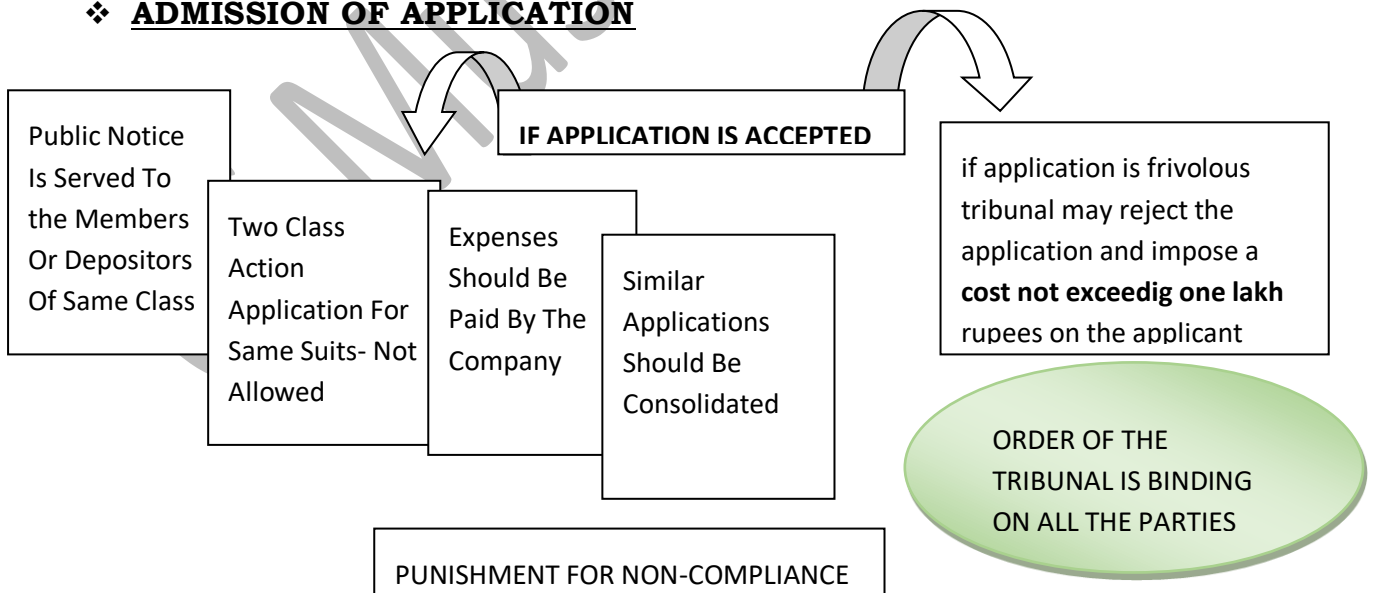
❖ **REQUIRED NUMBER OF MEMBERS OR DEPOSITORS TO APPLY**

| Members  | Depositors   |
|--|--|
| <p>In case company is having share capital-</p> <p>(a) at least five per cent. of the total number of members of the company; or one hundred members of the company, whichever is less; or</p> <p>(a) member or members holding not less than five per cent. of the issued share capital of the company, in case of an unlisted company and member or members holding not less than two per cent. of the issued share capital of the company, in case of a listed company.</p> | <p>(a) at least five per cent. of the total number of depositors of the company; or one hundred depositors of the company, whichever is less; or;</p> <p>(b) depositor or depositors to whom the company owes five per cent. of total deposits of the company.</p> |

❖ **PARTICULARS TO BE TAKEN INTO CONSIDERATION BY THE TRIBUNAL**

- a) Whether the member or depositor is acting in good faith in making the application
- b) Any evidence before it as to the involvement of any person other than directors or officers of the company
- c) Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
- d) Any evidence which shows the views of the members or depositors of the company who have no personal interest, direct or indirect, in the matter being proceeded;
- e) Where the cause of action is an act or omission that is yet to occur, whether the act or omission could be, and in the circumstances would be likely to be
  - a. authorised by the company before it occurs; or
  - b. ratified by the company after it occurs;
- f) Where the cause of action is an act or omission that has already occurred, whether the act or omission could be, and in the circumstances would be likely to be, ratified by the company.

❖ **ADMISSION OF APPLICATION**



**IF A COMPANY FAILS TO COMPLY WITH THE ORDERS OF TRIBUNAL, IT SHALL BE PUNSIHABLE WITH:**

- Fine which shall not be less than five lakh rupees, extend to twenty-five lakh rupees and
- Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and with fine which shall not be less than twenty-five thousand rupees, extending to one lakh rupees.



❖ **BENEFITS OF CLASS ACTION SUITS**

Class action suits will benefit the Indian landscape on various fronts, some of which are illustrated below:

**1. CLUBBING OF SIMILAR APPLICATION AND BAR OF FUTURE LITIGATION-**

When similar suits are filed against same defendants, it makes sense to combine them all and adjudicate it under one roof. This results in efficiency of judiciary, as it is not required to adjudicate similar cases number of times. Therefore, specific provisions are incorporated under the Act to enable NCLT to club all similar applications in any jurisdiction, into one.

According to section 245(5) (b) of the Companies Act, 2013 all similar applications prevalent in any jurisdiction should be consolidated into a single application and the class members or depositors should be allowed to choose the lead applicant and if the members of the class are unable to come to a consensus, the Tribunal shall have the power to appoint a lead applicant, who shall be in charge of the proceedings from the applicant's side. Moreover, no class action suit is supposed to be filed on similar cause of action.

**2. REDUCTION OF COST:** Filing of suits under civil procedure code is very expensive and time consuming. Hence, similar applications are clubbed to save the time of both, the tribunal and parties, and reduce the cost.

**3. COMPENSATION IN CASE SECURITY FRAUD:** By class action suits one can claim damages and compensation from company, its directors and auditors. In PIL, one cannot claim compensation, damages or related remedy as it does not cover private nature dispute. Consumer complaints jurisdiction is limited, which can be exercised in matters related to consumers only, but in security cases such complaints do not exist. Moreover, if such suits are filed under the rule of tort and misfeasance before Civil Courts, then such matter will take years to see the sun shine. Hence, the provision of class action suit has been incorporated so as to enable the members of particular class to file a suit against the company and claim damages.

**4. INVESTOR EDUCATION AS WELL AS AWARENESS:** As soon as the application is accepted by the tribunal a public notice is served to all the members

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of the class. Hence, it spreads awareness and educates the investors of such measures.

❖ **RELIEF FROM TRIBUNAL**

1. **To restrain the company** from:

- Doing an act which is contrary to the provisions of this Act or any other law
- Taking action contrary to any resolution passed by the members;
- Committing an act which is ultra vires the articles or memorandum of the company;
- Committing breach of any provision of the company's memorandum or articles;

2. To **declare a resolution** altering MOA and AOA as **void** if the resolution was passed by suppression of material facts or obtained by misstatement to the members or depositors;

3. To **claim damages or compensation or demand any other suitable action** from or against-

- (i) the company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct
- (ii) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
- (iii) any expert or advisor or consultant or any other person for any incorrect or misleading statement made

❖ **PENALTY FOR NON-COMPLIANCE OF ORDERS OF THE TRIBUNAL**

- a) Fine which shall not be less than Rs. 5 Lakh extending to Rs. 25 Lakh and
- b) Every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years and with fine which shall not be less than Rs. 25,000/- but which may extend to Rs. 1,00,000/-.

## 5) TRANSFER AND TRANSMISSION OF SECURITIES (Section 56)

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1. A company shall not register a transfer of securities of the company unless a proper instrument of transfer, duly stamped, dated and executed by or on behalf of the transferor and the transferee has been delivered to the company by the transferor or the transferee **within a period of sixty days** from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities. **However, where the instrument of transfer has been lost** or the instrument of transfer has not been delivered within the prescribed period, the company may register the transfer on such terms as to indemnity as the Board may think fit.
2. Where an **application is made by the transferor alone and relates to partly paid shares**, the transfer shall not be registered, unless the company gives the notice of the application, to the transferee and the transferee gives no objection to the transfer **within two weeks** from the receipt of notice
3. Every company shall, unless prohibited by any provision of law or any order of Court, Tribunal or other authority, deliver the certificates of all securities allotted, transferred or transmitted -
  - a) within a period of **two months** from the date of incorporation, in the case of **subscribers to the memorandum**;
  - b) within a period of **two months** from the date of allotment, in the case of any **allotment of any of its shares**;
  - c) within a period of **one month** from the date of receipt by the company of the instrument of transfer in the case of a **transfer or transmission of securities**;
  - d) within a period of **six months** from the date of allotment in the case of any **allotment of debenture**:
4. Where any default is made in complying with the provisions, the company shall be punishable with:
  - a. fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees **and**
  - b. every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees.

5. **Transmission of shares** is a process by operation of law, where when a member dies or becomes insolvent his shares are transferred and registered in the name of legal heirs. Thus, transmission of shares takes place when a registered member dies or is adjudicated insolvent or lunatic by a competent Court. Unlike transfer of shares, transmission of shares does not require any instrument of transfer.

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## 6) PUNISHMENT FOR PERSONATION OF SHAREHOLDERS

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Personation means to assume the identity of another person with intention to deceive. According to section 57 of companies act, 2013, If any person deceitfully personates as an owner of any security or interest in a company, **he shall be punishable**

- a) With imprisonment for a term which shall not be less than one year but which may extend to three years **and**,
- b) With fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

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## 7) REFUSAL OF REGISTRATION AND APPEAL AGAINST SUCH REFUSAL

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1. **In a Private Company:** If a private company refuses registration of transfer of shares, it may send a notice of refusal to the transferor and transferee within 30 days from the date on which the instrument of transfer or the intimation of such transmission was delivered to the company. Only the transferee may appeal to the Tribunal against the refusal within a period of thirty days from the date of receipt of the notice or in case no notice has been sent by the company, within a period of sixty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, was delivered to the company.
2. **In a Public Company:** If a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer or the intimation of transmission, as the case may be, is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the

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company, within ninety days of the delivery of the instrument of transfer or  
intimation of transmission, appeal to the Tribunal.

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## 8) RECTIFICATION OF REGISTER OF MEMBERS

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- If the name of any person is, without sufficient cause,
  - a) entered in the register of members of a company, or
  - b) after having been entered in the register, is, without sufficient cause, omitted therefrom, or
  - c) if a default is made, or unnecessary delay takes place in entering in the register, the fact of any person having become or ceased to be a member, the **person aggrieved**, or **any member of the company**, or **the company** may appeal in such form as may be prescribed, to the Tribunal, or to a competent court outside India, specified by the Central Government by notification, in respect of foreign members or debenture holders residing outside India, for rectification of the register.
- The Tribunal may, after hearing the parties to the appeal pass following orders:
  - a) dismiss the appeal or
  - b) direct that the transfer or transmission shall be registered by the company within a period of ten days of the receipt of the order or
  - c) direct rectification of the records of the depository or the register and direct the company to pay damages, if any, sustained by the party aggrieved.
- If any default is made in complying with the order of the Tribunal under this section, the company shall be punishable with:
  - a) fine which shall not be less than one lakh rupees but which may extend to five lakh rupees **and**
  - b) every officer of the company who is in default shall be punishable with:
    - a) imprisonment for a term which may extend to one year **or**
    - b) fine which shall not be less than one lakh rupees but which may extend to three lakh rupees, **or**
    - c) both.

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## 9) PUNISHMENT FOR WRONGFUL WITHOLDING OF PROPERTY (SECTION 452)

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If any officer or employee of a company

- (a) Wrongfully obtains possession of any property, including cash of the company;  
or  
(b) Having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be **punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.**

The Court trying an offence under sub-section (1) may also order such officer or employee

- to deliver up or refund, within a time to be fixed by it, the benefits that have been derived from such property or cash or
- in default, to undergo imprisonment for a term which may extend to two years.



### **CS Muskan Gupta**

CS Muskan Gupta is a qualified Company Secretary with AIR 15 in Foundation programme. She is pursuing law from ILS law college, Pune and also holds a Masters Degree in Psychology. She has diplomas in subjects like Cyber Law and Intellectual Property Rights.

Muskan has an inherent passion for teaching. Her interests include corporate laws, procedural laws as well as criminal laws. She believes in the saying - Dream it, Believe it and Achieve it



Address: Office 27, 1<sup>st</sup> Floor, Kumar Prestige Point,  
Behind BSNL Office, Bajirao Road, Shukrawar Peth,  
Pune - 411 002

Mob.: **8888 235 235, 8888 545 545**

Email: [yesacademypune@gmail.com](mailto:yesacademypune@gmail.com) | Website: [www.yesacademy.co.in](http://www.yesacademy.co.in)