Dissecting the New Law

Shareholder Activism

Class Action Suits

Under The Companies Act, 2013

Arpit Shah

csarpitshah@gmail.com

Class Action Suits

Executive Summary:

Class Action suit marks the debut in the Companies Act, 2013. It is a powerful and positive tool empowering non-promoter shareholders and depositors to seek remedies against the wrongdoings of management.

The Companies Act, 2013 under Section 245 provides right to the aggrieved class of members and depositors, to initiate class action suit against the company, its directors, experts whose guidance/opinion was taken, its auditors and partners of the audit firms for claiming compensation or damages.

Section 37 of the Companies Act also gives the power to the stakeholders to file a suit if they are affected by any misleading statement or the inclusion or omission of any matter in the prospectus.

The threat of class action tends to enhance sense of responsibility on the part of the management towards the interest of stakeholders as the non compliance with the order of the NCLT (tribunal) brings stringent penal consequences.

> ***Note:*** *The Companies Bill 2013, has been given the assent by the Hon'ble President of India, Shri Pranab Mukherjee on 30th August, 2013 and therefore, will now be known as* ***The Companies Act, 2013*** *(Act No.18 of 2013)*

1. Section 245 of the Companies Act, 2013 gives powers to the Shareholders and deposit holders or a class of such shareholders/deposit holders to file their application to the **National Company Law Tribunal** (NCLT) if they are of the opinion that the management or conduct of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors on the **following matters**:

   a. **To restrain** the company and its directors to act in contravention to its:
      i. Memorandum of Association (MOA)
      ii. Articles of Association (AOA)
      iii. Resolutions passed
      iv. Provisions of the Companies Act, 2013.
      v. Resolutions passed for altering MOA by suppressing material facts or by miss-statement can be made void

b. **To initiate action for claiming damages or compensation against the following parties** for any improper or misleading statement or any fraudulent, unlawful or wrongful act or conduct:

i. **The Company**
ii. **Its Directors**
iii. **Audit firm**
iv. **Audit partner**
v. **Expert/advisor/consultant**

Trivia

Section 245 (9) states that none of the provisions w.r.t. filing of Class Action Suits shall be applicable to a Banking Company

2. As per Section 245 (3) (i) & (ii) the following shall be treated as **requisite number** of members or depositors for filing a suit under this clause:

Sl.	Company	Members Required	Depositors Required
1	Company having share capital	1. 100 Members or Such % of total number of members to be prescribed *Whichever is less* ***or*** 2. any member or members holding > such % of the issued share capital of the company as may be prescribed *The applicant(s) must have paid all calls & other sums due on shares*	1. 100 depositors or Such % of number of depositors to be prescribed *Whichever is less* ***or*** 2. any depositors to whom the company owes such % f total deposits to be prescribed.
2	Company not having share capital	1/5th of the total number of its members	As above

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3. **Section 37** of the Companies Act, 2013 also provides that a **suit may be filed u/s 34, 35** (criminal and civil liability for misstatement in the prospectus) & **Section 36** (fraudulently inducing persons to invest money) by any person, group of persons or any association of persons affected by any misleading statement or the inclusion or omission of any matter in the prospectus against the following:
    a. Directors/ any person who has authorized himself to be named as director of the company during the issue of the prospectus
    b. Promoter of the company
    c. any person who has authorized the issue of the prospectus
    d. expert referred u/s 26(5)

4. **Section 125** of the Companies Act, 2013 also gives additional benefits to the shareholders/depositors by stating that **the funds of Investor Education and Protection Fund (IEPF) shall be utilized for reimbursing the legal expenses** of a class action suit.

5. There are certain **specified conditions** which will be taken into account by the NCLT before considering applications under class suit such as
    a. whether person was acting in good faith,
    b. evidence of person other than allegedly involved,
    c. cause of action etc.

6. The Tribunal after admitting an application of a Class Action suit shall have **regard to the following**:
    a. A public notice to be served to all the members or depositors of the class on the admission of the application in manner to be prescribed ;
    b. All similar applications in any jurisdiction be consolidated into a single application and a lead applicant be appointed from amongst them
    c. Ensure no two class action against same cause of action is allowed;
    d. Cost or expenses connected with the application for class action shall be paid by the company and any other persons responsible for the oppressive act.

7. An **Order passed by the NCLT shall be binding** on the company and all its members, depositors and auditors including audit firm or expert or consultant or advisor or any other person associated with the company.

8. Section 245 (7) states that if any company or **person does not comply with the order passed by NCLT** then the Company and every officer in default shall be punishable with:
    a. **Minimum fine of Rs. 5 Lakh extending upto Rs. 25 Lakh** on the Company
    b. Every officer in default punishable with **maximum 3 year imprisonment and a minimum fine of Rs. 25000 extending upto Rs. 1 Lakh.**

Conclusion

1. Welcome move for the small shareholders and deposit holders.
2. Companies will now have to be more careful in their actions as such provisions will motivate classes of stakeholders to initiate action against the company
3. Auditors cannot remain complacent or work hand in glove with the management. They will have to conduct more stringent audits to prevent any miss-statement or wrong certification.
4. A professional or expert or advisor can be also be sued by the members or depositors if they give any incorrect or misleading statement made to the company

Disclaimer: This note is based on the research and contains the views of the author on the above subject. The note is intended to initiate sharing of knowledge on Companies Act, 2013 and cannot be construed to be any professional or legal advice.

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