



IS MINORITY SHAREHOLDERS RIGHTS LAW NECESSARY IN THE CORPORATE WORLD IN INDIA?

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ABSTRACT

In the Corporate world, the shareholder are the ones who are the entities, which is needed to be taken into consideration. The Shareholders are voiceless and there are very few chances for the shareholders to take an extra step for their profits. The Shareholders are under the Directors in every aspect. The Directors are always in a dominant position than the Shareholders in the Company. The shareholders and directors are the most important pillars of the corporate world. Therefore, there should be a concern to identify the needs of the shareholders as the Directors are the ruling entities. The Directors sometimes takes decisions which are in favour of themselves and the Shareholders face a lots of unfair circumstances.

One of the important issues which is to be taken into consideration in the corporate world, is that the shareholders invest a value in the company as Share's. The have the right to know the details of the company working. The Shareholders are the ones who are the owner of the shares of the stock in a corporation. They are also known as the Stockholders. Being a shareholder they have the authority to receive dividends for each share as mentioned authorized by the board of the directors in the company.

Another issue which has been faced by the shareholders are the rights which are in shortage in case of the minority shareholders. The minority shareholders are the one not is a well versed position that of the majority shareholders. The minority shareholders may face some problems as their voice is not as louder as the majority shareholders. The minority shareholders are those who are less in number as their name indicates in the company. Such divisions are made on not matching of the interest as well as the decisions of the company. The directors are only the entities by whom the shareholders are getting dominated in the corporate world but also among themselves there is a disagreement of the decisions taken.

Therefore, this article main object is to portray the need of the Shareholders Rights Law in the Corporate World. In this Article, the main focus would be on the shareholder's rights in the corporate world in India as well as on the problems face by the minority shareholders in the company and remedies for them to deal such situations.

Key Words: Corporate, Directors, Shareholders

INTRODUCTION

Minority shareholders are the people in the company whose inclusion in the company's vote based choices are eclipsed by the lion's share run and to conquer this issue company's act 2013 has come up to handle the issues looked by the minority in company's act, 1956. Be that as it may, minority shareholders are not characterized under any law but rather still under section 235¹ which states that the power to get offers of dissenting shareholders and section 244 which states the right to apply for oppression and management of Company's Act, 2013 have been given 10% offers or least hundred shareholders whichever is less in companies with share capital and 1/3 of the aggregate number of its members if there should be an occurrence of com There are several rights which are given to the shareholders such as the:

1. The right to vote-except for preferred shares for the members of the board of directors.
2. To bring a derivative action in another words lawsuit, when the corporation is not maintained properly.
3. Participation in the division at value of assets upon, dissolution and winding up of the corporation, if there is any value.
4. The shareholder of the company should register their names and details with the corporation of the company i.e. Registrar of the Company (RoC).
5. The shareholders who are newly registered may not have the right to cast votes which are represented by the shares company's without share capital.

Changes to Memorandum of Association or Articles of Association of the Company

The Memorandum of Association or Articles of Association of a Company can be changed just in a general gathering of the organization, which can be assembled by giving adequate notice to the Shareholders of the organization. All Shareholders have a privilege to vote on revisions identifying with changes to Memorandum of Association or Articles of Association of the Company. The affirmative vote of at the very least 75% of shareholders is required for a few amendments that require a special majority of the Company.

Convene General Meeting of the Company

The Board of Directors of an organization is required to gather an extra-ordinary general meeting, if a demand to convent an Extra-Ordinary General Meeting is gotten from shareholders holding at the very least 10% of the paid-up capital of the company. The board is required to require the Extra-Ordinary General Meeting inside 21 days of the date of demand by shareholders out on the town at least 45 days from date of demand for Extra-Ordinary General Meeting. In the event that the

¹ Section 235 of the Companies Act, 2013- Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

Board of Directors neglect to require an Extra-Ordinary General Meeting inside the time gave, at that point the investors would themselves be able to require an Extra-Ordinary General Meeting.

Attend and Vote at General Meeting

All Company are required to hold an Annual General Meeting each year, without any than 15 months slipping by between two Annual General Meetings. All the Shareholders of the Company have a right to get a notice convening Annual General Meetings and Extra-Ordinary General Meetings and to vote at such meetings for or against every one of the resolutions proposed to be passed at such meetings.

Transfer of the Shares of the Company

The Shareholders of the Company have the privilege to exchange shares held by them in the Company unreservedly, aside from that, the board may decline to enlist an exchange of offers in the event that they are not completely paid or where the transferee isn't a man endorsed by the board. A private limited company, however may, by its articles of association, confine the transfer of shares and give pre-emptive rights to its members for acquiring shares proposed to be exchanged by the transferee.

Receive Dividends of the Company

Dividends can be paid by a company for any financial year out of the profits of the company for that year landed at in the wake of accommodating devaluation or out of the profits of the company for any past financial year or years touched base at in the wake of accommodating deterioration and staying undistributed, or out of both. The presentation of dividends is liable to investor's endorsement at an Annual General Meeting. When Dividends are declared, it must be paid inside 30 days and any unpaid dividends must be exchanged to an exceptional profit account opened by the company in a Scheduled Bank.

Minority Shareholders Protection

If there should arise an occurrence of oppression or mismanagement of the undertakings of the organization by larger part shareholders, minority shareholders appreciate insurance and ideal to help from oppression. In the event that at least 100 investors, or a number speaking to at the very least 10% of the aggregate number of investors, can apply to the Company Law Board on the off chance that they are of the view that the undertakings of the organization are being led in a way biased to general society premium or organization's advantage or in a way onerous to any investor. On the off chance that discovered fit, the Company Law Board can pass any request it considers fit, including guiding larger part investors to buyout shared held by the oppressed minority.

MINORITY SHAREHOLDER'S RIGHTS

Numerous arrangements in company's section, 1956 manages circumstances where minority shareholders are influenced and the same can be isolated into different real heads: -

A. Oppression and mismanagement of the company

Oppression is a method for exercising the authority or the power which is an oppressive, cruel or out of line way. The Case of Oppression could be not assembling a general conference, denying the member from appropriate to profit and so on. It can be likewise recorded on the off chance that there is any material change in the management or control of the company, for example, -

1. Board of Directors Alteration.
2. Manager.
3. Companies share ownership.

Application under section 241 of the Companies Act, 2013: - If a company having share capital:

1. At least 100 members from the company.
2. At least one-tenth of the aggregate number of its members.

Whichever is less should have the right to apply under section 241.

In any case, any members holding at the very least one-tenth of the issued share capital of the company subject to the condition that the candidate has paid all calls, should likewise have the right to apply under section 241. On the off chance that a company isn't having an offer capital at the very least one-fifth of the aggregate number of its members might have the right to apply under section 241.

Energy of the council on getting the application of the section 242 of the Companies Act, 2013: On an application made under section 241, the court might outline its assessment on two focuses: -

- a) That the company's undertakings are being directed in a way biased or onerous.
- b) That to twist up the company would unjustifiably partiality such part or members.

Based on over two focuses, the council might pass a request which incorporates: -

- a) The direction of the lead of the issues of the company in future.
- b) The buy of offers or enthusiasm of any member from the company by different members thereof.
- c) Restriction on the exchange or allocation of the offers of the company.
- d) Removal of the overseeing executives, administrator or any of the Managers of the company.
- e) Imposition of expenses as might be regarded fit by the council.

“Mismanagement” signifies "directing the undertakings of the company in a way biased to public interest or in a way biased to the interests of the company." Instances which can be considered as mismanagement in the company seem to be: -

1. Secret benefit being made out of the company's account.
2. Company destined to exchange unfruitfully yet the Managers keep on drawing their pay.
3. Company issues being given in the wrong member's hand who abuses it.

4. Any determination goes by the company which is abuse of the company's reminder or articles or in opposition to any arrangements of law until further notice in drive.

4. Reconstruction and amalgamation of the company

In the event of reconstruction and amalgamation, minority shareholders might be stifled in taking choices of the company and along these lines the Courts, while favouring the plan must take after legal approach by making the general population mindful about the proposed plot in daily papers to look for any complaints, against the plan from the shareholders. In the event that any complaints are discovered, at that point any intrigued member, including a minority shareholder may show up under the steady gaze of the court to start a class action.

5. Rights of shareholders to be informed through correct disclosures

The right of the company members to achieve the auspicious data must be communicated plainly in the statute. The money related data and revelations should be given to shareholders in a straightforward configuration. This prompts educated speculation basic leadership by the shareholders and help expanding the validity of the company.

6. Right of minority to be heard

A proper instrument ought to be set up for guaranteeing that arrangements identifying with "Minority Interest" don't impede the Board or the management from playing out their capacities truly in premiums of the company so the Board and the management should, be shielded from undue and unjustified obstruction from corrupt shareholders acting in the pretense of shareholders' rights.

7. Rights of minority shareholders during meeting of the company

Now and again the minorities are denied of a viable hearing since meeting of the company are led in such a way and accordingly it must be guaranteed that they have the right to go to the general gatherings, appropriate to coordinate the court for the arrangement of a general gathering, to choose intermediaries so they can go to and vote at general gathering, making proposition at shareholder's gathering.

8. Fair valuation as a means of safeguarding minority interests

For assessing the offers of the company there must be a free valuation instrument for shielding minority interests. The arrangement of the free esteem is required to be named by the review advisory group where such a panel would guarantee, to the point that shareholders must have the right to approach the council if the procedure seems, by all accounts, to be unreasonable. These standards for valuation of offers could likewise connected if there should arise an occurrence of companies that are delisted and have a shareholder base of at least 1000.

9. Right of minority shareholders to seek information

Each member shareholder has the right to think about all the data of the company. The current Act sets out the arrangement for decency to all shareholders independent of every member's

shareholdings. They have the right to get Notice of General Meetings (the AGM or the EGM), yearly report and examined account and quarterly and yearly account and so forth.

10. Class action

A class activity suit is where a gathering of people approaches the company law council to speak to a typical intrigue. It might be documented either by the members or shareholders of the company. Class activity suits help minority shareholders as a redressal instrument to approach the company law council having the normal premium.

The help which the part or contributors counting minority shareholders may overcome class action suits is to: -

1. Restrain the company from conferring an act which is ultravires of the company.
2. Restrain the company from conferring rupture of any arrangements of company including reminder or articles.
3. Restrain the company from acting in opposition to the arrangements of any law for the present in compel.
4. Restrain the company from making a move in opposition to any determination go by its members, and so forth.

MINORITY SHAREHOLDERS RIGHT IN INDIA²

1.Introduction

The Mumbai Bench of the Company Law Board (CLB), through its request dated April 16, 2015 on account of *Mr. Anil Kumar Poddar v. Bonanza Industries Limited*, rejected the utilization of a Shareholder who requested copies of account of a company and looked for inspection of the register, minutes, annual returns, and so forth, on the ground that such an application was mala fide and frivolous.³

2.Facts of the Case

In the present case, the applicant is an expert shareholder named Mr. Anil Kumar Poddar, hereinafter alluded to as the 'Applicant', who holds 5 to 10 shares in different listed companies and, the exercising shareholder's rights, requests copies of the company account, registers, minutes, and so forth. Bonanza Industries Limited is the company against whom the present application has been recorded, hereinafter alluded to as the 'Defendant', which expresses that the shareholder grievance is a vexatious one and that the shareholder harbors mala fide goal in his acts. While reacting to the application, that the Defendant presented that the Applicant holds an exceptionally ostensible or immaterial shareholding in different listed companies spread all over the nation.

Being a shareholder, the Applicant has different rights, which incorporate ideal to get duplicates of account being kept up by the companies and to look for review thereof. The Applicant

² <https://www.lawfarm.in/blogs/minority-shareholders-right-in-india> (accessed on 5th March 2018)

³ Ruling on Shareholder Rights to Inspect Company Account By Umakanth Varottil August 25, 2016 <https://indiacorplaw.in/2016/08/ruling-on-shareholder-rights-to-inspec.html> (accessed on 10th March 2018)

has received a modus operandi to slap sees under section 20 of the Companies Act, 2013, hereinafter alluded to as the "Act", to the companies looking for different account, including minutes, registers, annual returns and financials of the companies against payment of charges for giving such account. Notwithstanding, the goal has never been that of a veritable shareholder who is being worried of the execution of the company as his shareholding of 5-10 shares in each company demonstrates a differentiating picture. For this reason, the Defendant referred to the instance of *Reliance businesses Ltd, and Ors. v. Anil Kumar Poddar*, in which the Bench of the Company Law Board had watched that the Applicant drew closer with unclean hands and as a black mailer looking for finance in cash, in this manner making it an application recorded with ulterior rationale, which was therefore was rejected. The Defendant presented that the Applicant likewise gave cautioning that non-satisfaction of his requests may prompt critical results.

3. Company Law Board's Findings

The Hon'ble Bench watched the case in light of roughly 150 other such applications which were recorded by the Applicant and were pending before the Bench. The Bench likewise considered the decision articulated by the Calcutta High Court in the matter of *Phillips Carbon Black Limited and Ors. V. Anil Kumar Poddar and Anr.*, where the Applicant was banished from practicing his rights as a shareholder alongside his associates. The Bench emphasized that to keep the mishandle of the procedure of the Court, the Company Law Board is qualified for pass such requests as might be fundamental having respect to the certainties of the case, and since the data requested by the Applicant is accessible out in the open space as it is an issue normal information that the statutory account of all companies are accessible on MCA gateway, consequently the Bench reasoned that the Applicant is in the propensity for making such trivial applications and is clearly not a bona fide candidate.

Provisions of Law Section 20, which deals with the mode of service of documents to and by the company, reads as follows:

(2) Save as provided in this Act or the standards made there under to file of account with the Registrar in electronic mode, a document might be served on Registrar or any part by sending it to him by post or by enlisted post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as might be endorsed:

Given that a part may ask for conveyance of any archive through a specific mode, for which he might pay such expenses as might be controlled by the company in its annual general meeting.

4. Arguments by both the Parties Petitioner

It was contended by the Applicant who showed up face to face before the Hon'ble Bench that the Defendant has made wrong charges of pestering the management through out of line implies just to insult the picture of the Applicant and henceforth the expectations of the Defendant are mala fide. He requested inspection of the account of the company and the duplicates of such account in his ability as a shareholder, all things considered right is vested in him by the statute.

It was argued by the Applicant who appeared in person before the Hon'ble Bench that the Defendant has made wrong allegations of harassing the management through unfair means just to malign the image of the Applicant and hence the intentions of the Defendant are mala fide. He demanded inspection of the account of the company and the copies of such account in his capacity as a shareholder, as such right is vested in him by the statute.

5. Defendant

Be that as it may, direct speaking to the Defendant contended that the shareholder holds just 10 share in the Defendant and has been annoying the company and the management by unlawfully requesting duplicates of the account of the Company, in spite of the way that the account which he requests can without much of a stretch be gotten through the entry of the Ministry of Corporate Affairs, website of the stock trade where the shares of the company are recorded or even on the Company's website. Consideration was drawn by the Defendant towards the reality the Applicant had recorded 14 more applications against various companies, which were enrolled for hearing around the same time of this hearing, to expose the way that the acts of the Applicant are silly in nature and hold no substance. Thus, the Defendant made a demand that the application be suppressed by the Bench Judgment of Company Law Board, Mumbai.

The Company Law Bench of Mumbai watched that the Applicant is in the propensity for making such applications. Recognizing the Defendant's accommodation in regards to the accessibility of account of company's on different sites of controllers and account of the Registrar of Companies ("RoC") but then the act of the Applicant documenting such applications influences him to have all the earmarks of being a non-real candidate. The Bench rejected the application expressing that "the rights of assessment of reports ought to be practiced in accordance with some basic honesty and thinking about the company's best advantage." It along these lines exhorted the Applicant from opposing himself from documenting such unimportant and mala fide applications. Notwithstanding, the Bench likewise watched that in accordance with the forces vested by the Company Law Board Regulations upon it, it isn't skilful to pass a request for examination concerning charges levelled by the Company.

6. Analysis of the Case

Shareholders' rights have been presently talked about long and at standard at different gatherings. Be that as it may, it was in the year 1930 in the matter of *Johnson Ranch Royalty v. Hickey* that the shareholders' rights were amplified. All things considered, it was held that the key guideline is that the shareholders claim the company, including all property controlled by the partnership, including all the data and every one of the account. Those accountable for the company are only the specialists of the shareholders who are the genuine proprietors, and the proprietors are qualified for data with regards to the way in which the corporate business is directed. While the company holds the legitimate title to its property, the shareholders are regarded the genuine and helpful proprietors thereof and, accordingly, are qualified for data concerning the management of the property and business they have trusted to the

officers and Managers of the company as their specialists. A shareholder's statement of ideal to review the company's books and account is now and again said to be one just for the examination of what is his own. Further, it was pronounced in a similar case that the right to investigate corporate books and account exists with the goal that the shareholder may "as certain whether the issues of the enterprise are legitimately led and that he may vote keenly on inquiries of corporate approach and management."⁴

The purpose of presenting the idea of requesting investigation and duplicates of account of the company was to encourage more straightforwardness and management in light of a legitimate concern for the shareholders where an issue may influence their rights. The same was likewise acquainted with give shareholders control over the company as its their cash which is put resources into the company and they ought to have ideal to get data on how their venture is being channelized by the company in order to check whether they will get their coveted comes back from the company or not. In any case, despite what might be expected, a decision articulated in *Guthrie v. Harkness*, 199 U.S. 148 (1905) by the United States Supreme Court noticed that courts won't constrain the assessment of a bank's books under all conditions. "In issuing the writ of mandamus the court will practice a sound carefulness, and give the directly under appropriate shields to secure the interests of all concerned. The writ ought not be conceded for theoretical purposes, or to delight sit out of gear interest, or to help a blackmailer, however it may not be denied to the shareholder who looks for the data for real purposes." Though the decision was articulated for investigation of a bank's account, yet the expectation is to protect the account from going into wrong hands.

Be that as it may, vexatious shareholders have been abusing the rights, which could make pointless issues for the company's. The Act passed up a great opportunity for the arrangements which could require that a shareholder hold a base number offers previously practicing the shareholders' ideal for investigation of archives and other comparable rights. In their nonappearance, such rights could be abused by a few shareholders to make vexatious requests without authenticity, including before the legal stages and drag company's into pointless suit.

7. Cut out for companies to keep away from vexatious shareholders

The company's, when looked with such vexatious cases, end up in a troublesome circumstance. The Act has vested the shareholders with such rights, and the companies don't have the alternative to evade them however to treat their demand and follow up on it. The absence of energy in the hands of companies to settle a base limit of shareholding for practicing the rights of shareholder has left the company's without ammo in the war with such vexatious members.

In the period of e-management and with the different controllers expecting companies to roll out consistent revelations with improvements on their sites, there is by all accounts less requirement for a shareholder requesting account as in the moment case. In addition, duplicates of account are

⁴ Note, in any case, that the thought of possession privileges of shareholders in the property and account of the company might be restricted to law as was relevant in the US, and may not really comport with ideas of shareholder rights in nations like India.

likewise accessible to the gateway of the Ministry of Corporate Affairs from where one can look for data and duplicates, so there appear to be less reasons why a shareholder would need to stroll to the company's workplaces and request duplicates/data.

In spite of the fact that there is no particular cut out accessible to the company's, mind must be taken by the authorities of the company to find the rationale of the shareholder looking for such examination and duplicates of account from the company's. In the event that there have all the earmarks of being an ulterior intention, at that point such a demand might be hindered by the company's by moving toward the court.

8. Effect of Judgment

In my view, this request of company law board will convey a solid message of good corporate management to the partners and endeavour to control the fake and mala fide works on being led by vexatious shareholders who will likewise look before they jump. The judgment will most likely make a mindfulness in the corporate world for companies to know and take in the best approach to handle such cases and for the financial specialists to similarly find out about their rights which are intended to be utilized as a part of the best enthusiasm of the company and the shareholders everywhere as opposed to utilizing them for their own advantage or malignantly. Since we are in a period of digitalization, investigation of account and registers should just be practiced when there is most extreme need and matters are not kidding in nature, in order to maintain a strategic distance from the wastage of time and endeavours of both the company and in addition the shareholders.

CONCLUSION:

It might be presumed that however minority shareholder sees were not being considered because of concealment of the dominant part control in the company in the past company's section, 1956. Be that as it may, on the off chance that we see the present situation in the company's act 2013, at that point different advances have been taken to secure the minority rights of the shareholder in the company regardless of the reality whether there is any abuse or fumble or some other influenced rights of the minority shareholders.

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