

DE JURE NEXUS LAW JOURNAL

Author:

Anam Ahmad

Research Associate, Competition Commission of India.

PROTECTION OF MINORITY SHAREHOLDERS IN A COMPANY
UNDER THE COMPANIES ACT, 2013

“The one thing that doesn’t abide by majority rule is a person’s conscience”¹

ABSTRACT

The democratic resolutions pertaining to management and functioning of company in the corporate ecosystem are arrived at on the basis of the majority rule, and the said procedure is considered as fair. However, the principle of rule of majority in decision making usually completely disregards the views of minority shareholders since the minority shareholder in a company possess limited powers. Even though the Companies Act, 1956 provided safeguards for protection of the minority shareholders’ interest, the minority shareholders could not exercise their rights effectively owing to various factors such as shortage of time and resources, leading to domination of the majority shareholders and the suppression of rights of minority shareholders in the core management and decision-making process of the company. Thus, provisions to curb these issues faced by the minority shareholders have been incorporated in the Companies Act, 2013. The Companies Act, 2013 does not define ‘minority shareholders’, however, as per Section 235 (Power to acquire shares of the dissenting shareholders) and under Section 244 (Right to apply for the oppression and mismanagement) of Companies Act, 2013, the minority shareholders are provided with 10% of shares or minimum 100 shareholders, whatsoever is less, alongwith share capital and one-third of the total number of its members in case of companies without the share capital.

¹Harper Lee, *To Kill A Mockingbird*

This article aims to highlight the rights of minority shareholders that are protected under the Companies Act, 2013.

OVERVIEW

The Companies Act, 2013 has altered the entire scope of modern Company Law and filled in the various lacunas that hampered the Companies Act, 1956 to a great extent. Earlier, a company was ruled by shareholders who held a majority of shares in the company, thereby prejudicing the rights and interests of the minority shareholders. This principle has now been amended by the Companies Act, 2013 and provisions have been made to give greater power to minority shareholders.

The decision-making process is a fundamental part of a corporate body's functioning. This process is considerably affected when the opinions of the majority and minority shareholders are not in consonance with each other, and the majority shareholders take decisions without catering to the interests of the minority shareholders, thereby prejudicing the rights of minority shareholders gravely.

The Rule of Majority was firmly recognized in the landmark judgment *Foss v. Hardbottle*², where the court held that the Courts will not intervene in the internal administration of a company at the instance of a shareholder and will not interfere with the management of a company by its directors so long as they are acting within the powers conferred on them under the Articles of the company. Nothing related to an internal dispute between shareholders is to be made the subject of an action by a shareholder.³

This principle has been reaffirmed in a number of Indian judgments including in *Rajahmundry Electric Supply Corporation v. A. Nageshwara Rao*⁴, *Bagree Cereals v. Hanuman Prasad Bagri*⁵, thereby reiterating the principle that if a simple majority can ratify a wrong, the court will not intervene.

²(1843) 67 ER 189

³*Mac Dougall v. Gardiner*, (1875) 1 Ch. D 13

⁴1955 SCR (2)1066

⁵2001 105 CompCas 465 Cal

The intention of the legislature with respect to the Companies Act, 2013 was to establish a balance between the Rights of Majority and Minority Shareholders. As Palmer states in his book, “A proper balance of the rights of majority and minority shareholders is essential for the smooth functioning of the Company”⁶

Presently, the term 'minority shareholders' does not find a statutory definition either under the Old Act or the New Act. However, by means of Section 395 and Section 399 of Companies Act, 1956, minority shareholders have been set out as ten percent (10%) of shares or minimum hundred (100) shareholders, whichever is less, in companies with share capital; and one-fifth (1/5) of the total number of its members, in case of companies without share capital. In general terms, minority shareholding can be understood to mean holding such amount of shares which does not confer control over the company. Black's Law Dictionary defines the term 'minority shareholders' as “*an Equity holder with less than 50% ownership of the firm's equity capital and having no vote in the control of the firm.*”

The protection for rights of the Minority Shareholders is provided in The Companies Act, 2013 under Chapter XVI- S.241-S.246, under the head 'Prevention of Oppression and Mismanagement'. Section 241 of the Act empowers the oppressed minority shareholders to move an application in the NCLT for seeking relief in case of oppression and mismanagement. The required number of members who must sign the application is laid down in S.244. In case the company is with share capital, then the application must be signed by at least 100 members of the company or one-tenth of the total number of its members, whichever is less. If the company is without share capital, then the application mentioned above has to be signed by one-fifth of the total number of its members.⁷

Under the Companies Act, 1956 the Central Government had the discretion to allow any member or members to sue if in its opinion such circumstances exist which make it just and equitable, making it a speedy actionable remedy. However, in the Act of 2013, the Tribunal rather than Central Government has this discretion. Before an oppressed shareholder makes an application, he needs to satisfy certain pre-requisites laid down by the S.241. The application can be made either if the affairs of the company are being conducted in an oppressive manner which is prejudicial or oppressive to the interests of the company or if a

⁶Palmer, *Company Law*, 492 (20th ed., 1959)

⁷*Company Law by Avtar Singh*

material change has taken place in the management or control of the company which shall affect the members or class of members.

Lord Cooper explained the term Oppression as the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely.⁸

Although the legislation aims to protect the minority shareholders interest, in a fit case if the court is satisfied with the acts of oppression and mismanagement, relief can even be granted if the application is made by a majority rendered ineffective by the wrongful acts of a minority group.⁹

While the powers granted to the competent authority under the Companies Act, 1956 were restricted to some extent, the powers granted to the Tribunal under the New Companies Act, 2013 Act are wider by virtue of S.242, which places the Tribunal in a better position to protect the interests of the minor.

The Act of 2013 introduces a novel concept of Class Action suit, which evolved from the Satyam scandal that broke out in 2009. The essential provisions to enforce the rights of minority shareholders and investors were missing in the Act of 1956.

The above provision has been introduced under Section 245 of the Companies Act, 2013, thereby providing a great edge to minority shareholders, investors as well depositors. By means of this provision a suit can be filed against a company, its directors, auditor or expert advisor. In the case of a company with share capital, the suit can be filed by not less than 100 members or not less than 10% of the total number of its members or by any member or members singly or jointly holding less than 10% of the issued share capital of the company. In the case of a company without share capital, a suit may be filed by not less than one-fifth of the total number its members. Similar provisions are laid down for the protection of depositors.

⁸*Scottish Coop Wholesale Society v Meyer*

⁹*Baltic Real Estate Ltd (No 1)*

The New Companies Act, 2013 also introduced minority shareholding protective measures during mergers and amalgamations. Such measures have been provided under Section 235 and Section 236 of the New Act by which transfer of shares or class of shares by a transferor to a transferee company requires the approval of shareholders with a nine-tenth shareholding in value. If any shareholder dissents then the transferee company has to serve a notice to the same.

Under Section 236 of the New Act, the option to make an offer to the majority shareholders to purchase the minority equity shareholding of the company has been given to the minority shareholders. The acquirer, person or group of persons shall offer to the minority shareholders of the company a price determined by valuation by a registered valuer for buying the equity shares held by such shareholders.

In the event an acquirer or person acting in concert thereon or a group of persons become/s the registered holder of ninety percent or more of the issued share capital of a company by amalgamation, share exchange or other means, he/they shall notify the company of his/their intention to buy the remaining equity shares. Under the New Companies Act, 2013, minority shareholders are also involved in corporate decision-making whereby the “small” shareholders in listed companies having a nominal shareholding of shares not more than Rs. 20,000 have the right to appoint a director.¹⁰

A careful examination of the above mentioned provisions of the Companies Act, 2013 reveals that the intention of the legislators behind these provisions was to protect the interests of the minority shareholders against the brute force of the majority at every stage by filling in the lacunas in the Companies Act, 1956. However, the effective implementation of the provisions above plays a key role in executing the intention of the legislator thereby enabling the protection of interests of minority shareholders.

¹⁰S.151 of the Companies Act, 2013