COMPANY FORM OF BUSINESS: MAINTAINING A BALANCE BETWEEN OWNERSHIP AND MANAGEMENT

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Abstract : In this paper the author has critically examined the company form of business keeping in view the balance between ownership and management of the company according to Companies Act, 1956,2013 as well as the decisions of the courts of various jurisdiction in a hypothetical view.

INTRODUCTION:

The company form of business is considered to be most suitable for organizing business activities on a large scale as it does not suffer from the limitations of capital and management of other forms of organization. The sole proprietorship, partnership and Co-operative organization are not capable of undertaking large scale activity due to lack of adequate capital and limited managerial abilities. In a company organization those problems can be easily overcome. It has the advantage of attracting huge capital from the public due to the limited liability of members. With adequate capital it can also employ trained and experienced officers to run the business activities efficiently.

We may think of forming a partnership firm for setting up the cement plant. But if we recall the limitations of Partnership form of business organization, then definitely we will say- 'no'. Partnership may not be the suitable option for the business where huge capital investment is required. We know that there is a restriction on the membership of partnership, so it may not be possible to arrange the required amount of capital to set up a cement plant. Even if the people are capable of arranging the funds, nobody wants to take risk due to unlimited liability of partners. In such a situation company form of business organization may be the obvious choice whereby we can arrange large amount of capital easily from the members.

A company is defined as ***a voluntary association of persons having separate legal existence, perpetual succession and a common seal.*** As per the definition, there must be a group of persons who voluntarily agree to form a company. Once formed the company becomes a separate legal entity with a distinct name of its own. Its existence is not affected by change of members. It must have a seal to be imprinted on documents whenever required. The capital of a company consists of transferable shares, and members have limited liability.

A company is a voluntary association of persons generally formed for undertaking some big business activity. It is established by law and can be dissolved by law. The company has a separate legal existence so that even if its members die, the company remains in existence. Its members contribute money for some common purpose. The money so contributed constitutes the capital of the company. The capital of the company is divided into small units called shares. Since members invest their money by purchasing the shares of the company, they are known as shareholders and the capital of the company is known as share capital.

In India, the companies are governed by the Companies Act, 1956(now Companies Act 2013).

According to the Act, ***"company" means a company incorporated under this Act or under any previous company law.***[1] An existing company means a company formed and registered under any of the previous Companies Acts. This definition is not exhaustive enough to reveal the basic features of the company. However, based on the definition given in the previous Companies Act and various judicial decisions, it can be defined as ***'an artificial person created by law, having a separate legal entity, with a perpetual succession'.***

Though the company is a separate legal entity different from its members but in reality it is the natural persons who conducts the affairs of the company. Thus it becomes necessary to maintain a balance between the ownership and management of the company. The balance can be maintained by putting some restrictions on the directors and shareholders which we discuss in this paper.

1. RESEARCH METHODOLOGY:

1.1 Problem:

The problem here is that how to maintain a balance between the management and ownership in the company form of business to conduct the affairs of the company in an efficient manner and in the interest of the company as well as public.

1.2 Rationale:

Power corrupts and absolute power corrupts absolutely. The same saying is also applicable in case of company form of business. Study on this topic is important because it is necessary to maintain a balance between the ownership and management to conduct the affairs of the company in an efficient manner, which contribute in the development of the country especially in a developing economy like India.

The study on this topic is also necessary to make aware the people about the internal management of the company because it is the money of the investors through which the companies will operate.

1.3 Objectives:

Every study has been undertaken with some objectives. Similarly the objectives of my work are:

1. To become familiar with the concept of company form of business and internal management of the companies.
2. To find out how a balance will be maintained between the ownership and management to conduct the affairs of the company in an economic and efficient manner.
3. To analyze the provisions relating to the management of the company form of business.
4. To find out whether the provision relating to maintain balance between the ownership and management are sufficient to conduct the affairs of a company in an efficient manner.

1.4 Review of literature:

It is the literature which helps a scholar from selecting problem to conclusion and to form a clear cut idea about the research work. I have used the literature of many writers, the description of these are as follows:

The book entitled ***Company law by Dr. G.K. Kapoor &Sanjay Dhamija, 17th Edition, Taxmann Publications(P.) Ltd.*** Helps me a lot to reach conclusion and forming a basic idea about the company form of business. The writer has very specifically mentioned all the concepts relating to the company form of business with the provisions of the Companies Act, 1956 and 2013, the recent and some old landmark judgments(Indian and foreign).

[1] Section 2(20) of Companies Act 2013.

The book entitled ***Company Law by Avtar Singh, 16th Edition, 2015, Eastern book company.*** Also helps me to understand the provisions relating directors and shareholder. The writer have very specifically mentioned these provisions as provided under Companies Act, 2013 with commentaries and case law.

The articles entitled ***"Do shareholders own a corporation?" By Roger Donway*** & ***"What Is the Difference between a Shareholder and Ownership Interest in Corporation?"*** by Tiffany C. Wright, assist me to understand the concept of ownership and management and the reasons for considering the shareholders as owners of a corporation.

1.5 Hypothesis:

Though the company is a separate legal entity different from its members but in reality the natural persons like directors and other key managerial personnel conduct the affairs of the company. Some limitations on the powers of these members are necessary so that the rights of the shareholder and other investors (considered as the owners of the company) are protected.

The punishment provided and personal liability of the directors in Companies Act, 2013 is for the protection of the investors and necessary to protect the investors, because the company conduct its business through the investment of these members.

Similarly SEBI, RBI and CCI are also to protect the investors by maintaining a balance between ownership and management.

In this way a balance will be maintained between ownership and management.

1.6 Research questions:

To reach a conclusion on this topic the following questions are arises:

1. What is the company form of business?
2. Who are considered as owners and who are in the management of the company and why?
3. How the concept of majority rights and minority protection is helpful in maintaining a balance between ownership and management?
4. How the provisions relating to the prevention of oppression and mismanagement put restrictions on the powers of the directors and maintain a balance between shareholders and directors?
5. How a balance can be maintained between ownership and management in company form of business?

1.7 Research design:

1.7.1 Nature of research:

In this work I undertake doctrinal research i.e. by analyzing the legal provisions, case law and legal institutions.

1.7.1.1 Sources of data:

1.7.1.1.1 Primary data:

In this work primary data includes:

1. The Companies Act, 2013
2. The Companies Act, 1956

1.7.1.1.2 Secondary data:

Books:

1. Company law by Dr. G.K. Kapoor &Sanjay Dhamija, 17th Edition, Taxmann Publications (P.) Ltd.
2. Company Law by Avtar Singh, 16th Edition, 2015, Eastern book company.

Articles:

1. What Is the Difference Between a Shareholder and Ownership Interest in Corporation? by Tiffany C. Wright at http://yourbusiness.azcentral.com/difference-between-shareholder-ownership-interest-corporation-24705.html
2. Companies act 2013 :rise of minority shareholder by Akshat Sulalit at http://indialawjournal.com/volume6/issue-2/article5.html
3. Do shareholders own a corporation?" By Roger Donway at http://atlassociety.org/commentary/capitalism-and-morality/capitalism-morality-blog/3623-do-shareholders-own-a-corporation.

1.7.1.2 Methods of data collection:

I have collected data for this paper by:

1. Going to the library.
2. By browsing various websites.

2. COMPANY FORM OF BUSINESS ORGANIZATION

2.1 Basic attributes of company form of business

A company is an artificial person in the sense that it is created by law and does not possess physical attributes of a natural person. It cannot eat or walk, smile or marry, read or write. However, it has a legal status like a natural person.

The formation of a joint stock company is time consuming and it involves preparation of several documents and compliance of several legal requirements before it starts its operation. A company comes into existence only when it is registered under the Companies Act.

Being an artificial person, a company exists independent of its members. It can make contracts, purchase and sell things, employ people and conduct any lawful business in its own name. It can sue and can be sued in the court of law. A shareholder cannot be held responsible for the acts of the company.[2]

Since a company has no physical existence, it must act through its Board of Directors. But all contracts entered by them shall have to be under the common seal of the company. This common seal is the official signature of the company. Any document with the common seal and duly signed by an officer of the company is binding on the company.

The Company enjoys continuous existence. Death, lunacy, insolvency or retirement of the members does not affect the life of the company. It goes on forever. Since it is created by law, it can only be dissolved by law.

The company form of business is able to attract large number of people to invest their money in shares because it offers them the facility of limited risk and liability. The liability of a member is limited to the extent of the amount of shares they holds. In other words, a shareholder can be held liable only to the extent of the face value of the shares he holds, and if he has already paid it, which is normally the case, he cannot be asked to pay any further amount. For example, if 'A' holds one share of Rs.100 and has paid Rs.75 on that share, his liability would be limited only up to Rs.25.

[2] Salomon vs. Salomon&co.

The members of the company (Public company) are free to transfer the shares held by them to others as and when they like. They do not need the consent of other shareholders to transfer their shares.

The Companies Act 2013 provides about the membership of company as follows:

A company may be formed for any lawful purpose by—

(a) Seven or more persons, where the company to be formed is to be a public company;

(b) Two or more persons, where the company to be formed is to be a private company; or

(c) One person, where the company to be formed is to be One Person Company that is to say, a private company.[3]

People of different categories and areas contribute towards the capital of a company, so it is not possible for them to look after the day-to-day management of the company. They may take part in deciding the general policies of the company but the day-to-day affairs of the company are managed by their elected representatives, called Directors.

2.2 Worthiness of company form of business

The biggest advantage of a company organization is that it has the ability to collect large amounts of funds. This is because a company can raise capital by issuing shares to a large number of persons. Shares of small value can be subscribed even by people with small savings. In addition, company can also raise loans from the public as well as different lending institutions. Availability of necessary funds makes it possible for a company to undertake business activities on a large scale.

Another advantage of the company form of organization is the limited liability of members. With the liability of members limited to the value of their shares, company is able to attract many people to invest in its shares. It is thus in a position to undertake business ventures involving risks.

A company permits its members to transfer their shares. Free transferability of shares provides liquidity of the member's investment. Thus, if a member needs cash he can sell his shares and he can use the same amount to buy shares of another more profitable company. It enables profitable companies also to attract funds away from the less profitable ones.

A company is the only form of organization which enjoys continuous existence and stability and any change in the company's membership does not affect its life. As a result of this, a company can undertake projects of long duration and attract people to invest in the business of the company.

With the large resources at its command a company can organize business on a large scale. Once the business is started on a large scale it gives the company strength to grow and expand.

Since a company undertakes large-scale activities, it requires the services of expert professionals. Competent professionals for management can be easily hired by a company because it commands large financial resources. Thus, efficient management is ensured in a company organization.

A company enjoys great confidence and trust of the general people. Companies have to disclose the results of their activities and financial position in the annual reports. The reports are available to the public. It is on the basis of the annual reports and other information that investment is made in companies.

Apart from the benefits mentioned above, a company organization also offers the following social benefits:

1. In the company form of organization, management of business is entrusted to the elected representative of shareholders that is the directors. As a result of democratic management the business of company is run in the best interest of the majority shareholders.

[3] Sec. 3 of Companies Act 2013.

2. Since a large number of persons are associated with a company as members, its ownership is widely held. Thus the benefits of the company's operations are distributed among a large section of people.

2.3 Weakness of company form of business

The registration of a company is a long-drawn process. A number of documents are to be prepared and filled. For preparing documents experts are to be hired who charge heavy fees. Besides, registration fees have also to be paid to the Registrar of Companies.

A company is subject to government regulations at every stage of its working. A company has to file regular returns and statements of its activities with the Registrar. There is a penalty for non-compliance of the legal requirements. Filing returns and reports involving considerable time and money is the responsibility of a company. All this reduces flexibility in operations.

The Company is not managed by shareholders but by directors and other paid officials. Officials may not have investment in the company and also did not bear the risks. As such, they may not be as much motivated to safeguard the interests of the company as the shareholders.

In large companies, decision making and its implementation happen to be a time consuming process. This is obviously because individual managers are unable to take decisions on their own. They may have to consult others which may take a lot of time. Similarly, after decisions are taken, they have to be communicated to people working at various levels of the organization. It also delays the implementation of already delayed decisions.

A company is generally characterized a large organization with many groups operating in it. So long as the interests of these groups do not clash with each other they work for the good of the organization. But sometimes, individual and group interests become difficult to reconcile. For instance, the sales manager may be interested in the quality of products to satisfy customers and to increase sales, but the production manager may be more concerned with maximum production without regard to the product quality. In such a situation, the business is bound to suffer in course of time unless there is a reconciliation of the conflicting view points of the two managers.

The company management may seem to be fully democratic, but in actual practice, it is the worst form of oligarchy i.e. control by a small group of persons. People who are once elected as directors of a company adopt various means to get themselves re-elected over and again. Such individuals often exploit the company for personal interests instead of working in the interest of shareholders.

In speculation, profit is fought to be made by manipulating prices of shares without actually holding shares. A company organization provides scope for speculation in shares by the directors. Because directors have knowledge of all information about the functioning of the Company, they can use it for their personal advantages. For example, directors may sell or buy shares knowing that prices will decline or go up because of low or high profits. As a result of this, innocent shareholders may suffer loss.

A company because of its large size has the tendency to grow into a monopoly so as to eliminate competition, control the market and charge unreasonable prices to maximize profits.

Big companies are generally in a position to influence government officials to make decision in their favour. This is because such companies have large financial resources and are in a position to bribe even high officials.

From the preceding discussion it is clear that the company form of business is best suited to those lines of business activity which are to be organized on a large scale, require heavy investment of capital with limited liability of members. That is why enterprises producing steel, automobiles, computers and high technology products are generally organized as companies

3. OWNERSHIP AND MANAGEMENT IN COMPANY

3.1 Ownership in a company form of business

It is due to the presumption of law that company is considered as a separate legal entity but in reality it is the money of shareholders (who are called owners) through which company conducts its business and the management is in the hands of the board of directors.

A corporation belongs not to its executives but to an ever-shifting group of anonymous shareholders. And the business must be run by its directors and executives for one and only one purpose: ***maximizing shareholder wealth.*** Whatever actions are demanded by consumers' dollars, those actions must be performed by the men running a company. Corporations are about profits, not prophets.

In 1970, ***Milton Friedman*** gave the classic statement of the view that ***shareholders are the true owners of the corporation and executives are merely their employees.*** He wrote:

In a free-enterprise, private-property system, a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society.

Corporate executives, and those who carry their water, dismiss shareholder activists these days as promoters of hidden agendas that have no place in the financial markets. Stockholders interested in making executives more accountable to their owners, the shills say, are really pushing labor union participation or kooky environmental issues and are generally to be ignored. Many activists have the sole goal of pressuring executives to remember that they are hired help and are supposed to be working for their bosses (also known as shareholders).[4]"Shareholders are owners. Executives are servants. Shut up and listen to your masters."[5]

The long-term goal of a company is to maximize wealth for its shareholders. But it is obliged to do that only through its particular line of work. And that line of work is not defined by the general type of good or service it provides. Rather, as ***Mackey*** says, a company's purpose is defined by a corporate vision, set down by its board or CEO. Adherence to the corporate vision is what gives a company its integrity, and the primary duty of the man running the company is to ensure it adheres to that vision. In this way, the corporation does indeed become his lengthened shadow.

Shareholders own companies and Managers and directors should serve them. If the owners do not like the way their servants are performing, they have a right to do something about it. Trying to improve the way a firm is run is more constructive than the traditional "Wall Street walk", whereby disgruntled shareholders simply sell their shares.

Corporations are often the vehicle of choice for entrepreneurs who want to raise money to capitalize and expand their businesses. The corporate structure and the protections it provides, in addition to the amount of business case law that exists, makes corporations attractive to potential investors and co-owners. Owners in a corporation are shareholders. As owners, shareholders have an ownership interest in the corporation.

On the following grounds we can say that shareholders are the owners of the company:

Shareholders, or stockholders, own shares in a corporation. As a shareholder, we may own one share or thousands of shares. In the past, corporations issued stock certificates denoting the number of shares we owned. However, in more recent years, most private corporations simply track who owns what number of shares. We may be the sole shareholder or one of thousands. In the

[4] Gretchen Morgenson In her column of December 3, 2006, New York Times business journalist.

[5] In Robert Hessen's book Defense of the Corporation 1979.

United States, there are generally no restrictions on who can be a shareholder. A shareholder can be an individual, a partnership, an LLC or another corporation, a U.S. citizen or a foreigner.[6]

An ownership interest is how much of something we own. ***A share indicates how much ownership we have in a corporation.*** For example, if a corporation issues 10,000 shares and we own 1,000 shares, we have a 10 percent ownership interest in the corporation. If we own all 10,000 shares, we are the sole shareholder and have a 100 percent ownership interest. If we own 1,000 shares in a publicly traded corporation, our ownership interest may be less than 0.1 percent.

With corporations, it is relatively easy to sell our ownership interest compared to other business forms. With publicly traded corporations, we can execute a trade agreement online or with our broker and sell our shares almost immediately. With private companies it takes more effort because information is not publicly or readily available which is necessary to find interested buyers and provide them with the information they need to decide whether they want to buy.

Some private corporations have buy-sell agreements that outline ownership transfer rights. In addition, corporations may repurchase shares from shareholders using a predetermined calculation. That calculation is typically included in the buy-sell agreement. When we transfer or assign our shares in a corporation to someone else or to another entity, we transfer our ownership rights by signing over our shares and we no longer remains the shareholder and the person or entity to whom share has been transferred becomes the shareholder.

Thus the shareholders are deemed to be the owners in a company form of business. Their membership is in proportion to the extent of the share in the share capital of the company. No shareholder can claim ownership in corporation individually but the ownership is deemed to be vested in them collectively.

3.2 Management in company form of business

A board of directors is a body of elected or appointed members who jointly oversee the activities of a company or organization. The management of a company is in the hands of board of directors. It is the board of directors who manage almost all the affairs of the company.

A board's activities are determined by the powers, duties, and responsibilities delegated to it or conferred on it by an authority outside itself. These matters are typically detailed in the organizations by laws. The bylaws commonly also specify the number of members of the board, how they are to be chosen, and when they are to meet. However, these bylaws rarely address a board's powers when faced with a corporate turnaround or restructuring, where board members need to act as agents of change in addition to their traditional fiduciary responsibilities.

3.2.1 Duties of the board of directors

The following are the duties of board of directors:

1. governing the organization by establishing broad policies and objectives;
2. selecting, appointing, supporting and reviewing the performance of the chief executive;
3. ensuring the availability of adequate financial resources;
4. approving annual budgets;
5. accounting to the stakeholders for the organization's performance;
6. setting the salaries and compensation of company management;

[6] What Is the Difference Between a Shareholder and Ownership Interest in Corporation? By Tiffany C. Wright at http://yourbusiness.azcentral.com/difference-between-shareholder-ownership-interest-corporation-24705.html.

The legal responsibilities of boards and board members vary with the nature of the organization, and with the jurisdiction within which it operates.

The board of directors shall not be given unfettered powers. It must act according to the law and the provisions of Memorandum Of Association and Article Of Association. The restrictions are imposed on the board of directors in the following manner:

A board of directors conducts its meetings according to the rules and procedures contained in its governing documents. These procedures may allow the board to conduct its business by conference call or other electronic means. They may also specify how a quorum is to be determined. In most legal systems, the appointment and removal of directors is voted upon by the shareholders in general meeting or through a proxy statement.

Directors may also leave office by resignation or death. In some legal systems, directors may also be removed by a resolution of the remaining directors [7]. Some jurisdictions also permit the board of directors to appoint directors, either to fill a vacancy which arises on resignation or death, or as an addition to the existing directors.

In practice, it can be quite difficult to remove a director by a resolution in general meeting. In many legal systems, the director has a right to receive special notice of any resolution to remove him or her,[8] the company must often supply a copy of the proposal to the director, who is usually entitled to be heard by the meeting.[9]The director may require the company to circulate any representations that he wishes to make.[10]Furthermore, the director's contract of service will usually entitle him to compensation if he is removed, and may often include a generous "golden parachute" which also acts as a deterrent to removal.

The exercise by the board of directors of its powers usually occurs in board meetings. Most legal systems require sufficient notice to be given to all directors of these meetings, and that a quorum must be present before any business may be conducted. Usually, a meeting which is held without notice having been given is still valid if all of the directors attend, but it has been held that a failure to give notice may negate resolutions passed at a meeting, because the persuasive oratory of a minority of directors might have persuaded the majority to change their minds and vote otherwise.[11]

In most common law countries, the powers of the board are vested in the board as a whole, and not in the individual directors.[12]However, in some instances an individual director may still bind the company by his acts by virtue of his ostensible authority.[13]

Because directors exercise control and management over the organization, but organizations are (in theory) run for the benefit of the shareholders, the law imposes strict duties on directors in relation to the exercise of their duties. The duties imposed on directors are fiduciary duties, similar to those that the law imposes on those in similar positions of trust such as agents and trustees.

These duties apply to each director separately, while the powers is vested in the board jointly. Also, the duties are owed to the company itself, and not to any other entity.[14]This does not mean that directors can never stand in a fiduciary relationship to the individual shareholders; they may well have such a duty in certain circumstances.[15]

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[7] in some countries they may only do so "with cause"; in others the power is unrestricted.

[8] In the United Kingdom it is 28 days' notice, sections 303(2) and 379 of the Companies Act 1985. A private company cannot use a written resolution under section 381A – a meeting must be held.

[9] In the United Kingdom, section 304(1) of the Companies Act 1985.

[10] In the United Kingdom, sections 303(2) and (3) of the Companies Act 1985.

[11] *Barber's Case* (1877) 5 Ch D 963 and *Re Portuguese Consolidated Copper Mines* (1889) 42 Ch D 160.

[12] *Breckland Group Holdings Ltd v London and Suffolk Properties* [1989] BCLC 100.

[13] the rule in *Turquand's Case*.

[14] *Percival v Wright* [1902] Ch 421.

[15] For example, if the board is authorised by the shareholders to negotiate with a takeover bidder. It has been held in *Coleman v Myers* [1977] 2 NZLR that "depending upon all the surrounding circumstances and the nature of the responsibility in a real and practical sense the director has fiduciary duties towards the shareholders."

Directors must exercise their powers for a proper purpose. While in many instances an improper purpose is readily evident, such as a director looking to feather his or her own interest or divert an investment opportunity to a relative, such breaches usually involve a breach of the director's duty to act in good faith. Greater difficulties arise where the director, while acting in good faith, is serving a purpose that is not regarded by the law as proper. The seminal authority in relation to what amounts to a proper purpose is the Supreme Court decision in ***Eclairs Group Ltd v JKX Oil & Gas plc***[16]. This case was concerned with the powers of directors under the articles of association of the company to disenfranchise voting rights attached to shares for failure to properly comply with notice served on the shareholders. Prior to this case the leading authority was **Howard Smith Ltd v Ampol Ltd.** [17]this case was concerned with the power of the directors to issue new shares.[18]It was alleged that the directors had issued a large number of new shares purely to deprive a particular shareholder of his voting majority. An argument that the power to issue shares could only be properly exercised to raise new capital was rejected as too narrow, and it was held that it would be a proper exercise of the director's powers to issue shares to a larger company to ensure the financial stability of the company, or as part of an agreement to exploit mineral rights owned by the company.[19] If so, the mere fact that an incidental result (even if it was a desired consequence) was that a shareholder lost his majority, or a takeover bid was defeated, this would not itself make the share issue improper. But if the sole purpose was to destroy a voting majority, or block a takeover bid, that would be an improper purpose. Not all the jurisdictions had recognized the "proper purpose" duty as separate from the "good faith" duty.[20] ***However Directors cannot, without the consent of the company, fetter their discretion in relation to the exercise of their powers, and cannot bind themselves to vote in a particular way at future board meetings.***[21] This is so even if there is no improper motive or purpose, and no personal advantage to the director. This does not mean, however, that the board cannot agree to the company entering into a contract which binds the company to a certain course, even if certain actions in that course will require further board approval. The company remains bound, but the directors retain the discretion to vote against taking the future actions (although that may involve a breach by the company of the contract that the board previously approved).

As fiduciaries, the directors may not put themselves in a position where their interests and duties conflict with the duties that they owe to the company. The law takes the view that justice must not only be done, but must be manifestly seen to be done, and zealously patrols the conduct of directors in this regard; and will not allow directors to escape liability by asserting that his decision was in fact well founded. Traditionally, the law has divided conflicts of duty and interest into three sub-categories.

Where a director enters into a transaction with a company, there is a conflict between the director's interest (to do well for himself out of the transaction) and his duty to the company (to ensure that the company gets as much as it can out of the transaction). This rule is so strictly enforced that, even where the conflict of interest or conflict of duty is purely hypothetical, the directors can be forced to disgorge all personal gains arising from it. In ***Aberdeen Ry v Blaikie***[22] Lord Cranworth stated in his judgment that:

"A corporate body can only act by agents, and it is, of course, the duty of those agents to act as best to promote the interests of the corporation whose affairs they are conducting. Such agents have fiduciary duties to discharge of towards their principal. And it is a rule of universal application that no one, having such duties to discharge, shall be allowed to enter into engagements in which he has, or can have, a personal interest conflicting or which possibly may conflict, with the interests of those whom he is bound to protect... So strictly is this principle adhered to that no question is allowed to be raised as to the fairness or unfairness of the contract entered into..."

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[16] [2015] UKSC 71 (2 December 2015).

[17] [1974] AC 821.

[18] Following *Hogg v Cramphorn Ltd* [1967] Ch 254

[19] *Teck Corporation v Millar* (1972) 33 DLR (3d) 288.

[20] This decision was rejected in British Columbia in *Teck Corporation v Millar* (1972) 33 DLR (3d) 288

[21] Clark v Workman [1920] 1 Ir R 107 and Dawson International plc v Coats Paton plc 1989 SLT 655

[22] (1854) 1 Macq HL 461.

However, in many jurisdictions the members of the company are permitted to ratify transactions which would otherwise fall foul of this principle. It is also largely accepted in most jurisdictions that this principle can be overridden in the company's constitution.

In many countries, there is also a statutory duty to declare interests in relation to any transactions, and the director can be fined for failing to make disclosure.[23]

Directors must not, without the informed consent of the company, use for their own profit the company's assets, opportunities, or information. This prohibition is much less flexible than the prohibition against the transactions with the company, and attempts to circumvent it using provisions in the articles have met with limited success.

In ***Regal (Hastings) Ltd v Gulliver***[24] the House of Lords, in upholding what was regarded as a wholly unmeritorious claim by the shareholders,[25] held that:

1. what the directors did was so related to the affairs of the company that it can properly be said to have been done in the course of their management and in the utilization of their opportunities and special knowledge as directors; and
2. what they did resulted in profit to themselves.

And accordingly, the directors were required to disgorge the profits that they made, and the shareholders received their windfall. This decision has been followed in several subsequent cases, and is now regarded as settled law.

Directors cannot compete directly with the company without a conflict of interest arising. Similarly, they should not act as directors of competing companies, as their duties to each company would then conflict with each other. For example Company A owned a cinema, and the directors decided to acquire two other cinemas with a view to selling the entire undertaking as a going concern. They formed a new company ("Company B") to take the leases of the two new cinemas. But the lessor insisted on various stipulations, one of which was that Company B had to have a paid up share capital of not less than £5,000 (a substantial sum at the time). Company A was unable to subscribe for more than £2,000 in shares, so the directors arranged for the remaining 3,000 shares to be taken by themselves and their friends. Later, instead of selling the undertaking, they sold all of the shares in both companies and made a substantial profit. The shareholders of Company A sued asking that directors and their friends to disgorge the profits that they had made in connection with their 3,000 shares in Company B – the very same shares which the shareholders in Company A had been asked to subscribe (through Company A) but refused to do so.

Traditionally, the level of care and skill which has to be demonstrated by a director has been framed largely with reference to the non-executive director. In ***Re City Equitable Fire Insurance Co***,[26] it was expressed in purely subjective terms, where the court held that:

"A director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience."

However, this decision was based firmly in the older notions that prevailed at the time as to the mode of corporate decision making, and effective control residing in the shareholders; if they elected and put up with an incompetent decision maker, they should not have recourse to complain.

However, a more modern approach has since developed, and in ***Dorchester Finance Co Ltd v Stebbing***[27] the court held that the rule in *Equitable Fire* related only to skill, and not to diligence. With respect to diligence, what was required was:

"Such care as an ordinary man might be expected to take on his own behalf."

[23] In the United Kingdom, section 317 of the Companies Act 1985.

[24] [1942] All ER 378

[25] Industrial Development Consultants v Cooley [1972] 1 WLR 443, Canadian Aero Service v. O'Malley (1973) 40 DLR (3d) 371.

[26] [1925] Ch 407.

[27] [1989] BCLC 498.

This was a dual subjective and objective test, and one deliberately pitched at a higher level. More recently, it has been suggested that both the tests of skill and diligence should be assessed objectively and subjectively; in the United Kingdom, the statutory provisions relating to directors' duties in the new Companies Act 2006 have been codified on this basis.

3.2.2 Remedies for breach of duties

In most jurisdictions, the law provides for a variety of remedies in the event of a breach by the directors of their duties. Some of them are as follows:

1. injunction or declaration;
2. damages or compensation;
3. restoration of the company's property;
4. rescission of the relevant contract;
5. account of profits; and
6. summary dismissal.

4. PREVENTION OF OPPERSSION AND MISMANAGEMENT

A company in a broad sense is a group of persons who have come together or who have contributed money for some common purpose and have incorporated themselves into distinct legal entity. Company is the amalgamation of two distinct words- "com" and "pain", the former meaning with/together and the later meaning "bread". The whole scheme of the Companies Act, 1956 and 2013 is to ensure proper conduct of the affairs of the company in public interest and preservation of image of country in public interest.

Majority rule is hallmark of democracy. It equally applies to corporate democracy and is not free from pitfalls and abuse. Corporate democracy is more vulnerable to it because it is reckoned with the number of shares and not with number of individuals involved. The rule of majority has been made applicable to the management of the affairs of the company. The members pass resolution on various subjects either by simple or three-fourth majority. Once resolution is passed by majority it is binding on all members. As a resultant corollary, court will not ordinarily intervene to protect the minority interest affected by resolution. However there are exceptions to this rule- ***Prevention of Oppression and mismanagement being one such ground.***

4.1 Meaning of oppression and mismanagement

The Oppression of small/minority shareholders take place by majority shareholders who controls the company. It is understood as an act or omission on the part of management which implies majority, who holds or controls the management. ***When affairs of the company are being conducted in a manner prejudicial to public interest or in a manner oppressive to any member or members, it is said to be oppression.***[28]

Similarly, mismanagement is not uncommon in companies. It means mismanagement of resources by following means:

1. Absence of basic records of the company;
2. Drawing considerable expenses for personal purposes by directors/management of the company;
3. Non-filing of documents with The Registrar of Companies relating to compliances under The Companies Act,2013;

[28] Section 397(1) of CA 1956

4. Misuse of companies finances/funds;
5. Sale of assets at very low prices;
6. Violation of provisions of law and memorandum or article of association of the company;
7. Making Secret Profits;
8. Diverting company funds for personal use of directors; and
9. Continuation in office by director beyond the specified term and not holding any qualification shares.

Mismanagement means 'conducting the affairs of the company in a manner prejudicial to public interest or in a manner prejudicial to the interests of the company or there has been a material change in the management and control of the company, and by reason of such change it is likely that affairs of the company will be conducted in a manner prejudicial to public interest or interest of the company'.[29]

4.2 Prevention of oppression and mismanagement

Companies Act, 1956 provides for protection of the minority shareholders from oppression and mismanagement by the majority under Section 397 (*Application to Company Law Board for relief in cases of oppression*) and 398 (*Application to Company Law Board for relief in cases of mismanagement*). Right to apply to the Company Law Board in case of oppression and/or mismanagement is provided under Section 399 to the minority shareholders meeting the ten percent shareholding or hundred members or one-fifth members limit, as the case may be.

However, the Central Government is also provided with the discretionary power to allow any number of shareholders and/or members to apply for relief under Section 397 and 398 in case the limit provided under Section 399 is not met.

On the other hand, ***Companies Act, 2013*** provides for provisions relating to oppression and mismanagement under Sections 241-246. ***Section 241*** provides that an application for relief can be made to the Tribunal in case of oppression and mismanagement. ***Section 244(1)*** provides for the right to apply to Tribunal under Section 241, wherein the minority limit is same as that mentioned in Companies Act, 1956. Under Companies Act, 2013, the Tribunal may also waive any or all of the requirements of Section 244(1) and allow any number of shareholders and/or members to apply for relief. This is a huge departure from the provisions of Companies Act, 1956 as the discretion which was provided to the Central Government to allow any number of shareholders to be considered as minority is, under the new Companies Act, 2013 has been given to the Tribunal and therefore is more likely to be exercised.

4.2.1 Provisions of Companies Act, 1956 vis-a-vis Companies Act, 2013:

1. Provision of Section 397 and 398 of Companies Act,1956 are combined in Section 241 of Companies Act,2013 and accordingly applications for relief in cases of oppression, mismanagement etc. will have to be directed to the Tribunal.
2. While the powers of the Tribunal under Companies Act,1956 on application under Section 397 or 398 and Section 404 were limited, Companies Act, 2013 granted ***additional powers to the Tribunal*** including:

(A) restrictions on the transfer or allotment of the shares of the company;
(B) removal of the managing director, manager or any of the directors of the company;
(C) recovery of undue gains made by any managing director, manager or director during the period of his appointment as such and the manner of utilization of the recovery including transfer to Investor Education and Protection Fund or repayment to identifiable victims;

[29] Section 398 (1) of CA 1956.

(D) 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 company;

(E) 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; and

(F) imposition of costs as may be deemed fit by the Tribunal.

3. The requirement of establishing existence of 'just and equitable' circumstances to waive any and all requirements of the section pertaining to the meeting the minimum minority limits and providing 'security' while allowing such an application are excluded from the Companies Act, 2013.

4. Further, by way of Section 245, Companies Act, 2013 has introduced the concept of class action which was non-existent in Companies Act 1956.

4.2.2 Class action:

Section 245 of Companies Act, 2013 provides for class action to be instituted against the company as well as the auditors of the company. The Draft Companies Rules allow for this class action to be filed by the minority shareholders under Clause 16.1 of Chapter-XVI (*Number of members who can file an application for class action*). On close reading of Section 245 of the Companies Act, 2013, it can be seen that the intent of the section is not only to empower the minority shareholder and/or members of the company but also the depositors. Unlike Section 399 of Companies Act,1956 which provides for protection to only shareholder/members of the company, Section 245 of Companies Act, 2013 also extends this protection to the class of depositors as well. However, in the current scenario, the provision of representation of a class of members or depositors by a particular member or depositor lacks clarity.

Sub-section (1) of Section 245 provides, *"such number of member or members, depositor or depositors or any class of them, as the case may be, as are indicated in sub-section (2) may, 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, file an application before the Tribunal on behalf of the members or depositors for seeking all or any of the following orders …".*

Besides, there being a typographical error in this sub- section (1) with respect to indicating sub-section (2) instead of sub-section (3) which provides for the minimum number of members who can apply for class action there is also some confusion as to the class on whose behalf such class action can be instituted. While member has been defined in the Companies Act,2013 as including the subscriber to the memorandum of the company, shareholders and person whose name is entered in the register of members; definition depositor is not provided under Companies Act, 2013.

Further, section 245 does not empower the Tribunal with discretionary power to admit/allow any class suit wherein class of members or depositors are unable to comply with the minimum number of members/depositors requirement to be laid down in the Companies Rules. Also, on a close reading of Section 241 and Section 245 of the Companies Act, 2013, we can find duplication in protection provided to the members in case affairs of the company are conducted in a manner prejudicial to the interest of company/members.

4.2.3 Reconstruction and amalgamation

With respect to minority shareholder rights at the time of reconstruction and amalgamation of companies, Companies Act, 1956 under Section 395 states that transfer of shares or any class of shares of a company (transferor company) to another company (transferee company), has to be approved by holders of at least nine-tenths (9/10) in value of the shares whose transfer is involved within four months after the offer has been made by the transferee company. Herein it is important to note that consent of 90%

(ninety percent) shareholders is required, which is referred to as majority. The section further provides that within two months after the lapse of the aforementioned four months, the transferee company shall give a notice to any dissenting shareholders expressing its desire to acquire their shares. Herein, the term ***'dissenting shareholder'*** is defined under Section 395(5)(a) as including shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract. As the ninety percent (90%) shareholders in this section are referred to as majority, the remaining ten percent (10%) dissenting shareholders can be referred to as minority. This section further goes on to provide that once the notice is provided to the dissenting shareholders, unless the dissenting shareholders make an application to the Tribunal within a month of such notice, transferee company shall be entitled to the shares of the dissenting shareholders and such shares shall be transferred to the transferee company. If the transferee already owns ten percent (10%) or more of such shares then the scheme needs to be approved by shareholders holding ninth- tenth (9/10) in value and being three-fourth (3/4) in number of the shareholders holding such shares. In such a case, the dissenting shareholder ought to be offered the same price as the other shareholders. However, this section has seldom been used and instead recourse has been to Section 100 of Companies Act, 1956 to eliminate the minority. Section 100 provides that the capital of the company may be reduced in any manner whatsoever by way of a special resolution i.e. assent of seventy-five (75%) shareholders present and voting subject to approval of the courts.

To counter these shortcomings, Companies Act, 2013 has provided for Section 235 (*Power to acquire shares of shareholders dissenting from scheme or contract approved by majority*) and 236 (*Purchase of Minority Shareholding*). Section 235 is corresponding to Section 395 of Companies Act,1956 and provides that transfer of shares or any class of shares in the transferor company to transferee company requires approval by the holders of not less than nine-tenths (9/10) in value of the shares whose transfer is involved and further the transferee company may, give notice to any dissenting shareholder that it desires to acquire his shares.

Section 235 makes it mandatory for the majority shareholders to notify the company of their intention to buy the remaining equity shares the moment acquirer, or a person acting in concert with such acquirer, or group of persons becomes the registered holder of ninety per cent (90%) or more of the issued equity share capital of a company. It further provides that such shares are to be acquired at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

Companies Act, 2013, in addition to minor improvements to certain provisions of Companies Act, 1956 has also introduced new provisions affecting the reconstruction and amalgamation procedures as follows:

1. Companies Act,2013 vide Section 235(4) in respect of 'Dissenting Shareholders' provides that the sum received by the transferor company must be paid into separate bank account within the specified period of time as against the provision mentioned in Section 395(4)of Companies Act,1956 which lacked clarity on this aspect;
2. As per Companies Act,2013, Section 236 (1) and (2), the Acquirer on becoming registered holder of ninety percent (90%) or more of issued equity share capital shall offer minority shareholder for buying equity shares at the determined value;
3. Section 236 (3) of Companies Act,2013 has provided the minority with an option to make an offer to the majority shareholders to buy its shares; and
4. Section 236 (5) of Companies Act,2013 requires the transferor company to act as a transfer agent for making payments to minority shareholders.

4.2.4 Minority upgraded

Besides the above, Companies Act, 2013 has sought to empower the minority shareholders in corporate decision making also. Section 151 of the Companies Act, 2013 requires listed companies to appoint directors elected by small shareholders, i.e.

shareholders holding shares of nominal value of not more than twenty thousand rupees (INR 20,000/-). The Draft Companies Rules elaborates the provision in this regard under Clause 11.5 of Chapter XI and provides that *a listed company may either suo-moto or upon the notice of not less than five hundred (500) or one-tenth (1/10) of the total number of small shareholders, whichever is less, elect a small shareholders' director from amongst the small shareholders.* Here, it is important to note that small shareholders are different from the minority shareholders as small shareholders are ascertained according to their individual shareholding which should be less than twenty thousand rupees (INR 20,000/-); whereas minority shareholders/shareholding is collectively ascertained and regarded as having non-controlling stake in the company. However, small shareholders can be included in and/or regarded as minority shareholders by virtue of their small shareholding amounting to non-controlling stake in the company.

The Draft Companies Rules further provides for the procedure for nomination of a small shareholder director and the information and declaration to be provided in this regard. To safeguard the interest of the small shareholder and to maintain the independent decision making by such directors, the Draft Companies Rules provides that such director shall not be liable to retire by rotation and shall have tenure of three years. However, the small shareholder director will not be eligible for reappointment.

Sub-Clause (4) of Clause 11.5 of the Draft Companies Rules provides that "*such director shall be considered as an independent director subject to his giving a declaration of his independence in accordance with sub-section (7) of Section 149 of the Act*." Meaning thereby, that small shareholder director may or may not be an independent director. However, the Draft Companies Rules provides under Sub-Clause (5) of Clause 11.5 that such office shall be vacated if the director inter alia cease to be an independent director. Now, while Sub-Clause (4) of Clause 11.5 makes it optional for the small shareholder director to be an independent director; Sub-Clause (5) of Clause 11.5 makes it mandatory for the small shareholder director to be an independent director and to maintain its independence throughout its term thereby creating confusion. It is expected that this inconsistency may be addressed while finalizing the Draft Company Rules. While empowering the minority/small shareholders in the decision making process, the Companies Act, 2013 endeavors to further its present provisions to safeguard the interest of minority shareholders through appointment of independent directors.

The 'Code of Independent Directors' provided pursuant to Section 149(8) in Schedule IV of the Companies Act, 2013, provides that independent directors shall inter alia work towards promoting the confidence of minority shareholders.

Upon careful examination of the provisions of the Companies Act, 2013 it can be ascertained that legislative intent in Companies Act, 2013 is to safeguard the minority interest in a more comprehensive manner. However, the provisions of CA 2013 not only requires proper implementation upon addressing the present lacunas but also requires instilling confidence in the minority shareholders with respect to the institutional and regulatory mechanism which ensures that interest of minority shareholders shall be given due consideration. This dual approach towards enforcement of minority rights shall only guarantee proper administration of the corporate activities.

5. MAJORITY RULE AND MINORITY PROTECTION

The principle of rule by majority has been applicable to management of the affairs of the companies. The members pass resolutions on various subjects either by simple majority or three-forth majority. Once a resolution is passed by the requisites majority then it is binding on all members of the company. Generally the court will not interfere to protect the minority interest affected by the resolution, as on becoming member, each person impliedly consents to submit to the will of the majority of the members. Thus if a wrong is done to the company, it is the company which is legal entity having its own personality, and he can only institute a suit against the wrongdoer; and shareholders individually do not have a right to do so. The aforesaid rule was laid down in the leading case of ***Foss vs. Harbottle***.[30]

[30] [1843] Hare 461.

Similarly, in ***Rajamundry Supply Co. vs. Nageshavra Rao***[31] the Supreme Court observed that: "The court will not, in general, intervene at the instance of shareholders in the matters of internal administration, and will not interfere with the management of the company by its directors so long as they are acting within the powers conferred on them under article of the company. Moreover, if the directors are supported by majority shareholders in what they do, the minority shareholders can, in general, do nothing to do about it."

5.1 Personal rights of members

It should be noted that the principle of ***Foss vs. Harbottle*** applies only where a corporate right of a member is infringed. ***The rule does not apply where an individual right of a member is denied.*** The individual right of a member is arise in part from the contract between the company and himself which is implied on his becoming a member, and in part from the general law. Under the contract implied from his membership, he is entitled to have his name and shareholding entered on the register of members and to prevent unauthorized additions and alterations to the entry,[32]to vote at meeting of the members,[33]to receive dividends which has been duly declared or which have become due under the articles,[34]and to have his capital returned in proper order of priority in the winding up of the company or on a duly authorized reduction of capital.[35] Under the general law he is entitled to restrain the company from doing acts which are ultra-virus;[36]to have a reasonable opportunity to speak at meetings of members[37]and to move amendments to resolutions proposed at such meetings,[38]to transfer his shares,[39]not to have his financial obligations to the company increased without his consent,[40]and to exercise very many rights conferred on him by the Companies Act, 2013.

5.2 Exceptions to the rule in Foss Vs. Harbottle

In the following cases the rule in ***Foss vs. Harbottle*** does not apply, i.e., the minority can bring an action to protect their interest:

1. The rule in ***Foss vs. Harbottle*** does not apply where the act complained of is ultra vires the company.[41]
2. A derivative action may be brought against directors and promoters who have been guilty of breach of their fiduciary duties to the company, if they are able to prevent the company from suing them in its own name because they control a majority of the votes at general meeting from resolving that the company shall sue them.
3. Where a majority of company members use their power to defraud or oppress the minority, their conduct is liable to impeached even by a single shareholder.[42]

[31] AIR1956 SC213.

[32] Re British Sugar Refining Co.(1857)4 k&j 408.

[33] Pender vs. Lushington[1877]6Ch.D. 70.

[34] Woods vs. Odessa Waterworks Co. [1889] 42 Ch.D. 636.

[35] Griffith vs. Paget[1877]5 Ch.D.894.

[36] Simpson vs. Westminster hotel place co.[1860] 8HLCas.712.

[37] Wall vs. London and Northern Assets Corpn. [1898] 2 Ch.469.

[38] Henderson vs Bank of Australia[1890]45 Ch.D.330.

[39] Re Smith Knight & Co. Weston case[1868] 4 Ch. App 20.

[40] Hole vs. Garnsey[1930] AC472.

[41] Edwards vs. Halliwell[1950] 2 ALLER 1064,1067.

[42] Ibid.

4. It has been held in many cases that if an insufficiently informative notice is given of a resolution to be proposed at a general meeting, and member who does not attend the meeting or who votes against the resolution, may bring a representative action to restrain the company and its directors from carrying out the resolution.[43]

5. Where the act or article require a qualified(or special) majority for passing a resolution , the rule in ***Foss vs. Harbottle*** cannot be invoked to override these requirements. If this were not so, provisions requiring qualified majority would be valueless because a bare majority could always confirm a special resolution passed irregularly. The action brought by a shareholder to complain an irregularity in the passing of a special resolution would seems to be personal one.

6. The principle of majority is applicable only to the corporate membership rights of a member. Infringement of a member's individual rights like right to vote, right to receive dividends, etc. entitles him to proceed in his own name.

5.3 STATUTORY EXCEPTIONS:

Certain specific provisions of the Companies Act 2013, extends protection to the minority shareholders by conferring certain rights on them. These rights are as follows:

5.3.1 Variation of class rights[44]

Where the share capital of a company is divided in to different classes of shares, the rights attached to the shares of any class can be varied as provided in the memorandum or article of association of company with the consent of three forth majority of shareholders of that class. Where this is done and rights are varied by requisite majority vote, the shareholders of not less than ten percent of the issued shares of that class who had not assented to the variation may apply to the tribunal for cancellation of the variation under Section 48(2) of the act.

5.3.2 Request for investigation:

Under Section 213 one hundred or more member(s) holding not less than one tenth of the total voting power may apply to the tribunal for conducting an investigation in to the affairs of the company. In case the company without share capital, the application may be made by not less than one fifth of the members. The application needs to be supported by evidence to show that there are good reasons for an order for conducting an investigation.

5.3.3 Scheme of compromise and arrangement:

Section 230 which provides for scheme of compromise and arrangement with creditors and members also gives protection to minorities. Sub clause(c) of Section 230(7) provides if the compromise or arrangement results in the violation of shareholders rights, it shall be given effect to under the provisions of Section 48. Clause (e) of Section 230(7) requires that the tribunal order may also provide for the exit offer to dissenting shareholders to effectively implement the terms of the compromise or arrangement.

5.3.4 Oppression and mismanagement:

The principle of majority rule does not apply to cases where Section 241 is applicable for prevention of oppression and mismanagement. A member who complaint that the affairs of the company are being conducted, in a manner oppressive to some of the members including himself, or against public interest, he may apply to tribunal by petition under Section 241 of the act. In

[43] Tiessen vs. Henderson[1899] 1Ch.861.

[44] Section 48 of Companies Act 2013.

O.P.Gupta vs. Shiv General Finance (P.)Ltd.[45]the Delhi high court held that a member's right to move the court under Section 397(now 241) was a statutory right and cannot be affected by an arbitration clause in Article of association of a company.

5.3.5 Right of dissentient shareholders under take-over bids[46]

When an offer for the purchase of all the shares is received and offer is accepted by the holders of the 90 percent of the shares, the party making the offer may, on the same terms acquire the remaining shares also. But a notice should be given to the dissenting shareholders who have a right to apply to the tribunal praying that their shares should not be allowed to be acquired on the terms of the scheme. On hearing the parties concerned, the tribunal may make an order, as it may think fit.

5.3.7 Class action[47]

An application may be made by the prescribed number of members before the tribunal under Section 245 seeking certain reliefs on the grounds that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or its members. The tribunal may grant such reliefs as may be appropriate including restraining the company from committing nan act that is ultra vires the articles or memorandum or in contrary to any law.

Thus in this way the concept of majority rule and minority protection play an important role to maintain a balance between ownership and management in the company form of business.

CONCLUSION:

Though the company is a separate legal entity different from its members but in reality it is the shareholders who are the owners of the company collectively. The absolute power whether it is in the hands of board of directors or shareholder is an obstacle in the efficient management of the company. So the powers of board as well as shareholders (who are considered as owner) is restricted by imposing some restrictions on them.

In case of board of directors these restrictions are imposed by meeting (i.e. the board of directors must function according to the resolutions passed in general meetings of the shareholders), MOA &AOA (i.e.) the directors must operate according to the provisions of the AOA in the internal management of the company and within the limits prescribed by the MOA of the company). If the board of directors acts in the contravention of these provisions they can be held personally liable or can be punished with imprisonment or fine or with both. Subject to these conditions the board of directors have the right to manage the affairs of the company in the interest of the company or the shareholders.

Generally the company is the separate legal entity different from its members if a wrong is done to the company it is the company who can sue the wrongdoer but this rule have also some exception in which a single shareholder can sue for wrong done to the company; e.g If the individual rights of a shareholders are violated he can sue. These provisions are provided for the protection of the shareholders as well as the company.

Similarly certain restrictions are also imposed on the power of the shareholders like majority rule (i.e. The shareholder can act in the majority it is the majority that prevail in decision making but this rule have some exceptions also for the protection of the interest of the shareholders as well as the company). These rule of majority is provided for the efficient management of the company because if the decision making power is given to a single shareholder or a group of minority shareholders than they can interfere in the management of the company and due to this they becomes obstacles in the efficient management of the company.

[45] [1977]47 Comp.Cas. 297.

[46] Section 235 of Companies Act 2013

[47] Section 245 of Companies Act 2013

In this way by putting restrictions on the powers of the board of directors as well as the shareholders a balance is maintained between the ownership and management of the company.

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