



FACULTY OF JURIDICAL SCIENCES

Course : B.A.LL.B./BBALL.B IInd Semester

SUBJECT: COMPANY LAW
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NAME OF FACULTY: Ms. Anjali Dixit
Assistant Professor

FACULTY OF JURIDICAL SCIENCES



LECTURE-35

PREVENTION OF OPERATION AND MISMANAGEMENT

(continued)

Right to Complain mismanagement.

1. The following members of a company shall have the right to apply as above:- a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of

the issued share capital of the company, provided that the applicant or applicants have paid all calls and other sums due on their shares; b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members.

2. Where any share or shares are held by two or more persons jointly, they shall be counted only as one number.
3. Where any members of a company, are entitled to make an application, any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.
4. The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorize any member or members of the company to apply to the Company Law Board, notwithstanding that the above requirements for application are not

fulfilled.

5. The Central Government may, before authorizing any member or members as aforesaid, require such member or members to give security for such amount as the Central Government may deem reasonable, for the payment of any costs which the Court dealing with the application may order such member or members to pay to any other person or persons who are parties to the application.
6. If the managing director or any other director, or the manager, of a company or any other person, who has not been impleaded as a respondent to any application applies to be added as a respondent thereto, the Company Law Board may, if it is satisfied that there is sufficient cause for doing so, direct that he may be added as a respondent accordingly.

Notice to be given to Central Government of application

The Company Law Board must give notice of every application made to it as above to the Central government, and shall take into consideration the representations, if any, made to it by that Government before passing a final order.

Right of Central Government to apply

The Central Government may itself apply to the Company law Board for an order, or because an application to be made to the Company Law Board for such an order by any person authorized be it in this behalf.

Powers of Tribunal

Under Section 402 of the Companies Act ,1956 the powers of the Tribunal under Sections 397 and 398 are very wide .These are :-

1. the regulation of the conduct of the company's affairs in future;
2. the purchase of the shares or interests of any members of the company by other members thereof or by the company;
3. in the case of a purchase of its shares by the company as aforesaid, the consequent reduction of its share capital;
4. the termination, setting aside or modification of any agreement, howsoever arrived at, between the company on the one hand, and any of the following persons, on the other namely:-
 - a) the managing director;
 - b) any other director;
 - c) the manager;

Upon such terms and conditions as may, in the opinion of the Company Law Board, be just and equitable in all the circumstances of the case ;the termination setting aside or modification of

any equitable in all the circumstances of the case ;the termination, setting aside or modification of any agreement between the company and any person not referred to in clause

(d), provided that no such agreement shall be terminated, set aside or modified except after due notice to the party concerned and provided further that no such agreement shall be modified except after obtaining the consent of the party concerned; the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application, which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference. Any other matter for which in the opinion of the Company Law Board it is just and equitable that provision should be made.

Effect of alteration of memorandum or articles of company by order:

Where an order makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any permitted in the order, to make without the leave of the Company Law Board, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles. The alterations made by the order shall, in all respects, have the same effect as if they had been duly made by the company in accordance with the provisions of this Act. A certified copy of every order altering or giving leave to alter, a company's memorandum or articles, must within thirty days after the making thereof, be filed by the company with the Registrar who shall register the same. If default is made in complying with the above provisions, the company,

and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees.

Consequences of termination or modification of certain agreements:

Where an order terminates, sets aside or modifies an agreement:- the order shall not give rise to any claim whatever against the company by any person for damages or for compensation for loss of office or in any respect, either in pursuance of the agreement or otherwise; no managing or other director or manager whose agreement is so terminated or set aside, shall for a period of five years from the date of the order terminating the agreement, without the leave of the Company Law Board, be appointed, or act, as the managing or other director or manager of the company. Any person who knowingly acts as a managing or other director or manager of a company in contravention of the above provision, every

director of the company, who is knowingly a party to such contravention shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both. The Company Law Board will not grant leave for appointment as managing director or director or manager of the company unless notice of the intention to apply for leave has been served on the Central Government and that Government has been given an opportunity of being heard in the matter.

Powers of Central Government to prevent oppression or mismanagement:

The Central Government may appoint such number of persons as the Company Law Board may, by order in writing, specify as being necessary to effectively safeguard the interests of the Company or its shareholders or public interests, to act as directors thereof for such period not exceeding 3 years on any

one occasion as it deems fit if the Company Law Board:-

On a reference being made to it by the Central Government ; or on an application of not less than one hundred members of the company or of members of the company holding not less than onetenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest.

However, in lieu of passing order as aforesaid, the Company Law Board may, if the company has not availed itself of the option given to it of proportional representation to minority shareholders on the Board of the company, direct the company to amend its

articles in the manner provided section 265 and make fresh appointments of directors in pursuance of the articles as so amended within such time as may be specified in that behalf by the Company Law Board.

In case the Central Government passes such an order it may, if thinks fit, direct that until new directors are appointed in pursuance of the order aforesaid, not more than two members of the company specified by the Company law Board shall hold office as additional directors of the company. The Central Government shall appoint such additional directors on such directions.

The person appointed as a director by the Central Government in accordance with the above provisions, need not hold any qualification shares or need to retire by rotation. However, his office as director may be terminated at any time by the Central Government and another person appointed in his place. No

change in the constitution of the Board of Directors can take place after an additional director is appointed by the Central Government in accordance with these provisions unless approved by the Company Law Board. The Central Government in such cases may also issue such directions to the company as it may consider necessary or appropriate in regard to its affairs.

Power of the Tribunals to prevent change in Board of Directors :

Where a complaint is made to the Company Law Board by the managing director or any other director or the manager of a company that, as a result of a change which has taken place or is likely to take place in ownership or any shares held in the company, a change in the Board of directors is likely to take place which (if allowed) would affect prejudicially the affairs of the company, the Company Law Board may, if satisfied, after such inquiry as it thinks fit to make that

it is just and proper to do so, by order direct that no resolution passed or that may be passed or no action taken or may be taken to effect a change in the Board of directors after the date of the complaint shall have effect unless confirmed by the Company Law Board.

Any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the memorandum or articles of the company, or in any agreement with, or any resolution passed in general meeting by, or by the Board of directors or, the company. The Company Law Board shall have power when any such complaint is received by it, to make an interim order to the effect set out above, before making or completing the inquiry aforesaid. Nothing contained above shall apply to a private company, unless it is a subsidiary of a public company.

1. On a reference being made to it by the Central Government ; or on an application of not less than one hundred members of the company or of members of the company holding not less than onetenth of the total voting power therein, is satisfied, after such inquiry as it deems fit to make, that it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either in a manner which is oppressive to any members of the company or in a manner which is prejudicial to the interests of the company or to public interest.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. Company Act gives some Powers of Central Government to prevent oppression or mismanagement.

- i. True
- ii. False
- iii. Can not say

iv. None of the above

3. The person appointed as a director by the Central Government in accordance with the above provisions, need not hold any qualification shares or need to retire by rotation.

i. True

ii. False

iii. Can not say

iv. None of the above

4. Where an order makes any alteration in the memorandum or articles of a company, then, notwithstanding any other provision of this Act, the company shall not have power, except to the extent, if any permitted in the order, to make without the leave of the Company Law Board, any alteration whatsoever which is inconsistent with the order, either in the memorandum or in the articles.

i. True

ii. False

iii. Can not say

iv. None of the above

5. The Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorize any member or members of the company to apply to the Company Law Board, notwithstanding that the above requirements for application are not fulfilled.

i. True

ii. False

iii. Can not say

iv. None of the above

