

Amita Desai & Co. Company Secretaries Mumbai-India

NOTIFICATION OF RIGHT TO APPLY FOR CLASS ACTION



A new beginning in Indian Corporate world

In India, first time a new concept of “Class Action” was introduced vide **section 245** of the Companies Act 2013. It brings more accountability and responsibility in the management. Class Action means *action or application filed by a group of people who suffered similar harm or losses*. **Class action** litigation has a long history of changing the way businesses do business and of protecting the rights of people who suffer. India has not seen so far seen such kind of Class Action litigation which is there in the legal system since decades in many developed countries. In Class Action litigation the affecting party may claim damages for the losses they suffered due to any wrongful or fraudulent action of Directors, Auditors, Advisors, Consultant, Technical Advisors and Registered Valuer etc. Class Action saves clogging of Court as on the same issue against the same defendant there is no need to file separate law suit. When the class wins the lawsuit, each participant receives some payment, even if it is not an amount to fully cover damages.

On 1st June 2016, Section 245 was notified. Section provides and empowers such number of member or members [not less than 100 members or not less than **such percentage of the total number of its members as may be prescribed**, whichever is less,] depositor or depositors or any class of them, as the case may be [not be less than 100 depositors or not less than **such percentage of the total number of depositors as may be prescribed**, whichever is less] or any depositor or depositors to whom the **company owes such percentage of total deposits of the company as may be prescribed** , 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 (National Company Law Tribunal) on behalf of the members or depositors.

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On 8th May 2019, MCA has notified the National Company Law Tribunal (NCLT) (Second Amendment) Rules, 2019 with immediate effect. Vide this notification, Rule 84 of the principal rule namely NCLT Rules 2016 was amended by inserting following sub-rules (3) and (4) which prescribes Right to apply for Class Action u/s 245 of the Companies Act 2013.

Rule 3 In case of a company **having a share capital**, the requisite number of member or members to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least 5% of the total number of members of the company; or
(b) 100 members of the company, whichever is less; or
- (ii) (a) member or members holding not less than 5% of the issued share capital of the company, in case of an unlisted company;
(b) member or members holding not less than 2% of the issued share capital of the company, in case of a listed company.

Rule 4 The requisite number of depositor or depositors to file an application under sub-section (1) of section 245 shall be -

- (i) (a) at least 5% of the total number of depositors of the company; or
(b) 100 depositors of the company, whichever is less; or
- (ii) Depositor or depositors to whom the company owes 5% of total deposits of the company.

Conclusion

This new provisions of Right to Application is a leap towards addressing grievances of Investors like small shareholders and deposit holder. Hopefully this deter wrongdoers and management and advisors act more responsibly. Now it is to be seen how this will change the business environment and legal system in India. In past in the year 2009, Indian Investors could not initiate any proceedings against Satyam as there was no provision of Class Action in the statute than, whereas in USA several Class Action suits were filed against Satyam MD and Auditors as Satyam's ADR were listed in NY Stock Exchange. In 2017 Corporate India has seen financial fraud and scam of approx. INR 11,400 crores by Nirav Modi. Again in 2018 we saw scam of IL & FS In Class Action suit the damages can be claimed from professional, advisors and consultants including the management for their fraudulent act or conduct. However if the regulatory authorities also were given this right to apply for Class Action against the wrongdoers it would have been better for Indian society and corporate world. Legal remedy in India is very slow and "justice delayed is like justice denied". Considering clogging of NCLTs with IBC matter, to have success of Class Action in corporate sector, more NCLT should be functional soon.