

INDIA BUSINESS LAW JOURNAL

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Class action suits under the Companies Act, 2013

A class action enables one or more plaintiffs to file a suit on behalf of a larger group or class, wherein such class has common rights and grievances. Class action is a well-defined area of litigation in the US and can be broadly categorized into securities class action and consumer class action.

The Indian legislator considered instances of corporate fraud in India, primarily the "Satyam scam" while revisiting the concept of class action. In this case, no proceedings could be initiated in India due to the absence of any statutory provision for class action. The Companies Act, 2013, addresses this with a provision on class action.

Inclusion of this concept under the statute was also considered and recommended by different committee reports such as the J. J. Irani Committee Report, 2005, the 22nd report of the Standing Committee on Finance on the Companies Bill, 2006, and the 19th report of the Standing Committee on Finance on the Companies Bill, 2011.

The 2013 act has now introduced the concept of class action under section 245, which has been notified with effect from 1 June.

Section 245 introduces a distinct regime of class actions. A class action can be instituted by specified numbers of members, depositors or any class of them before the National Company Law Tribunal (NCLT), which has been constituted with effect from 1 June. If they are of the opinion that the management or conduct of the company is being conducted in a manner prejudicial to the interest of the company, its members or depositors, it can be instituted against the company, its directors, its auditor (including the audit firm), any expert, advisor, consultant, or any other person for specified acts or omissions.

Reliefs which can be granted in a class action suit include: rescinding the company from committing an act that is beyond the authority of the articles of association (AoA) or memorandum of association (MoA) of the company, from committing any act contrary to the provisions of the 2013 act or any other applicable law, and declaring a resolution altering the MoA or AoA of the company as void if the resolution was passed by not disclosing material facts, or by mistatement to the members or depositors. These reliefs are able to prevent relief and act based on the principles under the Specific Relief Act, 1963.

Section 245 also allows seeking damages or compensation or any other suitable action against the company or its directors, for any fraudulent, unlawful or wrongful act or omission or conduct on their part; its auditor (including audit firms), for any improper or misleading statements of particulars made in the audit report or for any fraudulent, unlawful or wrongful act or conduct; any expert, adviser, consultant or any other person for any incorrect or misleading statements made to the company or for any fraudulent, unlawful or wrongful act or conduct, or any likely act or conduct on their part.

While section 245 prescribes a limit for the fine that may be imposed for non-compliance with NCLT orders, it does not prescribe a limit for the amount of damages or compensation claimable. This enables the company and other relevant entities and persons to unlimited liability, as if a tortious claim was to be adjudicated in a class action.

Unless section 245 is amended to provide the amount of claimable damages or compensation, clearly on the same will come only from the decisions of NCLT or the National Company Law Appellate Tribunal (NCLAT), which has been constituted with effect from 1 June by the Supreme Court of India, as the case may be.

Principles under the 1963 act and under the Contract Act, 1972, are applied and the scope of liability and damages under section 245 of the 2013 act will be settled when this provision is tested by NCLT, NCLAT or the Supreme Court. However, it is vital to impose a limit on the liability of the relevant entities and persons, and to base the damages or compensation on an assessment of actual damages.

Introduction of the provision on class action suits under the 2013 act is likely to have far reaching implications. However, the possibility of misuse of this remedy by filing false and frivolous complaints cannot be ruled out. Therefore, it is important for the relevant authorities to balance the interest of all the parties while deciding a class action suit.

Another important issue is the likely co-ordination of two parallel offences of fraud both emanating from the same cause of action, one under section 449(1) and other under section 447 of the 2013 act. While section 449(1) provides for unlimited damages or compensation or other suitable action, section 447 provides for fine and imprisonment for offence relating to fraud. This may increase the exposure of the relevant entities and persons to the specified liabilities.

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