



## Class Action Suits: a Measure of Progressive Activism In India

\* Ms. Minny Narang \*\* Ms. Gunjan Jain

\* Assistant Professor, Department of Commerce, Delhi School of Economics  
University of Delhi

\*\* Delhi School of Economics, University of Delhi

### ABSTRACT

Poor investors especially the small and retail ones find it difficult to get them heard and get their grievances redressed. Class Action Suits - a new incumbent in the Companies Act, 2013 comes to the rescue of such stakeholders. Stakeholders Activism is a budding term in India which means the active participation of the shareholders in all the aspects of good corporate governance and fighting against the fraudulent and erroneous acts of a corporation. Individual claims are often very small to warrant legislation against the company. Thus, class action suits provide a solution to this economic problem by bringing together such individuals under a single lawsuit and thereby supporting the cost of litigation. India has recently introduced the class action suit in the brand new Companies Act, 2013 empowering the shareholders against the company, its directors, management, auditors and consultants engaged in misleading and fraudulent practices. This paper seeks to discuss these provisions and their implications for Indian scenario.

**Keywords : Class Action Suits, Companies Act, 2013, Corporate Governance, Shareholders' Protection**

### INTRODUCTION

A class action lawsuit is a set of claims filed on behalf of a certain group of people who have been injured or negatively affected by the actions or negligence of a particular company or agency. A concept well developed in countries like UK and USA is still evolving in India where a large chunk of shareholders of companies are widely scattered over an area of 3,287,240 sq. kms. Over a period of time, these small and dispersed investors have become active in protecting their rights taking lessons from their foreign counterparts especially after the Rs. 7000 Crore Satyam fiasco. About three lakh investors in India lost around Rs. 5,000 crore in the Satyam case, while its investors in the USA, who filed a class action against Satyam, were compensated to the tune of \$125 million (around Rs. 675 crore).

- Typically, there are four kinds of class action suits that can be brought against a company.
- Product liability/Personal Injury Class Actions: Such lawsuits are brought when a defective product or deficient service harms many people, for example, a drug with harmful side effects, or causing "mass accident".
- Consumer Class Actions: Most common type of class action suits, these class actions suits are generally brought when a company's systematic and illegal practices harm a group of consumers. Such as violation of consumer protection laws, illegal charges and penalties etc.
- Employment Class Actions: Brought on behalf of employees of a company for contravention of the Labor laws, such as unpaid overtime, safety violations, workplace discrimination among others.
- Securities Class Actions: Securities class actions, the term of focus here, are the lawsuits brought on behalf of a group of investors who have been injured as a result of an improper conduct- corporate or otherwise by the management of a company. It includes all illegal practices ranging from misstating earnings to concealing or misrep-

resenting risks and all unethical practices.

While the subject matter of class action lawsuits can vary widely, two factors are always present in every class action suit. These are:

- the issues in dispute are common to all the members of the class (group), and
- the persons affected are so large in number that it becomes impracticable to bring them all before the court.

Thus, a class action is a special kind of lawsuit which involves the interests of a large number of people whose claims and rights are decided in a single case. The resolution of the lawsuit binds all members of the class certified by the Court. Some of the motives behind such lawsuits are reduced cost and saved time of both the parties and the court of justice. Only a few plaintiffs are named in the lawsuit to represent the claims of the entire class so that each one of them with the same injury doesn't have to file their own separate lawsuit. In some cases, where the individual claims are too small to gain out of lawsuit, class action suits are the only practical way to hold the companies liable for illegalities and irregularities.

First originated in the US in year 1938, a class action suit is an old but certainly underutilized tool in the hands of investors. A class action suit in US law is used to describe a 'sui generis' area of litigation. Till date, Indian law recognizes a 'representative suit' but has not used the term 'class action suit' to mean 'sui generis' area of litigation. Federal Rules of Civil Procedure give comprehensive guidelines for class action suits under Rule 23.

#### **Rule 23(a) sets out four prerequisites to any class action.**

The class must be "so numerous that joinder of all members is impracticable." Classes have been certified with as few as 35 members, but normally there are hundreds, thou-

sands or even millions of persons in the class. There must be "questions of law or fact common to the class." One or more persons who are members of the class may sue or be sued as representatives of everyone in the class if their claims or defenses are "typical of the claims or defenses of the class," and if They "will fairly and adequately protect the interests of the class."

These four basic requirements are often referred to as numerosity, commonality, typicality, and adequacy of representation. The rule permits both plaintiff and defendant class actions.

### CLASS ACTION SUITS UNDER NEW COMPANIES ACT, 2013

Among the various new inductions in the Companies Act, 2013, the concept of 'class action' certainly aims at protecting the rights of investors of India corporations. The concept has been introduced in India in the aftermath of the Satyam corporate scandal wherein numerous small investors of Satyam Group in India were unable to seek effective relief against Satyam's management as against their counterparts in the US who brought class action suits against Satyam and made good their loss.

#### Section 245(1) of the Companies Act reads as follows:

*"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..."*

- to restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- to restrain the company from committing breach of any provision of the company's memorandum or articles;
- to declare a resolution altering the memorandum or articles of the company as void if the resolution was passed by suppression of material facts or obtained by mis-statement to the members or depositors;
- to restrain the company and its directors from acting on such resolution;
- to restrain the company from doing an act which is contrary to the provisions of this Act or any other law for the time being in force;
- to restrain the company from taking action contrary to any resolution passed by the members;
- to claim damages or compensation or demand any other suitable action;
- to seek any other remedy as the Tribunal may deem fit.

#### Who can sue?

• As per Section 245(3)(i), the requisite number of members who can maintain a Class Action are specified as under:

- In the case of a company having a share capital,
  - more than one hundred members of the company or such percentage of the total number of its members as may be prescribed, whichever is less; or
  - any member or members holding more than such percentage of the issued share capital of the company as may be prescribed.
- In case of a company not having share capital
  - More than one-fifth of the total number of its members.
- Numbers of depositors required to file class action:
  - More than 100 in number or more 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.

Who can be sued?

- the company or its directors ;
- the auditor
- any expert or advisor or consultant or any other person for any incorrect or misleading statement made to the company or for any fraudulent, unlawful or wrongful actor conduct or any likely act or conduct on his part;

#### Consequences

In the event of non-compliance of the order passed by the Tribunal under Section 245(7),

- a company shall be punishable with fine which shall not be less than 5 lakh rupees but which may extend to 25 lakh rupees ; and
- any officer of the company who is in default can be punished with imprisonment for a term upto 3 years and imposed a fine of not less than Rs.25,000 extendable upto Rs.1 lakh.

#### IMPLICATIONS OF CLASS ACTION SUITS

A concept like class action suit certainly carries benefits for investors of a company. It provides them with a medium to fight as one unit against the errant company or management, thereby reducing multiplicity of suits, costs of litigation and increasing their chances of success in the process. Deposit holders, who had no option but to file a civil suit so far, can also take action against any wrongful act by the company or other specified persons. These help in increasing the accountability of a company or its management towards its stakeholders and in containing any likely prejudice against the minority.

Class action suits are also beneficial over the individual lawsuits since these individual lawsuits run on a first-come, first-serve basis. Thus, a corporation with a huge corporate scandal may be able to compensate only a few claimants till it becomes bankrupt. Class actions, on the other hand, ensure that payments are spread equally across all injured parties.

These are particularly good for those small and minority shareholders who may not have been able to afford experienced and highly competent attorney on their own. At the same time, they increase the efficiency of legal system by reducing the number of rulings for the same issue, thereby saving the time and resources. Since the auditors and consultants of the company are also included within the ambit of class action suit, it will also ensure that such auditors, experts and advisors of the company act carefully and diligently before advising the company and its management.

However, not all is good with these lawsuits. It should be noted that such actions are open for misuse by unscrupulous minority shareholders in furtherance of their vested interest thereby hampering the efficacy of the entire corporate and legal system of a country.

Further, it has been noted in various class action suits that that victims receive no compensation or benefits for their association. Sometimes it is felt that the compensation awarded may have been greater if the case was pursued by an individual rather than a group. Also, a majority of people are not really aware of the concept in its entirety and the nature and amount of compensation that they are entitled to receive.

To avoid the improper use of the class action lawsuits, the courts may need to exercise caution while hearing and deciding class action suits in order to ensure that a company is allowed to function effectively while keeping intact required minority investor protection. For this, the Companies Act, 2013 also provides adequate protection to the companies also. Section 245(8), says that in case of an application filed before the Tribunal is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, reject the application and make an order that the applicant shall pay to the

opposite party such cost, not exceeding one lakh rupees, as may be specified in the order.

Thus, the Act takes care of the interest of both the parties adequately. But, keeping in mind the cost of coordinating and filing of suit, it becomes necessary to be associated with some investor association. However, there are only 26 investor associations registered with SEBI till date and not all the investors are the members of these associations. Amidst all these, the actual impact of the provisions relating to class action suits in India is yet to be seen once these are implemented.

### CONCLUSION

Introduction of class actions is certainly good news for Indian investors but it is at the same time a huge procedural change in the Indian legislative system. These have been great success in the US for the obvious reasons of having all the ele-

ments necessary to accommodate the class actions well developed in the country. At the same time, some aspects of the civil law system seem more suited to solving class action issues. For example, in civil law systems it is accepted that the judge plays a central role in sculpting the scope and shape of the lawsuit and the judge has a much greater knowledge of the facts of the case than is usually true in the U.S. system. Thus, for class action suits to be a success in India as well, it is necessary to modify it to fit into the Indian Legal and Procedural system. The investors should be made more aware of these provisions and how their rights can be enforced under these. Further, the role of investors associations and SEBI should be strengthened more in order to increase the shareholders activism and investors protection.

### REFERENCES

1. California Class Action Classics, by Elizabeth J.Cabraser. Retrieved online on Feb. 02, 2013 from <http://www.lieffcabraser.com/media/pnc/2/media.302.pdf> | 2. Class Action under Companies Bill 2012: Wide ranging injunctive and punitive powers against companies, Vinod Kothari & Company. Retrieved online on Nov. 28, 2013 from [http://india-financing.com/Class\\_Action\\_under\\_Companies\\_Bill\\_2012.pdf](http://india-financing.com/Class_Action_under_Companies_Bill_2012.pdf). | 3. Guru Nathan Balanaga K. (2007) 'An Investors' requirements in Indian Securities Market', Delhi Business Review X, Vol. 8, No. 1, January - June 2007. | 4. Janet Cooper Alexander C. J., An Introduction to Class Action Procedure in the United States. Retrieved online on Nov. 30, 2013 from <http://law.duke.edu/group/it/papers/classactionalexander.pdf> | 5. Shareholder Activism and Class Action Lawsuits. Retrieved online on Nov. 29, 2013 from <http://indiacorplaw.blogspot.in/2009/06/shareholder-activism-and-class-action.html> | 6. The Companies Bill, 2011. Retrieved online on Aug. 30, 2013 from [http://www.mca.gov.in/Ministry/pdf/The\\_Companies\\_Bill\\_2011.pdf](http://www.mca.gov.in/Ministry/pdf/The_Companies_Bill_2011.pdf). |