

Update



Shareholders' title disputes come back to Company Law Board

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A revamp of Companies Act, 1956 had been in the making for a long time and finally saw the light of the day with Companies Act, 2013 (“**Act, 2013**”). With the use of the word “prescribed” 416 times, it was obvious that a major part of the Act, 2013 was to be enforced by way of rules. However, on September 12, 2013¹ the Ministry of Corporate Affairs (“**MCA**”) issued notification to enforce 98 sections. This was hailed as a premature action of the MCA case in point being sections relating to insider trading, powers of Board, reference to NCLT, which still required clarifications².

The MCA attempted to control its premature action by way of another clarification dated September 13, 2013 and further by way of issue of Companies (Removal of Difficulties) Order, 2013³ (“**Order, 2013**”).

Although, the Order, 2013 is surely a backtracking of sorts by the MCA, yet it brings back the power to adjudicate cases pertaining to “rectification of register of members” to Company Law Board (“**CLB**”). The Order, 2013 relates to sections 24, 58 & 59 of the Act 2013.

Scenario under the Companies Act, 1956

The erstwhile Section 155 of the Companies Act, 1956 (“**Act, 1956**”) empowered any aggrieved person to appeal to the *court* to seek rectification of register of members. This section was not limited just to rectification of register of members on matters pertaining to transfer or transmission, but extended to cases on any default or delay in entry in the register of members in cases apart from transfer and transmission. This section actually flowed from section 22A of the Securities Contracts (Regulations) Act, 1956 which allowed listed companies to refuse registration only under four scenarios. However, the stated section 22A was omitted with effect from September 20, 1995. Section 155 of the Act, 1956 was also omitted by the Companies (Amendment) Act, 1988 (w.e.f. 31-5-1991), *vide* GSR dt. 31-5-1991.

Section 111 of the Act, 1956 was substituted with effect from May 31, 1991 by the Companies (Amendment) Act, 1988. With the insertion of section 111A of the Act, 1956 a void that was created with the deletion of section 155 of the Act, 1956 still remained. Section 155 of the Act, 1956 was applicable to public as well as private companies and allowed appeal for refusal to register in case of transfer or transmission or any other matter. Section 111(4) was also on the same lines, but by virtue of section 111(14) of the Act, 1956, the same was applicable only to private

¹ View the entire notification at:

<http://www.mca.gov.in/Ministry/pdf/CommencementNotificationOfCA2013.pdf>

² View our article on *Enforcement of Companies Act, 2013- a day too soon?* at : https://india-financing.com/Enforcement_of_Companies_Act_2013_a_day_too_soon.pdf

³ <http://www.mca.gov.in/Ministry/pdf/CompaniesRemovalOfDifficultiesOrder2013.pdf>



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companies. Section 111A was made applicable only to public companies and consequently, appeal under this section could only lie with CLB, if the same pertained to disputes relating to either transfer or transmission. Any non-transfer or non-transmission case for public companies would become a civil matter, to be dealt with by the civil court⁴.

A brief on the sections under Act, 2013

Section 24 – This section corresponds to section 55A of the Act, 1956 whereby matters pertaining to prospectus, return of allotment, redemption of preference shares shall be exercised by the National Company Law Tribunal (“NCLT”).

Section 58 – This section corresponds to sections 111 and 111A of the Act, 1956 and empowers any person to appeal to NCLT against any refusal to register transfer or transmission of shares.

Section 59 – This section corresponds to sections 111 (4), (5), (9) and sec. 111A (3) and (5) of the Act, 1956 and empowers any aggrieved person or member to make an appeal if his name is without sufficient cause entered in the register of members and if registered removed from such register.

Power vested with CLB

The Preface of the Order, 2013 clearly mentions that the constitution of NCLT will take some time which gives rise to the question that since sections 24, 58 and 59 of the Act, 2013 have come into force, then which is the right forum for filing appeal? The Order, 2013 has thus been issued to solve this problem in exercise of section 470 of the Act, 2013.

Gist of Order, 2013:

The Order, 2013 confers jurisdiction on CLB for appeals under sections 24, 58 and 59 of the Act 2013, until the constitution of National Company Law Tribunal (NCLT).

Our analysis

With the Order, 2013, the jurisdiction of CLB has been again extended to also include cases pertaining to rectification of register of members on matters other than transfer or transmission pursuant to section 59 of the Act, 2013. The stated

⁴ See Shirish Finance & Investment (P.) ... vs M. Sreenivasulu Reddy at <http://www.indiankanoon.org/doc/1464048/>. This was held in the case of *Andhra Pradesh Paper Mills Ltd. v. Pompasar Distillery Ltd.*, (1997) 26 CLA 316 (LBB). This ruling was also referred to in *Pushpaben Kalyanbhai Vasa And ... vs Grasim Industries Limited*, which can be read at <http://indiankanoon.org/doc/1301404/>



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section 59 allows an aggrieved person to file an appeal for rectification of register of members. Such appeals shall till the constitution of NCLT, lie with CLB. Section 59 of the Act, 2013 has sought to amend the lacuna which was present in section 111A of the Act, 1956 and with CLB being empowered for the time being to handle such matters, wisdom seems to have prevailed.

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