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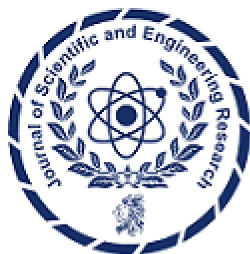

Research Article

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Comparative Requirement and Analytical Study for Class Action Suits

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Abstract Class action suits are a claim that permits countless individuals with a typical interest to make a difference from sue or to be sued as a gathering. India has presented the idea of Class Action Suit in Companies Act 2013. This paper is subsequently an endeavor to depict class action suit and to comprehend the motivation behind class actions suits, likewise the paper attempts to make an endeavor with respect to how class action suits are better contrasted with people throw different individual suits.

Keywords Companies Act 2013, Class Action Suit, Satyam case, Change in law, Definition of Class

Introduction

After the Satyam misrepresentation, the Indian investors at Satyam went the Indian courts for a redressal; be that as it may, none of the Indian laws encased any arrangement which could have helped them [1]. In any case, the US had skilled laws in this way supporting the US investors in recording a class activity suit and settles it at USD 125 million (approx.) [2]. A comparable issue had additionally emerge in the DLF case, where the complainant needed to move toward the High Court of Delhi applying for a writ coordinating Securities Exchange Board of India ("SEBI") to examine and initiate legitimate activities in the exchanges conveyed by DLF, which supposedly swindled the investors [3].

Class Action Suits in Companies Act, 2013

India has felt nonappearance such a cure since 2005, when class activities were proposed in the J.J. Irani Committee Report on Company Law [4] and afterward, in 2012 in the 57th report by Standing Committee on Finance, which likewise proposed the incorporation of a comparable arrangement [5]. With the appearance of Companies Act, 2013 (hereinafter called "the Companies Act"), area 245 has been acquainted [6] for giving right the individuals and investors to bring an Activity against the organization, its directors, inspectors, review firm, specialists, counselors, or advisors, in the event that they accept that the issues of the organization are being led in a way biased to the enthusiasm of the organization itself, or individuals or contributors. A gathering of at any rate 100 individuals or investors are required to frame a "class" and document such an application with the National Company Law Tribunal (hereinafter called "NCLT"), or 1/fifth individuals, if there should arise an occurrence of an organization without an offer capital, or some other models, as might be given under the guidelines. The NCLT is required to guarantee that the grumbling isn't irritating and documented with bonafide expectation. All candidates with same reason for complaint can be clubbed by the NCLT and one of them will be picked as lead candidate. The NCLT, after due thought of the application can, limit the organization from submitting a demonstration or oversight which is in opposition to organization's update or articles, or to any goal passed by the organization, or to the arrangements of organizations act or some other law. In the event that such a demonstration has just been submitted, at that point the court may pronounce it as void.

The NCLT can likewise grant harms or remuneration or some other appropriate solution for the individuals/contributors for any fake or unlawful or unfair act previously dedicated/precluded or is probably going to be submitted/discarded. The organization will likewise be at risk for a fine adding up to least five lakh rupees, alongside an individual obligation for every one of the officials of the organization.
Further, area 37 of the Companies Act additionally permits a class activity by the people influenced because of a mis quote or oversight in the plan, by the organization. Area 125 (3) (d) permits utilization of financial specialist training and assurance finance for repayment of lawful costs caused in a class activity suit under the over two arrangements.

Interchange Remedy under Companies Act, 2013

Area 241-244 of the Companies Act gives a comparative solution for individuals for demonstrations of persecution and bungle by the organization. The area endorses for a comparable necessity of least number of individuals who are together required to record an activity, for a legitimate application to the NCLT. The solution for the wronged is explicit to the idea of complaint, notwithstanding, the council is additionally enabled to provide some other request, as it might consider fit. It is accepted that since the prerequisites of recording an application, the reason for activity and nature of cure under area 241-244 is like segment 245; the individuals may incline toward the later. This is because of the way that segment 243 (1) (a) disallows harms or remuneration to the individuals and there is no such explicit arrangement which permits repayment of legitimate costs to the candidates. Further, there is no arrangement which forbids applications under both 241 and 245. Along these lines, a bombed prosecution under segment 241 can be challenged again under segment 245, since there won't be any legitimate costs included.

Bar on jurisdiction of civil courts

Segment 430 of the Companies Act forces a bar on the locale of common courts from managing any issue which has been depended upon NCLT or the investigative council ("NCLAT"). When section 430 is read with 245, it can be easily concluded that the sole authority to entertain matters related to class action suits is NCLT or NCLAT, and thus, the members or depositors cannot take their grievances to the civil courts. This was also upheld in the judgment by Delhi High Court in the matter of Greeneline Transit System Pvt. Ltd. vs. the Secretary cum representative Transport [7-8]. The High Court in the said matter held that a provision similar to the one under section 391 of the Companies Bill, 2009 will be considered as an express bar on the jurisdiction of civil courts under section 9 of the Code of Civil Procedure, 1908 (“the code”). Since, section 245 of the Companies Act is similarly worded therefore; it would be considered that the civil courts have no jurisdiction in matters referred to in this section.
However, the Companies Act is silent on the fact that if a similar prejudice is been faced by the members or depositors who are less than the required number (as given in section 245 (3) of the Companies Act), then what will be the remedy to such aggrieved parties. Considering the fact that the members or depositors are not aware about the identity and primary details of the other members or depositors therefore, it would be difficult for them to come together and bring a class action. Hence, the absence of a remedy in such instances is a lacuna in the Companies Act. This will also not serve the purpose of protection of minority interests.

Securities Laws

The SEBI act, 1992 (“SEBI act”) read with the Securities Contract (Regulation) Act, 1957 (“SCRA act”) does not contain any provision which gives a right to the shareholders or investors to bring a class action suit against any issuer company or any other securities market participant. However, a provision similar to section 430 of the Companies Act is also present in the above mentioned statutes [9], which bars the jurisdiction of civil courts in matters that are within the purview of SEBI or the Securities Appellate Tribunal. Hence, the only remedy that is available to the affected party in securities law is to file a complaint with SEBI, and wait for an action to be taken by it.
In such circumstances, the express bar, as mentioned under section 9 of the code will also be applicable, thus restraining the civil courts from entertaining any applications or suit filed, whether in the individual capacity or

by way of a commissioner suit in order 1 rule 8 of code. Hence, the only solution would be to file a writ petition with the High Court and convince the court that the said matter is of such a nature that it would be appropriate for the court to exercise its inherent jurisdiction and grant an order, direction, or a writ.

Conclusion

Even after going through a number of bills, parliamentary discussions, comments from legal experts and public yet, section 245 has certain anomalies. A class activity suit must be recorded in the interest of either individuals or investors. The act has failed to recognize the concerns of other stakeholders like unsecured creditors (considering that the secured creditors have remedies in companies act, banking laws, securitization laws, etc.), debenture holders, trustees, etc. Next, the application under section 245 can also be filed against the third parties for their expert or professional advice. Such an advice is made to the company, members or depositors, not being a party to such a contract cannot enforce the same. Further, the provision extends to contraventions made under the Companies Act or any other law for the time being in force [10]. Similarly, the remedy can be anything as the NCLT may deem fit [11]. the ambit of these provisions is not defined. Thus, the question arises as to whether NCLT, which is a quasi-judicial body, can direct regulatory bodies like SEBI to take an action, considering the fact that the SEBI Act and Companies Act are complementary with each other at various levels. The SEBI act does not permit similar class action suits. So, can the investors or shareholders (being the members of the company) approach NCLT for a direction that SEBI must investigate in a particular matter? If this is so, the shareholders will not have to plead for a writ remedy at the High Court, unlike the DLF matter. Lastly, the section allows remedy in terms of damages or compensation. However, it is not clear that these monetary remedies will be given only to those members/depositors who have filed an application in the class action suit or in general, to all the members/depositors of the company.

In any case, this is a stage forward in keeping a mind the working of the organization and guaranteeing that it doesn't do a demonstration which is biased to the enthusiasm of the partners. Simultaneously, it gives more alleviation to the individuals and investors by allowing them a chance to bring their complaints legitimately before the NCLT.

Reference

[1]. Midas Touch Investors Association v. Satyam Computer Services Ltd., Civil Appeal No. 4786 of 2009 (Supreme Court).

[2]. http://www.bloomberg.com/news/articles/2011-02-17/satyam-computer-services-pays-125-million-to-settle-shareholder-lawsuit

[3]. See W.P. (C) 7976 of 2007 (Delhi HC), Kimsuk Krishna Sinha v. SEBI, judgment dated 09.04.2010.

[4]. J.J. Irani Committee Report, May 2005, Para 10.1

[5]. 57th report of Standing Committee on Finance, June 2012.

[6]. Notified in the official gazette on June 1, 2016.

[7]. Notified in the official gazette on September 12, 2013.

[8]. C.M. (M) No. 490/2012 (Delhi High Court); MANU/DE/6132/2012.

[9]. Sec 20A and 15Y of the SEBI act and sec 22E of SCRA act.

[10]. Section 245 (1) (e) of the Companies Act.

[11]. Section 245 (1) (h) of the Companies Act.