



Class Action Suits: A tool of togetherness

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Abstract:

Class action suits are a law suit that allows a large number of people with a common interest in a matter to sue or to be sued as a group. India has recently introduced the concept of Class Action Suit as per Companies Act 2013. But on the other hand this concept is not new in U.S, U.K and Singapore. This paper is therefore an attempt to describe class action suit and to understand the purpose of class actions suits, also the paper tries to make an attempt as to how class action suits are better compared to individuals filing various individual suits.

Keywords: *Companies Act 2013, Companies Act 1956, Class Action Section 245*

1. Introduction

A class Action suit is also known as representative action law suit. It is a civil action. This concept was recommended by J.J Irani Committee in 2005. This concept is new in India but in other countries like U.S, U.K., Singapore it is not new they are practicing it since very long. Collective lawsuits/Class Actions originated in the United States in 1938 and is still predominantly a U.S. phenomenon. It describes a “Sui Generis “area of Litigation.

All credit goes to Satyam fiasco that India has introduced this concept by means of Section 245 of the Companies Act 2013. Satyam Scam involved a fraudulent practice on the part of its management and auditors. The revenues of the Satyam were over inflated. However due to the absence of any statutory provision for class action under the companies’ act 1956 to sue the audit firms no similar proceedings could be initiated by the affected shareholder of Satyam in India.

2. Definition as per Companies Act 2013

2.1 Section 245(1)

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, namely:—

- a) To restrain the company from committing an act which is ultra vires the articles or memorandum of the company;
- b) To restrain the company from committing breach of any provision of the company’s memorandum or articles;

- c) 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 miss-statement to the members or depositors;
- d) To restrain the company and its directors from acting on such resolution;
- e) 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;
- f) To restrain the company from taking action contrary to any resolution passed by the members;
- g) To claim damages or compensation or demand any other suitable action from or against—
 - (I) The company or its directors for any fraudulent, unlawful or wrongful act or omission or conduct or any likely act or omission or conduct on its or their part;
 - (II) the auditor including audit firm of the company for any improper or misleading statement of particulars made in his audit report or for any fraudulent, unlawful or wrongful act or conduct; or
 - (III) 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 act or conduct or any likely act or conduct on his part;
- h) To seek any other remedy as the Tribunal may deem fit¹

3. Who can sue for class action?

(I) Company with share capital-

- 100 members of the company or 10% of total no of members.(Requisite shareholders)
- 100 depositors of the company or 10% of total no of depositors or any depositor or depositors to whom the company owes 10% of total deposits of the company (Requisite Depositors)

(II) Company without share capital-

- 1/5th of total no. of members
- 100 depositors of the company or 10% of total no of depositors or any depositor or depositors to whom the company owes 10% of total deposits of the company (Requisite Depositors)

4. Who can be sued for Class Action?

As per the provisions of section 245 (1) (g) a class action suit can be brought against:²

1. The company.
2. Directors of the company.
3. Auditors and audit firm of the company for any false and misleading statement in the audit report or any wrongful act on the part of the management of the company.
4. Any expert or advisor or consultant or any other person for misleading statements. or any wrongful act on the part of the management of the company.

5. Where Class Action Suits are to be instituted?

Section 245(1) provides that all class action suits shall be instituted in the Tribunal. Tribunal as defined in Section 2 (90) of the Companies Act, 2013 means the National Company Law Tribunal.³

6. How can class action suits be inducted?

As per section 245(4) the Tribunal while considering a class action shall take the following factors into account.⁴

- Whether the member or depositor is acting in good faith.

¹Companies ACT 2013.

²CompaniesACT 2013

³Companies ACT 2013

⁴Companies ACT 2013

- Any evidence which shows the involvement of any person other than directors or officers of the company.
- Whether the cause of action is one which the member or depositor could pursue in his own right rather than through an order under this section;
- Where the cause of action is yet to occur, the Tribunal shall duly consider all acts and circumstances that would be likely
 - (i) authorised by the company before it occurs; or
 - (ii) ratified by the company after it occurs;
- Where the cause of action has already occurred, the Tribunal shall duly consider and evaluate all acts and circumstances that would be likely ratified by the Company.

7. Costs and expenses in regard with class action suits are borne by whom?

Costs and expenses with regard to class action suits shall be borne by the company and the person responsible for the “onerous act”. It is pertinent to note here that the section casts the liability to bear costs of application upon the person who does or is responsible for such act.

8. Penalty in case of Non Compliance of order passed by the tribunal

Any company which fails to comply with an order passed by the tribunal under section 245 shall be punishable with a fine which shall not less than Rs 5 lakhs but which may extend to Rs 25 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may exceed to 3 years and with fine which shall not be less than Rs 25000/- but which may extend to Rs 1 Lakh.

Under Section 425 of the Companies Act, 2013 the Tribunal has also been— conferred the same jurisdiction, powers and authority in respect of contempt of its orders as conferred on High Court under the Contempt of Courts Act, 1971.⁵

9. Benefits of Class action to various stakeholders& how class action suits are better to file as compare to individual suits

1. The collapse in Satyam case has created an environment requiring greater vigilance with regard to the corporate governance. Because of this new concept in India companies are likely to face increased threat of litigation posed by class actions.
2. Shareholders bring class actions against companies and their directors for compensation claims associated with their investments. Recent example in India is Sahara Case.
3. Class Actions are particularly very beneficial for all small and minority shareholders.
4. Since the auditors and consultants of the company are also included within the ambit of class action suits, it will also ensure that such auditors, experts and advisors of the company act carefully and diligently before advising the company and its management.
5. It also benefits the investors of a company.
6. 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
7. Class action helps in increasing the corporate accountability.
8. It avoids repetition of same witnesses, same documents and trial time again.
9. Reduces litigation costs, efforts and increases efficiency of a legal process.

10. Challenges of Class Action

1. Only Members and Deposit holders can file class action suits. Other stakeholders such as creditors, bankers, debenture holders and even regulatory authorities are deprived of this facility.

⁵Companies ACT2013

2. However, it has been observed in various class action suits (particularly in the US) that victims receive no compensation or benefits for their association.
3. Sometimes, it is felt that the compensation awarded may have been greater if the case was pursued by an individual rather than a group.
4. 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.
5. One of the drawbacks is delay in our legal system as compared to U.S approach towards Class action.
6. In the US, these firms work on a contingency model, where they take no fees upfront and usually collect a third of the settlement amount. "In India, the Bar Council prohibits a contingency model. It's unlikely that law firms would have any incentives to fight cases.

11. Conclusion and suggestions

It may be concluded that class action suits will be a platform for members and depositors to raise their grievances against the management of a company including directors, experts, advisors, consultants, auditors etc for wrongful acts which is prejudicial to the interest of the company. In India, it is very important to promote the concept of 'class action' at the grassroots level to bring about the required awareness among all stakeholders. On the other hand the Tribunal must pass effective and timely decisions. 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.

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