

SHAREHOLDERS' PROTECTION UNDER INDIA'S CORPORATE LEGISLATIONS



India's corporate legislation provides for a framework of rules and regulations that comprehensively and effectively deals with protection of shareholders thereby ensuring that all shareholders, irrespective of their size, are recognized as stakeholders in the corporate processes. This primer gives an overview of the shareholders' protection drafted in corporate legislations in India: *(For queries on rights of shareholders, please refer our FAQs on ['Shareholder's rights & Shareholders' meetings under Indian Law'](#))*

1. What are major corporate legislations in India that provide protection to shareholders?

The rights of shareholders are protected by The Companies Act, 2013, and the Securities and Exchange Board of India Act, 1992, and the rules and regulations made under these acts.

2. What are the rights of shareholders if the controlling shareholders carries out actions that are prejudicial to the shareholders?

Any shareholder who complains that the actions of the controlling shareholders are prejudicial to public interest, or the interests of the company, or prejudicial or oppressive to him or any other shareholders, can move before the National Company Law Tribunal ("NCLT") on the grounds of mismanagement and / or oppression by the controlling shareholders and seek appropriate relief.

3. Which acts amount to oppression?

Based on various judicial pronouncements, we have listed below an indicative list of acts amounting to oppression:

- a. Removal of a shareholder holding the position of a director and depriving him from salary and other benefits;
- b. Chairman of the board withdrawing a special resolution without the consent of the shareholder;
- c. Allotting shares with an intention to obtain majority and using that position to remove some existing directors and appointing new directors in their place;

- d. Meetings held without notice to shareholders;
- e. Shareholder having veto powers carrying on competing business adverse to the interests of the company with a view to gain pecuniary benefit;
- f. Not calling a general meeting and keeping shareholders in the dark;
- g. Usurping the office of the managing director or acting as managing director without being duly appointed;
- h. Illegal appointment of directors;
- i. Illegal removal of directors;
- j. Conversion of public company to private company without following proper procedure;
- k. Granting secret loans to directors when the company is not financially sound;
- l. Depriving a shareholder of the right to dividend;
- m. Refusing to register transmission of shares of a shareholder under a will;
- n. Issue of further shares benefiting a section of shareholders;
- o. Pushing a shareholder into hopeless minority;
- p. Violating statutory rights of shareholders such as right to elect directors;
- q. Not giving notices to shareholders of removal/ appointment of directors or issuance of shares;
- r. Not allowing attendance in general meetings;
- s. Exclusion of a director from management (in a family run company or a quasi-partnership company);
- t. Disposing of the assets of the company in an illegal manner.

However, the alleged action of oppression must be continuous in nature, i.e., the act complained of must not be a solitary action of the majority. To prove oppression, a continuation of the past acts relating to the present acts is relevant.





4. Which acts do not amount to oppression?

A non-exhaustive list of acts or omissions which have been held to not amount to oppression are as under:

- a. unwise, inefficient or careless conduct of a director;
- b. inefficient management by the directors;
- c. oppression not relating to the company's affairs but directed towards a third person;
- d. An isolated and single act of ouster from directorship;
- e. Appointment of directors not prejudicial to the interest of the company;
- f. Failure to declare dividend;
- g. Giving interest free loans to sister concerns;
- h. Commercial misjudgments by the directors;
- i. Single or isolated acts of procedural violations such as non-holding of the meeting of the directors;
- j. Lack of details in the notice of a meeting.

5. What acts amount to mismanagement?

Some of the acts which have been held by Indian courts to amount to mismanagement are summarized as under:

- a. Where there is serious infighting between directors;
- b. Where Board of directors is not legally appointed, and the illegality is being continued;
- c. Where bank account was operated by unauthorized person;
- d. Where directors take no serious action to recover amounts embezzled;
- e. Failure of the management to protect the company's records;
- f. Continuation in office after expiry of term of directors;
- g. Sale of assets at low price and without compliance with the Companies Act;
- h. Violation of statutory provisions and those of Articles of Association ("**AoA**");
- i. Violation of the Memorandum of Association ("**MoA**") by the management;
- j. Abuse of fiduciary duties by the directors;
- k. Conspiracy to defraud shareholder by changing pattern of shareholding by misappropriation of company resources.

6. What acts do not amount to mismanagement?

Looking to the various judicial pronouncements, following acts have been held as not amounting to mismanagement:

- a. Merely because the company incurs loss, mismanagement can't be alleged;
- b. An arrangement entered into between the company with its creditors if in the interest of the company;
- c. Removal of director and termination of manager's or other officer's services, when a bona fide decision;
- d. Building up of reserves of the company or non-declaration of dividend especially when it does not result in devaluation of shares;
- e. A bona fide shifting of the registered office of a company, causing no loss to the company.

7. Who can file a complaint before the NCLT alleging mismanagement and oppression?

Members of a company can file such a complaint before the NCLT, subject to the following minimum eligibility requirement:

Type of Company	Required minimum members
Company having share capital	100 (one hundred) members of the company, or 10% (ten percent) of the total number of its members, whichever is less, OR any member(s) holding at least 10% (ten percent) of the issued share capital of the company, subject to the condition that the applicant has paid all calls, and other sums due on his shares.
Company not having share capital	20% (twenty percent) of the total number of its members

However, NCLT may, on an application made to it in this behalf, waive the minimum eligibility requirement.





8. What reliefs are ordinarily granted by NCLT in a case of oppression or mismanagement?

If NCLT is of the opinion that the complaint is justified, it may pass any order that it thinks fit to bring the matter to an end, which includes the following:

- a. Regulation of affairs of the company in future;
- b. Purchase of shares or interests of any members;
- c. Reduction in share capital;
- d. Restrictions on the transfer or allotment of Shares;
- e. Termination or modification of any of agreement executed between the company, and its management or any other person;
- f. Removal of managing director and/or any other director of the company;
- g. Recovery of undue gains made by the any managing director, manager or director;
- h. change in the management of the company;
- i. Appointment of any other person to manage the company;
- j. Imposition of Costs.

9. What is a class action suit?

When the management or affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or depositors, a suit may be filed on behalf of the class of members/ depositors aggrieved by such action. These suits are distinctive and separate from

'oppression and mismanagement' complaint and were brought in the Companies Act, 2013 as an additional tool for shareholders' protection.

10. Who can file a class action suit before the NCLT?

Members of a company can file such a class action suit before the NCLT, subject to the following minimum eligibility criterion:

Type of Company	Required minimum members	Required minimum depositors
Company having share capital	Not less than 100 (one hundred) members or not less than 5% (five percent) of the total number of its members; whichever is less;	Not less than 100 (one hundred) depositors or at least 5% (five percent) of the total number of its depositors; whichever is less;
	OR	OR
	in case of an unlisted company any member(s) holding not less than 5% (five percent) of the issued share capital.	any depositor(s) to whom the company owes 5% (five percent) of the total deposits of the company.
	in case of a listed company any member(s) holding not less than 2% (two percent) of the issued share capital.	





11. What reliefs are ordinarily granted by NCLT in class action suits?

If NCLT is of the opinion that the suit is justified, it may pass orders to

- a. Restrain the company from committing an act, which is in breach of the AoA or MoA of the company;
- b. Declare a resolution altering the AoA or the MoA of the company as void;
- c. Restrain the company and its directors from acting on such resolution;
- d. Restrain the company from doing an act which is contrary to the provisions of the Companies Act or any other law for the time being in force;
- e. Restrain the company from taking action contrary to any resolution passed by the members;
- f. Claim damages or compensation or demand any other suitable action or remedy that the Tribunal may deem fit.

12. What is the basic difference between an ‘oppression and mismanagement’ complaint and a class action suit?

Particulars	Oppression and mismanagement	Class action suit
Who can file	Member(s) of a company	Member(s) / Depositor(s) / Class of Member(s) / Depositor(s)
Against whom can it be filed	The Company	The Company, the Board of Directors, Auditors and Advisors

	(NCLT may issue orders against the Board of Directors)	(including experts and consultants)
Minimum eligibility requirement	Refer Q. No. 7 Can be waived by NCLT.	Refer Q. No. 10 Cannot be waived by NCLT.

13. Can the Order of the NCLT be appealed?

Yes, the Order pronounced by the NCLT can be appealed before the National Company Law Appellate Tribunal (“NCLAT”).

14. What is the procedure of Appeal?

- a. The appeal must be made by the person aggrieved by the decision of the NCLT.
- b. Appeal will not be allowed when NCLTs decision is based upon the consent of the parties.
- c. Appeal must be made within 45 (forty-five) days from availability of the disputed order. This can be extended by NCLAT by another 45 (forty-five) days if there is sufficient cause for such delay.
- d. NCLATs Order can further be appealed before the Supreme Court within 60 (sixty) days from the availability from the disputed Order (further extendable by another 60 (sixty) days if there is sufficient cause)





15. What rights do shareholders have if the company becomes insolvent?

In India, the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) is the principal governing legislation on insolvency resolution of companies. If the debts of the company are not resolved, it is mandatorily liquidated. The distribution from the proceeds of the assets of such a company is done in accordance with the IBC. The claims of the preference shareholders and equity shareholders rank after all other preferential claims such as insolvency resolution process costs, liquidation costs, workmen dues (for the last 24 months), debts owed to secured creditors and so on, is made.

16. What statutory safeguards are provided in the Companies Act for misstatement in Prospectus?

The director, promoter, and every person (collectively “**Person responsible**”) who authorized the issue of the prospectus with misstatement intentionally is liable for fraud under the Companies Act and is punishable with imprisonment for a term not less than 6 (six) months but which may extend to 10 (ten) years and shall be liable to fine not less than the amount involved in fraud but may extend to thrice the fraud amount. However, if the fraud involves public interest the term of imprisonment shall not be less than 3 (three) years. Also, the person responsible shall have to compensate every person who acted upon the misstatements of the prospectus and suffered loss.

17. Can a shareholder file a complaint with the Securities and Exchange Board of India?

Yes, the Securities and Exchange Board of India (“**SEBI**”) has established the “SEBI Complaints Redress System” (“**SCORES**”) for receiving investor complaints in respect of listed companies, collective investment schemes and other SEBI-regulated entities.

18. Which are the matters that cannot be considered as complaints in SCORES?

- a. Complaint not pertaining to investment in securities market;
- b. Anonymous Complaints (except whistleblower complaints);
- c. Incomplete or un-specific complaints;
- d. Allegations without supporting documents;
- e. Suggestions or seeking guidance/explanation;
- f. shareholders not satisfied with trading price of the shares of the companies;
- g. Disputes arising out of private agreement with companies / intermediaries;
- h. Matter involving fake / forged documents;
- i. Complaints on matters not in SEBI's purview;
- j. Complaints about any unregistered/ un-regulated activity

19. When are shareholder complaints disposed of on SCORES?

Complaints are disposed of by SEBI:

- a. On receipt of report that satisfactory action has been taken. Such report must be from the concerned entity responsible for resolving the complaint and must be supported by documents;
- b. On failure by the investor/complainant to give complete details/documents required for redressal of their complaint within the prescribed time;
- c. When the concerned entity's case is pending with court/ other judicial authority.



Disclaimer: The information contained in this document is not legal advice or legal opinion. The contents recorded in the said document are for informational purposes only and should not be used for commercial purposes. Acuity Law LLP disclaims all liability to any person for any loss or damages caused by errors or omissions, whether arising from negligence, accident, or any other cause.