THE EVOLVING ROLE OF MINORITY SHAREHOLDERS IN CORPORATE DECISION MAKING: NAVIGATING THE TENSIONS BETWEEN UNSETTLING CONCERNS AND REASSURING OUTCOMES

Dr. Niladri Mondal
Assistant Professor, Chotanagpur Law College, Ranchi, Email: nilu.mondal@gmail.com; ORCID ID- 0000-0003-1850-4840

Dr. Gandhi Anand Bilung
Assistant Professor, Chotanagpur Law College, Ranchi, Email: gandhibilung@gmail.com; ORCID ID- 0009-0005-8004-8921

Victor Nayak
Assistant Professor, UEM Kolkata, Kolkata, Email: victor.nayak.25@gmail.com; ORCID ID- 0000-0002-1665-3036

Abstract

All democratic decision-making and company governance in the business world is led by majority rule, which is generally accepted as just and rational. When making choices, majority norms typically ignore the preferences of minority stockholders. Since there aren't that many individuals with real sway in the company's leadership, most employees' needs go unmet. In order to resolve the minority-majority conflict in corporate governance, the 2013 Companies Act addressed the concerns of minority stockholders and ensured that their voices would be heard in boardroom deliberations. In spite of the lack of a precise explanation in the Companies Act, 2013, minority shareholders can be recognized by referring to the stipulations stated in Section 235 (authority to obtain shares of dissenting shareholders) and Section 244 of the same Act. These provisions stipulate that minority shareholders are those who hold ten percent of the shares or a minimum of one hundred shareholders. This categorization remains applicable regardless of the overall number of participants in the company. For organizations that do not have share capital, the requirement is that at least one-third of the total number of participants must be considered minority shareholders. The primary aim of this research is to assess how the involvement of minority shareholders influences decision making within corporations, with the goal of improving its effectiveness. The study employs both analytical and experimental methods to investigate this topic. Furthermore, the paper conducts a thorough examination of the legal structure for corporate governance in India, specifically concentrating on the advancements made to safeguard and advocate for the rights of minority shareholders.

Keywords: minority stakeholders, corporate decision making, shareholder derivative action,

class action suits, corporate democracy.

Introduction

Debate on corporate governance started off simultaneously with the economic liberalisation and globalization of the Indian market. In India, liberalisation and globalisation have altered corporate governance standards and their evolution. In order to achieve parity with worldwide trends in corporate governance, the Indian legal system was envisioned as such. Nevertheless, the economic scenario in India exhibits significant variations compared to the United Kingdom and the United States. In contrast to the dispersal of shareholdings observed in the UK and the US, Indian companies were primarily controlled by families and individuals closely associated with them. The promoters had a significant impact on the company and its choices[1].

In today's commercial world, corporate governance has attained prominence across the countries and considered a major factor asserting health of a corporate setup. Strong corporate governance norms are equally important for developed and developing economies in order to grow sustainably. Ensuring the inclusion and empowerment of shareholders in the significant decision-making processes of a corporation is a crucial facet of an effective corporate governance framework.

By investing capital in the acquisition of shares of a firm, shareholders obtain specific rights inside that company. Shareholders control the firm indirectly, yet they are still regarded the company's true proprietors. Since shareholders are the actual contributors to a business's money, it is essential that their rights be protected for the organisation to operate efficiently. A company has multiple masters due to its operation business structure, thus protection of the shareholders rights becomes important.

Only when there are legal provisions, can the effective protection of shareholders' rights and interests be realized. Therefore, there are practical and legal aspects of shareholder protection. Legal aspects meaning thereby the statutory protection of shareholders governs the status of stockholders in accordance with the legal provisions. Stockholders and investors play a crucial role with respect to the corporate entity, and thus it is imperative to protect them. It has always been obvious that in almost all areas, the majority is becoming imposing and similar is the case with shareholders. In general, the interests of minority shareholders often take a backseat to the preferences of majority shareholders or company founders. Despite having specific rights under

[1] Corporate Governance in India - Battle of Stakes, available at https://www.inderscienceonline.com/doi/pdf/10.1504/IJCG.2019.098041

the legal framework, these rights are ultimately subject to the discretion of the majority stakeholders. Moving forward, safeguarding the interests of minority shareholders will play an increasingly crucial role in fostering the sustainable development of the company. Several variables influence whether a nation has a vibrant financial sector, but there is one that sticks out. "*Countries that offer a legal framework to protect minority shareholders tend to have more robust markets because investors are more willing to take risks*[2]. Company shares in India are typically owned by the founders or their close associates, including overseas business partners who invest in the company or through institutional investments. However, it is crucial for the company to not overlook the worries of minority stakeholders. The enactment of the Companies Act in 2013 in India has introduced specific legal provisions to effectively address this issue in a positive manner.

Minority Shareholder Vis-À-Vis Small Shareholder

1. Minority Shareholder

The definition of a minority shareholder under the Companies Act of 2013 remains ambiguous, but it typically pertains to shareholders who hold less than a majority of the company's voting rights or lack direct or indirect control over its management and decision-making processes.

A minority shareholder, as defined in the Merriam Webster Law Dictionary, refers to a shareholder whose percentage of shares is insufficient to grant them any authority or ability to exercise control or influence over the decisions and actions taken by a corporation[3].

2. Small Shareholder

According to the clarifying explanations provided in the notes for Section 151 of the Companies Act, 2013, a "Small Shareholder" refers to an individual who possesses shares with a stated value that falls below twenty thousand rupees or any other designated amount. This particular interpretation solely pertains to the aforementioned paragraph[4]. There is an unclear area where the difference between small and minority stockholders becomes blurred. In order to determine small shareholders who, hold a stake in the company, their personal shareholding should not exceed Rs. 20,000/-.

[2] World Economic Forum, "Why we need to protect minority shareholders," World Economic Forum Agenda, https://www.weforum.org/agenda/2015/10/why-we-need-to-protect-minority-shareholders/ (Accessed: February 27, 2024)

[3] LexisNexis, "Minority Shareholder," (last visited Feb. 29, 2024) https://www.lexisnexis.co.uk/legal/glossary/minority-shareholder.

[4] Companies Act, 2013, Act No. 18 of 2013, § 151, explanation.

On the flip side, minority shareholders are evaluated collectively and are determined to not have a significant influence over the company. However, due to their low share ownership, they may still be classified as minority shareholders, which in turn means that the company holds non-controlling shares. While there are no legal provisions specifically defining major shareholders or minority shareholders, the level of influence they possess over the company can serve as a vital criterion for differentiating between these two categories.

Minority Shareholder's Involvement with Company

1. In Appointment of Directors of their choice

In the broader context of publicly traded companies, individuals who are considered minority shareholders or small shareholders typically possess the right to nominate their favored candidates to serve on the board. This entitlement is in line with the provisions set out in Section 151 of the Companies Act 2013, where these shareholders can be classified as "small shareholders."

In the event that a minimum of 1,000 minority shareholders, or 10% of the total number of minority shareholders, file a request with the relevant company for the inclusion of a minority shareholder director, the company is obligated to comply with this request. To be considered an independent director within this provision, the nominee must satisfy the requirements outlined in Section 149 (6) of the Companies with Capital Act 2013 and will not be eligible for re-election once their term of office concludes[5].

This section's guidelines are being implemented for the first time by the minority shareholders of Alembic Ltd. Unifi Capital, a small shareholder owning three percent of Alembic's shares, has put forth the nomination of their vice president as a minority shareholder director. However, the board of directors dismissed the proposal, depriving the stockholders of their right to vote on the matter[6].

Notwithstanding the importance of this provision in protecting small shareholders, it must be protected against misuse by huge institutional investors who sometimes behave in accordance with the promoters' intentions. Without proper control small shareholders may be caught in a larger conflict of interest between powerful interest groups (such as large institutional investors and founders), ultimately endangering rather than protecting the interests of passive retail

[5] The Companies (Appointment and Qualifications of Directors) Rules, 2014, rule 7 (2019 ed.).

[6] Moneycontrol, "Alembic Rejects Small Shareholders' Request for Seat on Board," https://www.moneycontrol.com/news/business/companies/alembic-rejects-small-shareholders-request-for-seat%20on-board-2339181.html.

shareholders. The reason for the directors is mainly protection small shareholders which will be rendered null in such situation[7].

According to legal professionals, the Companies Act does not grant shareholders the explicit right to select a director based on their share ownership. However, the Companies Act, S 151, requires a company which is listed to have a director elected by minority shareholders and appointed through a simple resolution at a general meeting. This elected director serves a three-year term.

2. Approaching NCLT for Oppression and Mismanagement

Conventionally in companies, there are provisions that stipulates equal voting right for shareholders of the same category. Hence as a general rule, it is perceived that large shareholders have more power than small shareholders and can better control company affairs. Decisions made by majority shareholders, as long as they are within the legal framework and company's constitution (Articles of Association), have a binding impact on the minority shareholders.

Despite the fact that majority shareholders' decisions do not always align with the interests of minority shareholders, there are instances where the majority may make decisions that do not serve the interests of the minority. Minority shareholders in these situations may choose to bring these issues to the National Company Law Tribunal (also known as NCLT). Chapter XIV of the Companies Act of 2013 describes the remedies available to minority shareholders in situations of mismanagement and oppression. Sections 241 to 246 of the Companies Act 2013 provide measures to address tyranny and mismanagement.

The Act of 2013, specifically Section 241, outlines the circumstances under which an individual who is a member of a company can seek recourse from the National Company Law Tribunal (NCLT) due to oppression and mismanagement. This provision allows any member of the company to raise a claim based on the grounds specified in this section. The interpretation of "any member of a company" has been discussed in the case of *S.V.T. Spg. Mills (P.) Ltd. v. M. Palanisami*[8]. In the case of *S.V.T. Spg. Mills (P.) Ltd. v. M. Palanisami*[9], the court held that the term "member" under Section 2(27) of the Companies Act, 1956 (now Section 2(55) of the 2013 Act), should be given a broad interpretation. This means that individuals, excluding

[7] Umakanth Varottil, Minority Shareholders’ Rights, Powers and Duties: The Market for Corporate Influence (February 24, 2022)
[8] (2009) 95 S.C.L. 112 (Mad)
[9] (2009) 95 S.C.L. 112 (Mad)

holders of share warrants, should be considered as members of a company. The provisions of sections 397 and 398, which correspond to sections 241, 242, and 244 of the 2013 Act, serve as a fair and just authority aimed at protecting minority members of a company from discrimination and oppression by the majority members.

In the case of *Amalgamations (P) Ltd) & Others v. Shankar Sundaram & others*[10], the Madras High Court examined whether a member of a holding company is allowed to file a petition concerning the operations of a subsidiary company. The High Court upheld the decision of the Company Law Board, which stated that including subsidiaries in the company application would go against the law and would be incorrect based on the specific facts and circumstances of the case. It was concluded that individuals who are not members of the company cannot claim oppression or invoke section 397 of the Companies Act of 1956 against the company.

Therefore, a member of a holding company cannot assert that a subsidiary company is treating them unfairly as they do not have membership in the subsidiary company. There is no legal nexus between the shareholder and the subsidiary company. Additionally, the central government has the option to seek assistance from the National Company Law Tribunal (NCLT)[11].

In the case of *Amalgamations (P) Ltd) & Others v. Shankar Sundaram & others*[12], the Madras High Court examined whether a shareholder of a parent company is entitled to file a petition concerning the activities of a subsidiary company. The court affirmed and supported the ruling of the Company Law Board, which correctly determined that the inclusion of subsidiaries in the company's application was permissible.

Based on the particular facts and circumstances of the case, it was found to be unlawful and incorrect to argue that a non-member of a company could invoke section 397 of the Companies Act of 1956 to claim oppression against the company. Thus, it was determined that a shareholder of a parent company is not able to allege unfair treatment by a subsidiary company since there is no legal affiliation between the shareholder and the subsidiary. In such cases, the National Company Law Tribunal (NCLT) can be approached for assistance, and the central government may also seek the intervention of the NCLT[13].

Section 241: Suit Maintainability

[10] C.D.J. (India) M.H.C. 4938 (2011).
[11] The Companies Act, 2013, Act No. 18 of 2013, § 241(2).
[12] C.D.J. (2011) M.H.C. 4938.
[13] The Companies Act, 2013 (Act 18 of 2013), s. 241(2).

In accordance with the requirements of Section 244, Section 244 specifies which members may submit an application. According to Section 244 –

"(1) for a company with a share capital, at least one hundred members of the company or one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one-tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or her shares and

(2) for a company without a share capital, at least one-fifth of the total." If the tribunal receives a request, it is allowed to bypass the competency parameter mentioned in this section, as long as it has approved it previously. This is in accordance with the provision stated in that section.

"In the case of Cyrus Investments Pvt. Ltd. v. Tata Sons Ltd the NCLAT was faced with the question on whether the ten per cent 'issued share capital' requirement under Section 244(1) was limited to equity share capital or whether it included both, equity and preferential share capital. The Tribunal held that since the legislature did not specify that only equity share would be included for this calculation, their intention must be to permit entire share capital (equity and preference) within the phrase 'issued share capital'. Accordingly, the Tribunal held that Cyrus Investments of 18.37 per cent equity shareholder-ship did not qualify for the threshold under the section. As the total issued share capital to Cyrus Investments was 2.17 per cent, it fell short of the ten per cent requirement under the section. Section 241(1)(a) lays down the right of members to apply against acts of oppression and mismanagement under Section 241 in cases on companies backed by share capital. Similarly, Section 241(1)(b) provides for a right of members to apply under Section 241 for companies not backed by share capital, but by guarantee. Under sub clause (b), the right can be exercised where not less than one-fifth of the total members of the company make the application. It is these requirements under Section 244(1) – under subclause (a) and (b) – which may be waived off by application to the Tribunal by operation of proviso under the section[14]."

This new provision, stated in the Companies Act, 2013, allows for 23 class-action suits. These suits enable a large group of individuals with a common interest in a case to collectively sue or be sued. The provisions for class-action suits are outlined in Sections 245

[14] Verma, Rohit, Puri, Abhishek, and Sidhu, Jasmeet. "Decoding the Tribunal's Power to Grant Waiver Under Section 244 of The Companies Act, 2013." Available at: http://nujslawreview.org/wp-content/uploads/2020/09/13-2-Verma-Puri-Sidhu-Decoding-the-Tribunals-power-to-grant-waiver-under-section-244-of-the-Companies-Act-2013-1.pdf (accessed 27 February 2024).

and 246 of the Companies Act, 2013. Investors are granted the right to initiate class action lawsuits if they believe that a company's management is engaging in actions that harm the firm, its shareholders, or its depositors. This concept of class action lawsuits in India originated from the J.J. Irani Committee Report.

The study indicated that:

> *"in case of fraud on the minority by wrongdoers, who are in control and prevent the company itself bringing an action in its own name, derivative actions in respect of such wrong non-ratifiable decisions have been allowed by courts. Such derivative actions are brought out by shareholder(s) on behalf of the company, and not in their personal capacity(ies), in respect of wrong done to the company. Similarly, the principle of Class/Representative Action by one shareholder on behalf of one or more of the shareholders of the same kind have been allowed by courts on the grounds of persons having same locus standi. Though these principles have been upheld by courts on many occasions, these are yet to be reflected in Law[15]"*

The new Companies Act of 2013 included this provision in order to better safeguard the interests of minority shareholders, enhance the responsibility of auditors, and defend against corporate frauds and scams.

The "*Satyam Scam*"[16] showed how important it is for Indian law to have a way for people to sue as a group. Even though the SEBI (Prohibition of Fraud and Unfair Trade Practices) Regulations 2003 and the SEBI (Prohibition of Insider Trading) Regulations 1992 had provisions for prosecuting promoters, members of the board, and key managerial staff, there were no provisions for making up for shareholders' losses. Investors went to the National Consumer Disputes Redressal Commission and the Supreme Court to try to get their lost stock value back. But they don't win because their claim was turned down because there isn't a law that lets them get the value of their shares back in this kind of situation. On appeal, the case was also turned down by the Supreme Court.

This made things worse for Indian shareholders and investors because they couldn't get their

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[15] "Report on Company Law," available at: http://www.primedirectors.com/pdf/JJ%20Irani%20Report-MCA.pdf.

[16] Satyam Scam – The Story of India's Biggest Corporate Fraud!, Trade Brains (October 20, 2020) *available at:* https://tradebrains.in/satyam-scam/.

lost shareholder value back. In contrast, American investors were able to get their losses back through settlements with Satyam and PwC of $125 million and $25.5 million, respectively.[17] The different ways that security holders in India and the U.S. were treated caught the attention of the Ministry of Corporate Affairs when it came to class action lawsuits. In the end, section 245 of the new Companies Act made this possible.

Members and depositors are given the authority under Section 245 to take legal action against the business, its directors, auditors, or any adviser or expert they believe to be implicated in any fraudulent, illegal, or otherwise unethical act or omission connected to the firm.

3. Class Action Suit: Admissibility

The National Company Law Tribunal will take into consideration the provisions of section 245(4) of the Act as well as Rule 85 of the National Company Law Tribunal Rules, 2016, which details the requirements that must be met before a class action lawsuit may be admitted. Consideration must be given to the following aspects about the matter at hand:

a) *"Whether there is bona fide intention on the part of member or the depositor who is making the application.*

b) *Any evidence that shows the involvement of any other person except the directors or officers of the company in relation to the matters stated in section 245(1)(a)-(g);*

c) *That the cause of action is such that it can also be pursued by the member or the depositor in his individual capacity instead of taking the route under this section;*

d) *Any views of the members or the depositors that show that they neither have any direct nor any indirect personal interest in the concerned matter;*

e) *That the cause of action is such which has not taken place yet but is likely to happen and the chances are such that it may be authorized or ratified by the company before its occurrence;*

f) *That whether there are so many members in the concerned class that approaching them individually would be very difficult and hence class action preferable;*

g) *That there are questions either of fact or law that are common to that particular class;*

h) *That the claims made or the defences put forward by the parties are such that they are*

[17] Class Action Suits - Genesis, Analysis and Comparison, *available at:* https://www.researchgate.net/publication/311576056_CLASS_ACTION_SUITS_GENESIS_ANALYSIS_AND_COMPARISON.

typical to that particular class;

i) *That whether it would be fair and adequate in the interest of the class to allow the representative on behalf of that class."*

Take Away for Minority Shareholders

The minority shareholders, not having sufficient rights individually, have to abide by the decision taken by the majority shareholders normally. Section 245 allows them to file a legal suit, as a group and grants them right to recover losses from the company, its directors, auditors, experts and advisors. If a shareholder approaches the tribunal in his individual capacity instead of a class action suit, he may not get such benefit.[18]

1. Section 241 VS. Section 245:

There are few differences that shows importance of section 245.

- One important difference is that section 245 protects depositors in addition to those who are covered by section 241. So, depositors are likewise permitted in order to make an application in accordance with section 245. Section 241 does allow remedies connected to the acquisition of shares by any member, a restriction on the transfer or allocation of shares, the termination or modification of an agreement, the removal or appointment of directors, etc. The scope of it is quite a little broader than in contrast to the requirements of section 245. Nonetheless, section 245 is far more permissive regarding orders for the recovery of damages and compensation.
- The nature of the orders issued under Section 245 is unclear. Unlike an oppression and mismanagement order, which only binds the parties to the application, these orders are obligatory on non-parties who are members or depositors. In the event of oppression and management, the public interest is also considered. A class action lawsuit may be filed if an act is against the interests of members, depositors, or the firm, whilst the public interest is also considered in the case of a breach of contract.[19]

2. Minority Freezeout in Events of Merger and Acquisitions:

"*In most cases, merger decisions are taken by the management and approved by the shareholders. However, small or retail investors do not have much say in such decisions and*

[18] *Supra* note 18.
[19] Varun Munjal, India: Class Action Suits: Notified Yet Ambiguous, *available at:* https://www.mondaq.com/india/class-actions/548850/class-action-suits-notified-yet-ambiguous.

do not have enough votes to influence the decisions. They are tied with the drag along provision, which forces them to go along with the majority view".[20] If minority shareholders are not agreeing with the transaction at best they may vote against the resolution of such transection. But, as the phrase implies, minority stockholders have limited voting power. The interests of minority shareholders may be jeopardised if the management and majority shareholders decide to execute a low-priced merger or purchase with a related organisation, as is often the case with family-run businesses or in the event of a reverse merger. Additionally, the assessment of a fair price is not always straightforward, since a price that first seems to be unjust at the time of a merger may turn out to be very fair after the effects of the merger are known (acquisition of JLR by TATA Motors).[21]

A freezeout, also known as a squeeze out, is the practise of acquiring the shares owned by minority owners without providing compensation for those shares. It demonstrates the enormous influence that the majority owners exert over the minority shareholders in order to force them out of the company. This procedure could be profitable for the corporation, but it would be detrimental to the interests of the shareholders who own minority shares. Despite the fact that it is carried out in accordance with all of the company's legal requirements, it is still a risk to the company's members of underrepresented groups. According to the Companies Act of 2013, squeeze out may be influenced in four different ways.

A provision for squeezing out criterion is included in Section 236 of the Companies Act. This provision allows the dominant shareholder group to buy out the minority shareholder group. If a merger, an exchange of shares, or the conversion of securities results in an acquirer or another person acting in concert with him becoming the owner of at least 90 percent of the equity share capital (issued) of the firm, then the individual has the obligation to inform those who are in the minority, also known as the shareholders who own the remaining 10 percent of the company's shareholdings, about his intention to buy their shareholdings. This is because an acquirer is considered to be acting in concert with him. The price that is going to be provided for such a transaction is going to be decided based on an evaluation done by a certified valuer.

Moreover, the minority owners are granted the authority under subsection (3) of section 236 to make their shareholdings available for acquisition by the majority shareholders.

[20] Impact of mergers on small investors, available at: https://mnacritique.mergersindia.com/mergers-impact-small-investors/#:~:text=If%20a%20merger%20is%20successful,is%20any%20mismatch%20in%20valuation.
[21] Yogita Khatri, "How corporate mergers and acquisitions impact small investors", *THE ECONOMIC TIMES*, (July 17, 2017), *available at* https://economictimes.indiatimes.com/wealth/invest/are-mergers-and-takeovers-wealth-creation-opportunities-for-investors/articleshow/59606562.cms.

In a number of instances, the Indian courts have provided their interpretations on how squeeze out is treated legally in the country. In the case of *Sandvik Asia Limited v. Bharat Kumar Padamsi*[22], the court was asked to decide whether or not it could be stated that the choice to squeeze out the minority owners in lieu of a price was unjust and unequal. The court held that "*once it is established that non-promoter shareholders are being paid fair value of their shares, at no point of time it is even suggested by them that the amount that is being paid is any way less and that even overwhelming majority of the non-promoter shareholders having voted in favour of the resolution shows that the Court will not be justified in withholding its sanction to the resolution*."

In the matter of *Cadbury India Limited*[23] the Bombay High Court established certain standards and defined the definition of the term prejudice. These were both outcomes of the case. In transactions involving the purchase of minority shareholdings, the court said that it is the obligation of the court to ensure compliance (according to the Companies Act of 1956, the High Court was an approved authority, therefore it was required to ensure compliance), now under the Companies Act, 2013 tribunal is the authorised body) to ensure that "*the scheme is not against the public interest, is fair and just and not unreasonable, does not unfairly discriminate against or prejudice a class of shareholders and draws a balance between the commercial wisdom of the shareholders expressed at properly convened meetings. The term "prejudice" in relation to valuation of a scheme would mean something more than just receiving less than what a shareholder desires, being a concerted attempt to force a class of shareholders to divest themselves of their holdings at a rate far below what is reasonable, fair and just*"

In another example, concerning the case of *re Elpro International Limited*[24], the Bombay Stock Exchange took a stand against the buyout of minority shareholders using a reduction of share capital. The reasoning behind this opposition was that the Exchange considered the silence of the minority shareholders to indicate their acceptance of the proposed buyout. This was the basis for the opposition to the buyout of minority shareholders. Notwithstanding the fact that the court approved of the request, it also stated that stock exchanges have the discretion to take action in accordance with the listing agreements if they have reasons to think that a breach of securities legislation has occurred. Due to the stock exchange's resistance to the squeeze out,

[22] (2009) 3 Bom. C.R. 57.
[23] (1976) 1 W.L.R. 123.
[24] (2009) 149 Comp. Cas. 646 (Bom)

the company had no choice but to withdraw its request to squeeze out the minority shareholders. As a result, the squeeze out did not occur. This instance serves as a prime example of stock exchanges actively intervening to protect the rights of minority shareholders at opportune moments.

Nonetheless, there is still a fear that SEBI's responsibility is limited to the regulation of just listed firms. This is a problem that continues to exist. Such squeeze outs are not subject to assessment by SEBI in the case of unlisted firms; hence, in order for corporations to get around SEBI's oversight, they often first delist themselves and then make a request to squeeze out shareholders. Consequently, the minimal regulatory oversight greatly increases the vulnerability of minority shareholders in these enterprises.

3. Related party transactions

In recent years, in Asian countries, especially India, concerns about the abuse of related party transactions have increased. The issue pertains to the ownership structure of Indian companies, where a single family or individual holds significant control rights, or where a group of founders can exert control over multiple companies. Although related party transactions are not prohibited and can add value to the company, controlling shareholders may use it as a tool to embezzle the company's value. Related party transactions usually adversely affect minority shareholders. Such transactions have become a catalyst for fraud cases by certain companies.

"*Section 188 of the Companies Act, 2013 does not prohibit related party transactions but attempts to regulate it. As per the 1st proviso any that has a minimum paid up share capital of rupees 10 crore or more or wherein the company seeks to enter into a transaction then such company can only do so by passing a resolution to that effect. Further, the 2nd proviso prohibits any member who is a related party from casting its vote on the said resolution. Which often leads to the empowering of minority shareholders in allowing a related party transaction and this assumes greater importance in India where most of the companies are family run i.e. majority shareholders are related parties. Regulation 23(4) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 also lays down such prohibition*".[25]

The "Code of Independent Directors" mandated by Schedule IV of the Companies Act 2013 requires independent directors to actively work towards building trust and confidence among minority stakeholders. In recent times minority shareholders backed by the Proxy Advisory firms have been trying to wrest the control back from the majorities by *vetoing* their decisions

[25] *Supra* note 11 at 90.

which according to the minorities may seem to be not profitable or is questionable. Recently, an incident occurred at Eicher Motors (which is well-known for its brand Royal Enfield) where minority shareholders declined to support the reappointment of Mr. Siddharth Lal (a company promoter) as the Managing Director (MD) for a second term. Although the appointment had received the unanimous approval of the Board of Directors, the minority shareholder objected to a 10% increase in Mr. Lal's salary. They argued that this increment would make his remuneration disproportionate to the salaries fixed for other Managing Directors of the company. Though the BOD have finally been able to get the approval but with lot of sweat as twice the proposal was thwarted and then the company finally using the postal ballot process and by increasing the total voting power was able to just get the desired approval.[26] This kind of *investor activism* or minorities' involvement to prevent the majority from running the show as per their whims and fancies was also seen in numerous instances such as in 2011 when the shareholders of Cadbury refused to give up the shares at the price decided by the company and wanted a higher value and though the Bombay High Court at that time did not completely approve the higher value, and fixed it at Rs. 2014 which made the shareholders feel disappointed though it seemed to be the dawn of the era of investor activism in India. Another instance of that kind happened in the year of 2020 when the promoters of the conglomerate Vedanta tried to delist the company but was the proposal was thwarted by defeated by minority shareholders who demanded triple the valuation of the shares that was offered by the company which forced the management to re-strategise the whole scenario and ultimately call it off. There appears to be a similar situation occurring in the ongoing conflict between the Zee group promoters and US-based investor Invesco (who holds a 17.88% stake in Zee). Invesco has expressed their desire to hold an EGM to remove CEO Mr. Punit Goenka, which has faced strong criticism from Mr. Subhash Chandra, the founder of the Zee group. Mr. Chandra cautioned Invesco to act more like a shareholder and less like an entity with ownership rights.[27]

Conclusion

It's a democracy that is supposed to exist in every corporate structure but unfortunately unlike other jurisdictions the Indian corporate structure is plagued by a problem that is deep rooted in the *family based corporate shareholding structure* which makes the public companies also less

[26]Malyaban Ghosh, Eicher Motors' Minority Shareholders Oppose Appointment of Siddhartha Lal as MD, The LiveMint (Sept. 12, 2023), https://www.livemint.com/companies/people/eicher-motors-minority-shareholders-oppose-appointment-of-siddhartha-lal-as-md-11629451616344.html.

[27] Founder of Zee Says Key Investor Wants to Take Over Company, The Live Mint, (Oct. 26, 2023, 3:31 PM), https://www.livemint.com/companies/news/founder-of-zee-says-key-investor-wants-to-take-over-company-11633541161546.html.

public. The right of shareholders to cast votes is the essential foundation upon which a publicly traded corporation is built and maintained, regardless of any limits or repercussions that may be imposed on the right. Without proper corporate democracy, a general public company is merely "public" in the sense that its name suggests. Thus, the validity of the authority exerted by the insiders of the public organisation is contingent on the mechanisms of voice and, in particular, the voting power that shareholders have. In the absence of corporate democracy, minority shareholders have their interests represented by the controlling shareholder, whose objectives may not align with those of the minority shareholders and may even compete with them. This is especially concerning in companies in which the controlling shareholder owns significantly less than 50% of the stocks. If we excuse the investors' reasonable disinterest, the choices that are made at shareholder meetings could not represent the viewpoints held by the majority of shareholders.