

Supremacy of Shareholders & their Democracy in line with New Act, 2013

(By: Hemant Goyal & Sandhya Gupta)

“The strongest dimension of democracy is the highest degree of participation and not with the ‘degree of freedom or equality’.

Shareholders are one of the vital or should say; are the supreme components in the corporate scenario. They are theoretically empowered to influence and even frame major corporate decisions and are the managers of their company. The aim of legislature gets fulfilled when shareholders are free to exercise their rights in a democratic way and the device through which shareholders influence, lies in the voting rights, attached to ordinary shares. An ordinary share usually grants on its holders the right to cast vote on all matters, placed in the shareholders meeting except few provisions.

Shareholders can exercise control over the Company in several ways. The one way to exert control over the decision making process in corporate is by utilizing their rights attached and can explore opportunities by raising their voices. Another way to control in today’s era, rests on the market forces. The Shareholders can express their content by reacting through market forces by way of selling or buying the shares.

The management of the Company is responsible towards involvement of shareholders in the decision making process in order to create a “check and balance” system. This will ensure transparency in all the acts done by the company or by the shareholders. In shareholders Democracy everyone has equal opportunity to elect and constitute a board to manage and conduct the affairs of the company and to decide the future course of events of the company.

The central issue of shareholders participation in Corporate Governance is that of disclosure and information flow to the shareholders. Informed participant can actively participate in company’s affairs, contribute effectively in the discussions and help the management in decisions and the participation of the shareholders has been increased, by way of proxies.

The new right which allows them to take part in meeting without attending it is passing of resolution by postal ballot system. The need for proxies and postal ballot systems arises as companies in various instances hold their meetings in the remote places of the country and it is very troublesome for the members to access those meetings. No one can challenge the corporate as they hold their meetings as per the laws.

The net effect is that a minute number of shareholders are really able to access those meetings and exercise their voting rights. Thus, where a resolution has been passed by them at a general meeting which has been attended by say, hardly 2% of the total number of shareholders holding say 5% of the voting power, it cannot be said that the shareholders' democracy has been established in true spirit although there is no contravention of law .

To overpower the aforesaid situation that has been in existence for decades in India, the inauguration of the concept of postal ballot in the law books is really welcome. It provides for true shareholders' democracy. The listing agreement has also provided for companies passing certain resolutions through postal ballot. Through the postal ballot system, every member can make his/her contribution in the important decisions of the company without attending any meeting.

The justification behind proxies is that, it is not suitable for every member to attend meeting every time when it is called but they may be very interested in the proposed resolutions which have to be passed in the proposed meeting and wants to take part in it by empowering and appointing any person on their behalf to vote on the concerned matter. This approach enables the participation indirectly.

The Shareholders have limited access to the information on the policies and practices and also have very limited access to corporate proxy machinery. This is the limitation of the proxy system that shareholders are not aware about their rights and lack of information availability is also the main hurdle in implementing the law in true letter and spirit.

In short, *'Democracy is not something you conceive in or a place to hang your hat, but it is something in which you have to participate. If you will stop doing it, democracy will collapse'*.

A Company is governed by its Board and the shareholders are the voters who mould the decisions through the various channels as prescribed by the law. To assimilate the principles of democracy in our corporate culture, every eligible member should have to make vigorous or determined attempts in the decision making process of the company and the legislature should have to make laws according to the changes in the global scenario and to implement the laws not only in letter but also in spirit.

FEEDBACK/QUERY – You may direct your queries, comments or feedback to us at info@globaljurix.com.

DISCLAIMER: This article is an inclusive write up and is not exhaustive. This article, if circulated, will be only for general information purpose and under any circumstances, the contents of this article should not be construed as legal advice. The authors are not to be responsible for the correctness, completeness or quality of the information provided in this article. Liability/claims of any nature whatsoever caused by the use of any information provided in this article including any kind of information which is incomplete or incorrect will therefore be rejected.