persons who have the skill, the court said, a duty arises.

Applying this principle, the auditor owes a duty of care to the Company and to the shareholders.

iv) Liability for fraudulent misrepresentation :

The Auditors are liable for fraudulent statements made and also for reckless statements.

Leading case : Ultramares Corp. V. Touch.

# CHAPTER 12
# MEETINGS

**Ch. 12.1. Meeting : i)**

**Meaning:**

Meeting is derived from Meet which means 'Face to Face'. Hence, at least two persons are required to constitute a meeting.

A meeting is an assembly of persons at a particular place and at a particular time for determining certain specified matters which may be put before the meeting.

All powers relating to the management of the affairs of the Company vest in its shareholders. They may express their views and assert their will by majority votes. The Directors are subservient to the wishes of the shareholders. General meetings and Board meetings are the means of action. The policy and other decisions are taken at the meetings.

**ii) Kinds** : There are three kinds of Meetings.

1. Annual General Meetings or General Body.

2. Extraordinary General Meeting.

3. The Statutory Meeting.

**iii) General Meeting :**

Every Company must hold an Annual General Meeting in each year. (S.166). The interval between two Annual General Meetings should not be more than 15 months. In special cases, the Registrar may allow a maximum of three months time. The First General Meeting must be held within 18 months of the date of incorpo-ration. A public company may by its Articles, fix the time of its General Meeting. It must be held at the Registered office and during business hours.

If there is default in holding this meeting, a member may put an application to the Central Government, to call for a meeting (Sn. 186). This Board acts in a quasi-judicial capacity. It may order for the calling of the Annual General Meeting.

Not calling a General Meeting is an offence and is punishable with fine.

In Sri. Meenakshi Mills C. Ltd. V Asst. Registrar the co. was prosecuted for not holding its Annual General meting. It had held one such Meeting in Dec. 1934. This was adjourned to March 1995 and it was held then. The next was in Feb. 1936. Held guilty as no General Meeting was held in 1935.

The business transacted in the General Meeting is called the

Ordinary business, if it takes up any other business, it is called special business.

**Relevance**: The General Meeting is one of the most important and significant features of the Companies Act. The controlling lever of the affairs of the company is in its hands.

The shareholders get on opportunity to meet to discuss and to direct how the company should function.

Election of Directors, appointment of auditors, declaration of dividends, presentation of annual report by the Directors, approval of the Annual account etc. are the important functions of the General Meeting.

iv) Extra ordinary General Meeting :

If there is any important matter which requires consideration by the shareholders (before the next General Meetings) then an extra-ordinary General Body may be convened either by the Directors or on Shareholder's (10% of them) requisition. The business done is special business.

**Ch. 12.2. General Rules Regarding Procedure (Sns. 171 to 186) :**

a) **Duty of Directors :**

The Board of Directors is empowered to call for the General Meeting.

b) **Notice :**

21 days notice in writing must be given to all shareholders. It must specify the place, date and time of the meeting. It must contain an Agenda of the Meeting.

General Business: It may relate to the consideration of accounts, Director's Report, appointment of Directors and Auditors, fixing remuneration etc.

Special Business : Statement regarding it must be annexed to the notice.

c) **Quorum :** (Sn. 174) :

This is generally fixed by the A/A. This is the minimum number of persons who should be present at the Meeting. The Companies Act provides a minimum of 5 in Public Companies and at least 2 in case of Private company. If within half an hour, the Quorum is not available, the meeting stands adjourned to the same day during next week. That day the meeting may be held irrespective of the Quorum. But, there must be at least two.

The leading case is **Sharp V. Dawes.** Though there were many shareholders, only one attended the meeting. (He of course had proxies of some others). He took the Chair passed a resolution and

also proposed a vote of thanks. Held, meeting involved more than one person. Hence it was held not a meeting. A minimum of two is essential.

d) **Voting:**

Every member has a right to vote. Each member has one vote. Voting is done by show of hands unless a poll is demanded. Chairman's declaration of the passing of the resolution is final (For *non*-payment of calls due, a member may not be allowed to vote).

e) **Proxy:**

A proxy is an instrument in writing executed by a shareholder authorising another person to attend a meeting and to vote there at on his behalf and in his absence. S. 176 gives every share-holder who is entitled to attend and vote a statutory right to appoint another person as his proxy to attend to vote only on a poll. He need not be a member. He has no right to speak. Instrument appointing a proxy must be lodged with the company, 48 hours in advance. No invitation be issued by the Company at its expense for appointing a specified person as Proxy. But a list of persons who are willing to act as proxies may be sent to all members.

**f) Resolutions:**

They may be ordinary or special. A simple majority will suffice for an ordinary resolution. But, for a special resolution 3/4 majority is required. The details are to be found in the A/A of each Company.

Such resolutions must be registered with the Registrar within 15 days of passing them.

## Ch. 12.3. Statutory Meeting and Statutory Report:

Statutory Meeting is the first meeting of the shareholders.

Every public company limited by shares (or limited by guarantee) and having a share capital must hold a general meeting of the members of the Company which is called the statutory meeting. It is to be convened not within one month, but not later than six months from the date on which the Company is entitled to commence business. The Statutory Meeting is to be held only once in the life-time of the Company (Private Companies are not required to hold such a meeting).

Palmer in his Company law explains the importance of this meeting.

The Statutory Meeting is intended to afford an opportunity to the

members to consider the progress the Company may have made. This is disclosed by the Statutory Report which is circulated 21 days in advance among the members and filed with the Registrar. The members are at liberty to discuss at the meeting any matter relating to the formation of the Company, its prospects, method and management arising out of the Statutory Report.

Even if the Report is forwarded late it shall be deemed to have duly forwarded if the members agree to it. The particulars to be set out in the report are contained in Sn. 165 (3).

i) Names, addresses and occupation of Directors, Secretaries etc.

(ii) Number of Share allotted

(iii) Contract details of the Company

(iv) Abstracts of receipts and payments (v) Commissions paid, if any etc.

The report must be certified as correct by at least two Directors, one of whom should be a Managing Director if any. The Auditors should certify that it is correct, in respect of allotment of shares and cash received and payments made.

If the meeting is not held or the Statutory report is not filed, as required with the Registrar, a member may petition to the Court for the winding up of the Company. The court may instead order the meeting to be held (or the report to be filed) within the meaning of S. 443 (3). The Directors are also punishable.

# CHAPTER 13

## OPPRESSION AND MISMANAGEMENT

### Ch. 13.1. Rule in Foss V. Harbottle :

It is an elementary principle of the law relating to Public companies that the court will not interfere, at the suit of a share holder with the internal management of the company acting within its powers. In such a circumstance the action should be brought by the company itself to recover any money or damages. But what is the position if the directors themselves defraud the Company ?

In the case of Foss Vs. Harbottle, two shareholders took proceedings against the Directors of the Company to compel them to make good the loss sustained by the Company owing to the Directors fraud.

But majority in the General Meeting had approved of the acts of the Directors. Held, the loss was to the company and hence it may sue. There was no injury exclusively to the plaintiffs and hence they had no locus standi.

This is called the majority supremacy rule. The essence is this where the directors commit a fraudulent act and the majority confirms it in the General Meeting, the minority is incompetent to object to it by suing in the court.

**ii) Exceptions to the Majority Supremacy :**

Where the persons in the wrong, hold and control a majority of shares in the Company, and do not permit an action, in the name of the Company, the individual share holders can sue, in the following Circumstances:

1. To restrain the company from doing any illegal or ultra vires act e.g. **Bharat Insurance Co. V. Kanhayalal.**

Directors were granting loans contrary to M/A. Held, the shareholder could sue. Injunction was granted. Fraud on the Minority:

When the majority acts, not in good faith and not for the benefit of the company, ignoring the minority the suit is maintainable.

Leading cases:

i) **Cook V. Decks** : The majority holding 3/4th shares, got a contract in their own names and made profits. Held, this was fraud on the minority.

ii) **Brown V British Abrasive Wheel co.** Majority had 98% shares. They passed a resolution to compulsorily acquire 2% shares of the minority. Brown minority shareholder sued, held fraud on the minority.

iii) Lack of required majority or special majority is the cause of action for suing by any shareholder.

iv) Control by wrongdoers leading to oppression and mismanagement. Any shareholder may sue. Sns. 397 and 398 Companies Act.

v) For protection of individual membership rights guaranteed in the Companies Act and A/A a shareholder may sue.

Courts have wide powers in the above circumstances. Instead of winding up the Company, the courts may issue suitable orders, on the basis of facts and circumstances of each case.

**Ch. 13.2. Prevention of Oppression and Mis management (Sns. 397 to Sn. 409) :**

**These provision are made to meet Foss V. Harbottle (Add facts and decision Ch. 13.1) :**

**1. Oppression :**

**a) In case of Oppression and mismanagement, at least 10 members or 1/10 of total members (whichever is less) may make an application to the court. The conduct of the company must be oppressive to any member or members or prejudicial to public interest**

b) The other remedy is that on an application made, the Central Government may allow a shareholder to sue, if there are just and equitable grounds.

**2. Meaning of Oppression :**

Oppression means lack of probity and fair dealing in the affairs of the Company. Oppression may result from not acting also. Hence, it may take different forms. The idea is to get power and control.

In Elder V. Elder & Watson Ltd., the court defined oppression. The essence is that the conduct complained of should involve a visible departure from the standards of fair dealing and a violation of the conditions of fairplay. There must be an unjust and harsh or tyrannical conduct to constitute oppression.

In Hindustan Co-operative Insurance Society Ltd., case (1956), the Life Insurance Corporation of India was formed by taking over the Insurance Society on payment of compensation to the previous Directors. The Directors refused to distribute the amounts among the shareholders. They passed a resolution to use the money for new objects. Held this was oppression as the majority had exercised the powers wrongfully.

**3. Examples of Oppression :**

i) New and more risky business ventured against minority's opinions.

ii) Depriving right to vote or right to dividend.

iii) Continuously ignoring Board's decisions and making it impossible for the Company to do business, etc.

However, an unwise or careless performance of function is not oppression. Mere irregularities were held no oppression in another case.The leading case is **Shanti Prasad Jain V. Kalinga Tubes :**

In this case there were three groups of shareholders A, B and C in a Private Company. It was converted into a Public Company. B and C group did not offer shares to the existing members, but passed a resolution and issued to outsiders who were their own men. A challenged this as oppression. Question was whether the resolution by B and C to entertain outsiders was for the benefit of the Company or not ? Whether this amounted to the squeezing of 'A'. Held by the Supreme Court, that this was not oppression.

In **Lalita Rajalaxmi V. Indian Motors co**., the allegations were that petrol consumption was heavy, that ticketless travelling was not checked, that second hand buses have been disposed of at low price etc. were held to be not oppression.

The other leading cases are : Needle Industries Ltd.,

V. N.I.N. Holding Ltd. Turkish Baths Case. R.S.

Mathur V. Har Swarup Mathur.

**Prevention of Mismanagement (Sn. 398) :**

An application for relief against mismanagement should be made to the court. It must be established that the affairs are being run prejudicial to the affairs of the Company. The court may make a suitable order.The leading cases are

a) **Rajamundry Electric Supply Corporation V. Nageswara Rao** and

**b) Richardson Cruddas V. Haridas Mundhra.**

In **Rajahmundry case,** it was shown that the Vice-chairman had grossly mismanaged the affairs and that a considerable amount had been drawn by him for personal use, much of the machinery was in a state of despair and a powerful local junta was ruling the roost. It was held that there was mismanagement.

The court appointed two administrators for 6 months for the management of the company.

There must be an existing and continuing mismanagement to get the court relief.

## 13.3. Oppression and Mismanagement:

### Powers of the Court: Sn. 402.

In case of oppression and mismanagement the court has wide powers. The major objective is to end the matters complained of before the court.

Some specific remedies that may be provided are as follows:

a) To regulate the conduct of the affairs of the company. In L.I.C. V. Haridas Mundhra, the court appointed a Special Officer to function according to the orders of the court.

b) To allow some members to purchase the share of others.

c) The company itself may be allowed to buy the shares.

d) To terminate, or to modify any contract.

e) To set aside any fraudulent preferences.

f) To alter the M/A or A/A (Bennett Coleman's case) :

## Ch. 13.4. Central Government's Powers (Sn. 408)

**1988 Amendment:**

When there is oppression or mismanagement (under Sns. 397 and 398) the shareholders, instead of applying to the court may apply to the Central Government for relief.

The Government after inquiring may appoint a number of Directors so as to prevent oppression or mismanagement. These Directors are independent persons and not members of the Company.

Under Sn. 409, the Central Government has power to prevent any change in the Board of Directors, if the change is likely to

prejudice the interests of the Company.

The Central Government interferes, only if there is gross mis-management or oppression.

The 1988 Amendment has empowered to appoint any number of persons, as the Company-Law Board specifies as Directors for a period of three years.

This is to effectively protect the interest. In this regard the Board, may hold on enquiry; require the company to amend its A/A and make fresh appointment of Directors, the Board appointed work with these Directors.

**Prevention of change in the Board : Sn. 409 :**

The Central Government has the powers to prevent any proposed change in the membership of the company, if the change is to affect or damage the interest of the company. Any Director or secretary of the Company may file an application for such prevention.