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POWERS AND RIGHTS OF SHAREHOLDERS AND DIRECTORS IN A COMPANY

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ABSTRACT :

Shareholders and directors are two prominent pillars of the company, to run a successful company both have to be efficient and coordinate with each other, are often confused about who exactly is to a company, what are their rights, roles, and responsibilities in a company, what are their liabilities, who have powers over whom when these powers apply and mostly the importance of their synchronization to work together towards the development of a company this research paper deals with these all question in detail.

KEYWORDS; SHARES, SHAREHOLDERS, DIRECTORS, COMPANY LAW

INTRODUCTION :

The establishment, Regulation, and functioning of companies in India is done by the company act 2013, the origin of the act can be traced back to 1913 and after World war II when India got independence there was a major demand for changes in the company act this due to development in the nations industrial sector, Under the “chairmanship of H. C. Bhabha” a committee formed and by there recommendation, there was a major change in the act in 1956 the Companies Act 1956 which deals with the growth of the company and administration as well as promotion activities, Powers and duties of directors, Board of Directors, function of the auditors and the maintenance of the company accounts, etc.¹ From 1956 company act went through several amendments and major changes, finally, to 2013 the current company act has a much more integrated system with “Concept deals with One Person Company², Mandatory requirement of Corporate Social Responsibility in Companies³ Constitution of Company Law Tribunal⁴, Constitution of Company Law and Constitution Appellate Tribunal⁵”

¹ Vineeta\ Origin and development of Company Law In India\ Legal service india\
<https://www.legalserviceindia.com/legal/article-7931-origin-and-development-of-company-law-in-india.html>
Last Visited 01\02\2023

² The Company act, 2013, § 2(62), No 18, Act of Parliament, 2013 (India)

³ The Company act, 2013, § 135, No 18, Act of Parliament, 2013 (India)

⁴ The Company act, 2013, § 408, No 18, Act of Parliament, 2013 (India)

⁵ The Company act, 2013, § 410, No 18, Act of Parliament, 2013 (India)

A company or corporate body is an artificial judicial person which I created by law as a separate legal entity that has powers and obligations described by the law. Company law act defines a company as “Company means a company incorporated under this Act or any previous company law;”⁶. Companies have majorly classified into two categories mainly private limited company and public limited company, characteristics of the company is given follow a company can be said as a separate legal entity which is not affected by any changes in the ownership of it, a company can be said to be Perpetual Existence as the member's retirement or death will not affect it, it is an artificial juristic person, Transferability of Shares as the company can be divided into several shares, every company has a common seal which is considered as an official signature of a company, company is a juristic person which can sue others as well as be sued by its name by others.

SHARES :

To run a successful company capital is essential and capital can be raised in the forms of debenture and shares, capital from shares is raised by issuing shares or it can be said share is a fixed division of the company's capital, according to company law share capital is mainly divided in two they are⁷ “preferential and equity shares capitals”⁸. While dealing with the share's nature “it's an interest of a member in a Company, the share is a movable property, transferable in the manner provided by the articles of the company”⁹

SHARE OUR ALLOCATION :

Share of the company is given to the public for purchase through Initial Public Offering (IPO) it's a key factor to raise funds from the public to the company. Public Investors choose the particular company's lot of share IPO and investors place bids for free and value of IPO is determined by the Demand for the share and future performance “By issuing further shares a company which holds share capital proposes to increase its subscribed capital”¹⁰ In a Bombay

⁶ The Company act, 2013, § 2(20), No 18, Act of Parliament, 2013 (India)

⁷ Alicia Tuovila\ What Is Share Capital? Definition, How It Works, and Types\ Investopedia\
<https://www.investopedia.com/terms/s/sharecapital.asp> Last Visited 02\02\2023

⁸ The Company act, 2013, § 43, No 18, Act of Parliament, 2013 (India)

⁹ The Company act, 2013, § 44, No 18, Act of Parliament, 2013 (India)

¹⁰ The Company act, 2013, § 62(1), No 18, Act of Parliament, 2013 (India)

high court case when directors of the company decided to issue further share to increase the capital of the company these can be done only by the authorized limits¹¹

SHAREHOLDER :

In simple terms Shareholder is a person who holds a share in the company's stock it can be at least one share also. by subscribing to the memorandum of the company or investing the shares of companies any person can become a member of the particular company then the shares will be allocated to them, "Any person who is not competent to contract cannot be member person who is not sound mind and minor cannot be a member as they cannot enter in to contract"¹²

Company development is much dependent on its shareholders as they have invested in the company stock they can say they are the owners of the company and play a key role in business development and profits. when dealing with types of shareholders if a person holds more than 50% of the share of the company then he will be called a majority shareholder similarly when a person holds less than 50% share of the company then the person can be identified as a minority shareholder.

When shareholders have the right on voting and own equity is called **Equity Shareholders** similarly shareholders who don't have the right on voting but have priority over the equity shares of the company are called **Preference Shareholders**.

RIGHTS AND DUTIES OF SHAREHOLDERS ;

Shareholders do hold the ownership of the company as they do have rights, duties, and Obligations shareholders depending upon the majority of the share owned by the shareholders the powers of shareholders changes similarly depending upon the company number of minimum shareholders changes may be "**one person for one person company, two people for a private limited company and seven people for a public limited company**", also terms and condition of the company determine some rights of shareholder.¹³

1) ACTIONS AGAINST DIRECTORS

¹¹ Nanalal Zaver v. Bombay Life Assurance Co. Ltd., AIR 1950 SC 172.

¹² M.S. Palaniappa Mudaliar vs The Official Liquidator, AIR 1942 Mad 470.

¹³ Smartmoney angelone\ <https://smartmoney.angelone.in/chapter/what-are-the-rights-and-duties-of-a-shareholder/Last> Visited 02\02\2023.

A company's Shareholders have the right to take legal against the directors of the company, this is one of the most important powers of the shareholders as this right make a shareholder regulatory authority over the directors and their decision because every decision made by the directors determine the company. The following actions by directors will amount to a legal obligation, “Any act done by the director which is against the company if directors act against constitution if they does any fraudulent action, reduces the company asset value by transferring, any diversion of the company funds by the directors”.

2) DIRECTORS APPOINTMENT

A company's growth determine by the directors, and shareholders have a key role in the appointment of these directors, company act 2013 briefly deals with the director's appointment, “general meeting in the company will be determined by the appointment of directors”¹⁴ these directors will be responsible for the company decisions as well as company's management.

Similarly, company laws give every shareholder rights on the appointment of directors but the rights vary between small shareholders and shareholders “For a Small shareholder who has a nominal value which is less than twenty thousand rupees”¹⁵ can be part of electing a director but the manner is determined by the company’s terms and conditions. “Director identification number”¹⁶ is mandatory for a person to become the director of a company.

3) VOTING RIGHTS

One of the most prominent rights of the shareholder is the voting right, it is the right that determines the major decision of a company. company act elaborates in detail regarding voting right, Every year a company is needed to conduct an annual general meeting, During the annual general meeting “every shareholder has right to participate and vote in the meeting”¹⁷. Voting can be done by following methods **Showing hands, polling means electronic, ballot system.**

4) RECEIVING DIVIDENDS

Dividends are a part of Company profits and every shareholder has the right to revise dividends, company directors decide how often dividends should be paid, it also depends upon the number of shares owned by the shareholder. While to payment of the dividend is given preference in the preference share but there is no guarantee of the fixed return in equity shares.

5) CALL AND PARTICIPATE IN THE ANNUAL GENERAL MEETING

¹⁴ The Company act, 2013, § 152(2), No 18, Act of Parliament, 2013 (India)

¹⁵ The Company act, 2013, § 151, No 18, Act of Parliament, 2013 (India)

¹⁶ The Company act, 2013, § 154, No 18, Act of Parliament, 2013 (India)

¹⁷ The Company act, 2013, § 47, No 18, Act of Parliament, 2013 (India)

To call a general meeting as well as to direct the directors to call of extraordinary meeting shareholder has the right to do so and it's an obligation of the board to conduct the general meeting as well as they have rights on receiving internal audit reports and financial statements and including other documents. Company auditors appointment "A person who is a chartered accountant is eligible to be appointed as a Company auditor"¹⁸

6) TRANSFER OF SHARES

Share of any company can be transferred by the shareholders it is a movable property¹⁹ the one who transfers the share is known as the transferor and the one who receives the share is called a transferee. The shareholders of a public limited company can freely transfer their shares but in a private limited company it has to be approved by the board of directors and also the transfer deed has to be executed. Similarly, the transmission of share is also possible its given detail in the company act as rights to the transmission of their shares in the company interest, as the title of the share will be devolved this is done under the operation of law²⁰ on such share which is to be transmitted and shareholders have the power to nominate member²¹ so at any event of the death the securities of the share will be vested to him

7) PROXY REPRESENTATION

When there is a meeting in the company members of the company have the right to participate in the meeting there are some circumstances members cannot able to pattern the meeting during that time proxy is allowed on behalf of the member, during the meeting "a proxy shall not be allowed to vote or have right to speak in the meeting"²²

8) RIGHTS ON OVERSIGHTS

To run a company that is successful a company must have proper management, this will allow the administration to run a company in an effective manner, shareholders of a company have the right to oversing company's performance of the management also if there was poor performance of the management company shareholders address these issues mainly in the General Meeting and they have rights on questioning them, raise any objection on the work of the management and management to have liability to give the clarification of there action. Sometimes a special meeting may also arise from the shareholders regarding the issue.

¹⁸ The Company act, 2013, § 141, No 18, Act of Parliament, 2013 (India)

¹⁹ The Company act, 2013, § 44, No 18, Act of Parliament, 2013 (India)

²⁰ The Company act, 2013, § 56, No 18, Act of Parliament, 2013 (India)

²¹ The Company act, 2013, § 72, No 18, Act of Parliament, 2013 (India)

²² The Company act, 2013, § 105, No 18, Act of Parliament, 2013 (India)

9) MEMORANDUM OF ASSOCIATION AND ARTICLES OF ASSOCIATION AMENDMENTS

These are essential documents a company must prepare along with the company incorporation from these need to be filed before the registrar, An company's work, rules, objectives, and management are given briefly in the Memorandum of Association and Articles of Association Amendments, only in the general meeting of the company any amendment to the Memorandum of Association and Articles of Association Amendments can be made, during amendment Shareholder have right to participate in voting regarding the amendment.

10) INSPECTION OF REGISTERS AND BOOKS

Every company manager has an essential duty to maintain the registers, records, and books, a very good maintainer of these show a proper management setup is in the company this is made sure by the Shareholders, as they have the right to check and inspect these registers and books, also they have rights to question them when they need more clarification.

11) INFORMATION ON ANNUAL REPORTS AND FINANCIAL STATEMENTS

At the end of every year, a company financial statement is disclosed by the company. Every year companies annual meeting held, on that meeting shareholders have the right to get information regarding the financial statement of the company and other documents, Annual report will be prepared by the company and be given to the shareholders during the meeting and these reports deal with the performance of the company as well as plans.²³

12) COMPANY WINDING UP

The information regarding the winding up of the company has to be informed to the shareholders prior to winding up of the company, shareholders have the right to participate in this voting²⁴ every shareholder has the right to receive the payment when the company is getting winded up and depending upon the share and type of the investment they will be entitled with the capital.

OTHER RIGHTS OF SHAREHOLDERS :

Shareholders are the owners of the company by contributing capital towards the company, they have a responsibility as well as rights in the company to regulate management to make more efficiency on the working of the company. One of the main obligations a shareholder have is

²³ Ministry Of Corporate Affairs\ <https://www.mca.gov.in/MinistryV2/accounts+and+audit.html> Last Visited 02\02\2023

²⁴ The Company act, 2013, § 47, No 18, Act of Parliament, 2013 (India)

to maintain the confidential information given to him, and to remain as loyal to the company Shareholders also have to give some recommendation on the administration of the company, shareholder have a responsibility to coordinate with other shareholders not to compete with the company as a competitor,

DIRECTORS :

A company is a juristic and artificial person created by law, a natural person is needed to think using the mind in a real-time situation as well as to take decisions and intelligence in the vision for the company's future with knowledge of company objective and activities these activities cannot be by an artificial person a natural living person have to need to do this act these persons can be said as directors of the company,” A living person has mind, knowledge or intension and to carry out that intension person has hands, a company doesn't have it so it needs a living person to act”²⁵

Shareholders who are the owners of the company by investing capital in the company will usually they will not directly involve in the management of the company hence directors are appointed for the management, day to day operations of the company and to make strategic decisions that the company future and to attain its objective and goal, they play multiple roles in a company for the welfare of the company.

BOARD OF DIRECTORS :

Directors have many rights and responsibilities but among the most important is direct. manage and control the Company affairs. All the appointed directors of the company as per the article of association together collectively known as the board of directors as per company law defines ” A collective body of the directories in the company is said to be a board of directors”²⁶ .The main idea to have directors is to be loyal to the company and trustworthy persons, all there act must be the growth and welfare of the company, and they have at most responsibility to act in the company's best interest with truthful and honest.

NUMBER OF THE BOARD OF DIRECTORS :

²⁵ Tesco Supermarkets Ltd v Natrass, 1971 AC 153

²⁶ The Company act, 2013, § 2(10), No 18, Act of Parliament, 2013 (India)

As per the company act, 2013 Every company must constitute a minimum number of directors, as well as a restriction on the maximum number of directors on the board of directors, dealing with a mandatory minimum number of “directors public limited company shall have a minimum of three persons, two persons for a private limited company and one person for one person company similarly a company can have maximum fifteen numbers of persons as directors”²⁷

DUTIES OF THE DIRECTOR :

A Company's administration efficiency, as well as the mechanism, highly depends upon a director committed to the company. To meet the company's development goals and shareholders' protection they play a vital role, trust and every action in the company in good faith is the main expectation by shareholders to the board of directors, entire company's chain of mechanism runs around their decisions have to be gain of the company not for the personal interest as well as taking charge of the company and performance of there duty becomes more crucial and responsibility on the obligation as well as liability is also inevitable.²⁸ Every member of the board of directors has the duty to protect the confidential information passed to them which cannot be shared with anyone outside the company ad even inside the company itself until or unless it has been authorized or it has to do with a situation on an act of good faith that help the growth of the company.

Company act, 2013 describes the duty of the director in much more detail as follows:

- “A director appointed in a company should behave and act according to the article of association provided by the company
- A director should be protecting the company environment and promoting the objective objectives to the benefit of the company as well as the shareholders in a good faith
- A director has the power to make independent and self-made judgments to the benefit of the company with skill and reasonable care
- A director must Avoid direct or indirect conflicts which affect the company directly or indirectly in any form

²⁷ The Company act, 2013, § 149, No 18, Act of Parliament, 2013 (India)

²⁸ Burges salmon\ <https://www.burges-salmon.com/news-and-insight/publications/the-responsibilities-and-duties-of-a-company-director> Last Visited 02\02\2023

- A director should not misuse the power to gain any profits in any form for his relatives or even to self profitable actions and even attempting at such action is also prohibited
- If a director is found of doing any of above mentioned he or she will be liable to pay the gains they made and compensate for the losses
- A director doesn't have any power to assign his office if it's done by the director it would be considered a void
- Any violation to the above-mentioned director will be fined a maximum of five lack rupees and a minimum of one lack rupees²⁹

RIGHTS OF THE DIRECTORS :

As the high-level governing authorities of the company, they have responsibility over the company's future policy and welfare of it, to run a successful company the policymakers need to have some control and rights over the company which makes them work more efficiently in the growth of the company.

1) RIGHTS OF DIRECTORS ON CONSTITUTE AUDIT COMMITTEE

Once the audit committee is formed it will be acting as per the terms of the board of directors, audit committee contains a majority of independent directors with “three directors has a minimum number and the chairperson of such committee have the ability to read the financial statement”³⁰

Rights of directors on the committees on the nomination, remuneration including Stakeholders relationships Directors on both committee nomination and remuneration continent minimum of three directors or more who are non-executive directors, this committee shall have a policy on directors to attain quality to successfully run the company, benchmark on the performance and directors who are key in managerial positions and senior management involves in fixed and incentive pay reflecting short and long-term performance objectives necessary to the running of the company and its objective similarly on the stakeholder's committee has a non-executive director as chairperson and stakeholder relationship committee have debenture holders, deposit holders, more than thousand shareholder, and other security holders³¹

2) RIGHTS ON BOARD POWERS

²⁹ The Company act, 2013, § 166, No 18, Act of Parliament, 2013 (India)

³⁰ The Company act, 2013, § 177, No 18, Act of Parliament, 2013 (India)

³¹ The Company act, 2013, § 178, No 18, Act of Parliament, 2013 (India)

Powers given to the board of directors and the method of exercising those powers are done in the manner specified as per the article of association in a company and they can exercise those powers in the company but cannot do it with general meetings. And financial statements are approved by them.

“When there is unpaid money on the share board of directors has powers to call shareholders on it, on buy back securities directors have powers to authorize that, Regarding loads, directors have powers to provide security, give as well as grant it, no matter whether it is inside or outside India they have the power to issue securities and debentures as well as borrow money for the company's welfare and make an investment on behalf of the company. Directors have powers to approve any action regarding merger and amalgamation or even take over another company”³²

Similarly, the board of directors' powers are extended to undertake, and enter into a lease as well as sell but these can be done only with a special resolution³³ “when a company needs no more shares directors to have powers to issue shares only for maintenance”³⁴

3) DIRECTORS' RIGHTS ON THE CONTRIBUTE FUNDS

Any bonafide charity are only eligible for donation by the director and special permission from a “general meeting is essential if the total payment is more than five percent of the company's net profits”³⁵ similarly when dealing with political contribution a private company are less than “three financial years can make such a contribution should be in the ambit of 7.5 percent of net profit”³⁶t of them in terms of “contribution to funds related to national defence company”³⁷ director have the power to make so much contribution and have to disclose this in the financial year.

4) LIABILITY OF THE DIRECTORS IN THE COMPANY

The powers and duty of the board are in high-level management this because they have greater responsibility for the development of the company and its growth, when we deal with the board

³² The Company act, 2013, § 179, No 18, Act of Parliament, 2013 (India)

³³ The Company act, 2013, § 180, No 18, Act of Parliament, 2013 (India)

³⁴ Grant v. John grant & sons pty. ltd. [1954] HCA 23, (1954) 91 CLR 112

³⁵ The Company act, 2013, § 181, No 18, Act of Parliament, 2013 (India)

³⁶ The Company act, 2013, § 182, No 18, Act of Parliament, 2013 (India)

³⁷ The Company act, 2013, § 183, No 18, Act of Parliament, 2013 (India)

of directors they can be addressed in a group as well as individually this is because they have individual and group powers hence the liability falls to the individual as well as the group of directors liability on their decision this can be either the group or individual decision who can make on the group when such decision is in bad faith and made a loss to the company similarly and decision they took which is for its personal benefits or any other their relative benefits still it would be amount be liable.

When there is a tax violation or any non-payment tax payment decrees will be liable for this similarly, In terms of all transactions need to be documented and audited, when there is a more share application fee then the actual amount has to be refunded to the people if not directors may liable.

Any act done by the director who has made any violation as per the article of association of the company they will be made liable and the shareholder has the power to act against this and there might be fined or even termination is possible as the reaction, regarding the cheque bounced or a fraudulent an act in the purpose of bad faith they will be liable under the law, as well as action, will be taken by the company end.

CONCLUSION :

The entire company stands upon these two pillars shareholders and directors, the ownership of the company is in the hands of the shareholders and the company is managed by the director who is powered by the article of the association by the company most of the important decisions of the company are made by shareholders in terms of the amendment of an article of association, etc, were the company affairs and daily activity are managed by the directors and the execution of company's goal on the interest of the shareholder is the main objective behind the board of director.

Both shareholders and directors will be working together for a common goal these goal is companies well wish both shareholders and directors have to set their personal wishes aside and focus on their common goal, during the course of the action both have to bond and work in synchronization, items of the powers both have a unique this mainly to have a balance between the company owner and the manger this difference create a check and balance between them, so both company director and shareholder have rights and duties to check each other and directly or indirectly creates obligations which make more decency which in turn make the growth of the company.