

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

SMALL SHAREHOLDERS DIRECTOR **UNDER THE COMPANIES ACT, 2013**

AUTHORED BY - ANISH RAJ SINGH, BBA.LLB(H) 2020-2025
CO-AUTHOR - AYUSH KRISHN DIXIT, BBA.LLB(H) 2020-2025
CO-AUTHOR - HIMANSHI SINGH, BBA.LLB(H) 2020-2025
AMITY UNIVERSITY LUCKNOW UTTAR PRADESH CAMPUS

Abstract

A minor shareholder is someone who owns shares in a public corporation with a nominal value of less than INR 20,000. A listed company's small shareholders have the right to elect a director. A 'Small Shareholders Director' is a director who is elected by these shareholders. In this article we will discuss about Shareholders meaning, Section 151 Companies Act, and the process to appoint Small Shareholder Director.

- A person, organization, or institution that owns a company's stock or stock options.
- Shareholders are, in fact, proprietors of the company, and they profit from its success through increasing stock prices and dividends. If the company is losing money, the portfolio of the shareholders suffers as well.
- The shareholders' obligation is not a personal liability, and if the firm goes bankrupt, the shareholders' personal assets cannot be attached.

Introduction

The concept of small shareholder director was introduced to safeguard the interests of small shareholders in a company. The appointment of a small shareholder director is a measure taken to ensure that the small shareholders of a company are adequately represented and to prevent the board of directors from taking any decisions that are detrimental to the interests of small shareholders.

According to the Companies Act, 2013 small shareholders are those who have relatively less shares and so are vulnerable to the dominance of majority shareholders in the company, the provision of small shareholder director was inculcated in the act to ensure that the decisions of

the Board meet the requirements of fairness and that small shareholders through a Board presence would have their interests effectively represented.

The Companies Act, of 1956 introduced this concept with limited scope, which only dealt with the appointment of directors and was appointed on an optional basis. However, the Companies (Amendment) Act, of 2000 has bought the importance of small shareholders in the company and introduced the concept of 'Small Shareholder Director'. As a result, the Companies Act, 2013 provided a much wider scope to the provisions of the small shareholder directors by expanding the role of the small shareholder director beyond just the appointment of directors. The wider scope of the 2013 Act enabled the small shareholder directors to have a more significant role in the company's decision-making process, which can help ensure that the interests of minority shareholders are adequately represented. The provisions of small shareholder director are dealt in section 151 of the Companies Act, 2013 and the Companies (Appointment and Qualifications of directors) Rules, 2014.

Who Are Small Shareholders?

Section 151 of the Companies Act, 2013 deals with the provisions of small shareholders directors and for this purpose defines the small shareholders as:

"Shareholders holding shares of nominal value of not more than 20,000 or such other sum as may be prescribed."

So, the small shareholders are those shareholders whose share value is relatively less in the company.

WHICH COMPANIES MUST APPOINT A SMALL SHAREHOLDER DIRECTOR?

The companies Act, 2013, or the rules do not mandate or obligate any kind of company to appoint a small shareholder director, however, the rules provide for an enabling provision in relation to small shareholder directors.

Rule 7 of Companies (Appointment and Qualification of directors) rules, 2014 says that: Any listed company can appoint a small shareholder director on an application made by either 1000 small shareholders or 1/10th of the small shareholders whichever is lower.

However, the section also provides that a listed company can opt to Suo moto (on its own) to appoint a small shareholder director even if no application was made by the small shareholders.

Appointment Of Small Shareholder Director:

Qualifications:

Neither the Rules nor the Act provides for any minimum qualification criteria for the appointment of a small shareholder director. In fact, a small shareholder director need not even be a small shareholder o hold shares in the listed company. The small shareholders may nominate any person to be the small shareholder, whether he owns shares or not is immaterial in this case.

Disqualifications:

A small shareholder director is a kind of director, hence the disqualification criteria as mentioned under section 164 of the Companies Act, 2013 applies to the small shareholder director as well. Further, the provisions of vacancy of a director as mentioned under section 167 of the Companies Act, 2013 apply to small shareholder directors as well.

Further, the Companies Act, 2013 provides that if the small shareholder director at any time ceases to meet the independence criteria as mentioned under section 149 of the Companies Act, then the small shareholder director will be disqualified.

Tenure And Other Restrictions:

The Rules provide that a small shareholder director shall hold office for a tenure of three consecutive years.

The Rules also provide that the small shareholder director cannot be re-appointed after the completion of three years tenure.

A person may not occupy the position of small shareholder director in more than 2 companies, and the second company in which he has been appointed as such cannot be engaged in a line of business that is in direct competition or conflict with the first corporation.

Further a small shareholder director cannot for a period of three years from the date on which he ceases to hold the office as a small shareholder director be appointed in or be associated with such company in any other capacity, either directly or indirectly.

As per Rule 7(5) of the Companies (Appointment and Qualification of Director) Rules, 2014 the appointment of small shareholders' director shall be subject to the provisions of Section 152 of the Companies Act 2013 except that small shareholder directors are not subject to retirement by rotation.

Procedure:

On Notice Of Small Shareholders:

Section 151 of the Companies Act, 2013 provides that a listed company may elect one small shareholder director in the manner and in such terms and conditions as may be prescribed. Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 provides that either 1000 small shareholders or 1/10th of small shareholders, whichever is less must provide a notice to a listed company to appoint a small shareholder director.

Upon receiving such notice, the company must appoint one small shareholder director.

In accordance with Subrule (2) of Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014, small shareholders who wish to nominate a person for the position of small shareholders' director must notify the company in writing at least 14 days prior to the meeting, with their signatures, and include the candidate's name, address, number of shares held, and folio number.

The notice need not include the specifics of the shares held and the folio number if the individual being recommended does not own any shares in the company.

The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating: his Director Identification Number (DIN).

that he is not disqualified to become a director under the Act(section 164); and his consent to act as a director of the company[2]

The small shareholder director so appointed under the section will be considered as an independent director and so the small shareholder director must satisfy the criteria of independence as mentioned under section 149 of the Companies Act, 2013 and must also provide a declaration of independence.

Suo Moto Appointment By The Company:

Further, rule 7 of the Companies (Appointment and qualifications of directors) rules, 2014 provides that a listed company, if it feels that a small shareholder director needs to be appointed may, without any notice by the small shareholders, appoint a small shareholder director on its own. In such a case the provisions of sub-rule (2) shall not apply to the appointment of such a director.

Role And Importance Of Small Shareholder

Director In A Company

The main aim of the appointment of a small shareholder director is to ensure that he/she represents the interests of the small shareholders of the company adequately. So, they play a major role in protecting the rights of minority shareholders in a company. To ensure that a fair and transparent system is maintained in a company that does not infringe on the rights of small shareholders, the appointment of a small shareholder director is quintessential.

The role of small shareholder directors is important, as they act as a bridge between the company's management and the minority shareholders. Small shareholder directors help to ensure that the company is being run in an ethical and transparent manner. They promote good corporate governance practices within the company and help to ensure that the board and management are accountable to all shareholders.

Shortcomings Of Provisions Of Small Shareholders Directors In Companies Act, 2013 While the Companies Act, 2013 has provided a wider ambit to the small shareholder director, it lacks in providing a binding or obligatory nature to the provision. Initially, when the Companies (amendment) bill, 2000 was introduced, the provision of small shareholder directors was mandatory for a certain specified class of public companies.

However, when the bill was passed, the provision was made an optional requirement. Adequate representation of small shareholder directors is essential for a company, by making it an optional provision, it became a non-binding provision, unlike other provisions like the independent director.

So the companies are not bound to appoint small shareholder directors unless there is a notice by small shareholders or the company itself on its own decides to appoint one. Further another limitation or shortcoming of the provision is that it only specifies the listed companies and has no mention of other public companies.

The provision of small shareholder directors is essential to ensure that the small shareholders are not subdued by the dominance of majority shareholders in all companies, by making it a non-obligatory provision and limiting it to only listed companies, the scope and applicability of the provision is narrowed down.

Further, the provisions as such do not provide for any selection criteria for the small shareholder directors, in fact, the rules also provide that a small shareholder director nominee need not even be a shareholder of the company, so this may lead to arbitrary selection of small shareholder directors. This is solely because a person who is not even a shareholder of the company may not adequately understand the interests of the small shareholders of the company.

The present provisions also do not provide for any specific accountability mechanisms for small shareholder directors. This can limit their ability to hold the board accountable for any decisions that may adversely affect the interests of small shareholders. Hence, through the present provisions of the small shareholder director is a positive step towards enhancing shareholder democracy, there are several shortcomings that need to be addressed to make it more effective in representing the interests of small shareholders on the board.

Information on Section 151 Companies Act

Only listed companies are eligible to opt for SSD (Small Shareholder Director) under Section 151 of the Act. Under Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014, 1000 small shareholders, or one-tenth of a listed company's total number of shareholders, may recommend the election of SSD. Furthermore, the Rule states that small shareholders intending to propose a person as a candidate for the post of SSD must notify the company at least 14 days prior to the meeting, specifying the name, address, and any shares held by the person whose name is proposed for the post of director, as well as the small shareholders who are proposing such person as a candidate for the post of director.

Process to Appoint Small Shareholder Director of a Company

A firm may appoint a small shareholder director on its own initiative or in response to a small shareholder's request. A small shareholder director is unable to become a company's Whole-Time Director or Managing Director. Certain conditions must be met before a small shareholders director maybe declared an independent director.

A notice must be provided at least 14 days before the general meeting if the small shareholders wish to designate a Small Shareholders Director. Name, address, and a number of shares held by the person sought to be nominated as a Small Shareholders Director should all be included in the notice. A statement with the following declarations must be issued along with the notice:

- Director Identification Number (DIN) of the prospective person.
- The recommended candidate is not ineligible to serve as a director.
- The suggested person's permission to act in the capacity of a director.

A resolution for the appointment of a Small Shareholders Director should be passed at the general meeting after the preceding formalities are completed. Finally, a postal ballot will be used to elect the small shareholder nominee.

Reason for Vacation of Office

A small shareholder director may resign if one of the following conditions exists:

- If a director is disqualified for any reason.
- Due to the discovery of flaws in their appointment, the office of directors becomes vacant.
- He/she refused to meet the independence standards.
- A specific resolution is passed to remove him/her from the position.

Conclusion:

The concept of the small shareholder director on the board of listed companies is a laudable step towards enhancing shareholder participation and democracy in India. The concept is essential for shareholder democracy and to ensure that the small shareholders are safeguarded from the dominance of majority shareholders.

The role of small shareholder directors is important, as they act as a bridge between the company's management and the minority shareholders. Small shareholder directors help to ensure that the company is being run in an ethical and transparent manner. They promote good corporate governance practices within the company and help to ensure that the board and management are accountable to all shareholders.

As stated in the Statement of Objects and Reasons, the purpose of including this concept in the Company Act of 2013 was to defend the interests of small shareholders. Small shareholders who wish to propose a candidate for the position of small shareholder director must give the company written notice of their intention at least fourteen days prior to the meeting, including the name, address, number of shares held, and other necessary information of the person whose name is being proposed for the position of director.

However, the current provisions of the Companies Act, 2013 have several shortcomings that impede its effectiveness. The lack of a specific process for the selection of small shareholder directors, and the absence of special powers and accountability mechanisms for them, are some of the issues that need to be addressed.

Therefore, it is incumbent on the government and regulators to conduct a comprehensive review of the current provisions and take remedial measures to ensure effective representation of small shareholders on the board, promote transparency and accountability in corporate governance, and safeguard the interests of all shareholders.