

# **DRAFT RULES UNDER COMPANIES ACT, 2013**

## **CHAPTER-XVI**

### **PREVENTION OF OPPRESSION AND MISMANAGEMENT**

#### **Number of members who can file an application for class action.**

**16.1.** (a) For the purposes of sub-clause (a) of clause (i) of sub-section (3) of section 245, the number of members that may file an application for class action as provided in sub-section (1) shall be, in the case of a company having share capital, not less than one hundred members of the company or not less than ten per cent. of the total number of its members, whichever is less, or any member or members singly or jointly holding not less than ten percent of the issued share capital of the company, subject to the condition that the applicant or applicants have paid all calls and other sums due on his or their shares.

(b) For the purposes of sub-clause (ii) of sub-section (3) of section 245, the number of depositors that may file an application for class action as provided in sub-section(1) shall be not less than one hundred depositors or not less than ten per cent. of the total number of depositors, whichever is less or any depositor or depositors singly or jointly holding not less than ten percent of the total value of outstanding deposits of the company.

## **Publication of Notice.**

**16.2.** (1) For the purposes of clause (a) of sub section (5) of section 245, on the admission of the class action application filed under sub-section (1) of section 245, a public notice shall be issued by the Tribunal, to all the members of the class-

- (i) by publishing the same within seven days of admission of the application by the Tribunal at least once in a vernacular newspaper in the principal vernacular language of the state in which the registered office of the company is situated and circulating in that state and at least once in English in an English newspaper circulating in that State;
- (ii) the Tribunal shall require the company to place the public notice on the website of such company, if any, in addition to publication of such public notice in newspaper under (i) above:

Provided that such notice shall also be placed on the website of the Tribunal, if any, on the website of Ministry of Corporate Affairs, on the website, if any, of the concerned Registrar of Companies and in respect of a listed company on the website of the concerned stock exchange(s) where the company has any of its securities listed, until the application is disposed of by the Tribunal.

(2) The date of issue of the newspaper in which such notice appears shall be taken as the date of serving the public notice to all the members of the class.

(3) The public notice shall, *inter alia*, contain the following-

- (i) name of the lead applicant;
- (ii) brief particulars of the grounds of application;
- (iii) relief sought by such application;
- (iv) statement to the effect that application has been made by the requisite number of members/depositors;
- (v) statement to the effect that the application has been admitted by the Tribunal after considering the matters stated under sub-section (4) of section 245 and it is satisfied that the application may be admitted;
- (vi) Informing other members or depositors that they can also join the applicant, if they so wish;
- (vii) date and time of the hearing of the said application;
- (viii) time within which any representation may be filed with the Tribunal on the application; and
- (ix) such other particulars as the Tribunal thinks fit.

(4) The cost or expenses connected with the publication of the public notice shall be borne by the applicant and shall be defrayed by the company or any other person responsible for any oppressive act.

**16.3** Application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall not be withdrawn without the leave of the Tribunal.

**16.4** (1) A copy of every such application under clause (a) or clause (b) of sub-section (1) of section 241 of the Act shall be served on the concerned company and on such person as the Tribunal directs.

(2) A copy of every application made under section 241 or 245 shall be served on the Regional Director and Registrar of Companies.

**16.5** Where an order made by the Tribunal on a petition under this Chapter involves a reduction of share capital or alteration of the memorandum of association, the provisions of the Act and rules relating to such matters shall apply as the Tribunal may direct.

**16.6** An application under clause (b) of subsection (1) of section 243 for leave to any of the persons mentioned therein as to be appointed or to act as the managing director or other director or manager of the company, shall state that whether notice of the intention to apply for such leave has been given to the Central Government and shall be accompanied by a copy of such notice. Notice of the date of hearing of the petition together with a copy of the petition shall be served on the Central Government not less than 14 clear days before the date fixed for the hearing.

**16.7 Notice to be given to the Central Government, of applications under sections 241 and 245**

The Tribunal shall give notice of every application made to it under section 241 or 245 to the Central Government and shall take into consideration the representations, if any, made to it by that Government before passing a final order under those sections.

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