

## Issue of Public Interest Under Section 397/398 of the Companies Act, 1956

It is known that resolving the disputes between or among the shareholders in a closely held company is very difficult in the absence of any settlement between or among the parties. Now a day, based on the practice of entertaining petitions under section 397/398 of the Companies Act, 1956 without looking into sheer technicalities, a shareholder/s who is qualified to approach Company Law Board under section 399 of the Companies Act, 1956 and who has a grievance with the other shareholders prefers to file a Petition under section 397/398 of the Companies Act, 1956. It is known that as adjudicating a company dispute requires specialization and also a traditional Civil Court may not speedily dispose a Company dispute and may not go beyond the brief. In view of the difficulties in approaching the traditional Civil Court though a Civil Court can be approached at times in respect of the grievances in the Company, many prefer to approach the Company Law Board.

Normally, in most of the Petitions under section 397/398 of the Companies Act, 1956, the parties talk about their interests and rights in the Company and it is really rare to talk about public interest in the Company. But, in view of the clear reference to public interest under section 397/398 of the Companies Act, 1956, it is the responsibility of the Company Law Board to look into many other considerations pertaining to the Company and also the public interest. This is the complication with a petition under section 397/398 of the Companies Act, 1956. The parties before the Board may effectively conceal certain things and disclose the things based on their convenience. However, in view of the law and the responsibility conferred on the Company Law Board as conferred on the Company Court while dealing with a winding-up petition, the Company Law Board do every effort to ascertain all issues pertaining to the Company; not only the creditors, assets and liabilities of the Company.

Dealing with the issue of public interest under section 397/398 of the Companies Act, 1956 and the requirement on the part of the Company Law Board to look into many issues while entertaining a petition under section 397/398 of the Companies Act, 1956, the Hon'ble High Court of Bombay in **Bhalchandra Dharmajee Vs. Alcock, Ashdown and Co.Ltd reported in 1972 (42) CC 190** was pleased to observe as follows:

*“(6) After the amendment of sections 397 and 398 of the Companies Act by sections 10 and 11 of the Companies (Amendment) Act (LIII of 1963), it would appear that the affairs of the company have to be conducted not only in the best interest of its members for their profit but also in a manner which is not prejudicial to public interest. The element of public interest enters into the management of the companies after 1963. The modern corporation has become the accepted instrument of social policy, because it affects a large part of the economic life of the community. It has become an instrument for the improvement of the economic standards of the people and for economic growth of the nation. Society depends for some of its needs on corporate enterprise. It has therefore an interest in its stability and efficiency as an economic institution. The element of public interest also arises from the responsibility for ensuring a minimum wage to the numerous employees in the corporate sector. It is necessary to see that people who put their labour and lives into a concern get fair wages, continuity of employment and a recognition*

*of their right to their jobs where they have trained themselves to highly skilled and specialised work. In deciding whether the court should wind up a company or change its management the court must take into consideration not only the interest of the shareholders and creditors but also public interest in the shape of the need of the community and the interest of the employees. This, in my opinion, is the requirement of section 397 and 398 of the Companies Act. This country has been spending vast sums of money in promoting new industries in public and private sectors in the interest of the economic progress of the country and improvement of living standards. In face of this, it would appear to be improper to destroy a company which has worked for nearly 87 years and has acquired experience and expertise in manufacture and supply of structurals and in boat building and ship repairing. At the same time the company cannot be kept alive so as to incur further liabilities and to diminish the dividend payable in case of winding up to the existing creditors or the shareholders. Their interests also have not to be sacrificed. It is therefore necessary that pending the hearing and final disposal of these petitions, an arrangement ought to be made for the collection, realisation, preservation and maintenance of those assets of the company which are in the possession of the company. It is also necessary that an investigation ought to be made into the affairs of the company to find out if it is possible to resuscitate the company. It is only after such investigation that one can come to a conclusion as to whether the company ought to be wound up or whether it ought to be kept alive. In view of this position, I think the best order to make is to appoint a special officer to collect, realise, preserve and maintain the assets of the company and also to make the necessary investigation referred to hereinabove.”*

[**Note:** the views expressed are author’s personal point of view.]