

## **Removal of Directors and The Litigation**

We all know the role of the Directors in any Company and Board is collectively involved in the day-to-day affairs of the Company. Through segregation and delegation depending upon the size of the Company, the plan, the regulations in the Articles, the directors in-fact run the Company subject to the provisions of the Companies Act, 1956 and excepting few decisions which should only be taken by the shareholders at the Annual General Body Meeting (AGM) or Extraordinary General Body Meeting (EAGM). Subject to the limitations in the provisions of the Companies Act, 1956, the regulations in the Articles of the Company and the SEBI guidelines and regulations, normally, a Director either holds substantial number of shares in the Company or he represents a group of shareholders and the practice is also referred to as “Corporate Democracy”. In view of the role and the powers of the Directors or the Board collectively, a decision taken for removal of a Director leads to so much litigation very often. The problems with the removal of Directors will often come in Private Companies, closely held Public Companies or the family companies as is referred very often. The litigation surrounding removal of directors too is very complicated to dealwith if the removal is strongly opposed by the Director or by the group which he represents. In my opinion, normally, the issue of removal of Director is agitated either before the Civil Court or before the Company Law Board under section 397/398 of the Companies Act, 1956. There can be lot of things prompting the AGM to remove a director and in most of the cases; it reflects infighting among the shareholders or the shareholder groups. In my opinion, even if one approaches the Registrar of Companies (ROC) explaining as to how the removal is procedurally incorrect, the Registrar concerned may insist the Director who has been removed to approach the Court or the competent authority and get an order that the removal is illegal. Thus, an aggrieved Director may be forced to approach the Civil Court asking for a declaration that a particular resolution of AGM in which he has been removed is illegal. In view of the fact that there is no specific bar on the Civil Court in entertaining these kinds of corporate litigation, the Civil Court is forced to entertain the litigation and should give finding though it is criticized very often that the Civil Court lacks expertise in deciding corporate disputes. But, in my opinion, a Civil Court may not be able to look at the motives, issues of oppression etc. in a Civil Suit challenging the removal of a Director. A Civil Court may look at the procedural issues in removing the Director and may lay a special consideration on the regulations in the Articles of the Company governing removal of Directors and on the provisions of the Companies Act, 1956 dealing with the appointment and removal of Directors. Without going into the merits and demerits in the judgement taken in the AGM, the Civil Court can give a finding that the removal is illegal if there exists a procedural lapse and may say that the removal is valid if there is no procedural lapse. But, this is not the case when a Director removed or the one group of shareholders approaches the Company Law Board under section 397/398 of the Companies Act, 1956 alleging oppression and mismanagement and challenging his removal from directorship. There are two important issues when a Director or the concerned group approaches the Company Law Board challenging his removal as a Director as follows:

1. The Director or the group questioning the issue of removal should be qualified under section 399 of the Companies Act, 1956 if they want to move a petition before the Company Law Board under section 397/398 of the Companies Act, 1956.

2. Secondly, there should be oppression and mismanagement for filing a petition under section 397/398 of the Companies Act, 1956. There are so many judgements explaining as to how to construe the words “oppression” and “mismanagement” used under section 397/398 of the Companies Act, 1956. In the beginning, the words are construed so strictly and it is considered as an extraordinary remedy. If we go by the judgements on section 397/398 of the Companies Act, 1956 in the past, then, the oppression as alleged should be ‘harsh’ and ‘burdensome’. Again, there should be series of acts constituting oppression and mismanagement. That was legal position in the past. However, in the recent judgements it is held that the Company Law Board can pass any order under section 397/398 or section 402 of the Companies Act, 1956 even if the oppression and mismanagement is not established or proved. That means, the Company Law Board can very well say that, infact, there is no oppression and mismanagement, still, an order or direction can be passed and it is justified. Now, scope of section 397/398 of the Companies Act, 1956 is literally changed and technicalities are ignored.

The above two issues are important when it comes to approaching the Company Law Board under section 397/398 of the Companies Act, 1956. Unlike the Civil Court which can only look into the procedural irregularity in removing a Director, the Company Law Board can look into various issues and its decision or direction need not be based on the procedural irregularities only and its order is normally directed to put an end to the matters complained of or in order to regulate the future affairs of the Company. The Company Law Board may not decide to interfere with the removal of a Director even if it finds some procedural lapse, and at the same, it may say that the removal is not correct even if it is done in accordance with the provisions of the Companies Act, 1956. This is a very complicated issue to understand and to dealwith. Again, if one approaches the Civil Court challenging the removal of a Director, then, the scope of granting other relief and giving directions or interim directions to the Company from time to time may be less, but, it is not the case with the powers of the Company Law Board under section 397/398 of the Companies Act, 1956. There should not be any major disputes between or among the shareholders in the Company, but, if there is a dispute and the shareholders come to the Court or the Company Law Board, then, there can be so many complications in the course.

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