



# *Company Law Corner*

## ALL ABOUT SMALL SHAREHOLDER DIRECTOR

### Introduction

*Tata vs. Mistry* case has brought the rights of small shareholders under the spotlight. The Supreme Court while rendering its judgment on the larger question of oppression and mismanagement, in *Tata Consultancy Services Limited vs. Cyrus Investments Pvt. Ltd. & Ors.* has dealt with the relatively unexplored and topical issue of the rights of small shareholders, in the context of Section 151 of the Companies Act, 2013.

There has been a change in the law after the advent of the Companies Act, 2013 and a paradigm shift has taken place from the emphasis on majority control and corporate democracy, to a regime focused on corporate governance. The concept of small shareholders found its place in the erstwhile Companies Act, 1956 in the limited context of Section 252, that dealt with the appointment of directors, and provided that public companies may have a director to represent small shareholders. In contrast, the Companies Act, 2013 has introduced Section 151 and relevant rules, which contemplates the election or appointment of a Director to the Board of a Company by small shareholders, represented by a minimum of either 1/10th of the total number of shareholders or 1,000 shareholders.

### Regulatory Framework under the Companies Act, 2013

Section 151 of the Companies Act, 2013 requires that a listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as prescribed.

#### Small shareholders' value

*"small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.*

### Terms & Conditions for Small Shareholders' Director

Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholders' director, which are as under:

**(i) Election of small shareholders' director:**

A listed company, may upon notice of not less than:

- (a) "One thousand small shareholders", or
- (b) "One-tenth of the total number of such shareholders",

whichever is lower; have a small shareholders' director elected by the small shareholder.

A 'Small Shareholder's Director' may be elected voluntarily by any listed company. Thus, a listed company, may, on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required.

**How will the small shareholders know about other small shareholders?**

*The shareholders have the option to inspect the register of members. This gives opportunity to any interested small shareholder to get details of other small shareholders.*

**(ii) Notice of intention to propose a candidate:**

The small shareholders intending to propose a person as a candidate for the post of small shareholder's director shall leave a signed notice of their intention with the company at least 14 days before the meeting under their signatures specifying their details and proposed director's details and of the small shareholders who are proposing such person for the office of director. The details include name, address, shares held and folio number etc.

If the proposer does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice.

**(iii) Statement by the proposed small shareholders' director:**

The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholders' director stating:

- (a) his Director Identification Number;
- (b) that he is not disqualified to become a director under the Act; and
- (c) his consent to act as a director of the company.

**(iv) Small shareholders' director to be an independent director:**

Small shareholders' director shall be considered as an independent director, if-

- (a) he is eligible for appointment as an independent director as per sub-section (6) of section 149; and
- (b) he gives a declaration of his independence as per sub-section (7) of section 149.

**(v) Tenure of office and no retirement by rotation:**

The tenure of small shareholders' director shall not exceed a period of 3 consecutive years and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

**(vi) Grounds of disqualification:**

Disqualifications of a small shareholders' director are the same as that of any other director specified under section 164 of the Act.

**(vii) Grounds of vacation of office: A Small shareholders' director shall vacate the office if -**

- (a) he ceases to be a small shareholder, on and from the date of cessation;
- (b) he incurs any of the disqualifications specified in section 164;

- (c) the office of the director becomes vacant in pursuance of section 167;  
 (d) he ceases to meet the criteria of independence as provided section 149 (6).

**(viii) Number of small shareholders' directorship:**

A person shall not hold the office of small shareholders' director in more than two companies at the same time.

Further, the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

**(ix) No association with the company for next 3 years:**

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

**Procedure to appoint Small Shareholder Director**

S.no.	Activity	Governing provision	Steps
1	<b>Board Meeting</b>	Section 173	When the notice is received, the company shall examine that the same meets with the requirements of Section 151 r/w Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014.  Hold a Board Meeting or pass resolution by circulation to authorise the CS or CFO or any director of the company to intimate the members regarding the resolution for appointment of small shareholders' director to be elected by small shareholders.
2	<b>General Meeting</b>		Hold a 'General Meeting to pass ordinary resolution for appointment of small shareholders' director by small shareholders.  <i>Note:</i> Resolution may be passed by means of 'postal ballot'.  However, above item may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

3	<b>Time-bound disclosures</b>	Regulations 30 and 46(3) of the SEBI (LODR) Regulations 2015	Disclose the proceedings of general meeting/ postal ballot to stock exchanges (where the shares of the company are listed) as soon as reasonably possible and not later than 24 hours from the conclusion of general meeting and post the same on the website of the company within 2 working days.
4		Regulation 44 of the SEBI (LODR) Regulations, 2015	The listed entity shall submit to the stock exchange, within two working days of conclusion of its General Meeting, details regarding the voting results in the format specified by the Board.
5	<b>Appointment letter</b>		Issue an appointment letter to the small shareholders' director.
6	<b>Time-bound disclosures</b>	Regulation 7 of the SEBI (PIT) Regulations, 2015	Person appointed as a small shareholder director of the company shall disclose his holding of securities of the company as on the date of appointment to the company within seven days of such appointment.
7	<b>Statutory Register</b>		Make entries in the register of directors and key managerial personnel and register of contracts or arrangements in which directors are interested in 'Form MBP-4'.
8	<b>Form and documents filing</b>		File return of appointment of director with ROC within 30 days from the date of appointment in Form DIR-12 along with the requisite documents and prescribed fees.

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