CG # 107 Corporate Governance Series: The Power of 10

We have so far, in the Corporate Governance series, delved into the governance protections for shareholders and fiduciary duties of directors. In this article, we specifically focus on the protection available to minority shareholders in companies, including a highlight on the number '10' as far as corporate governance is concerned.

Majority rule is the cornerstone on which corporate governance is based, since a company is a separate legal entity and it is impractical to require unanimous consent for every decision. This enables efficient decision making by relying on the collective wisdom of majority shareholders to act in the best interests of the company. While the principle of majority rule facilitates effective corporate functioning, it also creates opportunities for abuse. Hence, majority rule is tempered by a system of checks and balances, wherein statutory safeguards and minority rights operate to restrain potential abuse of power and ensure that decisions are taken in the broader interests of the company rather than serving the narrow interests of the controlling shareholders.

This principle is effective practically, only if the majority shareholder group is diverse and represents different interests. On the contrary, if majority shareholding is held by one person or group of people with similar interests, the decisions taken by them, may not necessarily be reflective of the interests of all stakeholders of the company and there may be an inclination to support individual or group interests. This is where minority protection provisions of corporate law come into play, which enable smaller shareholders to raise their voice, have their interests protected and, claim oppression or mismanagement against the majority. Where does majority rule become fair game and where does it cross the line and become oppressive to minority?

When one speaks of majority rule, the numbers that immediately come to mind are (a) 50% (simple majority), that is, where shareholders holding more than 50% voting rights can effectively control the passage of ordinary resolutions, (b) 75% (special majority), that is, where the consent of shareholders holding more than 75% voting rights is required to approve certain critical matters; and (c) 25% (negative control), that is, where shareholders holding more than 25% of voting rights have the ability to block special resolutions, though they don't have the right to enable the passage of any resolution.

The one number that often gets overlooked in the scheme of things is 10%. This number holds a special place in Indian corporate law, giving 10% shareholders certain critical rights representation rights and rights to take action against the majority.

Representation rights

Minority representation and right to audience are essential for good governance. Shareholders holding not less than 10% of the paid-up share capital of a company are entitled to call for a general meeting of the shareholders. If the board fails to call for a meeting despite such request, such shareholders can, not only call a general meeting themselves but also get reimbursed for the expenses.

Members of a company having not less than 10% of the total voting power (or holding shares on which an aggregate sum of not less than INR 5 lakhs or such higher amount as may be prescribed has been paid-up), have the right to demand that the chairman of a general meeting order for a poll to be taken rather than a resolution being passed by show of hands.

Rights such as the right to call for a general meeting, demand for a poll, enable minority shareholders to ensure that the majority does not block their representation, and in turn, their right to be heard, when it comes to decision making, irrespective of their ability to enable passage of resolutions.

Management rights

In addition to rights available to shareholders to ensure protection of their legally granted rights, company law, under certain circumstances, allows them the right to correct or highlight wrong doing in the company. Critical for this is the right available to 1000 small shareholders or 10% of the total number of shareholders (whichever is lower), of a listed company to have a director appointed by them. Further, minority shareholders may also seek investigation into the affairs of the company, particularly, where fraud, mismanagement or misconduct is suspected.

Dissenting shareholder rights

While company law requires the consent of holders of 3/4th of a class of shares to effect any change to the terms of such shares, if a minimum of 10% of the holders of the class of shares whose rights are being varied do not consent to such variation, they have the right to apply to the National Company Law Tribunal to have the variation of rights attached to their shares cancelled.

In a public offering, if the proposal for change in objects or variation in terms of a contract, referred to in the prospectus is dissented by at least 10% of the shareholders who voted in the general meeting, then such dissenting shareholders are entitled to be provided an exit. This provides protection to shareholders in situations where there is a change in the terms on the basis of which a public offer was made and the shareholders who had approved the previous terms would like to exit the company.

Rights in relation to oppression and mismanagement

One of the most powerful rights available to smaller shareholders is the right to raise their voice against oppression and mismanagement. If, not less than 100 members or not less of the 10% of the total number of its members, whichever is less, or any member/ members holding not less than 10% of the issued share capital (which requirement may also be waived by the NCLT), are of the opinion that (i) the affairs of the company are being conducted prejudicially or oppressively towards public interest or the company's interest or (ii) any material change such cause such prejudicial conduct, then they can approach the NCLT for relief. It is interesting to note that company law provides for relief not only in case of proven oppression but also for anticipated ones, though this has not really been tested.

The NCLT has the power to provide a wide range of reliefs including, transfer of shares between members, reduction of share capital, termination, setting aside or modification of any agreement, setting aside of any transfer of goods, reconstitution of the board, etc.

Squeeze out right and obligation

Once an acquirer or group of people hold 90% or more of the issued equity share capital of a company, the acquirer has the right to make an offer to buy out the remaining minority shares. The minority shareholders also have a reciprocal right to offer their shares to the majority. The acquisition must take place at a fair price, which is determined by a registered valuer, ensuring that the minority shareholders cannot be squeezed out at a discount. The squeeze-out mechanism reflects the broader philosophy of Indian corporate law: while it enables efficient consolidation of ownership by the majority, it simultaneously protects minority shareholders through fair pricing and procedural safeguards.

Judicial approach

Indian courts have consistently recognized the importance of balancing majority rule with minority protection. Indian courts have even held that the question is not about legality vs illegality, and that even legal actions may amount to oppression to minority shareholders. However, the courts also do not interfere with the governance of a company, unless a legitimate case is made out.

In Needle Industries (India) Ltd. vs. Needle Industries Newey (India) Holding Ltd. (*1981 (3) SCC 333*), the Hon'ble Supreme Court of India held that that oppression involves conduct that is burdensome, harsh or wrongful. The Court went further to say that even an isolated illegal act may not amount to oppression; however, a series of illegal acts may lead to a conclusion that there is an intent to commit oppression.

In Miheer H. Mafatlal v. Mafatlal Industries Ltd. (*1997 (1) SCC 579*), the Supreme Court noted that while approving a scheme, the company court has to satisfy itself that members were acting bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to the interest of the minority.

The Supreme Court has also reaffirmed the importance of majority rule, by stating that not every act that prejudices the minority can be classified as oppression. Famously, in the matter of Tata Consultancy Services Ltd. vs. Cyrus Investments Pvt. Ltd. (*AIRONLINE 2021 SC 179)*, the Supreme Court of India while ruling in favour of Tata, held that removal of a director does not automatically constitute oppression unless it is shown that the conduct was prejudicial, oppressive or lacking in probity.

Implication during investment negotiations

When negotiating shareholder agreements and other transaction documents, founders should remain mindful of the statutory rights that arise once an investor or group of shareholders crosses the 10% shareholding threshold under law. Consequently, founders should carefully consider how equity is structured and whether certain governance or information rights are being granted alongside the shareholding. Some of the questions that founders should ask themselves – who is likely to cross 10% individually or whether there are a group of similarly acting shareholders who will cross 10%? What rights are being given to such shareholders? Is there any mechanism by which there is a mediation before statutory remedies are exercised?

Similarly, investors should be mindful of when this threshold is breached for them or the other

shareholders, specially if there are any opposing interest groups that may breach the 10% mark.

Clear acceleration channels (before statutory action is taken), well-defined governance frameworks, and dispute resolution mechanisms within the shareholder agreement can help ensure that statutory rights are exercised responsibly and that disagreements are addressed constructively.

Conclusion

The “power of 10” reflects the legislature’s attempt to balance the efficiency of majority rule with safeguards against its potential abuse. As corporate structures grow increasingly complex and concentrated ownership continues to shape Indian companies, the strategic importance of this threshold becomes even more apparent. Recognising and utilising the rights attached to this benchmark is therefore essential to ensuring that corporate democracy in India remains both effective and equitable. In the next chapter in this series, we will explore another powerful right available to minority shareholders in the form of ‘class action suits’.

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