

# Companies act

Law, Common Law



There had been innumerable petitions under s. 459 of the Companies Act 1985 for seeking relief by the shareholders of quasi-partnership companies where there were disputes. Lord Wilberforce had laid down the characteristics of a quasi-partnership company in his judgment in the case of *Ebrahimi v Westbourne Galleries*. Joint venture companies present a good example of the association between persons created on mutual confidence and personal relationship which is the essence of any form of organization.

After the deliverance of the judgment in the case of *Ebrahimi* it had been the practice of the courts to look beyond the provisions of the memorandum and articles of association of quasi-partnership companies whenever there are petitions for relief under s 459 of the Companies Act 1985 or under s 122 (1) (g) of the Insolvency Act 1986. There had been instances where the courts had given “ redress in respect of legitimate expectations of members of a quasi-partnership which have been disregarded by other members of the company.

Section 459 is now frequently invoked in a number of different situations and it is possible to glean some clear principles on substantive issues from the ensuing decisions. ” In order to elaborate on the comparison of the reliefs under section 459 of the Companies Act 1985 and section 122 of the Insolvency Act 1986, it is imperative that a background of issues relative to these section need to be studied which are hereunder: Exceptions to Majority Rule: Generally a majority rule prevails on decisions relating to the policies of the company.

If a director has committed any wrong doing then the company has the right to sue the directors on the specific authority of a majority of shareholders.

The decision in the case of Foss v Harbottle has given rise to two general rules: Proper Plaintiff Rule: If there is a wrong committed by anybody against the company then the company only can be the claimant. Indoor

Management Rule: “ If the act which is being claimed as wrong could be ratified by a vote in a general meeting, then the company is not allowed to sue.

However, if the vote has already been carried out, responded negative, and the directors acted anyway, then court action is possible” However there are exceptions to the majority rule. Under certain circumstances the minority shareholder can sue the directors either by initiating the action through the company. Alternatively there can be an action by the shareholder himself as an individual. The exceptions are: Derivative Actions: Under Derivative Actions, the shareholder derives his right to sue from the right of the company.

Personal Wrongs: Under the Companies Act 1985, the Memorandum and Articles of Association represent the contract between the members inter se. If by any action of one member, the right of another member is intruded the party against whom the wrong is committed can claim a legal remedy. In the case of Pender v Lushington when one member refused to count the votes of another shareholder then the wronged shareholder was allowed to sue against the other and get the votes counted.

Unfairly Prejudicial Conduct: “ Under s459 of the Companies Act 1985, any member may apply to the court for remedies on the grounds that the company’s business is being conducted in a manner which is unfairly prejudiced against the shareholders generally, or against any subsection of shareholders (provided that subsection includes themselves) The meaning and circumstances of ‘ unfairly prejudicial conduct’ has been defined by various courts . The different circumstances are: Exclusions from management as has been decided in the case of Ebrahimi v.

Westbourne Galleries Ltd Breach of pre – emption rights by allotting shares  
Convening a meeting of the company in a distant future date that is unreasonable  
Failure to pay dividends properly  
Diverting business from the company  
Making rights issue under certain circumstances  
Providing misleading information to the shareholders  
Proposal to sell company’s undertaking at a considerably low valuation to connected party and  
Using the assets of the company for the benefit of the controlling shareholders’ family.