

# Class Action Suits

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The Companies Act, 2013 is a milestone in the second generation reforms that is set to change the face of the Indian corporate world. It has brought forth a new regime of investor protection and sets new standards of corporate governance. It is a strategic shift in the regulatory framework that will not only affect every company but also impact every entity associated with companies, be it a promoter, director, employee, shareholder, creditor, banker, consultant, financial advisor and so on.

**Insights into the New Company Law** provides a multi-dimensional view to enable the company and its stakeholders to better understand their modified role and responsibilities, privileges and liabilities. This is a thematic book that focuses on concepts and principles, balances theory with practice and explores the earlier situations in new light along with consequent transitional issues. It provides an incisive analysis aimed at understanding the essence of the new law.

This book will be invaluable to students pursuing courses of law, company secretary, and chartered accountancy, to companies, boards and senior management needing a clear overview of the new company law and is a good first point of reference for practitioners.

**Prachi Manekar** is a qualified company secretary and lawyer and an alumnus of the Indian Law Society. She is an advocate at the Bombay High Court and handles a variety of corporate cases at forums like the Supreme Court, High Courts, Company Law Board, Competition Commission and Arbitral Tribunals. She has represented the State in several matters at the aforesaid forums.

She specializes in corporate, commercial, constitutional and infrastructure law advising domestic and multi-national companies on a variety of corporate matters including M&A, company structures, corporate actions, joint ventures, commercial contracts and national and international arbitrations.

She has authored a book titled "*Management of Special Economic Zone*" and regularly contributes articles to magazines and journals. She is a prolific writer and frequent speaker at several conferences and seminars organized by leading professional institutes, associations and chambers on subjects like Company Law, M&A, Arbitration, Construction Contracts and SEZs.

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# Class Action Suit

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# What is Class Action

A lawsuit filed or defended by an individual or small group acting on behalf of a large group



# Do we have the concept of Class action in India

- Yes. We already have the concept of class action in India
- The **class action** is a vehicle for securing judicial review in India
- Public Interest Litigation



# Do we have the concept of class action in Companies Act, 1956

O& M is a type of class action



# Class actions world wide

- [Bank of America](#) has agreed to settle a class-action lawsuit brought by investors who claimed they were misled by its Countrywide unit into buying risky mortgage securities. Bank of America acquired Countrywide Financial, a California-based lender, in July 2008 for \$2.5 billion, but analysts have put the effective cost at more than [\\$40 billion](#), taking into account the post-purchase lawsuits, loan buybacks and write-downs.



# Companies bill

The concept of class action suits has been introduced giving right to a group of shareholders or depositors to move NCLT if they believe that the management or conduct of the affairs of the company are prejudicial to them, such concept is already permitted in the US.





# Who can sue

## Shareholders & Depositors



# What can they claim

## Compensation



# Compensation for What

Damages for any fraudulent,  
unlawful or wrongful act or  
conduct or any likely act or  
conduct on his part



# Compensation From

- Company
- Directors
- Experts
- Advisors



Can investor seek recourse to  
Clause 245 for wrongdoings  
prior to enactment of new  
Companies Act



# Class Action Suit vs. Arbitration



# Biggest Scams

Old Scams analysed in new light



# Harshan Mehta Scam

- He siphoned off funds amounting to Rs 4,000 crore (Rs 40 billion) from various banks to manipulate stocks in the early 1990s.

The scam was exposed as the markets crashed, and banks and investors lost huge amount of money. He died in 2001.





- *How could National Housing Bank give stock broker custody of a Rs. 95.39-crore cheque?*
- The Supreme Court on Wednesday pulled up the Centre for failing to get at the truth of the securities scam indulged in by the late stock broker Harshad Mehta and directed the National Housing Bank to return to the State Bank of India Rs. 95.39 crore with 19 per cent interest from 1992 (about Rs. 900 crore.)... *15<sup>th</sup> August 2013 , The Hindu*



# Ponzi scheme

- Chain Roop Bhansali collected money from the public through mutual funds, fixed deposits and debentures.
- He also raised funds through non-existent companies and transferred the money to shell companies or others who invested with him.
- The scam came to light when he could not raise more money. The scam resulted in a loss of Rs 1,100 crore (Rs 11 billion).



# Ketan Parekh scam

- Ketan Parekh was involved in circular trading and stock manipulation through 1999-2001 in a host of companies.

Like Mehta, he borrowed from banks such as Global Trust Bank and Madhavpura Mercantile Co-operative Bank, and manipulated a host of stocks popularly known as K-10 stocks.

Parekh has been banned from the stock market.



# Rs 14,000 crore Satyam scam

- Ramalinga Raju confessed he had cooked up the accounts of Satyam Computers and that the cash and bank balances were inflated by Rs 5,040 crore (Rs 50.40 billion), after a failed attempt to acquire Maytas.
- Satyam Computers has since been acquired by Tech Mahindra.



# NSEL

- Jignesh Shah, the man behind the crisis-ridden National Spot Exchange (NSEL). Leading brokers, who rarely antagonise exchange authorities, came on air on Tuesday to openly badmouth Shah and the exchange's alleged failure to safeguard commodity stocks and repay thousands of investors on time.



- More than 12,000 small investors and farmers in NSEL are now waiting to get back their investments in NSEL.

## Fraud -

- artificial liquidity was created
- forged warehouse receipts
- same stocks pledged with more than one lender.
- NSEL is indulging in a cover-up,



- [BJP](#) on Thursday said many public sector units, including [MMTC](#) and PEC, have either lost or locked hundreds of crores in the National Spot Exchange Ltd ([NSEL](#)) payment crisis, and asked the government to take action against the exchange. Both companies jointly have an exposure of Rs 300 crore to NSEL.



# Ponzi Schemes

- The Saradha group ran a wide variety of collective investment schemes that collected money from the public.

The ponzi scheme collapsed and caused an estimated loss of Rs 4,000 crore (Rs 40 billion) with 1.4 million investors affected, mostly small savers. The Union government launched a multi-agency probe to investigate the scam.

- Sudipta Sen, promoter of Saradha group is the key accused in the scam.





- 73 companies running Ponzi schemes to be shut down, says West Bengal government



# 2G Scam

## UNTANGLING THE CROSSED WIRES

### THE CASE

- 122 licences issued to different operators amidst allegation that rules were violated to favour certain firms.
- Comptroller and Auditor General estimates loss to government at Rs 1.76 lakh crore.

### PETITIONERS

Centre for Public Interest Litigation & Dr. Subramanian Swamy

### THE IMPACT

#### On licence-holders

- Will have to go out of business; option of bidding again in auction
- Assets created will have to be sold to others
- Collective loss of Rs 9,000 crore paid as licence fees
- Fines ranging from Rs 50 lakh to Rs 5 crore

#### On subscribers

- Will have to migrate to other operators
- Uncertainty and temporary loss of connections possible

#### On government

- Negative political fallout
- Auction is only route for future licences
- Possible gain from higher licence fees

#### On investors

- Shares of Unitech and DB Realty lose
- Bharti Airtel and Idea shares gain

### WHAT THE COURT FOUND

Actions of Department of Telecom and the Telecom minister were wholly arbitrary, capricious and contrary to public interest.

### THE VERDICT

All 122 licences cancelled.



Government to auction the cancelled licences in consultation with the telecom regulator in next four months.

Fines imposed on the companies that secured the licences.

## WRONG CALL

*Unitech & Telenor*  
Uninor  
22 LICENCES | 36.28mn SUBSCRIBERS

*Loop Telecom*  
Loop  
21 LICENCES | 3.21mn SUBSCRIBERS

*Sistema Shyam*  
MTS  
21 LICENCES | 14.12mn SUBSCRIBERS

*Videocon*  
Videocon  
21 LICENCES | 5.45mn SUBSCRIBERS

*Etisalat DB*  
Etisalat  
15 LICENCES | 1.69mn SUBSCRIBERS

*Idea & Spice*  
Idea  
13 LICENCES | 6.6mn SUBSCRIBERS

*S-Tel*  
S Tel  
6 LICENCES | 3.57mn SUBSCRIBERS

*Tata Teleservices*  
DoCoMo  
3 LICENCES | N.A SUBSCRIBERS



A.Raja

Prashant Bhushan



Source: TRAI

- **Corporations accused in 2G Spectrum Scam and charges against them**

- A number of companies and firms have been implicated in the 2G Spectrum scam and they are as follows:

- Unitech Wireless
- Reliance Telecom
- Swan Telecom



Loop Mobile India Ltd

Loop Telecom Pvt Ltd

Essar (Parent company of Essar Tele Holding)

Essar Tele Holding

- **The criminal charges framed against these companies include the following:**
  - Section 120B
  - Section 420 (cheating)
  - Sections 468 and 471 (forgery)



# Possibility of Abuse

Frivolous applications, if any, made by the group of shareholders or depositors will be rejected and the applicant can be asked to pay up to Rs 1 lakh to the opposite party



# What will the future look like



# Leading Class Action Suits in World



# AOL Time Warner

- Status: Settled 2005
- Amount: \$2.5 billion

Investors in AOL Time Warner stock sued the company for fraud under federal securities law. The company was alleged to have improperly accounted for dozens of advertising transactions between 1998 and 2002.

The alleged transactions created the appearance that they were generating revenue when, in reality, were just shifting money back and forth. The alleged false earnings statements inflated the company's value by \$1.7 billion.





# Tyco International

- Status: Settled 2007  
Amount: \$3.2 billion

A series of class-action lawsuits were filed against the company., former officers and directors of Tyco, and Pricewaterhouse Coopers, alleging that these individuals and entities made **false and misleading public statements** and **omitted material information** about Tyco's finances in violation of Sections 10(b), 14, 20A and 20(a) of the Securities Exchange Act of 1934.



# World Com

- Status: Settled 2005  
Amount: \$6.2 billion

This class-action lawsuit represented investors who held World Com stock from April 29, 1999 through June 25, 2002. Lawsuits were initiated against World Com, and individual employees Bernard Ebbers (CEO), Scott Sullivan (CFO) David Myers (Controller) and Buford Yates (Accounting Director) for fraud.



# World Com

The main charges of fraud stemmed from improperly classifying expenses as “capital costs” and inflating revenue statements with false entries. The Securities and Exchange Commission (SEC) later stated that the earnings and assets had been falsely stated by over \$11 billion.



# Enron

Status: Settled 2006

Amount: \$7.2 billion

Investors in Enron corporate stock filed lawsuits under both federal and state securities laws against Enron Corporation, individual Enron officers and directors, Enron's accountant Arthur Anderson, individual Arthur Anderson partners and employees, and Enron's former law firm Vinson & Elkins.



# Enron

- The lawsuit's primary contention was that Enron engaged in fraud by concealing from investors losses by Enron-controlled special purpose entities (the Raptors). Because Enron's primary corporate losses were attributed to these entities, those losses were not disclosed in annual reports or SEC filings.

In total, the \$7.2 billion in settlements reached by Enron to compensate shareholders whose stock became worthless during the company collapse is the largest payout to date in a shareholder securities class action.



# Rising Class Action Abroad

The sweep of securities class litigation is massive, and is increasing by time. The US Chamber Institute for Legal Reform report above states that since 1996, at least 2,758 public companies—or 41% of the roughly 6,000 companies currently listed on the three major stock exchanges—have been named as defendants in at least one federal securities class action. As accounting standards get more complicated, it is possible to find accounting lapses and use them as the handle to file class litigation



# Will we face an avalanche of Class Actions



# Impact on CA's



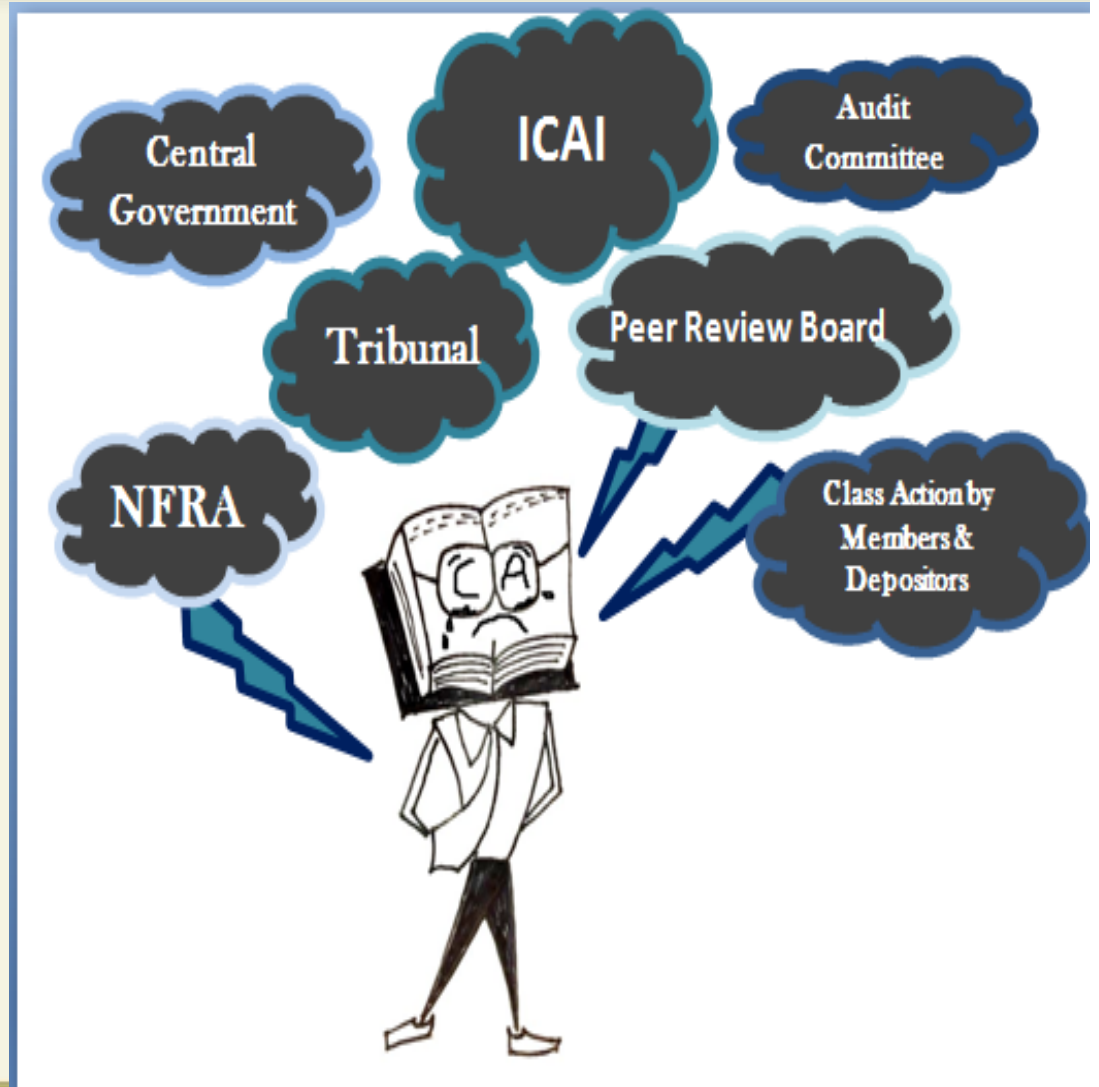


# Remedies



# Other Onerous Provisions – Impact on CA's

- CA's who help in raising Corporate Finance
- Recourse for people relying on audit report
- Removal of Authority



# Queries?



# Thank you

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