

# Seminar NIRC of ICSI

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on Consolidation of Corporate Jurisdiction

**CS Saurabh Kalia**  
**Partner, Śāstra Legal**

**Class Action**  
**– Issues & Concern**

# Class Action Suits (CAS)



## □ Class Action ?

Class Suit or a Representative Action is a form of lawsuit in which **large group of people collectively** bring a **claim** to tribunal / court **against a group people**

## □ New Concept under Indian Law ?

# CAS: Why in India ?



## □ Who can file ?

- **Members** or
- **depositors** in a company
- Does not allow any other class

## □ Qualification

- 100 members or depositors
- 1/10th or
- 10%
- whichever is less

## □ Restrain the company from :

- Committing an Act ultra vires the MOA & AOA
- Committing breach of MOA & AOA
- Declare such resolution as void, which is based on misleading statement
- Restrain co. & directors from acting on such resolution or contrary to resolution passed

- Seek any damages or compensation or demand any other suitable action from or against
- Company or its Directors:
  - for any fraudulent, unlawful or wrongful act, omission or commission or conduct on its of there part
- Auditor including audit firm, with liability of each partner who acted:
  - Any expert or advisor or consultant or any other person associated with company
  - Improper, misleading statement of particulars, any fraudulent, unlawful or wrongful act or conduct

- ❑ Whether its in Good Faith
- ❑ Involvement of other person (KMP ? )
- ❑ Member / depositor to pursue in own right
- ❑ Public Notice within 7 Days
- ❑ Information on website of NCLT, MCA, ROC & SE (for listed co.)
- ❑ Application cannot be withdrawn without leave of tribunal
- ❑ All applications to be clubbed (lead applicant)
- ❑ No two class actions
- ❑ Cost for frivolous applications

# IMPACT

## **STAKEHOLDERS**

- Positive and encouraging move for stakeholders.
- New remedy & additional rights and grounds .
- Deposit Holders no option but a civil suit , now shall be more secure about their investment.
- Includes auditors and consultants



# IMPACT

## **STAKEHOLDERS**

- Additional empowerment to stakeholders
- Ensures experts, advisors and auditors act carefully.
- NGOs can also take up causes for affected people
- Faster action and speedy disposal.
- Deterrent.

## □ Industry

- Will ensure companies become more careful.

## □ Professionals

- auditors,
- experts,
- advisors or
- consultants

Will exercise more independence, diligence and efficiency in their work.

# O&M vis-à-vis CAS in CA, 13

## O&M

- Provision u/s 241 deals with filing of petition before the NCLT for O&M
- Filed against the company and its statutory appointees only.
- Can be filed for past mismanagement and to prevent recurrence.

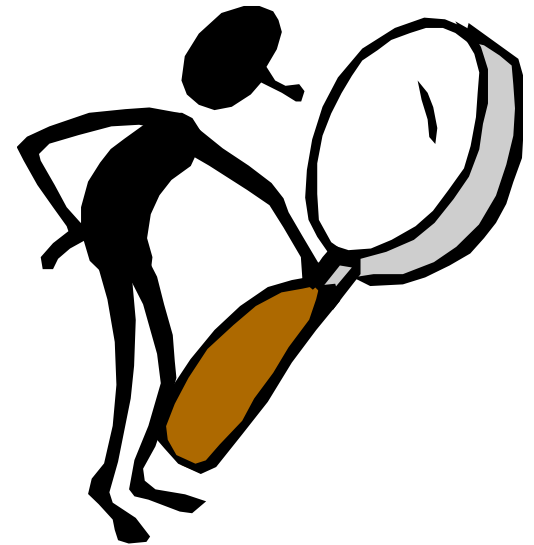
## CAS

- Depositors can file class action suits
- An expert, advisor, consultant or any other person for any incorrect or misleading statement to the company and also against an auditor for any improper or misleading financial statements.
- Ask the management or directors of company to desist from 1 or more particular action that have not been taken yet.

# CAS

# Concerns

- ❑ Potential Misuse ?
- ❑ Can be filed by members and deposit holders only
- ❑ Stakeholders like Creditors, bankers , debenture holders etc. are deprived such rights.
- ❑ Regulatory authority not empowered to file CAS against companies



*Thank you*

*CS Saurabh Kalia*

Con. No. +91 98109 79440 ; +91 9711444434

Sastra Legal, E-96, Malcha Marg, Chankyapuri, New Delhi 110 021

Email : [saurabh@sastralegal.com](mailto:saurabh@sastralegal.com) ; [saurabhkalia@hotmail.com](mailto:saurabhkalia@hotmail.com)

Skype ID : kaliasaurabh15