

**CASE ANALYSIS OF RAJEEV SAUMITRA V. NEETU SINGH &
OTHERS¹**- Sarthak Sharma²**ABSTRACT**

This particular instance is among the initial cases scrutinizing the responsibilities of directors classified according to Section 166 of the Companies Act, 2013, and the possibility of subsidiary lawsuits in India. In the case of Rajeev Saumitra v. Neetu Singh, the Delhi High Court concluded that a director could be liable to reimburse the company for any unwarranted gains resulting from the breach of obligations stipulated by Section 166 of the Companies Act, 2013, while handling a subsidiary lawsuit.

Keywords: Director, Obligations, Section 166, Company.

BENCH AND PARTIES TO THE DISPUTE

Bench: Justice Manmohan Singh (Single-Judge Bench), High Court of Delhi

Plaintiff: Rajeev Saumitra

Defendant(s):

1. Ms. Neetu Singh (Defendant No. 1);
2. M/s. K.D. Campus Pvt. Ltd. (Defendant No. 2);
3. M/s. Paramount Coaching Centre Pvt. Ltd. (Defendant No. 3).

¹ [2016] 198 COMP CAS 359 (DELHI)

² Student, Gujarat National Law University

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Counsel for Plaintiff Mr. P.V. Kapur

Counsel for Defendant Ms. Geetha Luthra

MATERIAL FACTS OF THE CASE

The plaintiff and the defendant are shareholders of Paramount Coaching Center Private Limited (hereinafter "Paramount"), each holding half of the offer capital of Paramount. They are additionally directors of Paramount.

The defendant has fused two different companies that do organizations rivaling Paramount, comparable to which she requested the workers and existing customer base of Paramount. To advance the activities of the companies fused by her, the defendant additionally utilized the altruism and protected innovation of Paramount.

As the defendant was a half shareholder (50% shareholder) and director of Paramount, she had the capacity to hinder any goals of Paramount trying to continue against her. Considering this, the plaintiff contemplated that he had no other option except for to seek after a subordinate suit against the defendant for the violation of Section 166 of the Companies Act, 2013.

ISSUES RAISED

1. Whether the Director is approved to utilize the trademark of company at his/her tact and contend the matter of the Company?
2. Whether such action by the director prompts breaks of directors' obligations under Section 166 of the Companies Act, 2013?
3. Whether a shareholder can record subsidiary Suit under such conditions?

ARGUMENTS RAISED

On behalf of Plaintiff

1. Defendant number one is creating confusion and deception in the minds of ordinary individuals by trying to make them believe that KD Campus is either a part of defendant

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

number three, or in some way associated with defendant number three, or operating with the plaintiff's consent. However, this claim is untrue.

2. As a Director of defendant number three, defendant number one is obligated to act in the company's best interests and should not allow herself to be placed in a position of conflict with the company. However, defendant number one has established a competing business under the banner of K.D. Grounds Pvt. Ltd. and has prioritized her own financial interests above those of defendant number three. The plaintiff alleges that defendant number one has been and continues to use her position as Director to take over defendant number three's business.

3. After incorporating defendant number two, which in itself constitutes a breach of the fiduciary duty owed to defendant number three, defendant number one made every effort to exploit the goodwill generated by defendant number three and deceive the public into believing that defendant number two is part of defendant number three in order to redirect all of the business to herself and defendant number two. One of the key methods used by defendant number one to achieve this was by using the phrase "another venture by Neetu Singh, founder/director of Paramount Coaching Center" - defendant number three's resources such as Facebook and Twitter were used to promote this phrase.

4. Defendant number one started her own independent business after being removed from defendant number three by the plaintiff and his associates. The defendant argues that the facts of this case are not similar to the case of Heena Dutt, so the issue of the sale of shares does not arise. Defendant number one has already established a profitable business of a similar nature, so the suggestion of selling shares between the parties is not feasible at this point. Additionally, defendant number one has refused to transfer the unjustified profits made by her in defendant number two's company.

5. Defendant number one is generating significant profits through her competing business, therefore, she is liable to pay all the profits to defendant number three, and defendant number two should also be restrained. The argument is also made that the demand for removal is an afterthought.

6. Defendant number one could not have started a competing business because she was never removed from defendant number three's affairs. This is a conceded fact in the initial

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

written statement filed by defendant number one in the case CS(OS) No.1592/2015 (which was withdrawn by the plaintiff to file the current suit). It was never defendant number one's position that she had been removed from defendant number three's affairs.

7. The assertion made by Defendant number one that the equity rate was decreased by 9% is incorrect and, in any case, very belated. The issue occurred in 2013 and she was aware of it. It happened because she had a lower balance in the company's account, which was subsequently restored. Therefore, there is no significant relevance in addressing the issue at this point.

On behalf of Defendant(s)

1. The Plaintiff has been making unilateral decisions on behalf of Defendant No.3-Company, such as hiring, firing, and salary increases for employees, without holding any board meetings. He has also employed bouncers and hired muscle to prevent Defendant No.1 from participating in the affairs of Defendant No.3-Company, as well as restricting access to and from the company's premises. This is evident from CCTV footage and photographs of an incident that occurred on August 5, 2015, at the Munirka Branch of Defendant No.3, where Defendant No.1 was brutally attacked and assaulted by the thugs hired by the Plaintiff with the intention to harm and potentially kill Defendant No.1.

2. The management of the defendant company is deadlocked due to the Plaintiff's unilateral decision-making.

3. The Plaintiff allegedly embezzled an amount of Rs. 47 Lac from the January 2015 collection of defendant No.3 for personal use, as the said amount was not deposited with the records section of the Head Office of the company.

4. The Plaintiff, who is a Director of Paramount Coaching Center Pvt. Ltd. (Defendant No.3), is accused of indulging in his expensive hobby of mountain climbing by illegally using the company's resources and collections. It is alleged that he has been earning a salary of Rs. 5 lakhs per month, which was later increased to Rs. 7 lakhs per month. The Plaintiff has allegedly been using the company's funds to go on mountain climbing expeditions with friends to different continents, each costing at least Rs. 30-40 lakhs per person, and bearing the entire cost of his friends as well.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

5. Both the Plaintiff and Defendant No. 1 had equivalent shareholdings of half and were similarly answerable for the undertakings of the Company for all reasons. The plaintiff decided to disregard such a commitment to the everyday working of the Company. The shareholding is similarly partitioned between the gatherings/shareholders, accordingly, it tends to be assumed that the equivalent is of the idea of an organization and not a company.

6. Section 166 of the Companies Act or Section 88 of the Indian Trusts Act or Section 16 of the Partnership Act don't suspend Defendant No. 1 in going into a comparable business as she has been expelled from defendant No.3 according to averments made in the composed assertion.

7. There are various forthcoming cases between the two shareholders and the plaintiff has been turning to threatening behavior on the Defendant No.1 to keep her from entering the premises of the Defendant No.3. Plaintiff's quarrel against Defendant No. 1 has outperformed common techniques and the plaintiff has been:

- i. Withdrawing immense sums from the Company accounts;
- ii. Drawing overdrafts;
- iii. Making arrangements;
- iv. Overall creation a plenty of incredibly hurtful budgetary choices;
- v. Siphoning off assets, and;
- vi. Increasing the obligation on the Company.

8. The plaintiff has negligence to the budgetary condition and fate of the company, defendant No.3. The procedures for persecution and fumble, under Section 397 and 398 of the Companies Act, 1956, were the effectual cure enacted under the Special Act, in the Company Law Board. The said procedures have not advanced because of the slow tactics embraced by the plaintiff. Defendant No.1 is compelled to document the wrapping up procedures because of the unmanageable disposition of the plaintiff. The plaintiff has been constantly drafting his family members, loved ones in Defendant No.3- Company, making it simpler for him to expel defendant No.1 from the company. Plaintiff has taken assistance of muscle force and hostile to social components and has been paying off staff into submitting

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

acts against DefendantsNo.1, with a thought process to assume responsibility for the company for individual increase.

STATUTORY RULES AND FRAMEWORKS RELIED UPON IN ADJUDICATION

1. Section 166, Companies Act, 2013: Section 166 of the 2013 Act accommodates trustee obligations of directors, for example, the obligation to act in accordance with some basic honesty, the obligation to act to the greatest advantage of the company, its representatives, the shareholders, and the network and for the insurance of the climate, and so forth.
2. Section 397, Companies Act, 2013: Purview of the company law board under the Companies Act according to Section 397 of the said Act is a simultaneous ward which might be practiced by common courts where charges relating to mistreatment and botch share the character of a common question.
3. Section 398, Companies Act, 2013: Section 398 of the Act includes provisions that govern and guide the filling and filing of documents virtually, i.e. in the online mode.

JUDICIAL PRECEDENTS, BOOKS, ARTICLES AND OTHER LITERATURE RELIED UPON IN THE JUDGEMENT

Judicial Precedents

Indian

- I. Starlite Real Estate (ASCOT) Mauritius Ltd. &Ors. v. Jagrati Trade Services Pvt. Ltd.¹

In a lawsuit involving a company, the company itself is usually the eligible party to seek legal recourse for any wrongdoing done to it. However, since a company is a fictional entity, it must act through its appointed directors. If the directors in charge fail to take action against a wrong done to the company, the company is unable to take action on its own behalf. In such situations, it becomes necessary for minority shareholders, even if they hold a minority stake,

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

to file a subsidiary action in order to protect the interests of the company. The minority shareholders bring the lawsuit on behalf of themselves and all other shareholders except for those who are defendants, and they may also name the company as a defendant in the legal action.

II. Norma (India) Ltd v. Sameer Khandelwal and Ors.²

According to established legal precedent, the jurisdiction of the Company Law Board under the Companies Act, specifically Section 397 of said Act, is concurrent and can be exercised by civil courts in cases where allegations of misuse and mishandling resemble a civil dispute.

The Court observed that it is not permissible for a director to possess undisclosed profits obtained through the use of information, property or opportunities belonging to the company. In such cases, the company can seek legal action to recover the undisclosed profits, claim damages for fraud or request the annulment of any transaction that allowed the director to acquire such profits.

According to the Court, if a director puts themselves in a situation where their personal interests clash with their duties to the company, without the company's consent, they will be obligated to "reimburse the company which they have betrayed through disloyalty".

Foreign

I. Levy v. American Beverage Corporation³

The situation of the proprietor of offer control is a troublesome one. In struggle with the alleged liberated opportunity to discard his property dependent on "propensities for thought in a buy and deal economy," is the idea that negligible obligations of decency are owed to the non-controlling shareholders by those in charge, as trustees.

II. Gerdes v. Reynold⁴

A miscreant is obligated for a definitive aftereffect of his direct, i.e., the outcomes which actually result in this way, despite the fact that they were not predictable and were novel or unprecedented. That obligation stops just at where the grouping of occasions is broken by the

³ Levy v. American Beverage Corp., 265 App. Div. 208

⁴ Gerdes v. Reynolds, 30 N.Y.S. 2d 755 (Sup. Ct. 1941)

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

intercession of another and free reason as recognized from an associated or contributing or simultaneous reason.

Books, Articles and Other Literature

I. A. Hill, "The Sale of Controlling Shares," 70 Harv. L. Rev. 986 (1956-57)

The extraordinary larger part of, if not all, unfavorable exchanges occur including some hidden costs over market esteem. In spite of the fact that this suspicion may be upheld by the couple of revealed cases, it may not be precise. Controlling offers could be sold underneath market esteem since level-headed speculators consider the dangers of such enormous interests in opposition to their cravings to differentiate their possessions." Again, we don't have the foggiest idea.' But a total worry for the chance of adverse deals would prompt the end that the equivalent treatment rule isn't sufficient and that what is required is a standard that on any offer of controlling offers the buyer must get 100%. The impacts of such a standard on deflecting gainful transactions would likely be enormous to be sure.

II. A.A. Berle, " 'Control' in Corporate Law," 58 Colum. L. Rev. (1958) 1212

The choices made by corporate administration have a significant impact upon representatives legitimately concerned, yet additionally upon the entire of our general public. Consequently we should be crucially worried that the corporate establishment is run not just at greatest proficiency regarding benefit to the partnership, yet additionally that it seeks after a course of lead that is generally valuable to the whole society which it serves. Nonetheless, company law has in numerous zones neglected to perceive this need.

III. Comment, "Sales of Corporate Control and the Theory of Overkill," 31 U. Chi. L. Rev. (1963-64) 725

The majority shareholder has the right to sell their shares to any purchaser unless they know that the buyer intends to gain control of the company and strip it of its assets. This provides a balance between the right of ownership and the protection of the company's interests. This principle is similar to another principle in our legal system, where ownership does not justify the commission of an act that harms another person

CONCRETE JUDGEMENT

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Based on the case's evidence, the court determined that the defendant, who was a majority shareholder in Paramount, did not act fairly and breached her responsibilities as a director. As a result of violating Section 166 of the Companies Act, 2013, she is obligated to repay the company for the improper gain that was made through the newly added competing entities.

The court ruled that if a breach of directorial duties occurs, the shareholder representing the plaintiff has the right to pursue a derivative action against the defendant on behalf of Paramount.

The court stated that, given the defendant's position as a majority shareholder of Paramount, "an offer is property, which its proprietor may treat in any capacity he wants." Nonetheless, the court also noted that there are limits to this right. A controlling shareholder who intends to sell his or her shares has a duty of loyalty to the company with respect to the transaction and must act in good faith and honesty toward it. If the shareholder sells the shares to a buyer who is likely to strip the company of its assets and lead it to bankruptcy, the shareholder will be in breach of this duty.

RATIO DECIDENDI

According to the law, a director cannot retain any undisclosed profits made by using the company's resources or opportunities. In such cases, the company can seek compensation for the undisclosed profits, file a lawsuit for fraud, or cancel any transactions that allowed the director to make such profits.

If a director puts themselves in a position where their personal interests conflict with their duties to the company, without the company's consent, the director must compensate the company that they have betrayed by their disloyalty.

CONCLUSION AND CRITICAL COMMENTS

Initially, the responsibilities of directors were determined by court rulings as company law did not provide comprehensive guidance on the obligations owed by a director to a company. These obligations were based on general principles such as the duty to exercise a reasonable level of skill and care in performing duties and to act with honesty and fairness. However, over time, the law relating to director obligations has evolved into specific duties owed by directors to the company, shareholders, and other stakeholders. India has adopted the

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

approach advocated by common law jurisdictions like the United Kingdom to categorize broad-ranging principles relating to the duties of directors.

The court perceived that it was proceeding new ground in corporate administration and informed concerning the need to continue with alert. While the judgment is vigorously dependent on the facts of the case, Justice Manmohan Singh states, "Customarily the directors of the company are the main people who can lead case for the sake of [a] company, however when they are themselves the transgressors ... and have acted malafide or past their forces ... most of shareholders must in such a case be qualified for find a way to change some unacceptable."⁶ This opens the entryway for seeking after subsidiary suits and acts as an additional strategy for shareholders, notwithstanding the yet-to-be-advised class action suit arrangements set out in the Companies Act, 2013.

Further, the preclusion on directors rivaling the matter of the company wherein they hold directorship should be analyzed further. It is not yet clear whether the actions of candidate directors or potentially directors who are leaving will be dependent upon a similar examination as applied for this situation.⁷

The obligation of shareholders, especially the larger part shareholders, to guarantee that the offer of their controlling stake doesn't bring about the depriving of the company likewise brings up issues according to the practicality of regularly utilized M&A/private value leave arrangements, for example, drag rights and the option to make vital deals.

According to the Court's ruling, a nominee director may be held liable for violating their obligations under Section 166 of the Companies Act. However, the law states that a nominee director can act on the instructions of their nominator if they genuinely believe that the interests of the nominator and the company are aligned.⁸

Subordinate suits are a crucial element of corporate governance and are an important remedy available to shareholders to enforce their rights. However, the legal framework in India concerning these suits is still unclear. Section 245 of the Companies Act permits the initiation of a class action suit by a member or a depositor only for the benefit of the members or shareholders of a company.

BIBLIOGRAPHY

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

Legislations

1. The Companies Act, 2013

Cases

1. Starlite Real Estate (ASCOT) Mauritius Ltd. & Ors. v. Jagrati Trade Services Pvt. Ltd., G.A. No. 2437/2014
2. CDS Financial Services (Mauritius) Limited v. BPL Communications Limited and Others, (2004) 121 CC 374 (Bom) (DB)
3. Darius Rutto Kavasmaneck v. Gharda Chemicals Ltd., (2015) 191 Comp Cas 52(Bom)
4. Foster Bryant Surveying Ltd v. Bryant, [2007] EWCACiv200
5. Scottish Co-operative Wholesale Society Ltd v. Meyer, (1958) 3 AllER66
6. Bennets v. Board of Fire Commissioners of New South Wales, (1967) 87 NSWWN307
7. Levin vs. Clarke (1962) NSW686(Aust.)
8. In Re. Broadcasting Station, 2GB Pty. Ltd., (1964-5) NSW1648(Aust.)

Books and Articles

1. Balasubramanian, N., Black, B.S., and Khanna, V., *Firm-Level Corporate Governance in Emerging Markets: A Case Study of India* (2009), European Corporate Governance Institute, retrieved from <http://ssrn.com/abstract=992529> (30 Jan., 2013)
2. Afsharipour, A., *The Promise and Challenges of India's Corporate Governance Reforms*, retrieved from <http://ssrn.com/abstract=1640249> (30 Jan., 2013)
3. Afsharipour, A., *Corporate Governance Convergence: Lessons from the Indian Experience* (2009), retrieved from <http://ssrn.com/abstract=1413859> (26 Nov., 2014)
4. Balakrishnan, R., *What is stored in the draft Companies Bill 2009- Relating to accounts and audit* retrieved from http://www.taxmann.com/taxmannflashes/flashart9-2-10_15.htm.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>