Anil Kumar Poddar v. Bonanza Industries Ltd: The Shareholder’s Right to Inspect the Company’s Registers and Documents

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**Introduction**

Section 94 of the Companies Act, 2013, which corresponds to Section 163 of the Companies Act, 1956, seeks to provide the members and debenture holders of the company the right to the copies of the company’s documents and registers, including the annual returns.

Sub-section (3) of this section reads as:

" *(3) Any such member, debenture-holder, other security holder or beneficial owner or any other person may—*

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| *(a)* |  | *take extracts from any register, or index or return without payment of any fee; or* |
| *(b)* |  | *require a copy of any such register or entries therein or return on payment of such fees as may be prescribed.”* |

The Proviso of Section 20 of the Companies Act, 2013 allows any member of the company to request for the delivery of any document of the company for a certain fee. On 16th April, 2015 the Mumbai Bench of the Company Law Board, in the case of *Anil Kumar Poddar v. Bonanza Industries Ltd.*,[[1]](#footnote-1) dismissed the application made by a shareholder who demanded the copies of the registers and records of a company for inspection, on the ground that such an application was frivolous and made with a *mala fide* intent.

**The Case of Anil Kumar Poddar v. Bonanza Industries Ltd.**

Mr. Anil Kumar Poddar (herein referred to as the Applicant) is a shareholder in Bonanza Industries Ltd. (herein referred to as the Respondent). On the 11th of January, 2014 the applicant filed for inspection of the respondent company’s statutory register and records. The respondent company denied the applicant the said files as they claimed his actions was of vexatious nature and his intention was to extract money from them. As such this issue was brought up in front of the Company Law Board by the applicant seeking to pass an order directing the respondent company to allow the inspection of the statutory register and records of the company and also to pass an order awarding the applicant exemplary damages.

**The Applicant’s Submission**

The applicant appeared before the Mumbai Bench, in person, and argued that the respondent company had made false allegations against him. He denied the allegations made by the respondent company against him of blackmailing the company and making illegal demands of money. He further stated that the respondent company tried to malign his image and hence the intention of the respondent company was mala fide. He demanded inspection of the statutory register and records of the company in his capacity as a shareholder, as such a right was vested in him by the statute.

**The Respondent Company’s Submission**

The respondent company claimed that the applicant was a professional investor who acquired very nominal or negligible shareholding of various listed companies purely to create nuisance and frighten the directors with criminal liability and illegally extract money from them. The applicant in this current circumstance had only acquired 10 shares of the respondent company to harass the company and frighten the directors of criminal action and to illegally extract money.

Shareholders have various rights, which also include the right to obtain statutory register and records maintained by companies and the right to seek inspection of them. The applicant under Section 20 of the Companies Act, 2013 was seeking various records which included minutes, registers, annual returns and financials of the companies against payment of charges for providing such records. However, the intention of the applicant was never that of a genuine shareholder who is concerned about the performance of the company. The applicant had acquired a sum of 10 shares of the respondent company in June 2013 and ever since had started frequently demanding copies of the registers and documents. The *modus operandi* followed by the applicant was to send the requisition under Section 163 of the Companies Act, 1956 followed by a hard copy and then demanding inspection of the various registers and documents and copies of the annual accounts for the past 5 years.

The case of *Reliance lndustries Ltd, and Ors. v. Anil Kumar Poddar*, observed that the applicant had approached the Company Law Board with a mala fide intent, unclean hands, and to blackmail the company, due to which the applicant was rejected. The respondent company cited this case and submitted that the applicant had threatened and blackmailed them in case of non-fulfillment of his demands.

The respondent company then drew the Bench’s attention towards the fact that the applicant had 14 hearings in front of the Bench due for hearing on the same day as the present one. This brought to light the fact that the applicant’s act was frivolous in nature and held no substance. Therefore, the respondent company made a request to the Company Law Board to quash the application.

**The Decision by the Company Law Board**

The Mumbai Bench of the Company Law Board acknowledged that approximately 150 applications pending were made against various companies by the applicant. They also found that the information that the applicant was seeking could have been easily obtained from the Ministry of Corporate Affairs portal and that there was no real need to repeatedly pester the company. The Bench further referred to the case of Phillips Carbon Black Limited & Ors. v. Anil Kumar Poddar & Anr.[[2]](#footnote-2) where the applicants were barred from exercising their rights as shareholders as they had approached the Board with unclean hands. Due to these reasons the Company Law Board found the intention of the applicant to be mala fide and in an order dated April 16, 2015 dismissed the application. They however clarified that this order should not be interpreted as an applicant being prevented from approaching the Board on bona fide grounds.

**Background Information regarding Anil Kumar Poddar**

The applicant had filed more than 100 criminal complaints against companies situated in Kolkata, before the Court of the Metropolitan Magistrate. The Khaitan & Co. team of the Kolkata office then filed a suit against Poddar and Mahato, on behalf of these companies, under Order 1 Rule 8 of the Code of Civil Procedure, 1908 preventing them from misusing their rights as a shareholder.

It was submitted that the suit had also been advertised in the Economic Times, Kolkata Edition, on 31-3-2010, whereby several other companies had also jointed as plaintiffs in the suit and had obtained similar orders. Further, it had also been advertised in Sanmarg, Kolkata Edition, on 1-4-2010. The aggrieved companies procured an interim order whereby Poddar and Mahato had been restrained from exercising right as shareholders. The Calcutta High Court had also observed that the rights of inspection of document should be exercised in good faith, taking into consideration the company's best interests.

The Kolkata High Court passed an order restraining the applicants from exercising their rights as shareholders. This seems to be the main reason for the applicants to shift from Kolkata to Mumbai. Similarly, various judgments by the Company Law Board has previously barred Anil Kumar Poddar from harassing listed companies in India. [[3]](#footnote-3)

**The Nuisance Caused by Vexatious Shareholders**

The shareholders own the corporation, including all the records and property possessed by the corporation, while those in charge of the corporation are merely agents of those shareholders. The shareholders are the real owners who are entitled to information concerning the management of the property and business while the corporation, acting as their agent, holds the legal title to the property.[[4]](#footnote-4)

The intention of this concept was to facilitate transparency and good interest. It was introduced to give the shareholders more control over the company as they should have the right to obtain information on how their investments are being used and whether they will get their desired returns from the company or not. However, taking advantage of this right, some people acquire a small number of shares and claim the privileges that are available to the shareholders. They then cause hindrance to the companies by demanding registers and documents, disrupting meetings, including the Annual General Meeting.

Often to stop causing hindrance in such meetings and to pass the accounts these people demand costly gifts or money. When the companies are faced with vexatious claims they find themselves in a difficult situation with no option but to accept their request and act upon it. This is due to the shareholders being vested with such rights while the companies have no rights. While there was a draft in one of the Companies Bill to prohibit the giving of such gifts during meetings, the later drafts and proposals do not contain this clause, without any justification for such.

**The Carve Out for Companies to Avoid such Vexatious Shareholders**

With the digitization of all records and the increasing use of e-governance everything can be found on the companies’ websites. Due to this there should be a lesser need for demanding physical copies of the same documents from the companies, as seen in the present case. With the Ministry of Corporate Affairs also having a copy of the documents the shareholder can alternatively seek information and copies from there. While there is no specific carve out available, the companies should try to discover the motive of the shareholder who is seeking inspection and copies of the records. If an ulterior motive appears to be seen then the companies should approach the Company Law Board.

What the Companies Act, 2013 should have added was the definition of a shareholder with a minimum number of shares before being able to exercise the right of inspection of documents and other similar rights. In absence of such a provision there has been constant misuse of the right to inspection by some shareholders to make vexatious demands and involving the companies in unnecessary litigation matters.

Shareholder activism has gained popularity in the recent past. With no requirement of the number of shares required to be called a shareholder and benefit from all the rights, even holding one share in a company effectively turns a person into a shareholder. These shareholders are seen to take aggressive stances during the annual general meetings. While there is a conflict between shareholder activism and corporate governance on one hand there are times when there are legitimate complaints of harassment of the corporate sector. As such the entire issue falls in the grey area due to the fine distinction between shareholder activism and harassment. Hopefully in due time the distinction becomes more apparent and a reasonable balance between the two can be found.

**The Impact of the Judgment**

The right to inspect the documents of the company is a mandatory provision and there is no bar to a member or debenture holder seeking inspection of the company’s documents.[[5]](#footnote-5) However the Company Law Board has ruled that the time and charges for supplying such information to the members must be fixed in such a way so as to not allow the company’s work to suffer and that too without disclosing the reason for the same.[[6]](#footnote-6) No doubt the applicant had the statutory right to seek inspection of the company’s documents in his capacity as being a shareholder of the company. However, the applicant used the provisions of the Companies Act as a shield against the companies and made frivolous applications for inspections of records.

It is quite common to see unscrupulous profession shareholders, like Anil Kumar Poddar, harassing companies, not motivated by and public cause but, to serve their personal interests and gain some profit. Due to corporate democracy each and every shareholder, even a person with one share in the company, can avail the provisions of Section 94 of the Companies Act, 2013 to solicit information from the company. One course of action that companies can take is to go along the lines of the Anil Kumar Poddar v. Bonanza Industries case and ask the shareholders to acquire the information required from their company website or the MCA website. If a further request is made by the shareholder, then depending on the shareholder’s intention the company can decide not to accept the request and use this case as a defence with a request to dismiss the application.

The decision of the Company Law Board in the instant case is well appreciated. The judgment should send out a strong message of good corporate governance and would act as a deterrent for all such frivolous and mala fide applicants. This should be seen as a warning to all the shareholders who have been vexing the companies with a mala fide intent. So as to avoid the wastage of time of both the companies as well as the shareholders the inspection of physical records and registers should only be used in exceptional circumstances where the MCA and the company’s website does not give the entire information required.

1. *Anil Kumar Poddar v. Bonanza Industries Ltd.*, [2015] 132 SCL 47 (CLB – Mumbai). [↑](#footnote-ref-1)
2. *Phillips Carbon Black Ltd. & Ors. v. Anil Kumar Poddar & Anr.,* [2011] 163 COMP CASE 181 (Calcutta). [↑](#footnote-ref-2)
3. *Supra* 4; *Anil Kumar Poddar v. Alka India Ltd.*, C.P. No. 79 of 2013;*Re: Reliance Industries Ltd.*, C.P. No. 83 of 2012; *Wipro Limited v. Anil Kumar Poddar*, [2011] 3 CLONLINE 104 (CLB – Chennai). [↑](#footnote-ref-3)
4. *Johnson Ranch Royalty v. Hickey*, 31 S.W.2d 150 (Tex. App. 1930). [↑](#footnote-ref-4)
5. *Rajendra G. Patel* v. *Sanghi Industries Ltd.*,[2013] 176 COMP CASE 49 (CLB - Chennai). [↑](#footnote-ref-5)
6. *Fomento Resorts And Hotels Ltd.* v. *Mahendra G. Wadhwani*,[1996] 85 COMP. CAS. 1 (BOM.). [↑](#footnote-ref-6)