

Chapter : XVI (Sec 241-246)

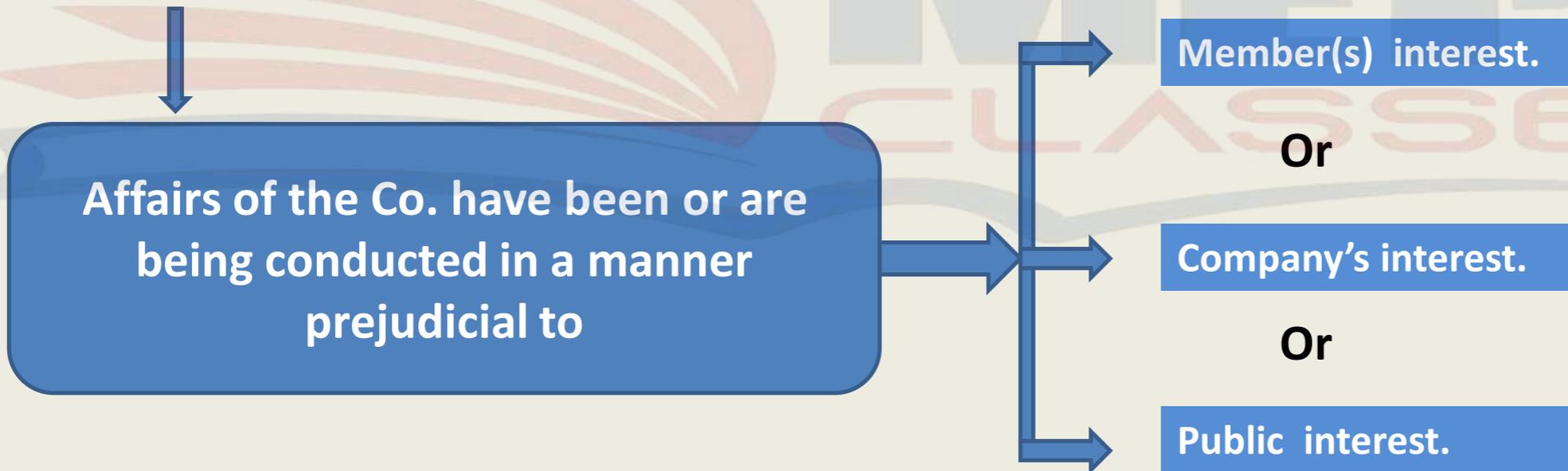
Prevention of Oppression & Mismanagement



Sec 241

1. Grounds of making application to NCLT (in Form NCLT-1) by member U/S 241(1)

I. Clause a



II. Clause b



Material change has taken place in the management or the contract of the Co. due to change in composition of BOD or managers or change in ownership of shares or membership as a result of which it is likely that the affairs of the Co. will be conducted in a manner prejudicial to



Company's interest.

Or

Member(s) interest.

2. Grounds of making Application to Tribunal by C.G (MCA) U/S 241(2)

- **The affairs of the Co. are being conducted in a manner prejudicial to public interest.**

3. 241 (3)

- **C.G may apply to tribunal to inquire & pass order whether such person is fit & proper to hold the position of director or any other person in the management of the Co. if the affairs of the Co. have been or are being conducted by him.**
 - a) Fraudulently or with misfeasance or breach of trust or gross negligence or breach of his obligations/ duty.**
 - b) Against sound business principles or prudent commercial practice.**
 - c) Against the interest of the trade & industry to which it pertains.**
 - d) Or against the interest of the public / or interest of creditors / deb.hrs to defraud them**

4. 241 (4) :

The person against whom a case is referred to the Tribunal under sub-section (3) , shall be joined as a respondent to the application.

5. 241 (5) :

Every Application under sub-section (3) :-

- shall contain a concise statement of such circumstances & materials as C.G may consider for purpose of inquiry. And
- shall be signed & verified by the plaintiff in a suit by CG as per the manner laid in CPC , 1908

Sec 242 : Orders Passed by NCLT

- 1. 241(1):** As per Sec 242(1) NCLT can pass any order for bringing an end to oppression & mismanagement if NCLT finds that affairs of the Co. have been or are being conducted in a manner prejudicial to member(s) interest or Co. interest or public interest & the grounds are just & equitable for the winding up of the Co. but it would unfairly prejudice the interest of the existing members of the Co.
- 2. 241(2):** NCLT may pass any one or more of the following orders .
 - I. Regulation of conduct of affairs of Co. in future .
 - II. Purchase of shares of a member by other member.
 - III. Purchase of shares of a member by the Co. & consequent reduction of share capital.

- IV. Restriction on transfer / allotment of shares.**
- V. Modification / setting aside / termination of contract between Co. & its MD / any other director / Manager.**
- VI. Modification / setting aside / termination of contract between Co. & 3rd parties after their consent.**
- VII. If the Co. had transferred any goods , property to any person with fraudulent preference within 3 months immediately preceding the application made to the Tribunal , then Tribunal can declare such transfer as void.**
- VIII. Removal of MD/ any other director / Manager**

- IX. Recovery of undue gains , advantage made by MD / director / Manager by breach of duty and giving it to identifiable victims or transferring to IEPF.
 - X. Manner in which appointment of MD / Director / Manager has to be done in place of those who were removed.
 - XI. Appointment of such no. of directors / persons who may report to the Tribunal on such matters as Tribunal may direct.
 - XII. Imposition cost on Co.
 - XIII. Any such other order as it deems fit.
- 3. 242(3):** Tribunal's order shall be submitted by Co. to ROC within 30 days of such order .

4. **242(4)** : Tribunal may pass interim order also if it deems fit.
5. **242(5)&(6)** : Tribunal if by order U/S 242(1) or 242(2) altered AOA/MOA then Co. can not by itself alter its AOA or MOA without Tribunal's approval.
6. **242(7)**: MOA / AOA if altered then their certified copies shall be submitted to ROC within 30 days of such alteration .
7. **Fine for Contravention of (5)**

Co.

OID

MIN

1 Lacs

25,000

MAX

25 Lacs

1 lacs

Sec 244 : Member(s) right to apply U/S 241

Company having
share capital

100 members or at least $1/10^{\text{th}}$ of the total
Members

OR

Members holding at least $1/10^{\text{th}}$ of the
issued share capital w.e. is less

Company not having
share capital

At least $1/5^{\text{th}}$ of the Total Members.

- **Provided that NCLT may also allow lesser No. of members to apply if above limit is not satisfied**

NOTES :

1. Joint shareholders shall be counted as 1
2. Pref. shareholders shall be counted.
3. Any member who has done Calls-in-Arrear shall not apply to Tribunal.
4. A single member may apply on the behalf of rest of the applicants to the Tribunal after obtaining their written consent.

Sec 243

Consequences of termination , modification of setting aside of Agreement pursuant to Tribunals order U/S 242

No compensation to anyone for termination / setting aside of agreement or for loss of office of MD/ Director / Mgr.

Such MD/Director/Mgr. whose agreement is terminated /set aside or Tribunal concluded that he is not a fit & proper person then he can not be appointed for 5 Years as MD/Director/Mgr. in the Co.

Provided that with approval of NCLT , he can be appointed as MD/Director/Mgr of the Co. before 5 years but NCLT will also give CG an opportunity of being heard in such regard.

If any person knowingly that he has been removed as a MD/Director/ Mgr continues to hold such post he shall be liable to a fine which may extent up to ₹ 5 Lacs Rupees

Class Action Suit :

It is a suit filed by large group of people having same or similar injuries caused by the same person i.e. the cause of action is same & so collectively they bring a claim to the court represented by one or more persons.

History , Origin :

1. In USA the provisions of class suit action originated in 1842.
2. It is popular in USA , UK , Singapore & Other European Countries.

Evolution in India :

1. The Company Law Committee headed by Dr. J. J. Irani recommended the provisions of class Action suit in 2005 but were not introduced by the legislators at that time.
2. In 2009 , the India's Enron i.e. Satyam fiasco happened where accounts were mis-stated to the tune of ₹ 7855 Crores.
3. Indian shareholder of Satyam saw that their money going into drain.
4. Satyam was also listed in NASDAQ in USA . American shareholders because of strong Class Action framework recovered 125 million \$.
5. Finally in the Companies Act 2013, the provisions of the Class Action suit were introduced in India.

Types of Class Action Suit

**Employment Class
Action Suit**

**Class Action Suit filed
by employees for
Labour Law violation**

**Consumers Class
Action Suit**

**Class Action Suit filed
by a group of
Consumers against
the traders etc.**

**Securities Class
Action Suit**

**Class Action Suit filed
by shareholders /
depositors etc.**

Class Action Suit Under the Companies Act 2013

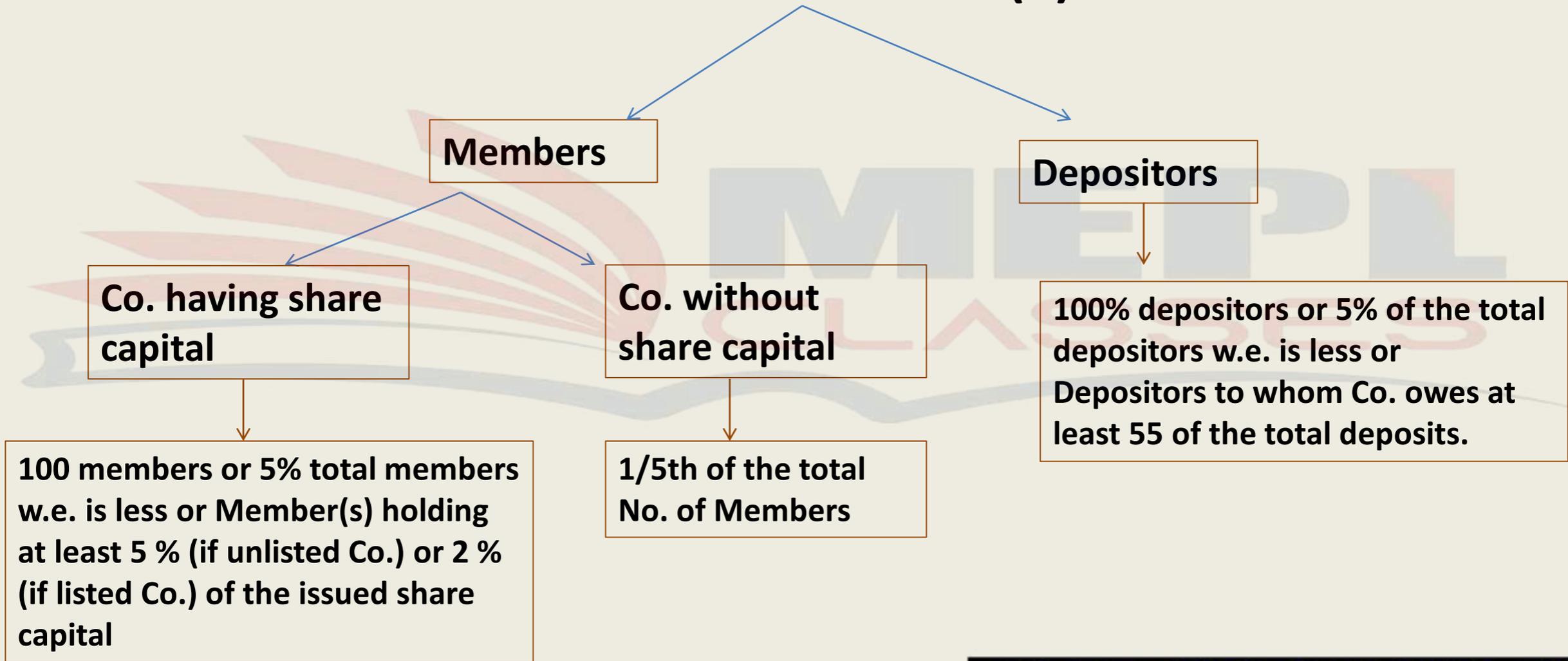
Sec 37

Sec 245

Suit may be filed by any person / group of person / affected by any misleading statement or omission in prospectus U/S 34 (criminal liability) or U/S 35 (civil liability) or U/S 36 (fraudulently inducing person to invest money)

By Members / Depositors .

Class Action Suit U/S 245 of the Companies Act 2013 , read with the NCLT Rules 245 (3)



Sec 245 (1) : Grounds of Class Action Suit & Order sought from NCLT

- If members or depositors or any class of them are of the opinion that the management of the Co. or conduct of the affairs of the Co. are being conducted in a manner prejudicial to the
 - Co's interest
 - Members interest or
 - Depositor's interest
- then they can make an application to NCLT in Form No – NCLT -9 for seeking all or any of the following orders:
- a) To restrain the Co. from doing any act which ultra – vires of MOA / AOA

- b) To restrain the Co. from breach of any of the provisions of MOA/AOA**
- c) To declare the resolution passed by Shareholders as void if facts were misrepresented or there was suppression of material facts.**
- d) To restrain Co. & it's directors from acting on such resolution.**
- e) To restrain the Co. from acting contrary to the resolutions passed by the shareholders.**
- f) To restrain the Co. doing any act which violates the provisions of this Act or any other law for the time being in force.**
- g) To claim damages or compensation or any other suitable action from/ against:**
 - i. Co. / its directors for their fraudulent / unlawful or wrongful act or any omission or mis-conduct on their part.**
 - ii. Auditors including audit firm of the Co. for any improper / mis-leading statement in the audit report or for it's fraudulent , unlawful or wrongful act.**

- iii. Expert / auditor / consultant of Co. for any incorrect or mis-leading statement in any report or for its fraudulent , unlawful or wrongful act .
- h) To seek any other remedy as NCLT deems fit.

Sec 245 (2)

If members or depositors bring a class action suit against the audit firm of Co. , then all the partners of the firm along with the firm who gave improper or mis-leading statement in audit report or who acted fraudulently , unlawfully or wrongfully shall be held liable.

Note : Why concept of Class Action Suit was introduced?

To reduce multiple litigations.

AND

To give relief to geographically dispersed investors / depositors.

Sec 245 (4) : Factors to be considered by NCLT before admitting application U/S 245(1)

- a) Whether the members / depositors are acting in good faith in making application & seeking relief U/S 245(1)**
- b) Any evidence before NCLT regarding involvement of any person other than director / officer of Co. in matter of sec 245(1) (a) to (f) .**
- c) Whether cause of action is such which members / depositors could pursue in their own individual rights.**
- d) Any evidence before it such members / depositors involved in class action suit have no direct or indirect interest.**

- e) Whether cause of action is related to any act or omission which is yet to occur but it is likely that
 - i. It will be authorized by the Co. before it occurs.
 - ii. Ratified by the Co. after it occurs.
- f) Whether the cause of action is related to any act or omission which has already occurred but it is likely to be ratified by the Co.

Rule 85 of the NCLT Rules, 2016

Prescribes the additional grounds that NCLT may consider before admitting application U/S 245(1) .

- a) Whether the class of members are so many that joining them would be impracticable.

- b) Whether there is a common question of law & facts.
- c) Whether the claim & defenses of representative are typically the claims & defenses of class of members.
- d) Whether representatives shall protect fairly the interest of class of members.

Sec 245 (5) : In case of admission of application NCLT shall have due regard to the following :

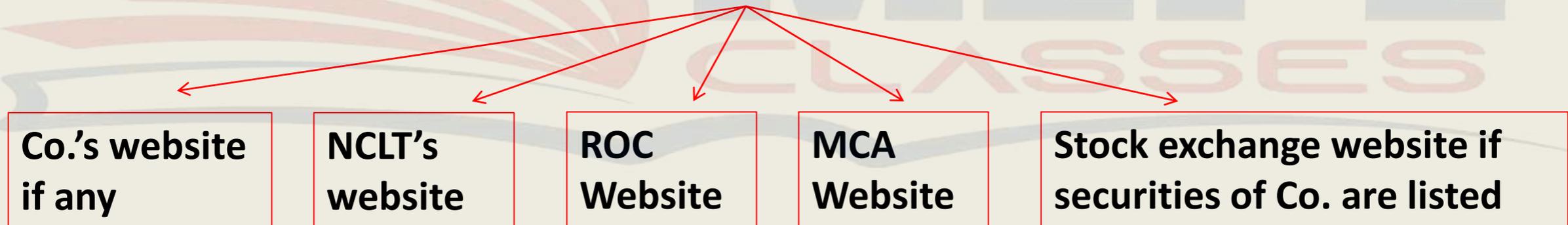
- a) Public notice shall be served on all the members / depositors of that class in such manner as may be prescribed .

↓
RULE 87

Rule 87

- Within 7 days of admission of application , public notice in Form no. – NCLT - 13 shall be published in at least 2NP's – one in Eng Language in Eng NP & other one in principal vernacular language in vernacular NP both having wide circulation in the district where Co.'s RO is situated.

Such a notice shall also be published on



The date of publishing in N.P shall be the date of service of notice to all the members / depositors .

Contents of the public notice :

- 1) Name of the lead applicant
- 2) Grounds of application
- 3) Relief sought
- 4) Statement that application was made by requisite no. of members / depositors.
- 5) Statement that NCLT has admitted the application.
- 6) Time within which representation can be made to NCLT.
- 7) Opt out facility in NCLT-1
- 8) Date & time of hearing .

The cost of suit shall be borne by the applicants but later on defrayed by Co. or the persons who act as oppressive .

Sec 245 (5)

- b) All such similar application shall be consolidated into 1 & member / depositors shall be allowed to choose the lead representative & if consensus is not achieved between them , NCLT shall choose lead representative .
- c) 2 Class Action Suits on same cause of action is not possible .
- d) Clause d – Rule 87 (cost of suit)

Q. Can a member / depositor opt out a Class Action Suit ?

- Yes as per Rule 86 , by submitting NCLT 1 & taking NCLT's approval that he can opt out from class action suit otherwise all the members / depositors of that class shall be deemed to be involved in Class Action Suit .

After opting out , that member / depositor can claim relief under any other law if necessary provisions of relief exists in such other law

Sec 245(6)

- NCLT's order shall be binding on Co. , all members , depositors , officers , directors , auditors including audit firm , expert , advisor , consultant & any other person related to Co.

Sec 245(7)

If NCLT's order is not complied then

	Company	OID
MIN FINE	5 Lacs	₹ 25000
MAX FINE	25 Lacs	1 Lacs & imprisonment up to 3 years

Sec 245(8)

- Application filed in frivolous / vexatious then NCLT may pass an order rejecting the application & also order the applicant to pay to the opposite party cost not exceeding ₹ 1 Lacs .

Sec 245(9)

- Application filed in frivolous / vexatious then NCLT may pass an order rejecting the application & also order the applicant to pay to the opposite party cost not exceeding ₹ 1 Lacs .

Sec 245(10)

- Class Action Suit applications U/S 245(1) can be filed by person, group of persons , association of person representing of the persons affected by any act or omission on the grounds mentioned U/S 245(1) .

Sec 245(10)

- The provisions of Sec 337 to 241 (both inclusive) shall apply mutatis-mutandis to applications filed U/S 241 or U/S 245

Q. Who can file Class Action Suit ?

➤ Requisite no. of members / depositors

Who is a member

- a) Subscriber to MOA
- b) Person who agreed in writing to become members , shares were allotted & name entered in ROM
- c) In case of listed Co. name entered in records of depository as a beneficial owner.

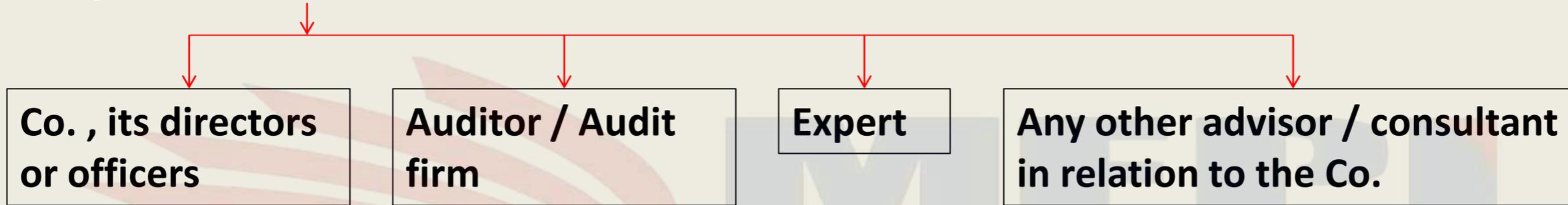
Who is a depositor

- a) Member who gave deposit to Co. U/S 73(2)
- b) Person who gave deposit to eligible public Co. U/S 76

Q. Where?

➤ **NCLT, Principal bench , New Delhi**

Q. Against whom?



Class Action Suit under various laws in India

1. **Code of Civil Procedure :- Persons having same interest in the suit.**
2. **The Companies Act 2013 :- (a) Sec 37 (b) Sec 245**
3. **The Competition Act 2002:- Any person , consumer or their association having same cause of action.**
4. **The Consumer Protection Act 2019:- Consumers of goods / services having same cause of action.**

Basis	Sec 241	Sec 245
Who can apply	Member(s) can apply	Members / depositors / any class of them
For what	For Past Oppressive Acts application possible	Not possible as it must be present continuous.
Public Interest	If affairs conducted against Public interest , an application is possible	Public interest not covered
C.G	C.G can make application	Can not
NCLT power	NCLT can waive off minimum required members to file application	Can not
Auditors	Auditor , expert etc. not included	Included
Public Notice	No Public Notice required	Required NCLT – 13
Consolidation	Various applications can not be consolidated	Can be consolidated
NCLT Bench	Application in different benches of NCLT possible	Only NCLT New Delhi Branch