

Provision related to alteration of Share Capital of Company

Section 61 of Companies Act, 2013

- The share capital of a limited company can be altered by-
 - Increase in authorized share capital
 - consolidate and divide shares to larger amount
 - convert fully paid-up shares to stock and stock to fully paid-up shares
 - sub-divide shares into smaller amount
 - cancel shares which have not been taken by any person
- No consolidation/division shall be taken which results in change in voting power of shareholders except with the approval of Tribunal.
- In sub-division, the proportion of paid & unpaid shares on each reduced share shall be same as it was derived from reduced share.
- Cancellation of shares ≠ Reduction of shares

Section 62(4) & 62(6) of Companies Act, 2013

- If any company issues debentures/takes any loan from any Government, such Government may order for conversion of such debentures/loan in to shares.
- The Company may approach Tribunal for such order.
- However, if no order is made or is dismissed, the memorandum stands altered.

Section 64 of Companies Act, 2013

- The Company shall file Form SH-7 within 30 days of
 - Section 61 event
 - Section 62(4) & 64(6) event
 - Redemption of preference shares
- Attachments: Altered Memorandum of Association
Members Resolution

HIGHLIGHTS OF CASE LAW UNDER SECTION 61:

Fillunger & Company Pvt Ltd (Herein Appellant & Original Defendants-Company) Vs. Ajit Arvind Marathe (Herein Respondent & Original Plaintiff)

Facts: The Company had altered Memorandum of Association (MOA) by increasing its authorized share capital (ASC) and altered its Articles of Association (AOA). It had also issued shares through right issue which was opposed by the Plaintiff. Plaintiff that the Company failed to comply with relevant provisions of Companies Act (Act) for alteration of AOA. On the basis of which he applied for interim order. The same was granted as well. The Company appealed against the Plaintiff and asked for discontinuation of interim order which was in effect for two years. The learned counsel after duly examining the case, allowed the appeal citing that interim order was passed without any basis of information and the Plaintiff had filed a belated case after all the legal formalities were completed.

Claims of Plaintiff/Respondent: Alteration made in Share capital (SC) in Clause V and increase made in authorized share capital (ASC) from Rs. 5,00,000 to Rs. 10,00,000 in MOA in (Extra Ordinary General Meeting) EOGM dated 27.01.2015 is illegal and null.

According to Plaintiff, resolution to increase ASC was done by ordinary resolution but alteration in AOA could not be given effect due to lack of majority votes as the same was opposed by the Plaintiff and other directors of the Company.

He says that Board of Directors of the Company allegedly approved right issue Rs. 2,00,00,000 in Board Meeting 09.03.2015 without altering share capital clause in AOA.

The Plaintiff complained to (Registrar of Companies) ROC for directing the Company to stop allotment. But had ROC approved the same.

The Plaintiff sought interim order restraining –
EOGM dated 27.01.2015
Defendants from claiming their rights under an issue dated 27.04.2015

He was granted an interim order on 21.09.2015 for almost two years.

Observation of the learned counsel on behalf of Appellant: Section 61 provides for procedure and not power to amend MOA.

MOA and AOA (twice) were altered as per provisions of the Act.

The trial judge failed to give a valid ground of the order and no proper interpretation of provisions was considered.

The Plaintiff did not file any suit soon after amendment of MOA. It was filed at belated stage when steps were taken by Board. Before he filed the suit, MOA was altered; Right issue was completed and RoC recorded the amended MOA.

MEHTA & MEHTA
Company Secretaries

The company issued shares on 09.03.2015 and MOA was also amended. But the ad-interim order was passed on 21.09.2015.

The company was only restrained from making changes in AOA in meeting scheduled on 30.09.2016.

As per the learned council, all the amendments were done as per the law and they couldn't find any base of trial court interim order.

The learned council even discontinued the interim order.

Reference : Miheer Hemant Mafatlal vs. Mafatlal Industries Ltd.

Decision: Appeal allowed.

Case Link : <https://indiankanoon.org/doc/23184527/>