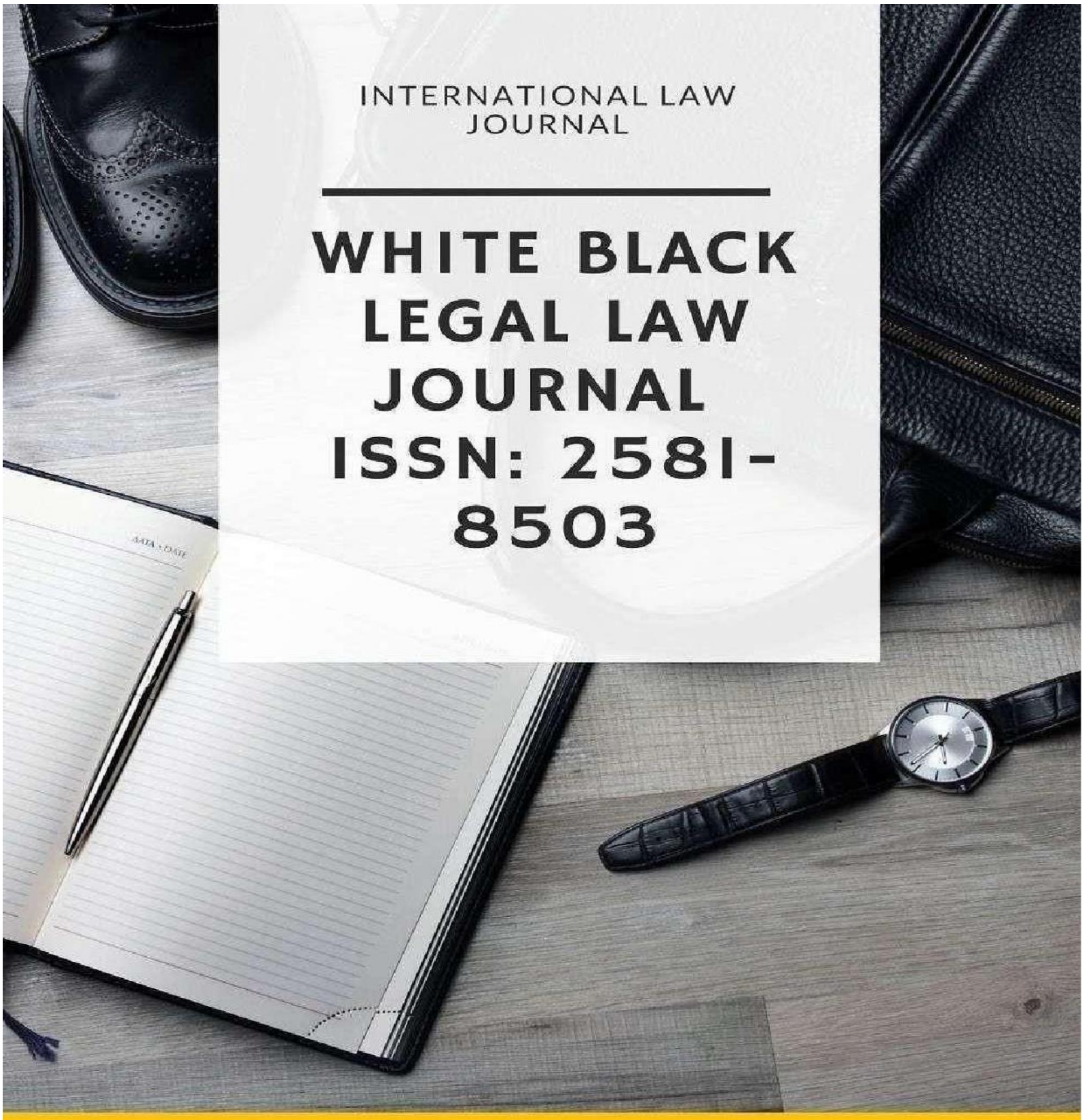

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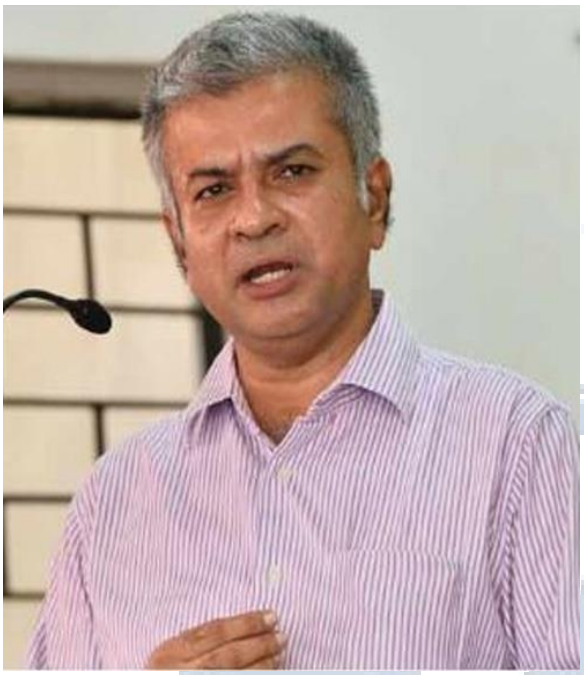

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

IS MINORITY SQUEEZE OUT A PROBLEM OF LEGISLATIVE POLICY UNDER THE COMPANIES ACT, 2013''

AUTHORED BY - JHANVI GOEL

INTRODUCTION

The system of corporate governance involves balancing the interests of various stakeholders ofthe company, including that, of the shareholders. However achieving consensus, amongst all of them, might not be a feasible task, which has, given birth to "majority owned & Controlled[1]operations'. It was in the case of *Foss V. Harbottle*[2], wherein, this principle of majority decisionmaking was duly recognized & stressed upon. The court held the view that it would refrain from interfering within the company's matters, in any way, provided they have been concluded.
,by a majority, except in cases of mismanagement.

The majority is thus vested with intrinsic value, to be, able to make decisions. However, the same must be commensurate with equal representation of minority interests & a balance has tobe struck between the rule of majority & the interests of minorities. But the JJ Irani committee'sexplicit recommendation[3], with respect to, minority rights was turned down & a conservativeapproach was followed by the majority shareholders in buying out the shares held by the minority counterparts.

WHAT IS SQUEEZE OUT?

This mechanism of compulsorily acquiring the equity shares, of minority shareholders, of a company is broadly known as the "Squeeze out "provisions wherein their shares of minority are acquired by providing them with a fair compensation in return. This alludes the takeover of a company, in a smooth way, via a scheme of compromise or arrangement.

[1] Shuchi Agrawal & Isha Ahlawat, 'Minority Squeeze Outs Under Takeover Law: An Analysis' (The RMLNLULaw Review Blog, 5 October 2021)
[2] Foss V Harbottle (1843) 67 ER 189
[3] Report of the Expert Committee on Company Law, chaired by Dr. Jamshed J. Irani, submitted to the MCA onMay 31, 2005.

POSITION OF SQUEEZE OUT IN INDIA

However, the law on minority squeeze-out has not been a glorious chapter in the history of Company Law[4] The parliament in lieu of its legislative policy, seems uncomfortable, when it comes to enacting a law, forcing the less represented 'minority shareholders' to compulsory sell their shares. It is seen as a measure of suppression of the minority shareholders, at the hands of, those at majority by forcing them out of the company , taking up their shares. The Government views it as an attempt to dispossess them of their property, thereby, leading to theviolation of the rightful rights of the minority shareholders.

Where the Indian company law corresponds with the English company law, in various aspects,it has a dissenting outlook with respect to the minority squeeze out law. Unlike the company laws of most developed countries, which carry clear & stringent provisions, in respect of majority shareholder's rights ; the Indian company law as under S. 395 vide Co. Act , 1956[5] provides a somewhat limited mechanism to transferee company for a minority squeeze out in situations involving a transfer of shares between two Co. , requiring the approval of at least 90% of shareholders (who count as majority) , the one whose shares are being purchased as under the scheme or contract.

This section closely corresponds with the S. 235 as under the amended act of 2013[6] , which provides , for a compulsory acquisition of shares held by the dissenting shareholders , in situations where a scheme or contract involving a transfer of shares or say any class of shares by the transferor company to the transferee been approved by the holders of not less than 90%of the value of shares & that too within 4 months of making the offer. After receiving the approval of the majority shareholders, a notice in that regard is issued to the dissenting shareholders enumerating its desire so as to acquire their shares. This provision however does not stand, to be an absolute one, as the dissenting minority shareholders can rightfully approach the NCLT whenever they deem fit to do so, thereby, objecting the said acquisition as stated under S. 235(2) & (3) of the act.[7]

Apart from this, listed Co. are also borne with the opportunityof "Delisting" their equity sharesin accordance with the SEBI (Delisting regulations) ,2021, which is, usually considered as a

[4] Vasani B, Kanan V and Seal R, "Minority Squeeze-out under Our Company Law – Is It a Legislative Policy Dilemma" (*Cyril Amarchand Mangaldas* December 16, 2021)

[5] See Companies Act, 1956 S.395

[6] See Companies Act, 2013 S.235

[7] See Companies Act 2013 S.235(2) ; Companies Act 2013 S.235(3)

prequel to squeeze out. It is less onerous to implement such a squeeze out, which passes through the stage of delisting rather than when the company is listed.[8]

OTHER SQUEEZE OUT METHODS

(A) **SCHEME OF ARRANGEMENT**: - As against the compulsory acquisition method, this counts as one of the most prominent methods to be used by the controllers in terms of squeeze out, provided under, S. 230 of the Co. Act, 2013[9]. Under the scheme, the company permits either the controller or the company itself to purchase the shares heldby the minorities, thereby, effecting the squeeze out[10]. However, the said scheme is not exclusively applicable to minorities & is not as protective as the compulsory acquisitiondespite carrying a high threshold of about 75%.

(B) **REDUCTION OF CAPITAL**: - The reduction of share capital is yet another way of bringing squeeze out into effect & is governed by the S. 66 of the Co. Act, 2013[11]. It involves buying back the shares of minority shareholders & their subsequent cancellation, thereby, resulting in a consequential decrease in the capital. This procedure has also been found similar to that of the buyback conundrum, provided under, **S. 68** of the act[12], which led to, raising the contention of applicability of the **S. 77** vide Co. Act, 1956[13] in *Reckitt Benckiser (India) Ltd*[14] since the reduction essentiallypointed towards a buyback. The said argument was however turned down by the court stating that although they both invariably lead to a reduction in capital, they do not complement each other. Although appearing similar, theyactually stand for two distinctideologies & operate into two entirely different directions. Where reduction of capital as under **S. 100**[15] can occur in any manner, the literal interpretation of S. 77 skims through the buyback, to happen proportionately, notwithstanding anything else.

[8] Delisting is advantageous for the controllers because the company is first brought outside the purview of the securities laws applicable to listed companies (which are administered by SEBI) that enables it to implement the squeeze out through a less onerous legal regime than when the company is listed.

[9] See Companies Act 2013 S.230

[10] In the context of squeeze outs, a company may propose a scheme that permits either a controller or thecompany itself to purchase shares held by the minorities thereby effecting a squeeze out

[11] See Companies Act 2013 S.66

[12] See Companies Act 2013 S.68

[13] See Companies Act 2013 S.77

[14] In Re: Reckitt Benckiser (India) Ltd, MANU/DE/3902/2011

[15] See Companies Act 2013 S.100

SCHEME OF SECTION 236

The provision which explicitly exists & stresses upon the purchase of minorityshareholding is S. 236 of Co. Act, 2013[16] . Being clumsily drafted, it has posed to be asa challenge several times before the corporate lawyers. However, NCLT has tried to interpret it to the best of its abilities. It listed out the events under which the said S. canbe invoked – which implies the "majority shareholder" to hold a minimum of 90% of shareholding "*by virtue of an amalgamation, share exchange, conversion of securities or for any other reason*" [17]in accordance with the S. 236(1). It also takes the acquisitionof shares from "assenting shareholders" in consideration as against **S. 235** which enshrines the concept of only dissenting shareholders.

Also, it is pertinent to note that where a compulsory obligation lies with the 90% majority shareholder to make an offer of purchase of securities to the minority shareholder, the minority shareholder on the other hand is immune to such obligation. It is clear from the S. 236(3), the one dealing with the minority shareholder's right whichuses the word "may" as against the majority shareholder's rights (which uses theword "shall" – S. 236(1) & (2)). Furthermore, the usage of the words "no prejudice to"in clause (1) & (2) of S. 236 points towards 236(3) being an independent provision , whichconfers the right , upon the minority to sell or not sell their shares. However, it would be against the objectives of S. 236 as laid down in the "PSC report"[18], which states, that 236(2) & (3) are different but interlinked provisions. In fact it was in *A.P State Financial Corporation V. Gar Re-Rolling Mills*[19], it was laid down that the use of the expression "Without prejudice to " shall not be made so as to render the other provisions redundant.Therefore, it is to be noted that a minority shareholder can makea binding offer for thesale of securities provided the conditions laid down in the preceding section are met.

[16] See Companies Act 2013 S.100

[17] Section 236(1) of the Act provides that in the event of an acquirer, or a person acting in concert with such acquirer, becomes a registered holder of **90%** or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming **90%** majority or holding **90%** of the issued equity share capitalof a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason

[18] *57th Report of the Parliamentary Standing Committee on Finance, The Companies Bill, 2011, 15th Lok Sabha, at Pg. 73*

[19] A.P State Financial Corporation V. Gar Re-Rolling Mills *(1994) 2 SCC 647*

CONCLUSION & RECCOMMENDATIONS

It is contended that in order to protect the minority interests there is a need of increasedcourt's interference. They are generally approached for the purpose of dismissal of application or for preventing the squeeze out. No influence is laid down, upon approaching them, for the purpose of determining the fair share price of that of the minority shareholders. Furthermore, there shall be a requirement wherein the vote of the independent directors is considered whose decision cannot be challenged in any manner[20]. Since there exists no straitjacket mechanism, for buying out the minority, given the loopholes, the majority shareholders are forced to resort to other mechanisms such as reduction of capital. The legislative laws with respect to squeeze out are fragmented here & there & need a consolidation in that regards, which can , be broughtinto effect by the combined efforts of the court & the regulator. Instead of providing several laws for squeeze out, all being ineffective, efforts shall be made to consolidate them under a single umbrella. It's time for the policy makers to bring a sustainable & amuch more effective prototype, with regards to , squeeze out in the next rounds of amendments to the company 2013 act.

[20] There are some commonalities across these jurisdictions – in particular, the more favorable treatment given to squeeze outs when they are accompanied by the approval of independent directors on the board and afavorable vote of disinterested shareholders (i.e., the minorities – sometimes called a "majority of theminority" (MoM) ratification)