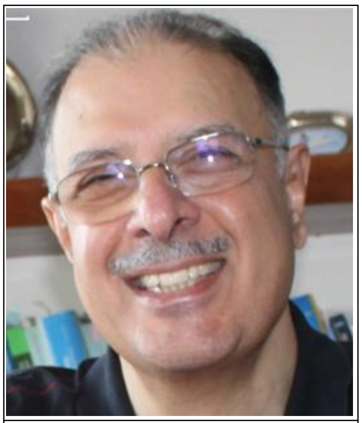
The Great Bluff



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For many years it has been claimed that a company is jointly owned by its shareholders. This is the argument used to justify their exclusive right to determining its governance. This shibboleth has been parroted by almost every person who is connected to the corporate sector – employees, managers, directors, lawyers, accountants and most members of the public. Professors of governance have taught it to their students who have, in turn, passed-on the belief to others. But this is a bluff floated by those who believe that the sole purpose of a company is to maximise profits. These people also believe that a company must not have a conscience, a soul.

Indeed, the belief that shareholders jointly own a company is the premise on which both, the Agency Theory and the Stewardship Theory have been constructed. With the foundation of the theories itself being sand, the superstructure cannot be trusted.

To hold a share in a company is not to be one of the owners of it, like a partner in a partnership. To hold a share is to own the share. Nothing more. There is a great difference between owning a share and owning a part of the business that has issued that share. Why is that so?

- A corporation is a juridical person. It has all the rights and obligations that a natural person has, including the right to own and carry on a business along with the assets and liabilities that the business acquires. The power to own a person was abolished by the anti-slavery and the bonded labour laws. Neither a natural person nor a juridical person can be owned. The businesses and assets of a company are owned by that company and not jointly by its shareholders, acting through the vehicle of a company. The right to run the business resides with the board of directors, not with the shareholders. The shareholders have powers that are severely circumscribed by law in how far they can direct the board to carry out their wishes. If they were the joint owners they could direct the board to do anything they wanted; they cannot. More specifically:
- An ownership implies exclusive physical possession. Each shareholder is the exclusive physical owner of his share (whether in paper or dematerialized form). The shareholders jointly have no right to possess either one or more of the assets of the company that they have invested in. Were they the joint owners, this would have been possible.
- Ownership implies the absolute right to use or not use the asset one owns and in the manner of his choosing. The owner of a share may, if he so chooses, tear it up, discard it, ignore it, neglect it or treasure it at his absolute discretion. But he cannot do any of these things with the business of the company he has invested in either by himself or jointly with the other shareholders. That power vests in the board of directors. Of course, they are answerable to the shareholders for the outcomes of their decision, but it is they who have the discretion.
- Similarly, the owner of an asset or business can manage it as he so chooses. In a company the board has that power, not its shareholders, singly or jointly.
- The owner of an asset has the right to income from it. All of the income belongs to the owner, to be disposed of as he chooses. In a company the income of the business accrues to the company and the shareholders receive as much of it, in the form of dividends, as the board decides. The law allows the shareholders jointly to refuse any or all of the dividend that the board declares; they have no power to enhance it. Were they joint owners, they could have taken out as much of the company's profits as they would jointly decide.
- Shareholders singly or jointly may alienate their right to the shares they own. But they have no authority to alienate the business or its assets from the company. Only the board is empowered to decide what to do with the business.
- The right of the heirs of a shareholder is limited to the shares in the latter's estate. The successors possess no right of succession to all or a part of the company's business. Were they one of the owners, they would succeed the testator to a joint ownership of the business or assets.
- Were the shareholders' assets to be expropriated or attached, the authority exercising the right to do so could exercise it only on the shares held by the concerned shareholder, not on the assets or business underlying them. The same would be true for execution of a judgment against a shareholder.
- If there is a claim of tort brought for harmful use of the assets of a business, that claim shall lie against the company, not the shareholders of it. Were they joint owners, the claimants could reach into the assets of the shareholders for discharge of the claim.
- A successful claim by a creditor of a company for payment of his debt can be executed against only the company, not its shareholders.
- Shareholders' rights to the assets of a company are restricted to the residuary rights; i.e., after all other claimants have been satisfied.

- The shareholders, singly or jointly, cannot make the company liable for a debt they create. The power in a company to create debt is with its board; they alone can approve borrowings in its name.

Suffice to say that many of the powers and rights that joint owners of a partnership business possess reside, in the case of a corporation, in its board. But even the powers the board has are not as wide as in the case of the partners of a partnership. Boards can act only as a body, individual members of a board possessing absolutely no power unless delegated specifically by the board. The partners of a partnership can act in the name of the partnership individually, binding all their fellow partners. By no stretch of logic is the position of shareholders in a company akin to that of partners in a partnership. There could not be limited liability protection if shareholders were joint owners. That is why it is important for shareholders to be involved in a company's meetings because that is the only means they have to get their wishes respected.