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## Alembic Limited: Will a set of small shareholders be able assert themselves?

***A set of small, yet discerning shareholders in Alembic Limited have woken up to the fact that their ownership of shares in a company need not be passive: they are seeking a seat on the board Alembic Limited. Will the voice of these small shareholders be heard, or will it get drowned under the weight of an untested Companies Act? It is for Alembic Limited's Independent Directors to shoulder this responsibility. This is a seminal case because it is the first time a set of sophisticated domestic investors are taking a firm stance. liAS believes this case will define the equation between companies and their shareholders, but importantly, assess the protection regulations offer the small investor.***

Alembic Limited's management has confirmed (to liAS) that the board will consider a notice it received under section 151 (See Annex 1 and Annex 2) to appoint a small shareholder director at its next board meeting, which is scheduled for 28 July 2017. While small shareholders have attempted to get board seats in the past through this route, this is possibly one of the first cases where a set of sophisticated, discerning shareholders are leveraging this regulation. Therefore, how the board, particularly the independent directors, decide will be reflective of the company's (and perhaps a large set of corporate India) attitude towards small shareholders.

On 12 July 2017, the company had received a notice from [Unifi Capital Private Limited](#) (under the signature of [Sarath Reddy, its Managing Director](#)), which proposed [Murali Rajagopalachari](#)'s candidature for being appointed as a small shareholder director under section 151 of the Companies Act 2013.

### **Exhibit 1: Alembic Limited's correction to the process of appointing a small shareholder director**

On 18 July 2017, Alembic Limited filed an [addendum to its AGM notice](#) (Annex 3): it added resolution 8 to appoint Murali Rajagopalachari (DIN: 00759040) as a director liable to retire by rotation under section 152 of the Companies Act 2013. However, the appointment was to be made as a small shareholder director under section 151, and not under section 152 as a non-independent director. There are several critical differences between director appointments under the two sections (See Annex 2). The company has, since then, corrected its stance and [withdrawn the addendum](#) (Annex 4).

[Unifi Capital Private Limited](#) (which has proposed Murali Rajagopalachari's appointment as a small shareholder director) is a 16-year old portfolio management company with over Rs. 25.0 bn of assets under management. [Murali Rajagopalachari](#) is Vice-President, and part of Unifi Capital's research team (Exhibit 2).

### **Exhibit 2: Murali Rajagopalachari's background, as listed on Unifi Capital's website**

Murali is a Management Graduate from the Asian Institute of Management, Manila. He has more than 16 years' experience in the field of Corporate Finance. He has worked in various capacities initially with Alpic Finance Ltd, an

NBFC and thereafter with Navia Markets Ltd, a Chennai based NSE Member. His functions in these companies included Client Sourcing, Credit Evaluation, Transaction Structuring & Completion, Private Placement of Debt/Equity, Identification of Potential Investors and Post transaction services. He then served as the Chief Financial Officer with Enmail.com P Ltd, and was responsible for Budget & Management Control, Corporate Strategy, Financial Strategy and Management. Murali joined Unifi in March 2002.

Regulations allow a small shareholder director on the board with the specific intent of having the interest of small shareholders represented in the decisions made by the board. Market infrastructure companies, like the stock exchanges and depositories, have shareholder directors (or public interest directors) on their board. Public sector banks too, under RBI regulations, are required to have shareholder director representations on their boards. The Companies Act 2013, in providing for at least one small shareholder director appointment in non-public-sector companies, attempts to achieve the same goal.

Through its provisions, the Companies Act 2013 tried to balance the agenda of both, the shareholders and the company. For shareholders, regulations demand that at least 1,000 shareholders, or 10% of small shareholders, can together nominate a 'small shareholder' director. In asking for these numbers, regulations have attempted to ensure that there is a serious agenda that backs the request for a small shareholder director. Even so, it may happen that small shareholders may nominate an individual that may not be competent (although not disqualified under the Companies Act 2013). To protect companies and boards from having to embrace such individuals, and from the potential threat of greenmail, regulations provide discretionary powers to the board in acquiescing to the demand for a shareholder director, on the understanding that it will be used judiciously.

### **Independent directors' decisions under scrutiny**

Whether Alembic's board is serious about the shareholders' notice under section 151 is unclear. The board has remained quiet on its opinion of Murali Rajagopalachari's appointment as a small shareholder director. Even upon receiving a notice to appoint Murali Rajagopalachari's as a small shareholder director on 12 July 2017, the company failed to make the required disclosures to the stock exchanges. Receiving notice under section 151 is not an everyday event. IiAS believes this is a material event which affects a larger set of shareholders – therefore, it should have been disclosed. Not doing so raises red-flags.

Alembic Limited's Independent Directors' (Exhibit 3) silence is indeed eloquent. In decisions that were significantly more public and controversial, Tata group's independent directors were responsible in providing shareholders with their opinion, and it was then left to shareholders to decide if they agreed with that point of view. While one may argue that the independent directors did not have sufficient time to make a decision, their protracted reticence on this matter raises questions about their own independence, about their ability to tide the company through difficult times, and about how seriously they take their responsibilities as representatives of non-promoter shareholders.

**Exhibit 3: Alembic Limited's board composition**

S No	Name	Occupation	Category	Tenure (yrs)	AC	NR C	SRC	CSR	Attendance (%)	Pay (Rs.mn)
1	(Ms.) Malika Chirayu Amin (Promoter group)	Managing Director and CEO from 1-Feb-2017	ED	29				C	100	2.20
2	Chirayu Amin (Promoter group)	Chairperson	NED	50		M			100	0.10
3	Udit C. Amin (Promoter group)	Resigned as MD from 31-Jan-2017	ED	4			M		100	24.61
4	Abhijit Joshi	Experience in the pharma industry	NED	3					100	0.08
5	CP Buch	Visiting faculty, Faculty of Law at MS University	ID	5	M	M	C	M	100	0.25
6	RC Saxena	Partner - Trivedi & Gupta, a law firm	ID	4	M	M			100	0.19
7	Milin Mehta	Senior Partner - K. C. Mehta & Co, a CA firm	ID	7	C	C	M	M	75	0.17
8	Sameer Khera	Founder trustee - SEE Foundation	ID	2					75	0.06

ED: Executive Director  
NED: Non-Executive Director  
ID: Independent Director  
Pay: Remuneration in FY17

AC: Audit Committee  
NRC: Nomination and Remuneration Committee  
SRC: Stakeholder Relationship Committee  
CSR: Corporate Social Responsibility Committee

The company's announcement of a board meeting on July 28, 2017 (before its AGM) has a stated agenda of only considering the results of the first quarter ended 30 June 2017. Alembic's management has separately confirmed to IiAS that the board will consider Murali Rajagopalachari's appointment as a small shareholder director under section 151 at that meeting.

The board has discretionary powers – and not absolute, as many argue, and may consider quashing Murali Rajagopalachari's appointment as a small shareholder director. But, these discretionary powers are given to the board to protect the company against frivolous agendas, or incompetence, or both. For the board to use these discretionary powers to turn down a genuine agenda will be a misuse of the regulatory headroom it has been provided. In any case, turning down the demand for a small shareholder director will not be easy: the board has a responsibility towards all public shareholders to provide a thoughtful and considered rationale for its decision.

Should the board acquiesce to the shareholders' demand for an appointment, the company will then have to issue a postal ballot – in which only small shareholders will be eligible to vote. Murali Rajagopalachari can then be appointed through a simple majority.

**Watch this space**

If Alembic's shareholders are required to vote on this resolution, they have little to go by. The board's radio silence is providing neither guidance nor clarity on the context of the resolution. Unifi Capital, on the other hand, must provide clear guidance to all shareholders if it is to undertake actions that create

shareholder value, and garner their votes through a more public discourse of their agenda.

Unlike previous attempts, this is the first time that a set of astute shareholders have decided to act, compelling the company and its board to make thoughtful decisions. How this plays out will have far reaching consequences for the development of India's equity market.

## Annex 1: Appointment of a small shareholder director

### Annex 1(a): Section 151 of the Companies Act 2013

A listed company may have one director elected by such small shareholders in such manner and with such terms and conditions as may be prescribed.

*Explanation* - For the purposes of this section "small shareholders" means a shareholder holding shares of nominal value of not more than twenty thousand rupees or such other sum as may be prescribed.

### Annex 1(b): Rule 7 of the Companies Act 2013 Rules

7. Small shareholders' director -

(1) A listed company, may upon notice of not less than one thousand small shareholders or one-tenth of the total number of such shareholders, whichever is lower, have a small shareholders' director elected by the small shareholders:

Provided that nothing in this sub-rule shall prevent a listed company to opt to have a director representing small shareholders suo motu and in such a case the provisions of sub-rule (2) shall not apply for appointment of such director.

(2) The small shareholders intending to propose a person as a candidate for the post of small shareholders' director shall leave a notice of their intention with the company at least fourteen days before the meeting under their signatures specifying the name, address, shares held and folio number of the person whose name is being proposed for the post of director and of the small shareholders who are proposing such person for the office of director:

Provided that if the person being proposed does not hold any shares in the company, the details of shares held and folio number need not be specified in the notice:

(3) The notice shall be accompanied by a statement signed by the person whose name is being proposed for the post of small shareholders' director stating -

- (a) his Director Identification Number;
- (b) that he is not disqualified to become a director under the Act; and
- (c) his consent to act as a director of the company

(4) Such director shall be considered as an independent director subject to his being eligible under sub-section (6) of section 149 and his giving a declaration of his independence in accordance with subsection (7) of section 149 of the Act.

(5) The appointment of small shareholders' director shall be subject to the provisions of section 152 except that-

- (a) such director shall not be liable to retire by rotation;
- (b) such director's tenure as small shareholders' director shall not exceed a period of three consecutive years; and
- (c) on the expiry of the tenure, such director shall not be eligible for reappointment.

(6) A person shall not be appointed as small shareholders' director of a company, if the person is not eligible for appointment in terms of section 164.

(7) A person appointed as small shareholders' director shall vacate the office if -

- (a) the director incurs any of the disqualifications specified in section 164;
- (b) the office of the director becomes vacant in pursuance of section 167;
- (c) the director ceases to meet the criteria of independence as provided in subsection (6) of section 149.

(8) No person shall hold the position of small shareholders' director in more than two companies at the same time:

Provided that the second company in which he has been appointed shall not be in a business which is competing or is in conflict with the business of the first company.

(9) A small shareholders' director shall not, for a period of three years from the date on which he ceases to hold office as a small shareholders' director in a company, be appointed in or be associated with such company in any other capacity, either directly or indirectly.

## Annex 2: Difference in director appointment under section 151 and under section 152

	under section 151	under section 152
<b>Nature of appointment</b>	Small shareholder director	Non-independent director
<b>Rotation</b>	Not liable to retire by rotation	Liable to retire by rotation
<b>Nomination process</b>	Lower of 1,000 small shareholders, or 1/10 <sup>th</sup> of the total number of small shareholders can nominated a small shareholder director.	The nomination and remuneration committee nominates or selects the director and proposes the appointment.
<b>Powers of the board</b>	The board has discretionary powers and may decide to quash any shareholder application for the appointment of small shareholder director – under such circumstances, the appointment will not even be put to a shareholder vote.	Once the board nominates the director, the appointment must be mandatorily approved by shareholders.
<b>Notice</b>	Only through a postal ballot	Can be appointed by the board during the year, but needs ratification at the ensuing AGM.
<b>Shareholder voting</b>	Only small shareholders can vote.	All shareholders, including promoters, can vote.
<b>Resolution passing thresholds</b>	Ordinary resolution – a simple majority (50% + 1 vote) of the <u>small shareholders'</u> votes will determine passing of resolution.	Ordinary resolution – simple majority of the <u>total</u> votes will determine passing of resolution.
<b>Director term</b>	Maximum 3-year term	<ul style="list-style-type: none"> <li>Executive director: Maximum 5 years</li> <li>Non-executive director: No specified term, but will retire by rotation.</li> </ul>
<b>Reappointment</b>	Not eligible for reappointment on expiry of the term.	Can be reappointed subject to shareholder approval

### Annex 3: Text of **Alembic Limited's Resolution 8** on appointment of a shareholder director

**Addendum to the Notice dated 9th May, 2017 convening the 110th Annual General Meeting of the Company scheduled to be held on Friday, the 28th July, 2017 at 12:30 p.m. at "Sanskriti", Alembic Corporate Conference Center, Opp. Pragati Sahakari Bank Limited, Alembic Colony, Vadodara - 390 003.**

Notice is hereby given that the following item of business is added in the aforesaid Notice as Item No. 8 as a Special Business:

**8. To consider and if thought fit, to pass the following Resolution as an Ordinary Resolution:  
Appointment of Mr. Murali Rajagopalachari (DIN: 00759040) as Director of the Company:**

**"RESOLVED THAT** pursuant to the provisions of Section 152 and other applicable provisions, if any, of the Companies Act, 2013 and rules framed thereunder, Mr. Murali Rajagopalachari (DIN: 00759040) in respect of whom the Company has received a notice in writing on 12th July, 2017 from a member along with requisite deposit of ₹1 Lac, pursuant to the provisions of Section 160 of the Companies Act, 2013 proposing the candidature of Mr. Murali Rajagopalachari to the office of a Director, be and is hereby appointed as a Director of the Company, liable to retire by rotation."

#### **Explanatory Statement as required under Section 102 of the Companies Act, 2013**

##### **Item No. 8**

The Board of Directors of the Company had at its meeting held on 9th May, 2017, approved the Notice convening the 110th Annual General Meeting (AGM) of the Company scheduled to be held on 28th July, 2017 and the same had already been circulated to the members.

Subsequently, on 12th July, 2017, the Company has received a notice in writing dated 12th July, 2017 from Unifi Capital Pvt. Ltd., under the signature of its Managing Director, Mr. Sarath Reddy, also a shareholder of the Company, proposing the candidature of Mr. Murali Rajagopalachari, another shareholder of the Company, for being appointed as a small shareholders director under Section 151 of the Companies Act, 2013 ("the Act"). Further, the Company has also received from Mr. Sarath Reddy, a cheque of ₹1 lac, stating that the same is in terms of Section 160 of the Act.

Since Mr. Sarath Reddy has enclosed the requisite deposit amount under Section 160 of the Act, the Board has amended the Notice convening the 110th Annual General Meeting by way of an addendum and inserted an agenda item for appointment of Mr. Murali Rajagopalachari to the office of a Director, liable to retire by rotation.

Pursuant to Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014, r/w. Section 160 of the Act, the Company is required to inform the members of the above referred candidature and place notice of such candidature on its website. Accordingly, the Board of Directors has amended the Notice of the 110th Annual General Meeting by adding Item No. 8 by way of addendum to the said Notice. The Proxy Form shall be deemed to be amended to include the above referred agenda item.

Pursuant to the provisions of Section 110 r/w. Section 151 of the Act and rules made thereunder, election of a small shareholders director, if approved by the Board, can be considered by the members only by way of a resolution put for voting through Postal Ballot. Hence the Board of Directors of the Company may consider the aforementioned notice under Section 151 of the Act at their ensuing Board Meeting.

The Details of the person seeking appointment, to the extent provided under the aforementioned notice are given hereunder:

<b>Name of the candidate</b>	<b>Mr. Murali Rajagopalachari</b>
Age	53 years
Qualifications	Not Provided
Experience	Not Provided
Terms and Conditions of appointment along with details of remuneration sought to be paid	Not Applicable
Remuneration last drawn (2016-17)	Not Applicable
Nature of expertise in specific functional areas	Financial Services
Date of first appointment on to the Board	Not Applicable
No. of Shares held in the Company as on 12th July, 2017 (as stated in the above mentioned notice)	4050 *
Relationship with other Directors, Manager and other Key Managerial Personnel	Not Provided
No. of Meetings of the Board attended during the year	Not Applicable
Directorship in other companies as on 12th July, 2017	1. Unifi Financial Private Limited 2. UWM Investment Private Limited
Chairmanship / Membership of Committees of other Board	Not Provided

\* As per the beneficiary position of members obtained from the Depositories and the RTA, the shareholding of Mr. Murali Rajagopalachari as on 12th July, 2017 was 4,000 shares.

None of the Directors, Key Managerial Personnel and relatives thereof, has any concern or interest, financial or otherwise in the resolution at Item No. 8 of this Notice.

Registered Office:  
Alembic Road, Vadodara – 390 003.  
Tel: (0265) 2280550 Fax: (0265) 2282506  
Web: www.alembiclimited.com  
Email Id: alembic.investors@alembic.co.in  
CIN: L26100GJ1907PLC000033  
Date : 18th July, 2017

By Order of the Board,  
  
Drigesh Mittal  
Company Secretary

#### **Annex 4: Text of Alembic Limited's withdrawal of the addendum to the AGM notice**

Addendum dated 18th July, 2017 to the Notice convening the 110th Annual General Meeting of the Company scheduled to be held on Friday, the 28th July, 2017 at 12:30 p.m. at "Sanskriti", Alembic Corporate Conference Center, Opp. Pragati Sahakari Bank Limited, Alembic Colony, Vadodara - 390 003, hereby stands withdrawn.

Registered Office:  
Alembic Road, Vadodara – 390 003.  
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Web: www.alembiclimited.com  
Email Id: alembic.investors@alembic.co.in  
CIN: L26100GJ1907PLC000033  
Date : 22th July, 2017

By Order of the Board,  
  
Drigesh Mittal  
Company Secretary

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