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1st August 2014

Shri Naved Masood, IAS

Secretary to Government of India,
Ministry of Corporate Affairs,
Shastri Bhavan
New Delhi – 110001

Subject: Form 23C and Form 23D

Respected Sir,

I would like to draw your kind attention to certain procedural problems and ambiguities that have arisen in connection with the implementation of the mechanism for appointment of cost auditors by the companies. As you are aware, the procedure of appointment of a cost auditor involved filing of following e-forms with the Central Government:

- a) Form 23C by the company within 90 days of the commencement of the relevant financial year; and
- b) Form 23D by the cost auditor intimating acceptance of the appointment.

Sir, Section 148 of the Companies Act, 2013 deals with maintenance of cost accounting records (sub-section 1) and conducting cost audit (sub-section 2). The Rules under Section 148 have been notified by the Central Government in two stages and on two different dates.

- a) The rules in respect of sub-section 3 of section 148 dealing with remuneration of cost auditors were notified on 31st March, 2014 as part of the Companies (Audit and Auditors) Rules, 2014.
- b) The rules in respect of all other sub-sections of section 148 were notified on 30th June 2014 under Companies (cost records and audit) Rules, 2014.
- c) The eforms as mentioned in the Companies (cost records and audit) Rules, 2014 are yet to be made available.

In view of General Circular No. 6 of 2014 dated 28th March, 2014 issued by the MCA giving "Roll out plan of various forms under the Companies Act, 2013 and continuance of forms under the provisions of Companies Act, 1956", majority of the companies covered under cost audit under the erstwhile orders issued by MCA followed the laid down procedure for appointment of cost auditor and filed Form 23C for the financial year 2014-15. In many cases, even Form 23D has also been filed by the cost auditor. The MCA-21 system has accepted these filings with the enhanced fees of Rs.20,000 and have also issued acknowledgements and approvals drawing reference to sub-rule (6) of rule 10 of the Companies (Registration offices and Fees) Rules, 2014.

Further, in view of the Rules prescribed u/s 148(3) dealing with remuneration of cost auditors, many listed companies have already placed and ratified the remuneration of the respective cost auditors at their Annual General Meetings and issued appointment letters to the cost auditors.

CMA DR. A. S. DURGA PRASAD
President



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The companies have acted bonafide keeping in mind contents of the General Circular No. 6 of 2014 dated 28th March, 2014, and provisions of Section 465(2) of the Companies Act, 2013 [section 645 of the Companies Act, 1956]. MCA has accepted Form 23C filed by these companies with the enhanced rate of filing fees in respect of financial year commencing on 01/04/2014 in pursuance of cost audit orders in force since there were no notifications to the contrary from the Central Government.

However, suddenly with effect from 29th June 2014 the MCA has withdrawn Form 23C and Form 23D stating that new Forms would be made available, though no such forms have been made available till date. This has created a complete chaos and confusion among the corporates and the profession.

Further, while withdrawing the Forms 23C and 23D from the system, MCA did not consider that even if new Rules under Section 148 of the Companies Act, 2013 come into force from 01/04/2014, the same would not be applicable to companies maintaining calendar year as financial year and such companies whose financial year commenced before 01/04/2014 would be required to appoint cost auditor for the financial/calendar year 2014 under the old rules/orders of 2011.


Also, companies which were required to get cost audit conducted for the financial years prior to 2014-15 [covered under the erstwhile orders] but did not appoint the cost auditors within the stipulated time under the old rules would also be required to follow the old rules and file Form 23C and the cost auditors so appointed would be required to file Form 23D. In the absence of Form 23C and 23D, the defaulted companies are unable to appoint Cost Auditors for the earlier years.

In view of the above, we request you to take into consideration the effect of withdrawal of Form 23C and Form 23D, not only for companies having financial year April to March but also because of companies who are at default and also the calendar year companies, and request you to restore Form 23C and Form 23D with immediate effect. The penalty, if any, for late filing of Form 23C should be waived for all companies whose financial year commences on or after 01/04/2014. For defaulting companies for the earlier years and also for the companies whose financial year commenced before 01/04/2014, the late filing fee should be there.

We are sure that you will consider our representation above in its right perspective and would take a decision to meet the ends of justice and fair play for both the profession and the industry.

Thanking you,

Yours faithfully,


(CMA Dr. A.S. Durga Prasad)

Cc: Shri Amardeep Singh Bhatia, IAS, Joint Secretary, Ministry of Corporate Affairs, Govt. of India
Mrs. Aruna Sethi, Advisor (Cost), Cost Audit Branch, Ministry of Corporate Affairs