C.S. Final + C.A. Final

Compilation of decided cases (DIRECTORS)

Section-253 Only individuals to be director

1. Oriental Metal pressing works (P) Ltd.
Vs.
Bhaskar Kashinath Thakore

⇒ The reason why only an individual should be a director as pointed by S.C. in this case was that as the office of a director is to some extant an office of trust, there should be somebody available on whom responsibility could be fixed. Fixing such responsibility might be, if the director is a corporation, an associate or a firm.

Section-255 & 256

2. Swapan das Gupta
Vs.
Navin Chand Suchanti

⇒ Sec-255(2) - If the article of private Co. are silent as to the appointments of directors or do not specifically provide for appointment of directors otherwise then in General Meeting, then the directors are to be appointed in the General Meeting by shareholders.

3. Ques:- If the directors do not hold General meeting in time. Can they continue till the meeting is held?

Ans:- No → B.R. Kundra

Vs.

Motion Pictures Association

⇒ The Delhi High court held that the directors cannot extend their tenure by not holding a meeting in time. The directors due to retire by rotation must vacate their office at the latest day on the last day of which the AGM ought to have been held.
"However retiring directors are eligible for re-election."

Also See:- A. Anantalakshmi Ammal Vs. Indian Trade & Investt. Ltd.

4. In Re:- Incab Industries

⇒ If Articles of a public Co. provide that all the directors will retire at AGM and if AGM is not held, then none of the directors will retire otherwise it will creat a vaccum in the Board.

Sec-257 - Appt. of dir. other then retiring dir.

5. Namita Gupta

Vs.

Cochar native joint stock Co. Ltd. (1999)

⇒ Non compliance of procedure prescribed u/s 257, such as non circulation of Notice to Member, would render the appointment invalid.

Sec-258 :- Increase or decrease in the No. of directors.

(6) Laljibhai C. Kapadia

vs.

Laljibhai Desai (1973)

⇒ No Formal Resoln required :- Where a company wants to increase the number of directors, it is not necessary to pass a separate resolution for increasing the no. of directors before appointing the new director

Example :- A Co. having 6 dir. can appt. a new Dir. 'Mr. A' by passing a resoln for appt. of Mr. A. The Co. is not required to ~~pass~~ first pass a resoln u/s 258 in order to increase the no. of directorship from 6 to 7 and then to pass a separate resoln for appt. of Mr. A.

Sec-260 :- Additional Directors.

(7) Krishna Prasad Pilani

Vs.

Colaba Land and Mills Co. Ltd.

⇒ If the AGM of a company is not held or cannot be held, the person appointed as additional dir. should vacate his office on the last date on which the AGM should have been held as per Section-166 of the act. He cannot continue in office thereafter on the ground that the meeting was not held or could not be called within statutory prescribed time limit.

Sec-264 Consent to act as director

(8) Laljibhai C. Kapadia

Vs.

Laljibhai Desai (1973)

Default u/s 264 :- Failure to file consent with the Co. will not render the appointment invalid. Provisions w.r.t. filing of consent with the Co. are directory and not mandatory in nature.

Sec-267 :- Disqualiⁿ for appt. as MD/WTD.

9. Rama Narang
vs.
Ramesh Narang. (1995)

⇒ The order of conviction does not, on the mere filing of an appeal disappear and it cannot be held that Sec 267 applies only to a final order of conviction. As such M.D. cannot continue pending the appeal.

Further, he shall be eligible to be appointed again as M.D., only if the appellate court suspends the order of court. As such where the appellate court suspends ~~the order of court~~ merely the execution of the sentence, the M.D. shall remain disqualified for appointed.

* The operation of Sec-267 takes effect as soon as conviction for an offance involving moral turpitude is recorded by the court.

Sec-270 :- Qualification Shares

Qus:- Can a director obtain shares from promoters and relatives?

10. Deep Sea fishing Co.
VS.
Ansell

Ans:- Yes, a director can obtain shares from promoters & relatives but these should not be accepted ~~as~~ by way of secret gifts, othewise that will result in breach of trust ans such director shall have 2 options:-

(i) ☆ Pay for the qualiⁿ shares to the promoters.
(ii) ☆ To give up the shares and to vacate the office of dir.

This dislosure should be made in Board of Director's report.

☆ ⇒ However a dir. can accept the qualiⁿ share by way of gift from his own relatives.
in re:- Bombay Electricals Limited.

11. Aruna Suresh Mehra

Vs.

Ifcon tools Pvt. Ltd.

⇒ A private company can provide for qualification shares voluntarily in its Articles.

12. Ram autar Jalan

Vs.

Coal products of India Limited (S.C. 1970)

⇒ S.C. held in this case that the requirment of qualification shares is not satisfied unless the name of the person is inserted in the register of members.

13. Malineaux

Vs.

London Birmingham and Manchester Ins. Co.

⇒ If amount of share quali^{n} is increased by way of alteration in the article, the director shall acquire share quali^{n} so increased, if he has not already acquired it.

However, if at the time of alteration of articles a director "already holds" quali^{n} shares, a subsequent increase in the amount of share quali^{n} shall not be binding on the director.

14. Zamir Ahmed

Vs.

Banaji (1957)

⇒ A director can act for 2 months without possessing quali^{n} share where a dir. resigns within 2 months without acquiring share quali.. His name can not be included in the list of contributories, if Co. goes into winding up.

His mere acting as a dir. does not imply an agreement to take share in the company.

(15) Channel Collieries Trust Limited
Vs.
Dover St. Margarets and Martin Mills Light Rly. Co.

⇒ A person cannot be said to be qualified in respect of qualification shares untill he is registered as holder.

(16) Grundy Vs. Briggs

⇒ In case of joint shareholding only one of the joint shareholders can be said to possess share qualification except where AOA provides otherwise.

RESIGNATION OF DIRECTORS

(17) Achutta Pai
Vs.
ROC

⇒ Formal acceptance of resignation of MD./WTD is compulsory. Thus, M.D. or W.T.D. cannot resign by merely sending his resignation. The resignation becomes effective only when the company accepts the resignation & relieves him from office.

(18) Glossop Vs. Glossop

⇒ (i) Resignation once given can be withdrawn before acceptance. Withdrawal can be done with the consent of the Co. even if such withdrawal is sought before the GM or Board considers the resignation.

(ii) Where AOA contain no provision for resignation of directors then the resignation shall take effect immediately without any need for its acceptance by Board or by shareholders.

19. Abdul Haq

Vs.

Katpadi Industries Limited.

Qus:- Can the last remaining director resign?

Ans:- Such last remaining director can resign tendering a copy of resignation at the office of the company and simultaneously giving a copy of the resignation to ROC along with form. 32.

20. Latch Ford Premier Cinema Limited.

Vs

Ennion & Paterson.

⇒ Verbal resignation at General Meeting is sufficient.

21. S.S. Lakshmana Pillai

Vs.

ROC.

⇒ It was held that in the following cases, the acceptance of resignation is necessary and the resignation become effective only from the date of acceptance.

(i) where Articles requires acceptance of the resignation.

(ii) where the resignation letter states that it is to take effect on acceptance.

(iii) where the tenor of the resignation letters requires its acceptance.

Section-284 :- Removal of Director

22. S. Vardarajan

Vs.

Venkateswara Salvent Extraction (P) Ltd.

⇒ Removal of a person as M.D., does not affect his continuing position or office as director, and there is no scope of invoking provisions of Sec-284.

23. Tarlok Chand Khanna
Vs.
Raj Kumar Kapoor.

⇒ The articles of a pvt. Co. can not provide that a permanant dir. cannot be removed (except a person holding for life on or before April 1, 1952). A provision like that would run against the provisions of this section and become void read with Section-9.

Imp. 24. Khetan Industries Private Limited
Vs.
Manju Ravindra Prasad Khetan.

⇒ The court held that the shareholders have a right to remove the directors u/s 284. which provides a inbuilt machinery for the enforcement of the right and civil court has no jurisdiction to entertain the suit for removal of directors.

25. Bhankerpur Simbhavli Beverages (P) Ltd.
Vs.
Sarabjit Singh.

⇒ where no special notice to remove a director was given, the resolution passed in the E.G.M. to remove a director was invalid.

26. Pyara lal Gupta Vs. Agarwal (D.P.) (1983)

⇒ The Central Government approval is required only for the appointment of M.D. and not for his removal.

Question:- Can we avoid the procedure or the provision u/s 284 in the disguise of Sec 283(3) by increasing the ground of vacation?

Ans:- No. A pvt. Co. can not avoid Sec-284 in this manner.

* Sec 284 is also applicable to dir. appointed by deb. holders and other creditors by virtue of any agreement with them.

(27.) El Sombrero Limited

⇒ where the director attempt to avoid there removal by omitting to call a meeting or by not attending it with a view to creating a situation of "No Quorum" the CLB may convene the required meeting u/s 286.

Good

(28.) Vinod Kumar Mittal

vs.

Kaveri Lime Industries Limited.

⇒ It has been held to be a good ground for removing a director where it was found as a fact that the director had made misleading complaints to the various Govt. authorities which resulted in raids, on the company's premises and the concerned authorities found nothing wrong and gave a clean chit to the Co.

(29.) Bersal Mfg. Co. Limited Vs. Berry.

⇒ Where the articles empowered the 2 life directors of a private company, to remove other directors, it was held that on the death of one of such directors, the other could still exercise the power annexed to the office, the power being not for their joint benefit, but for the protection of their life directorship.

(30.) Home Chaudhary (AK) Vs. National Textile Corporation Ltd.

⇒ Sec 284 itself contemplates removal of a directors L. in addition to the provisions contained therein. Thus where the AOA confer powers on the board of directors to remove the M.D. or other directors, such power is not affected by the provisions of Sec-284.

(31) Queens Kuries & Loans (P) Limited Vs. Sheena Jose

⇒ Any omission to serve special notice constitutes denial of statutory right of the director to make representation and persuade ~~to~~ the member to reject the resolution for his removal. The resolution will stand vitiated by such omission.

(32) Tarlok Chand Khanna

Vs.

Raj Kumar Kapoor.

⇒ It was held in the absense of a notice to the director the proceeding of the meeting, whereat the resolution for his removal was considered, were invalid

(33) Opera Photographic Limited.

⇒ Where one of the only two director-shareholder who was holding 51% share wanted to remove his fellow director who did not attend the meeting to frustrate him because the articles required quorum of 2 (two) the court (Here it would have to be C.L.B) ordered a meeting to be called with the presence of one as sufficient quorum.

☆ Any provision in the Articles that a director shall not be removed, violate the statutory right given to Shareholders and is ultravires the act as provided by Section-9 of Companies Act, 1956.

Section-9 :- Section 9 says that the provisions of the act have an overriding effect on clauses contained in Memorandum & Articles, if they are not in conformity with the provisions of the Act.

Section-286 :- Notice of Board Meeting.

34 Kamal Kumar Dutta
Vs.
Ruby General Hospital Limited.

⇒ Routine notice can be given to a director, who is usually in India though temporarily abroad. But such routine notice sent at the local address will not serve any purpose with reference to a director who mostly stays out of India.

Such notice would not permit him time to make arrangement to unable him to attend the notified B.M.. It would show lack of probity and fair play on the part of a directors who are in charge of the company's day to day affairs. in India.

The non attandance of the meeting by such director cannot be taken into account for the purpose of automatic vacation of office by director u/s 283.

35 S.T. Ganapathi Mudalier
Vs.
S.G. Pandurangan

☆ Notice of Meeting at wrong address.

⇒ Where the notice of meeting was sent at an address where the director in question was not re-siding, the consequent failure to attend the meeting did not constitute the ground for automatic vacation of office.

36 Sunil K. Alagh Vs. Britania Industries Limited.

⇒ Where a person is appointed director by virtue of his employment in the company, his directorship will cease automatically on the termination of his employment.

~~37~~ ~~Imp~~ Sec-286 read with Sec-283.

Situation:- Director informed vacation of office u/s 283(1)(g) for absenting from B.M. → Director contended that he didn't receive any Board meeting notice for last 3 meetings.

37. Parmanand Choudhary

Vs.

Smt. Shukla devi Mishra

⇒ It was held that the burden is on the company to show that three consecutive meetings were actually held and postal certificate of service of notice have to be produced.

38. Vijay Krishna Jadika

Vs.

Jadika Motor Company.

⇒ where the company was not able to furnish proper evidence, either of service of notice or of holding of meetings, C.L.B. held that clause providing for automatic vacation would not be allowed to be used.

39. Kuldeep Singh Dhillon

Vs.

Paragon utility fineries (P) Ltd.

⇒ The provisions of Sec-286 are mandatory and failure to send the notice even to a single director would make the meeting & resolution passed thereat to be null and void.

40. Parmeshwari Prasad Gupta

Vs.

Union of India.

⇒ Even an accidental omission to send BM notice would invalidate the meeting.

(41.) Ferrucco Sias Vs. Jai Mangeeram Mukhi

⇒ Notice given by fax was held to be a valid notice.

(42.) In re:- Homer District consolidted Gold mines.

⇒ It was held that it is necessary to give notice of the meeting of the board to an interested director even when he is precluded from voting.

(43.) In Re:- Portguese consolidated copper mines limited.

⇒ It is necessary to send BM notice to each and every director even if a particular director informs that he will not be able to attend the meeting.

(44.) Arunachalam Chettiar Firm

Vs.

Kaleswar Mills Limited.

⇒ A resolution passed by the board specifying the time, date and place and day of all the future meetings is equivlent to the notice in writing.

(45.) Maharani Yogeshwari Kumari

Vs.

Lake shore Palace hotel.

⇒ In the absense of statutory provision it is implied that an adjourned board meeting has not been exempted from the requirement of quorum. Therefore an adjourned B.M. without quorum is not permissibe under the law.

(46.) In Re:- Liverpool household stores association Ltd.

⇒ Where quorum for committee of directors is not specified the whole of the committee must meet.

Section-287 Quorum for Board Meeting.

47. Firestone tyre and Rubber Co.

Vs.

Synthetic and Chemicals Limited. (1970)

⇒ The provisions relating to quorum for board Meeting are mandatory. Any resolution passed without quorum is void and incapable of even subsequent ratification.

48. Maharani Yogeshwari Kumari

Vs.

Lake shore Palace Hotels pvt. Ltd. (1995)

⇒ No quorum present in adjourned meeting ⇒ CONSEQUENCES

⇒ In the absence of any statutory provision, it is implied that an adjourned Board Meeting has not been exempted from the requirement of Quorum. Therefore an adjourned Board Meeting without the quorum is not permissible under the act.

Section-290 Validity of the acts of directors.

49. ⇒ Varkey Souriar

Vs.

Keraleeya Banking Co. Ltd. (1957)

⇒ Where a Managing Director cease to hold his office, all his subsequent acts were held to be invalid. It was not an irregular exercise of power, but exercise of power by a person who had no authority at all.

*☆ Also see In Re: Gilt Edge Safety Glass Ltd. (Munish B.) Page-50

Section-293 Restrictions on the power of Board.

(50) Pothen Vs. Hindustan Trading Corpn. (P) Ltd.

⇒ The power to sell the property of the company is vested in the Board of Directors. If in the opinion of the board, it is not in the best interest of the company to sell its assets, the board is not bound to do so, notwithstanding the fact that the company in General Meeting has resolved that assets should be sold.

(51) Lakshmi Ratan Cotton Mills co. Ltd.

Vs.

J.K. Jute Mills Co. Ltd.

⇒ If borrowing by the directors are ultra-vires their powers, the directors may be personally liable in damages to the lender, on the ground of breach of warranty of authority.

When the borrowing is unauthorised the co. will be liable to repay it, if it is shown that money has gone in the hands of the company.

(52) Herburtson

Vs

Kishore Rajaram Chabbaria.

⇒ (i) Majority shareholders cannot impugn the action of Board of directors to institute judicial proceedings.

(ii) Initiating judicial proceeding is well within the powers of board of directors.

Section-295 Loan to Directors.

Imi.

(53.) Fredie Ardeshir Mehta

Vs.

Union of India

⇒ Rent free accomodation (RFA) given to M.D. = Subsequently sold to M.D. = 50% was down payment = remaining 50% is payable in 3 equal instalment whether amounts to indirect Loan.

Bombay H.C. held that this transaction is merely a credit sale and cannot be considered as direct or indirect Loan, because the loan by very nature involves the advancement of money which is repayable after sometime with or without interest.

Housing Loan

M.Imi

☆ D.C.A. clarified that housing Loan under section-295 is not applicable to a housing Loan given by a company to its directors, if all the following conditions are satisfied :-

(i.) the director to whom the loan is given is MD/WTD.

(ii.) the company is having a housing loan scheme for all its employees and officers.

(iii) the loan is given to M.D./W.T.D. as per the scheme above.

(54.) M.R. Electronics Components Limited.

Vs.

Assistance ROC

⇒ Salary advance to the wife of MD/WTD shall not be covered u/s 295, if the same salary advance is also available to all the other employees of the company.

However if such salary advance to the wife of M.D. is over and above normal salary advance (or) is not available to other employees, it may be considered as loan u/s 295.

Section-299 Disclosure of interest by directors.

(55.) Fire stone Rubber and Tyre Co. Limited

Vs.

Synthetic and chemicals Limited.

⇒ An absent director need not to disclose his interest in any of the items of the agenda and if discloses the interest in the existing contract at a subsequent B.M. where he is present then it is a sufficient compliance of Section-299.

Imp. Note:- Duty to disclose interest shall be performed at the board meeting and not by post, fax etc.

Note:- In the case of resolution by circulation, interest is not required to be disclosed, however such interest shall be disclosed at first Board Meeting held thereafter.

(56) Pyadh Venkatachalpati

Vs.

Guntur Cotton, Jute and paper mills co. Ltd.

⇒ Relationship of husband and wife or father or son is capable of influencing the judgement of a person so that it is prima-facie a matter of interest which must be disclosed.

(57) Amritsar Rayon and silk mills Limited

Vs.

Amirchand

⇒ The contract (entered in violation of Sec-299) is not illegal, void, unenforceable, However the Co. has an option to avoid the contract.

However the transaction would be void where he (interested director) participates and votes in such circumstances in which but for his vote, there would be no quorum or without his vote the resolution of the board would not have been carried.

In Re:- Victors Ltd. Vs. Lingard

Imp.

(58) A sivasailem Vs. ROC.

⇒ It has been held that where a director on earlier occassion disclosed his interest and whole body of directors is already aware of his interest, non-disclosure at the subsequent occassion did not amount to contravention of Section-299.

59. Madras Tube Co. Ltd.

Vs.

Harikishan Somani

⇒ Company having — 4 directors — only 2 attend meeting — appointed brother and wife as additional director. The court held that appointing additional director amounts to arrangement. The attending director therefore becomes interested and so there would be no quorum in the meeting. Consequently the appointment was in nullity.

60. Shailesh Harilal Shah

Vs.

Matushri Textile Limited.

⇒ In a similar case it was held that appointment of a person as additional director does not constitute any contract or arrangement. The directors in question were not disentitled from voting and participating.

☆ DCA was satisfied with the case of Madras Tube Co. Ltd.

Section-299 read with Section-300

61. Seth Mohanlal

Vs.

Grain Chamber Limited.

⇒ It must be carefully noted that restriction placed u/s 299 & 300 are attracted only in case of a resolution put for the board approval. Where the same matter comes before the GM, the right of an interested director to vote on it is not affected by Sec 299 & 300.

Section-309 Managerial Remuneration.

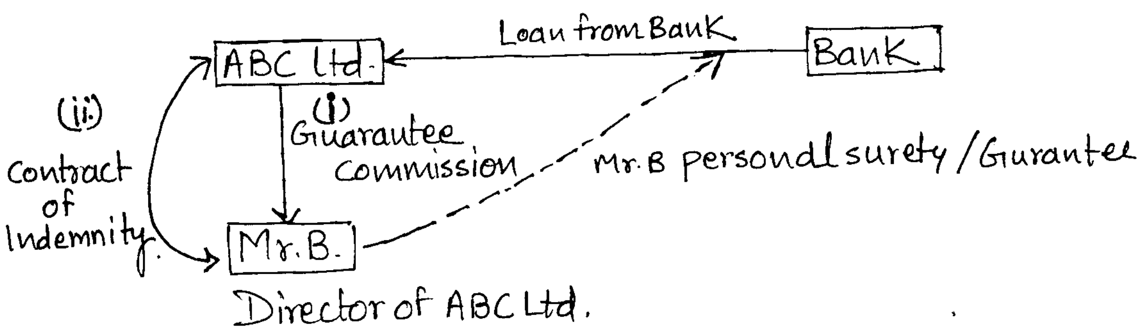
Ques:- Is the guarantee commission paid to the directors counted in total remuneration of that director?

Ans:- No

58. Sussen Textile bearing Limited
Vs.
Union of India (Delhi D.HC. 1984)

⇒ The Guarantee commission is paid to the director in the capacity of Guarantor i.e. on principal to principal basis. under the contract of Gurantee.

Therefore such commission cannot be counted in his remuneration as director or in any other capacity.



☆ DCA has clarified in this case that guarantee commission is actually paid to the director in his capacity as guarantor, i.e. on principal to principal basis under the contract of Guarantee therefore such commission cannot be counted in his total remuneration as director or in any other capacity in the Company.

C.G. approval for removal of Managing Director

Pyara lal Gupta Vs. Agarwal (D.P.) (1983) ⇒ Central Govt. approval is required only for the appointed of M.D. and not for his removal.

Sitting fees to directors.

⇒ DCA has clarified that a company shall not pay sitting fees to its M.D. or W.T.D. for attending the B.M. or committee meeting. Reason being convening the B.M. is the duty of M.D./W.T.D. and not their privilege.

⇒ DCA further clarified that if the sitting fee is paid to the MD or WTD then it will be counted in the total remuneration.

Imp.
Ques:- Can the MD of a company pay bribe for obtaining a contract in favour of the Company.?

Ans:- The court do not interfere in the directors' discreation as to the way in which the companie's funds are to be applied provided it is within the powers of the Company.

(63) Tauton
Vs.
Royal Insurance Co.

⇒ It is therefore follows that where the funds of the Co. are applied ultra-vires the memorandum or the application of funds involves illegal Act the court will interfere.

Imp.
(64.) Hannibal (E) and Co.
Vs.
Frost

Imp. (CLP-II) CS final (Dec-2003)

⇒ Where the M.D. of the Co. used the funds of the Co. for paying bribes, the court held that he had no authority to use the company's money for an illegal purpose, and the fact that co. had benefited from the payment, did not provide the director with any defence.

65. Sir Hormusji Wadia & Co. Ltd.

facts of the case:-

1. Articles provide maximum permissibe directors as 5.
2. Articles provide the quorum for Board Meeting - 3 disinterested director.
3. Total strength of Board of dir. in the Co. was 5.

Ques:- In a particular Board meeting all 5 directors were present but 3 directors were interested in a particular item. whether the quorum is present.

(This question arise due to the following reason ⇒ As per Sec-287 the required quorum is 2 which is very much present in this case, but articles provide higher quorum i.e. atleast 3 disinterested dir. should present.)

Ans:- No. In this case quorum is not present. Reason being quorum is made more stringent by the company itself. Hence in this case Articles prevails over the proviso of Section-287.

Remuneration

66. Radhey Shyam vs. Official Liquadator.

⇒ A private Co. has to take care of the matters of Remuneration through provisions in its Articles. In the absence of any such provision/authorisation in the Articles, the director of a private Company are not entitled to draw any remuneration.

☆ Section-309 shall not apply to a Banking Co. or private Co.

67. Nelbery Vs. Working Shipping Co. Ltd.

⇒ A dir. cannot be paid anything beyond the limits specified in the companies Act or within those limits which may be specified in Article or General body Resolution.

A director cannot claim anything extra even on the ground that he has performed substantial extra service unless they qualify as professional service.

Section–318 Compensation for Loss of office

68. V. Rajgopal
Vs.
Salem Provident Society Limited

Ques:- If the company goes in the compulsory winding up, can the M.D. claim the damages for breach of contract for loss of office.

Ans:- No, Compulsory winding does not amount to breach of contract on the part of the company and Managing Director cannot claim the damages.

However the Co. may pay the commission on its own.

Ques:- Can M.D. claim the damages for breach of contract if the Co. goes in the voluntary winding up and his office comes to an end.

Ans:- Yes, Voluntary winding up amounts to breach of contract on the part of the Co. and M.D. can claim damages for the same.

Sec-314 Office or place of profit.

Sole selling Agent and Office or place of profit.

- **1968 :-** Ist DCA Clarification :- Sec-314 is applicable to the office of sole selling agency.
- **1971 :-** Case :-

69. Fire stone tyre & rubbers Limited
Vs.
Synthetic & Chemical Limited

⇒ Bombay H.C. held that Sec-314 is not applicable to the office of Sole Selling Agency.

- **1975 :-** IInd DCA Clarification :- Sec-314 is not applicable to the office of sole selling agency because it is already governed by Sec. 294, 294 AA.

~~Hence, Si~~

70. Ravindra Kumar Sangal
Vs.
Auto Lamps Limited.

⇒ There was no contravantion of Sec-314 (1B) if total monthly remuneration doesnot exceed the prescribed limit.

The H.C. emphasised on the word "monthly"

The perks like medical reimbursement, Bonus, leave wages cannot be treated as events of monthly occurrence.

They are dependent on certain events or happenning and therefore not included in while calculating total monthly Remuneration.

However if it is given on monthly basis then it will be considered.

Sec-312 Prohibition on assignment of office of director.

(71.) Bhaskar Kashinath Thakur
Vs.
Oriental Metal Pressing (P) Ltd.

⇒ In this case S.C. held that such kind of arrangement in the Article does not amount to assignment of office u/s 312, rather it can be considered as first appointment which is not debarred by Section-312.

Qus:- Can articles of a pvt. Co. authorise the MD. to appoint someone in his place by way of will?

Ans:- Yes. (Bhaskar's Case).

Sec-630 Penalty for wrongful withholding (Property of Co.)

Qus:- Proceedings under Section-630 can be taken against the officer or employee of the Company or it can also be taken against ex-officer or employee of the company.

Ans:- (72.) Baldev Krishna Sahi
Vs.
Shipping Corporation of India Ltd. (1987)

⇒ The S.C. held that the term 'officers and employees' of the company refers not only to existing officer or employee of the Co., but also to past officers and employees of Co. It is the duty of the court to place a broad construction on the provision in furtherance of the object of Law. There is, therefore no reason to give restricted meaning to the term 'officers and employees' appearing in Sec-630.

Qus:- whether proceedings u/s 630 can be taken against immediate family members or Legal heirs who have been occuping the property after the death of employee.

Ans:- Yes. It is very much possible.

(73.) Abhilash Vinod Kumar Jain

Vs.

Cox & King India Ltd.

⇒ Action can be taken against both i.e. the immediate family members as well as the other legal heirs because the object of Sec-630 is to provide speedy relief to the Co. and the objective will be defeated if the company is asked to take the action under the civil law.

(74) J.K. (Bom) Limited

Vs.

(Mrs) Bharti Mata Mishra (2001)(SC)

⇒ As per S.C. officer or employee of the Co. would include the past officer or employee of the Co. or hi's legal heir or representative but does not include other member of his family. In otherwords action can not be taken against othermembers of the family.

Accounts and Audit

Sec 220 — filing of Balance sheet/P&L. with ROC.

(75.) Ravindra Narayan Vs. ROC Jaipur (1994)

→ It was held that ordinary dir. cannot be prosecuted u/s 220 for defaults in filing accounts when Co. had M.D. at relevant time and liability of ordinary dir. would arise only in respect of a Co. which had no. Managing Director.

In Re:- G. Vijaya Lakshmi Vs. S.E.B.I

Some Important Interpretations (Rammiya-2423)

1) Whether a whole time employee is a W.T.D. :- A whole

⇒ time employee of a company also appointed as a director of the Co. would be in the position of a whole time director. The view is equally applicabe in the case of an alternate director. Accordingly the appointment of an employee as an alternate director will be governed by the provisions of Sec-314, 269, 309, and 198 of the Companies Act, 1956.

2) Appointment of whole time C.S. as part time director without powers of management :-

⇒ DCA has clarified that the appointment of the whole time company Secretary, as part time director on its board does not require the approval of Central Government under Section-269 of the Companies Act, 1956, so long as the substantial powers of the management of the affairs are not vested in him.

3) Branch Manager if appointed as director would be whole time director :-

⇒ The department is of the view that when a branch manager who is apparently a whole time employee is appointed as a director, he will be in a position of a whole time director' and the appoint would require the approval of C.G. under Section-269 (If it is not as per Sch XIII)

4) Re-election of M.D. as Director - Whether approval necessary :-

⇒ A Managing Director's office as M.D. does not suffer any break, if he retires as a director u/s 255 and is re-elected as a director in the same meeting, Hence in such a case, the approval of the Govt. whenever applicable under the new section would not be necessary for 5 years where the terms of appointment of Managing Director has already been approved by Govt. for that period.

Sec-316 Appointment of M.D./W.T.D. in more then one Co.

Sec-316 :- Applicability on a private Company.

⇒ As Sec-316 does not apply to a private Co. which are not subsidiaries of public Companies, the same person may be M.D. of any number of such companies.

☆ If all the 3 companies are private Companies, then Section-316(4) shall not apply / required.

☆ DCA mentioned in the explanatory notes to the companies bill, 1956 that the intention of law in Sec-316(4) is not to compell the approval of Central Govt., if none of the companies are public Co.

☆ Sec-316 does not apply to a Govt. Companies.

☆ A director incharge or whole time director will for the purpose of this section be considered to be in the same position as a Managing Director.

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By- Ankur Garg
Company Secretary.