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Topic 4. On Corporate Laws

Caselet 1:

Can auditors continue in office if AGM is not held in time or is adjourned without considering the appointment or reappointment of auditor?

Ram & Co. was appointed as auditor of ABC Limited at the Annual General Meeting held on 30th September, 2010. Can Ram & Co. continue as auditor of the company in case the next annual general meeting has not been held in time? What would be the position in case the next annual general meeting was held on 30th September, 2011, but adjourned without considering the business of appointment or re-appointment of auditor?

Answer: - The tenure of auditor is laid down in sec. 224(1) of the Companies Act, 1956. It is from the conclusion of the annual general meeting. Therefore, the tenure of office of the auditor does not expire on the last date on which the annual general meeting was due to be held in terms of sec. 166. Hence Ram & Co. can continue as auditor even if the AGM for the year 2011 has not been held in time.

In case AGM for 2011 was held on 30.9.2011 and was adjourned without considering the business of appointment or reappointment of auditor, the tenure of Ram & Co. will extend till the conclusion of the adjourned meeting.

Caselet 2:

Appointments as a managing director and a chief executive officer – Applicability and requirements of section 314

M/s Akin Consultants Private Ltd. seeks your legal advice regarding the following appointments relating to directors and their relatives:

(i) Mr. K, who is a relative of one of the directors, is to be appointed as the managing director on a monthly salary of `80,000 plus other perquisites as applicable to other executives of the company.

(ii) Miss N, a relative of a director, is to be appointed as Chief Public Relations Officer on a salary of `65,000 per month.

(iii) Mr. W, a relative of a director, is to be appointed as Chief Executive Officer on a consolidated salary of `2,55,000 per month.

Advise explaining the relevant provisions of the Companies Act, 1956.

Answer :- As per provisions of sec. 314(1) of the Companies Act, 1956, except with the consent of the company accorded by way of special resolution, no director or relative of a director shall hold any office or place of profit under the company except that of managing director or manager of the company.

Further as per provisions of sec. 314(1B) of the Companies Act, 1956 , no relative of a director can be appointed to any office or place of profit under the company which carries a monthly remuneration of not less than Rs.250000/- except with the prior consent by way of special resolution and the approval of the central government.

Thus in the given case:

i) **Mr. K, who is a relative of one of the directors, is to be appointed as the managing director, the provisions of sec. 314(1) are not attracted even though he is a relative of a director. This is because the appointment of Managing Director or Manager is outside the provisions of sec. 314 of the Companies Act, 1956. Thus no special resolution is required in this case.**

ii) **Since the remuneration proposed to be paid to Miss N does not exceed Rs. 250000/- per month, her appointment does not require the passing of special resolution by the company and also the approval of the central government is not required. However, as the proposed remuneration exceeds Rs. 50000/- her appointment shall require the passing of special resolution by the company. The special resolution is to be passed by the company at general meeting held for the first time after such appointment.**

iii) **In case of Mr. W his monthly remuneration exceeds Rs. 250000/- and as he is relative of director his appointment would require prior passing of special resolution and prior central government approval.**

Caselet 3:

Director of 14 companies appointed as a director in 4 other companies – Legal requirements

Mr. PC is Director in 14 Public Limited Companies as on 30th July, 2010. He continues to be so till 24th September, 2010. The following companies appoint Mr. PC as a director at their respective annual general meetings held on dates mentioned against their names:

(i) PQR Ltd. (AGM held on 29th September, 2010)
(ii) BCD Private Ltd. (AGM held on 25th September, 2010)
(iii) City Traders Association (A company registered under section 25 of the Companies Act, 1956 September, 2010)
(iv) TSP Ltd. (AGM held on 25th September, 2010).

You are required to state with reference to the relevant provisions of the Companies Act, 1956 the options available to Mr. PC in respect of accepting or not accepting the appointment of director of the above companies.

Answer: Sec. 275 of the Companies Act, 1956 debars any person to hold office as a director more than 15 companies simultaneously. As per provisions of sec. 277(2) of the Companies Act, 1956 where a person holds directorships of 14 or less companies is appointed as a director of other companies and such appointments make the total number of his directorships more than 15, then the person concerned has to choose the directorships which he wishes to continue to hold or to accept so that the total number of directorships, old and new henceforth to be held by him does not exceed 15.

The said section further provides that none of the new appointments shall be effective until such a choice is to be made and in case of failure of that person to make such a choice within 15 days of the day on which the last of the new appointments was made, all the new appointments shall become void.

Sec. 278 of the companies Act, 1956 states that for the purpose of sec. 275 and sec. 277 the number of companies of which a person may be a director, following companies are not to counted

a. **A private company unless it is a subsidiary of a public company.**
b. **An unlimited company.**
c. **An association not carrying on business for profit or which prohibits the payment of dividend.**

d. **A company in which such a person is only an alternate director.**

In view of the above mentioned legal provisions, Mr. PC who is already a director in 14 companies has to consider the following aspects:
As per provisions of sec. 278 of Companies Act, 1956, BCD Pvt. Ltd. being a private company and City traders Association being an association not carrying on business for profit and prohibiting the payment of dividend by virtue of being a company registered u/s 25 are not to be counted for the purpose of sec 277 read with sec 275. Thus, Mr. PC can accept the appointment in BCD Pvt. Ltd. and City Traders Association without any obstacle.

The appointment of Mr. PC in other two public companies along with the old directorships in 14 companies makes a total of 16, which are in excess of 15 prescribed by sec. 275. As per provisions of sec. 277, Mr. PC has to decide within 15 days from 29th September, 2010, the date on which the last appointment was made, as to the directorships which he wishes to continue to hold or to accept so that the number of his total directorships does not exceed 15 and in case he fails to decide within the said 15 days, then his appointments as a director of PQR and TSP Ltd. shall become void on the expiry of the said 15 days.

Caselet 4:

Raman Ltd having Paid Up Share Capital of `5 Crores owns an agency of Cement Corporation of India Ltd and proposes to supply cement, on credit, to Raman enterprises (P) Ltd. Raman is a common Director in both the Companies.

State the requirements of the Companies Act, 1956, if any, to be complied with by the Company on the facts of this case.

Will it make any difference, if –
(a) M/s Raman Enterprises (P) Ltd were a Public Company.
(b) M/s Raman Ltd were carrying on real estate business and it proposes to sell a flat to M/s Raman Enterprises (P) Ltd for `50 Lakhs?

Answer: - U/S 297 of The Companies Act, 1956 except with the consent of the board of directors of company a director of company

the company or his relative; a firm in which such director or relative is a partner or a private company of which the director is a member or director, shall not enter into any contract with the company for the sale, purchase or supply of any goods materials or services. Where the paid up capital of the company is not less than Rs. One crore, it will also require previous approval of the central government. Exemption from the said provisions are available in the following circumstances-

1. **The purchase of goods and materials from the company or sale of goods and materials to the company is for cash at prevailing market price;**
2. **Any contract for sale, purchase of supply of goods, materials and services in which the company or director etc. regularly trades the cost of which not exceed Rs. 5000/- in any year.**

In the present case Mr. Raman is a common director in both the contractee companies. Accordingly, apart from the approval of the board, previous approval of the central governments is also required for entering into the proposed contract of supply cement on credit. The provisions of sec. 299 and 300 have also to be complied with and in the board meeting Mr. Raman shall disclose his interest in the contract and shall not participate in discussions on this item and shall not vote for the same. The particulars of the contract be also recorded in the register of contracts.

1. **Sec. 297 does not apply to a contract where both the contractee companies are public companies. If Raman Enterprises happens to be a public company, sec. 297 will have no applicability.**
2. **Sec. 297 does not apply to a contract relating to immovable properties being the sale of flat in case of Raman Ltd. is a real estate company. The expression 'goods' used in the section has been defined in the Sale of Goods Act, 1930 according to which it means every kind of movable property hence, sale of flat will not amount to sale of 'goods' for purposes of sec. 297.**

Case let 5:

Position of alternate directors while computing quorum

The articles of association of XYZ Computers Limited provide for a maximum of 15 directors. But the company has only 10 directors and for 2 of them representing foreign collaborator, alternate directors have been appointed. Board meeting held on 1st August, 2008 was attended by 4 directors including 2 alternate directors.

Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board meeting held on 1st August, 2008. Will your answer be different, if the articles provide for a quorum of 6 directors?

Answer: Section 287 of the Companies Act, 1956 prescribes a quorum for meetings Board of directors of companies. According to section 287(2) quorum for a meeting of the board of Directors of any company, public or private shall be one third of the total strength of the board, or two directors, whichever is higher. According to sec. 287(1), 'total strength' means the total strength of the board of directors of the company as determined in pursuance of the act, after deducting therefrom the number of directors, if any, whose place may be vacant at the time. Hence the total strength is 10 directors, excluding 2 alternate directors, even though the articles provide for a maximum of 15.

Sec. 287(2) provides that the quorum for a meeting of the board of directors of the company shall be 1/3rd of its total strength (any fraction contained in that 1/3rd being rounded off as 1), or 2 directors, whichever is higher. Hence in this case 1/3rd of 10 i.e. 3 1/3rd, the fraction being rounded off to 1 i.e. 4 is quorum.

The alternate directors present at the meeting will be counted for quorum, if the original director is not present, the alternate directors present at a meeting will be counted for the quorum. The board meeting on 01/08/2008 was attended by 4 directors including 2 alternate directors quorum was present at the meeting. Hence, it is invalid meeting.

Sec. 287 provides for a minimum quorum. It does not forbid a company to fix a higher quorum. A company in its articles cannot provide a quorum of lesser number of directors than what is provided in sec. 287(2). However, it can provide for a higher number. Hence, if the articles provide 6 as quorum, the meeting held on 01/08/2008 is not valid as it was attended only by 4 directors.

Caselet 6:

No condition in agreement that appointment of a sole selling agent is subject to prior approval in general meeting – Consequences

The Board of directors of a multi-product company, namely PQR Limited having a paid up capital of `25 lakhs appointed XYZ Limited as sole selling agent for all its products in India without prior approval of the company in general meeting without any condition that the appointment is subject to the approval of the company in general meeting. XYZ Limited, its directors and their relatives are not holding any shares in PQR Limited. Discuss whether the appointment of XYZ Limited as sole selling agent is valid. State with reasons whether your answer will be different if -

(a) XYZ Limited are appointed as sole selling agents only for the State of Maharashtra, or for whole of India; and

(b) For only some of the products manufactured by PQR Limited or for the entire range of products.

Answer: Section 294(1) and 294(2) and sections 294A(1), 294A(2) and 294A(3) of the Companies Act, 1956 deal with the appointment and other related procedures regarding sole selling agent. The board shall appoint the sole selling agent either at the board meeting or by resolution by circulation. MD/ Marketing manager cannot appoint the sole selling agent. Also, the board shall appoint sole selling agent subject to the condition that the appointment shall be approved in the first general meeting.

In case such clause of approval in general meeting is not provided in the resolution appointing sole selling agent then the appointment of sole selling agent is void-ab-initio. Prior approval in general meeting is not required for appointing sole selling agent, but the condition of approval in general meeting is required.

If such condition is not put in resolution but even then the general meeting approves the appointment of such sole selling agent then also such appointment will be void. There will be no question of vacation of office by sole selling agent in such case as the office had not started at first place. Also the remuneration received, if any, by such sole selling agent will have to refunded to the company by such agent. The acts done by such agent will not be binding on the company and no compensation for loss of office will be paid to agent.

In the given case PQR Ltd. had not put the condition of approval while appointing XYZ Ltd. and thus the appointment is void. The answer will be same even if such agent is appointed only for Maharashtra instead of whole India and even if appointed for single product instead of all products of PQR Ltd.

Caselet 7:

Aggregate amount of all the loans, investments, securities and guarantees provided by ABN Private Limited stand at `75.00 lacs as on 31st March 2010 against the paid up capital of `50.00 lacs and free reserves of `60.00 lacs. For making any investments or providing any loan, security or guarantee, members' approval was not obtained. On 15th April 2010, ABN Private Limited was converted into a public company. Is it necessary for such a company to obtain approval of members after conversion into public company as the aggregate amount of all the loans, investments, securities and guarantees exceed 60% of the company's paid-up capital and free reserves?

Answer: As per sec. 372A the Board of Directors may give loan, guarantee and security or invest up to 60% of its paid up share capital and free reserves or 100% of its free reserves, whichever is more. Where, a company exceeds the aforesaid limits, prior special resolution will be required to be passed in a general meeting.

As per Sec. 372A (8) nothing contained in sec. 372A shall apply to loans, guarantees, securities and investments made by a private company which is not a subsidiary of public company. Thus no prior approval by special resolution was required.

In the case of ABN Pvt. Ltd. the loans, securities, investments and guarantees exceed 66 lakhs. (60% of paid up share capital and free reserves, as it is higher than 100% of free reserves) on 31st March 2010. On 15th April, 2010 ABN Pvt. Ltd. was converted into public company, in this case it will not be necessary to obtain approval of members after conversion even though the limit has been exceeded as there is no such express provision contained in Companies Act, 1956 and while the limit was exceeded ABN Pvt. Ltd. was exempt from the provisions of sec. 372A. The approval in general meeting would be required only for loans, guarantees, securities or investments made after 15.04.2010 i.e. after the date of conversion.

Caselet 8:

Following information is available from the audited Balance Sheet as at 31st March, 2010 of ASK Ltd.:

Share Capital	`
Equity share Capital (5,00,000 shares of `10 each fully paid up in cash)	50,00,000
Less: calls in arrear	
	50,000
	49,50,000
Preference Share Capital	
Share Application Money	15,00,000
	10,00,000
Reserves and Surplus:	
Securities Premium	
Capital Redemption	15,00,000
Fixed Assets Revaluation Reserve	12,00,000
Sinking Fund Reserve	10,50,000
General Reserve	11,00,000
Profit and Loss Account	40,00,000
Dividend Equalization Reserve	22,00,000
Secured Loans:	6,00,000
Cash Credit facility from Bank	
	1,00,00,000

You are required to find out, explaining the relevant provisions of the Companies Act, 1956, the amount upto which the Board of Directors can invest in securities of other bodies corporate and/or give loans.

Answer: As per sec. 372A the Board of Directors may give loan, guarantee and security or invest up to 60% of its paid up share capital and free reserves or 100% of its free reserves, whichever is more. Where, a company exceeds the aforesaid limits, prior special resolution will be required to be passed in a general meeting.

1. Share Application Money is not includible in Free Reserves. [Sec.372A]

2. Capital Redemption Reserve, Fixed Asset Revaluation Reserve and Sinking Fund Reserve are not available for distribution of dividend, and hence not "Free Reserves".

3. Dividend Equalisation Reserve is held for distribution as dividend, and hence a "Free Reserve".

4. Calculation of limit u/s 372A

i.	**Share Capital**	
a. **b.** **c.**	**Equity Shares** **Preference Share Capital** **Total**	**Rs. 49,50,000** **Rs. 15,00,000** **Rs. 64,50,000**
ii.	**Free reserves**	
a. **b.** **c.** **d.** **e.**	**Securities Premium** **General Reserve** **Profit & Loss A/c** **Dividend Equalisation Reserve** **Total**	**Rs.15,00,000** **Rs.40,00,000** **Rs.22,00,000** **Rs.6,00,000** **Rs.83,00,000**
iii.	**Maximum Amount u/s 372A without Shareholders' Approval**	
a. **b.**	**60% of Paid Up Cap. & Free Reserves [60% of (64,50,000 + 83,00,000)]** **100 % of Free Reserves.**	**Rs.88,50,000** **Rs.83,00,000**
iv	**The amount up to which the Board of Directors can invest in securities of other bodies corporate and/or give loans.** **(Higher of Rs. 88,50,000 and Rs. 83,00,000)**	**Rs. 88,50,000**

Caselet 9:

Withdrawal of consent - Whether invalidates the application?

A group of shareholders of M/s. Elite Engineering Company Ltd. has filed a petition before the Company Low Board alleging various acts of oppression and mismanagement by the majority shareholders. The petitioner group holds 15% of the issued share capital of the company. During the course of hearing before Company Law Board, some of the petitioner group of shareholders holding about 6% of the issued share capital of the company have withdrawn their consent by stating that they are misled by the group to sign the petition and after coming to know of the true facts they have disassociated themselves with the petition and they, along with the other majority shareholders have submitted that the petition should be dismissed on the ground of non-maintainability. Examine their contention having regard to the provisions of the Companies Act.

Answer: The argument of the majority shareholders that the petition may be dismissed on the ground of non-maintainability is not correct. The proceeding shall continue irrespective of withdrawal of consent by some petitioners. It has been held by the Supreme Court in *Rajmundhry Electric Corporation v/s V. Nageshwar Rao, AIR (1956) SC 213* that if some of the consenting members have subsequent to the presentation of the petition withdraw their consent, it would not affect the right of the applicant to proceed with the petition. Thus, the validity of the petition must be judged on the facts as they were at the time of presentation. Neither the right of the applicants to proceed with the petition nor the jurisdiction of Company Law Board to dispose it of on its merits can be affected by events happening subsequent to the presentation of the petition.

Caselet 10:

A past member when liable as a contributory?

By an order of the Court M/s ABC Limited was wound up with effect from 15.03.2008. Mr. Guha, who ceased to be a member of the company from 01.06.2007 received a notice from the liquidator to deposit a sum of `15,000 as his contribution towards the liability on the shares previously held by him. Mr. Guha seeks your opinion about his liability.

Answer: Contributory is a term used in the case of winding up of a company. A contributory can be a past or present member and is liable to contribute to the assets of the company in the event of winding up. In the present case Mr. Guha ceased to be a member of the company when it went into liquidation from 15/03/2008. Thus Mr. Guha will be treated as a past member. He will not be required to contribute to the assets of the company if the following conditions are fulfilled:

1. **If Mr. Guha had ceased to be a member of the company for a period of 1 year or upwards before the commencement of the winding up. In this case since 1 year has not elapsed, Mr. Guha will be liable to contribute to the assets of the company.**

2. **If the debt or liability of the company was contracted or incurred after he ceased to be a member.**
3. **If the present members are able to satisfy the contributions required to be made by them under the act.**

In any case, the liability of past or present member cannot exceed the unpaid amount on the shares and if the shares are fully paid up no contribution is required to be made by the members past or present (Section 426 of Companies Act, 1956).