

PART XXIII

POWERS AND DUTIES OF THE BOARD

Chapter 1

Powers of the Board

Synopsis

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Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form Nos.
1.	290	Validity of acts of directors.	
2.	291	General powers of the Board of directors.	
3.	292	Powers to be exercised at the meeting only.	
4.	293	Restrictions on the powers of the Board.	

Though a company is a legal entity in the eyes of law, it cannot, act as a natural person. It must act through human agency and the control of its management and exercise of its powers must necessarily be delegated. The persons to whom the delegation is made are referred to as 'directors' which expression is simply used to denote the Board of directors of the company acting as a body.

1. Validity of acts of directors

Section 290 of the Act states that any act done by a person as a director shall be valid, notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification or had terminated by virtue of any provision contained in this Act or in the Articles.

Section 290 could not apply to a transaction where a director or a *de facto* director invoked the rule so as to validate a transaction, which was in fact irregular and unauthorised. Benefit of section 290 is not available where directors have not acted in good faith and have knowledge of defect in appointment.

2. Board should act as a collective body

The Companies Act, 1956 vests the management of a company in the Board of directors (herein called 'the Board') collectively and the Board as a general rule act at their board meetings. However, the Act provides for transaction of business by directors by passing resolutions by circulation without formal Board meetings. Further, the Articles generally authorise the Board to delegate any of its powers (other than those which cannot be delegated) to committees of directors or to managing/whole-time directors or to managers of the company.

3. Distribution of powers of the company

Generally speaking, the Board of directors of a company ("the Board") may exercise all the powers and do all the acts and things which the company is authorised to do to carry out the objects contained in its Memorandum and in conformity with the regulations contained in its Articles. The Board cannot, however, do an act which is required to be done by the company in general meeting. The shareholders of the company at the general meeting have no power to do an act which comes within the sphere of the Board. Section 291(2) makes this position abundantly clear by stating that any decision made by the company in general meeting cannot invalidate any prior act of the Board which is within its purview.

4. General powers of the Board of directors

Section 291 of the Companies Act, 1956 states the general powers of the Board of directors and provides that the Board shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. (See Appendix 1 for General Power of Attorney)

Section 293 imposes certain restrictions on powers of the Board. Further, section 292 of the Act, 1956 stipulates that the Board shall exercise certain powers on behalf of a company only by passing resolutions at the Board meetings.

Therefore, the Board shall not exercise any power or do any act or thing which is directed or required, whether by this or any other Act or by the Memorandum or Articles of the company or otherwise, to be exercised or done by the company in general meeting. Thus, the Board cannot usurp the powers of a company in general meeting.

5. Certain powers to be exercised by the Board only at Board meeting

The powers delegated to the directors by the Articles of a company are vested in them collectively and, therefore as a general rule, must be exercised by them collectively at the Board meeting and duly convened and constituted.

Section 292(1) specifically provides that the Board of directors of a company shall exercise the following powers on behalf of the company, and it shall do so only by means of resolutions passed at the Board meetings:—

- (1) Making calls on shareholders in respect of money remaining unpaid on the shares.
- (2) Authorise the buy-back referred to in the first proviso to clause (b) of sub-section (2) of section 77A.
- (3) Issuance of Debentures.
- (4) Borrowing moneys otherwise than by issue of debentures.
- (4) Investing funds of the company.
- (6) Making Loans.

It is also provided in the section that the Board may delegate by a resolution to a committee of directors, the managing director, manager or a principal officer of the company or in the case branch office to a principal officer of the branch office, any of the powers at items (4), (5) and (6) in the following manner:—

- (i) The delegation to borrow shall state the amounts outstanding at any one time up to which money may be borrowed by the delegatee.
- (ii) The delegation to invest funds shall state the total amount up to which the fund may be invested and the nature of the investments that may be made.
- (iii) The delegation to make loans shall specify the total amount up to which loans may be made by the delegatee, the purpose for which the loans may be made and the maximum amount that can be made for each such purpose in individual cases. [See Appendix 2 for Specimen of Board resolution]

Apart from the powers stated above, the following powers are also to be exercised only at Board meetings:—

- 1. Adoption of declaration of solvency in case of buy back if a company intends to buy back its shares. [Section 77A(6)]
- 2. Exercise for buy back of shares upto 10% of the paid up capital of the company. [Section 77A]
- 3. To approve the draft resolution to be approved by Postal Ballot. [Section 192A]
- 4. To fill upon casual vacancies in the office of directors. [Section 262(1)]
- 5. To make donation to political parties. [Section 293(A)(2)]
- 6. To accord sanction for specified contracts in which one or more directors are interested. [Section 297(4)]
- 7. To receive notice for disclosure of interest by a director. [Section 299]
- 8. To receive notice of disclosure of director's interest. [Section 299(3)(c)]
- 9. To place at the Board meeting Register of interested contract and signed by the directors present. [Section 301]
- 10. To receive notice of disclosure of director's shareholdings. [Section 308]
- 11. To appoint or employ a person as managing director if he is the managing director or manager of one and not more than one company. [Section 316(2)]
- 12. To make investment, to give loan and to give guarantee or to provide security to other body corporate. [Section 372A]
- 13. To invest in the shares and debentures of another company exceeding the prescribed limits. [Section 372A(2)]
- 14. To appoint or employ a person as its manager, if he is also the manager or managing director of another company. [Section 386(2)]
- 15. To make a declaration of solvency where it is proposed to wind up the company voluntarily. [Section 488(1)]
- 16. To approve the text of advertisement inviting deposits [Rule 4(2) of the Companies (Acceptance of Deposit) Rules, 1975].
- 17. To print or issue share certificates or duplicates thereof [Rules 4(1)(i), 4(3) and 8 of the Companies (Issue of Share Certificates) Rules, 1960].

6. Manner in which the powers may be exercised by the Board

It can be said that all the powers of the company are vested with the Board as such even in respect of powers that are reserved for the general meeting, the initiative to call a general meeting also lies with the Board. These powers may be exercised by the Board in the following manner:—

- (1) At the Board meetings — Most of the matters are generally considered by the Board at its periodical meetings.

- (2) Approval of resolution by circulation — Where a matter which cannot be kept pending till the time of the next meeting of the Board, the matter may be got approved by the directors by way of a circular resolution.
- (3) Through delegation of powers to the Managing Director (M.D.) — The Board may by resolution or by way of agreement to be entered into with managing director, entrust to him substantial powers of management. They may also be whole-time directors.
- (4) Through its committees — If authorised in the Articles, delegate certain matters to the committees for consideration and submission of recommendations to the Board for approval. The committees may also be authorised to decide certain matters.

7. Powers exercisable by the Board only if authorised by Articles

There are certain provisions in the Act, which authorise a company (namely the Board of directors) to take action on such matters only if the Articles of the company give the said power to the company. Wherever necessary, the Articles shall be altered by a special resolution so as to include the provisions in the Articles. The said statutory provisions with the relevant matters are enumerated below:

<i>Sl. No.</i>	<i>Section</i>	<i>Matters covered</i>
1.	50	A company, whose objects extend to a foreign country, can, if authorised, by its Articles, have a foreign seal for use in such areas.
2.	76	A company may pay commission for subscribing and agreeing to procure subscription if the payment of commission is authorised by its Articles.
3.	77A	Buy-back of securities by a company shall be authorised by its Articles.
4.	79	Issue of shares at a discount should be authorized by passing a resolution in the general meeting.
5.	80	A company may issue preference shares if authorised by its Articles.
6.	80(1A)	Issue of further shares to any person requires the authority of a special resolution of general meeting.
7.	82	Shares are transferable in the manner provided in the Articles.
8.	92	A company may accept the uncalled amount if authorised by its Articles.
9.	93	A company may pay dividend in proportion to the amount paid up if authorised by its Articles.
10.	94	A company may alter its capital if authorised by its Articles.
11.	100	A company may reduce its capital only if power is contained in its Articles.
12.	106	A company may vary the rights attached to shares if authorised to do so by its Articles or if such variation is not prohibited by the terms of issue.
13.	111	Power to refuse transfers in a private company.
14.	114	A company may issue share warrants if authorised by its Articles.
15.	157	A company may keep outside India a Foreign Register of members or debentureholders if authorised by its Articles.
16.	171-186	Unless the Articles in a private company otherwise provides, the provisions of sections 171-186 will apply as they apply to a public company.
17.	174	Unless the Articles provide for a larger quorum, the provisions of section 174 will apply.
18.	175	Unless the Articles provide that the chairman of the Board of directors shall be chairman of general meetings, the members present in a general meeting can elect one amongst them as chairman.
19.	176	If a company wants that proxies should speak and vote on a show of hands, the Articles must contain this power.

<i>Sl. No.</i>	<i>Section</i>	<i>Matters covered</i>
20.	181	Restriction on voting as prescribed will be valid only if authorised by the Articles.
21.	205	Authority to Board/General meeting to declare dividend.
22.	255	Where necessary, the Articles may provide for the retirement of all directors at every annual general meeting.
23.	260	The power to appoint additional directors must be conferred on the Board by its Articles.
24.	269	Provision for appointment of managing director, whole-time director and manager and payment of superannuation.
25.	309	Authority to Board to reimburse expenditure incurred by directors for the business of the company.
26.	309	Payment of remuneration to non-executive directors.
27.	313	Power to appoint alternate directors must be contained in the Articles.
28.	323	Making the liability of directors, etc. unlimited possible only if authorised by the Articles.

8. Matters that may be placed before the Board as per the code of Corporate Governance for listed companies

The Code of Corporate Governance, which forms part of Clause 49 of the Listing Agreement for listed companies contain the minimum information that shall be placed before Board meetings which are as follows:—

1. Annual operating plans and budgets and any updates.
2. Capital budgets and any updates.
3. Quarterly results for the company and its operating divisions or business segments.
4. Minutes of meetings of audit committee and other committees of the Board.
5. The information on recruitment and remuneration of senior officers just below the Board level, including appointment or removal of Chief Financial Officer and the Company Secretary.
6. Show cause, demand, prosecution notices and penalty notices, which are materially important.
7. Fatal or serious accidents, dangerous occurrences, any material effluent or pollution problems.
8. Any material default in financial obligations to and by the company, or substantial non-payment for goods sold by the company.
9. Any issue, which involves possible public or product liability claims of substantial nature, including any judgment or order which, may have passed strictures on the conduct of the company or taken an adverse view regarding another enterprise that can have negative implications on the company.
10. Details of any joint venture or collaboration agreement.
11. Transactions that involve substantial payment towards goodwill, brand equity, or intellectual property.
12. Significant labour problems and their proposed solutions. Any significant development in Human Resources/Industrial Relations front like signing of wage agreement, implementation of Voluntary Retirement Scheme etc.
13. Sale of material nature, of investments, subsidiaries, assets, which is not in normal course of business.
14. Quarterly details of foreign exchange exposures and the steps taken by management to limit the risks of adverse exchange rate movement, if material.

15. Non-compliance of any regulatory, statutory nature or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer etc.

9. Delegation of powers by the Board

The directors are *prima facie* entitled to delegate any of their powers to any one or more of themselves because the 'maxim *delegatus non protest delegate*' applies to directors. Therefore, the Articles usually provides for such delegation in the express terms. The delegation however, cannot prevent the Board from acting in regard to the matter, which were delegated.

The word 'delegation' does not imply a parting with powers by the person who grants the delegation, but points rather to the conferring of an authority to do things which otherwise that person would have to do himself.

Section 292 lays down certain restrictions as to the manner of delegation of some of their specific powers by the directors.

Board of directors of a company may delegate its certain powers to any of the following:—

- (a) any committee of directors;
- (b) managing director;
- (c) whole time director;
- (d) manager;
- (e) any other principal officer of the company; or
- (f) in the case of branch office of the company, a principal officer of the branch office.

Certain powers may be delegated by the Board by resolution passed at a meeting to any of the aforesaid persons to the extent specified in the relevant sections and also on such restrictions as it may specify:—

- (a) *Delegation of power to borrow moneys otherwise than on debentures:*

Section 292(2) state that every resolution delegating the power to borrow moneys otherwise than on debentures shall specify the total amount outstanding at any one time upto which moneys may be borrowed by the delegatee. (Appendix 3)

- (b) *Delegation of power to invest funds of the company:*

Every resolution delegating the power referred to in section 292(1)(d) shall specify the total amount upto which the funds may be invested, and the nature of the investments which may be made, by the delegatee and such resolution shall be passed with the consent of all the directors present at the meeting [*vide* section 292(3)]. (See Appendix 4)

- (c) *Delegation of power to grant loans or give guarantee or provide security:*

Section 292(4) says that every resolution delegating the power referred to in section 292(1)(e) shall specify the total amount up to which loans may be made by the delegatee, the purposes for which the loans may be made, and the maximum amount of loans which may be made for each such purpose in individual cases and such resolution shall be passed with the consent of all the directors present at the meeting. (See Appendix 5)

10. Appointment of the Committee of Directors

Regulation 77 of table 'A' empowers the directors to delegate their powers to a committee consisting of such members of their body as they think fit, subject to the provisions of the Act. Committee of directors may consist of even one member of the Board and there is no legal objection to a committee consisting of one person only. But the directors cannot in this way deprive themselves of the power to manage the company's affairs, nor can the directors make use of the power to exclude one of their numbers from their meetings.

Where powers are delegated to a committee, the Board and the company will be bound by actions of the committee within the scope of its authority. A committee cannot delegate powers to sub-committee unless authorised to do so. The directors may ratify acts of a committee outside the latter's powers.

It is a common practice in large public companies to appoint various committees for specific purposes/functions, *e.g.*, sales, purchase, production or finance either on temporary or permanent basis. There may be continuing committees to deal with such matters as dealing with documents or approving share transfers and issuance of new share certificates, etc. It is important that while forming committees the Board shall define clearly the scope of the committee's power. This is done by passing resolution of the main body.

11. Ratification of unauthorized act of directors

A transaction by the directors, which is beyond their powers but within the powers of the company can be ratified by a resolution of the company or even by acquiescence. Shareholders can by their assent ratify acts of directors, which are *intra vires* company, though they may not be *intra vires* the board of directors.

Where money borrowed has been shown in the balance sheet of a company, which has been approved by the shareholders, it would amount to ratification of borrowing. [*Lakshmi Ratan Cotton Mills Co. Ltd. v. J.K. Jute Mills Co. Ltd.* (1957) 27 Comp Cas 660 (All.)]

Appendix 1

Specimen of General Power of Attorney

TO ALL TO WHOM THESE PRESENTS SHALL COME, XYZ Ltd., a Company incorporated under the Companies Act, 1956 and having its registered office at Silver Arc Plaza, Narayan Kothi Square, Indore, M.P. (hereinafter referred to as the "Company") **SENDS GREETINGS:**

AND WHEREAS the Company is desirous of appointing Ms. Abha Jaiswal (hereinafter called the "Attorney") one of the Directors of the Company as the true and lawful Attorney with full power and authority to do and execute all acts, deeds and things as hereinafter mentioned in the name of and on behalf of the Company and subject to the provisions of the Companies Act, 1956:

The Company is carrying on the business of manufacture of Chemicals more particularly detailed in the main objects clause of the Memorandum of the Company.

In order to facilitate the business to be carried on smoothly, the Company hereby appoints Ms. Abha Jaiswal as its constituted attorney with full power and authority to do and execute all acts, deeds and things as hereinafter mentioned in the name of and on behalf of the Company and subject to the provisions of the Companies Act, 1956.

NOW KNOW YOU ALL AND THESE PRESENTS WITNESS that the Company does hereby appoint, constitute and nominate Ms. Abha Jaiswal as true and lawful attorney or agent of the Company with full powers and authority to do and execute all acts, deeds and things as hereinafter mentioned on behalf of and for the Company *viz.*:

1. To manage the affairs of the Company efficiently and faithfully and in a manner conducive to the interest of the Company.
2. To maintain proper control on and discipline in the staff employed and to initiate disciplinary proceedings against any member of the staff employed in the Company for any act of indiscipline or misconduct or any other offence prescribed by the service rules made by the Company.
3. To pay the monthly salaries and other emoluments of the employees as sanctioned by the Company and to obtain receipt for the same.
4. To open one or more accounts of the Company, in the name of the Company with one or more Banks as may be approved by and to such an extent and with such limits and restrictions as may be stipulated by the Directors from time to time by a resolution of the Board or Committee of the Board of Directors of the Company and to operate the same for and on behalf of the Company by drawing, accepting, endorsing, negotiating, releasing, paying or satisfying any promissory notes, bills of exchange, cheques, drafts, hundies or orders for payment of moneys and delivery of securities, goods, or effects or other negotiable instruments and mercantile documents which may be deemed necessary or proper in respect of the business of the Company or its offices.

5. To sign any deed or document or other paper required to be executed by or in favour of the Company including a Deed of Conveyance or a Deed of Mortgage, hypothecation or pledge or a lease or a leave or licence agreement or any other document required to be executed by the Company.
6. To lodge for registration any document executed by or in favour of the Company and to admit execution thereof and do all acts and things required to be done for registration of such deed.
7. To accept any moneys on fixed deposit according to the schemes made by the Company for accepting fixed deposits and to issue and sign fixed deposits receipts in the form prescribed by the Company.
8. To appoint agents or dealers for sale of the products of the Company on terms and conditions prescribed by the Company and to sign necessary letters or agreements for such appointments.
9. To take on monthly tenancy basis or leave or license basis go-downs, storerooms or other suitable premises for storing the products of the Company and to pay the rent thereof.
10. To advertise the products of the Company by publishing in the newspapers or sponsoring events or by holding seminars and by doing other acts and things beneficial to promote the sale of the Company's products.
11. To demand, receive, recover, accept, exercise or utilize any claim, things, rights or any object to which the Company is entitled and to make and give receipts for the moneys and other property received for and on behalf of the Company.
12. To carry on correspondence with the customers of the Company including prospective customers, agents, brokers, dealers and other trade agents in connection with the business of the Company and to represent the Company at any programs or meetings in connection with or with a view to promote the business of the Company.
13. To commence and prosecute any suit or other legal action or proceedings in relation the business of the Company and for recovery of any moneys, good or other properties of the Company or establishing a right related to the business of the Company and to defend any suit or legal proceedings against the Company by any person or other company, and for that purpose to sign, affirm, or declare plaints, statements of defense, petitions, affidavits and other papers as may be require to be done and to appoint any advocate or solicitor for that purpose.
14. To insure the stocks of the Company wherever stocked and to pay the premium in respect thereof from time to time.
15. To appear before any official of the Government in connection with the affairs of the Company or to appoint a suitable agent to do the same on behalf of the Company.
16. To refer to arbitration any dispute in connection with the business of the Company and to attend to such arbitration personally or through advocates and to do all such acts or things as may be required in that behalf.
17. To negotiate with any party for settlement of any dispute or claim and to compromise or compound the same in the best interest of the Company.
18. To receive moneys and other property payable to the Company by way of sale of the products, commissions or any other account from the customers, agents, shopkeepers and other persons whatsoever and to pass valid receipts for the same and to credit the moneys so received in the Bank Account of the Company.
19. To sign, seal, swear, affirm, declare, deliver, execute, enter into, acknowledge, perfect and do all such contracts, conveyances, leases, mortgages, transfers, releases, agreements, re-conveyances, reassignments, releases, agreements, pleadings, affidavits, declarations, petitions, returns, refund orders of income tax, super tax, gift tax, expenditure tax and any other tax assurances, deeds, documents, instruments, acts, matter and things as shall be requisite or as the attorney may deem necessary, proper or expedient for or in relation to all or any of the purposes or matters aforesaid.

20. To concur with any other person or persons interested in doing any of the acts or things as aforesaid.
21. To ask, demand, sue for and recover, receive payments of and give good and valid receipts, releases, discharges and indemnities for all the moneys, securities for moneys, profits, debts, goods, chattels, stocks, shares belonging to the Company whether solely or jointly with any other person or persons.
22. To commence, carry or defend, appear or appeal in all suits, departmental appeals, appeals before the court of law, appellate bodies or tribunals and other legal proceedings and demand touching any matter or thing in which the Company may in any way concerned whether solely or jointly with any other person or persons as aforesaid.
23. To receive the interest and income arising from any securities or other property now or hereafter belonging to the Company whether solely or jointly as aforesaid.
24. To give, vary and revoke instructions as to the manner in which any moneys payable (whether periodically or otherwise) or dealt with and to make and submit returns and afford required information relating to income tax, super tax, excess profits tax, business profit tax, wealth tax, expenditure tax and taxation generally.
25. To accept for and on behalf of the Company, payments due to the Company under any agreements earlier than the dates stipulated for such payments in the concerned agreement on such terms and conditions as deemed fit by the Attorney and to allow discounts, concessions and rebate and by way of interest or profits as may be deemed fit by the Attorney.
26. To sign all complaints, written statements, affidavits, applications, petitions, reference papers, appeals and such other connected documents as may be required in connection with legal proceedings arising out of the Company's contracts for hire purchase or any other finance business and to accept any such writ or summons and or other legal process as shall be requisite or expedient.
27. To present or oppose any petition for winding up or bankruptcy, to attend and vote as proxy at any meetings of creditors, to make and file proofs of claim; and generally to act in any liquidation, bankruptcy or insolvency proceedings.
28. To sign and issue deposit receipts to the depositors, credit and debit notes to the parties with whom the Company has any business dealings.
29. And generally to do all acts and things incidental to the powers hereinabove mentioned and all other acts and things necessary for carrying on the business of the Company to such an extent and with such limits and restrictions as may be stipulated by the directors from time to time by a resolution of the Board or Committee of the Company;

IN WITNESS WHEREOF, the Company has pursuant to a resolution of the Board of directors of the Company passed at its meeting held on Monday, 15th May, 2006 in that behalf caused its common seal to be duly affixed hereto.

FOR AND ON BEHALF OF THE COMPANY

Witnesses:

- 1.
- 2.

Appendix 2

Specimen of Board resolution for delegation of powers

RESOLVED THAT pursuant to the provisions of section 292 of the Companies Act, 1956, Mr. A and Mr. B Whole-time Directors of the company be and are hereby severally empowered:—

- (a) to borrow for the company from such person or persons on such terms and conditions as to repayment, interest and otherwise as they may think fit up to a total of Rs. 10,00,000 (Rupees Ten lacs only) outstanding at any one time, such limit to be exclusive of any money borrowed by or on behalf of the company otherwise than by virtue of this resolution;
- (b) to invest funds of the company in stocks and securities of the Government of India up to a total nominal value of Rs. 1,00,000 (Rupees One lac only) for the purpose of furnishing security to the Central Government or any State Government or to any other person or body corporate in connection with the supply to or from such Government, person or body corporate by or to the company of any property, goods or services;
- (c) to invest the funds of the company by deposit with a scheduled bank or banks either at call or for a fixed period up to a total of Rs. 10,00,000 (Rupees ten lacs only) so invested at any time, such limit to be exclusive of any funds invested by or on behalf of the company otherwise than by virtue of this resolution;
- (d) to make loans out of the funds of the company on such terms and conditions as to repayment, interest and otherwise as they may think fit to such persons being employees of the company for the following or like purposes:—
 - (i) the purchase of a motor-car, motor cycle or other conveyance approved by them;
 - (ii) the purchase of household furniture and furnishings approved by them;
 - (iii) payment of passages, rail fares and leave expenses of the employee and/or his dependants;
 - (iv) repayment of personal indebtedness incurred or to be incurred provided the loan is specifically authorised by them;
 - (v) building, rebuilding or repair of dwelling house;
 - (vi) to pay expenses incurred in connection with the marriage of the employee or of any member of his family or in connection with the death of any member of his family;

such loans not to exceed a total of Rs. 40,000 (Rupees forty thousand only) to an individual employee at any time and further more the total of such loans shall not exceed an aggregate of Rs. 4,00,000 (Rupees four lacs only) outstanding at any one time.

Appendix 3

Specimen of Board resolution for delegation of powers of borrowing

RESOLVED THAT pursuant to Article 170 of the Articles of Association of the Company, the consent of the Board of Directors of the Company, be and is hereby accorded for the appointment of a Borrowing Committee consisting of following Whole time Directors:

1. Mr. DKJ Managing Director
2. Ms. AJ Director- HR&A
3. Mr. IJ Director- Technical
4. Ms. SM Director-Finance

RESOLVED FURTHER THAT pursuant to section 292 of the Companies Act, 1956, the consent of the Board of Directors of the Company, be and is hereby accorded to delegate its borrowing powers to the above Borrowing Committee and do hereby authorise and empower to borrow such amount as may require from time to time for the purpose of the Business of the Company upto a ceiling of Rs. 252.10 Crores including the existing borrowings.

RESOLVED FURTHER THAT the above ceiling of Rs. 252.10 crores (Rupees Two Hundred Fifty Two Crores and Ten Lacs Only) shall stand increased to such amount as may be authorised by the shareholders of the Company in their Meeting by way of passing an ordinary resolution under section 293(1)(d) of the Companies Act, 1956.

RESOLVED FURTHER THAT the above Borrowing Committee be and is hereby authorised to take decisions for the requirement of the funds and to make borrowings of the required amount within the

above ceiling from any bank and financial institution and to negotiate, settle and finalise all terms and conditions for the borrowings and to offer and provide security and to create/extend charges on the assets of the company as the committee may consider appropriate in the interest of the Company.

RESOLVED FURTHER THAT the above Borrowing Committee be and is hereby authorised and empowered to authorise any two Directors jointly to execute and sign the loan, security and other documents and to affix the Common Seal of the Company in presence of any two Directors of the Company.

Alternate Resolution

RESOLVED THAT the Secretary for the time being of the company be and is hereby authorised to accept deposits or borrow money from such person or persons on such terms and conditions as to repayment, interest or otherwise as he thinks fit up to an aggregate sum of Rs. outstanding at any one time, such limit to be exclusive of any money borrowed by or on behalf of the company otherwise than by virtue of this resolution.

RESOLVED FURTHER THAT the Secretary be and is hereby empowered to execute on behalf of the company all documents including deposit receipts and promissory notes in connection with acceptance of deposits or borrowing of money as stated above

Appendix 4

Specimen of Board resolution for delegation of powers for investment of funds

RESOLVED THAT a Committee of the members of the Board named as 'Finance Committee' be and is hereby constituted with the following members—

Shri J.P. Saraf, Managing Director

Shri Pankaj Pabiya, Director

Ms. Subhangi Baiwar, Finance Manager and

Ms. Abha Jaiswal, Director

RESOLVED FURTHER THAT the quorum for the meeting of the Finance Committee shall be two members present personally.

RESOLVED FURTHER THAT the minutes of the meetings of the Finance Committee shall be brought before the Board for ratification.

RESOLVED FURTHER THAT the Finance Committee shall be authorised to take decisions in connection with availing of financial facilities/borrowings and or lending and/or investments of the Company's funds subject to the restrictions provided under section 292 of the Companies Act, 1956.

RESOLVED FURTHER THAT the Finance Committee shall be authorised to exercise its powers of borrowing and/or lending and/or investment upto Rs. 250.00 lacs at any one point of time.

Alternate Board resolution

RESOLVED THAT pursuant to the provisions of section 292 of the Companies Act, 1956 and subject to the other provisions of the said Act or other laws, the Committee of directors consisting of Shri J.P. Saraf, Managing Director; Shri Pankaj Pabiya, Director; Ms. Subhangi Baiwar, Finance Manager and Ms. Abha Jaiswal, Director, be and are hereby authorized to invest funds of the Company in fixed/term deposits with banks, bodies corporate in shares, debentures of companies, government securities provided that the total amount upto which the funds to be invested as aforesaid shall not exceed the sum of Rs. 25.00 Crores at any one time until otherwise decided in this regard.

RESOLVED FURTHER THAT above said Committee be and is hereby authorized to disinvest money, demand before maturity, renew, subscribe and to sign application form, forms of renunciation, transfer deeds, receipts and all other paper and documents as may be required in the matter of investment of Company's funds.

Appendix 5

Specimen of Board resolution for delegating powers to make loan within the permissible limit

RESOLVED THAT pursuant to the provisions of section 292 of the Companies Act, 1956 and subject to the other provisions of the said Act or other laws, the Committee of directors consisting of Shri J.P. Saraf, Managing Director; Shri Pankaj Pabiya, Director; Ms. Subhangi Baiwar, Finance Manager and Ms. Abha Jaiswal, Director, be and are hereby authorized to make loans in the business interests as short-term accommodation to bodies corporate, firms or individuals on such terms and conditions as they deem proper provided that the amount of loan in each individual case shall not exceed Rs. 5.00 Crores and in total Rs. 25.00 Crores.

Appendix 6

Specimen of Board resolution giving authority to invest in the public issue

The Chairman appraised that the Dena Bank is making public issue of the Equity Shares of Rs. 10 each at a premium of Rs. 17 per share. He appraised that it shall be a good investment if the Company apply for the allotment of 1,00,000 Equity Shares in the Public Issue aggregating Rs.27.00 Lacs only.

The Board appreciated the idea of the Chairman and thereafter the Board passed the following resolution unanimously:

RESOLVED THAT the consent of the Board of directors of the Company be and is hereby accorded to apply for allotment of 1,00,000 Equity Shares of Rs. 10 each of Dena Bank at a premium of Rs. 17 per Share in the public issue for and on behalf of the Company and Shri Puneet Agrawal, the Director of the Company be and is hereby authorised to sign the Share Application Form and to deposit the necessary Share Application Money in terms of the public issue of the Dena Bank.

FURTHER RESOLVED THAT Shri Puneet Agrawal, the Director of the Company be and is hereby authorised to submit the above said resolution with a copy of the Memorandum & Articles of Association of the Company along with the Share Application Form.

Chapter 2

Restrictions on the powers of the Board

Synopsis

Important Provisions at a Glance

1. Powers to be exercised by the Board only on approval given by the general meeting
 2. Meaning of Undertaking
 3. Powers to be exercised by the members in general meeting only
 4. Certain powers which can be exercised by the Board of directors only with the approval of the members/Central Government
 5. Other major restrictions on powers of the Board
- Appendix 1 Specimen of General meeting resolutions to be passed u/s 293(1)
- Appendix 2 Clarifications issued by the Department of Company Affairs

Important Provisions at a Glance

Sl. No.	Sections	Matters dealt with	E-Form Nos.
1.	293	Restrictions on the powers of the Board.	

1. Powers to be exercised by the Board only on approval given by the general meeting

Section 293 states certain matters where the Board can take action only after the company in general meeting has empowered the Board to act on any of the said matters. These are mentioned below:—

- (a) Sale, lease or disposal of the whole or substantially the whole, of the undertaking of the company.
- (b) Remit, or give time for the repayment, of any debt due by a director.
- (c) Invest, otherwise than in trust securities, of compensation money received by the company in respect of compulsory acquisition of any undertaking of the company.
- (d) Borrow moneys which together with the moneys already borrowed (other than temporary loans repayable on demand or up to six months such as short-term cash credit arrangements, the discounting of bills or loans of short-term seasonal nature but does not include loans raised for financing capital expenditure) which exceed the total of paid-up capital and free reserves.
- (e) Contribute to charitable and other funds not directly relating to the business of the company or the welfare of its employees, any amounts the aggregate of which will in any financial year exceed Rs. 50,000 or 5% of the net profits computed in terms of sections 349 and 350 during the three financial years immediately preceding, whichever is greater.

Every resolution passed in general meeting in respect of item (d) or (e) above shall specify the total amount upto which money may be borrowed or total amount of contributions that can be made during a financial year, by the Board. (See Appendix 1 for the general meeting resolutions)

The above said restrictions are not applicable to a private company unless it is a subsidiary of a public company.

2. Meaning of Undertaking

'Undertaking' as occurring in section 293(1)(a) is an activity engaged in with a view to earn profit and the properties movable or immovable for the purpose of business are tools of the undertaking. [*Yallamma Cotton, Woollen & Silk Mills Co. Ltd., In re* (1970) 40 Comp Cas 466 (Mys.)].

Word 'undertaking' as used in section 293(1)(a) cannot mean or embrace within itself even one of the several capital assets used by the owner in connection with the undertaking. [*P.S. Offshore Inter Land Services (P.) Ltd. v Bombay Offshore Suppliers & Services Ltd.* (1992) 75 Comp Cas 583 (Bom.)].

The sale of shares, whatever be their number, even if it amounts to a transfer of the controlling interest of a company, cannot be equated to the sale of any part of the 'undertaking' so as to come within the mischief of section 293(1)(a). [*Brooke Bond India Ltd. v U.B. Ltd.* (1994) 79 Comp Cas 346 (Bom.)].

A closed unit is not an 'undertaking' and thus restrictions imposed by section 293(1)(a) in terms would not apply to the proposed sale of such a closed unit.

3. Powers to be exercised by the members in general meeting only

The Companies Act, 1956 provides that certain powers cannot be exercised by the directors at all, they must be exercised by the shareholders in general meeting. Some of these powers are given below:—

1. Alteration of provisions of Memorandum and Articles of Association so as to change the place of the company's registered office from one State to another or with respect to the object of the company. [Section 17(1)]
2. Change of registered office within the same State but from the jurisdiction of one Registrar of Companies to another within the same State. [Section 17A]
3. Alteration in the Articles of Association. [Section 31]
4. Vary the terms of contract mentioned in the prospectus or in statement in lieu of prospectus. [Section 61]
5. Issue of shares at a discount. [Section 79]
6. Offer of further shares to persons other than the existing members of a public company. [Section 81(1A)]
7. Increase in the authorised share capital. [Section 94(1)(a)]
8. Consolidation and sub-division of share capital. [Section 94(1)(b) and (d)]
9. Conversion of shares into stock and *vice versa*. [Section 94(1)(c)]
10. Cancellation of shares. [Section 94(1)(e)]
11. Reduction in share capital. [Section 100]
12. Commencement of new business activities. [Section 149(2A)]
13. Keeping of Register of members/debentureholders and copies of returns at a place other than the registered office of the company. [Section 163(1)]
14. Appointment of auditors. [Sections 224 and 224A]
15. Appointment of first auditors if the Board of directors fails to appoint them within one month of the date of registration of the company. [Section 224(5)(b)]
16. Increase or reduce the number of directors within the limits fixed by the Articles. [Section 258]
17. Removal of director before the expiry of his terms of office and appointment of another person in his place. [Section 284]
18. Determining remuneration for directors. [Section 309(1)]
19. Appointment of alternate director in place of a director who goes out of the State for three months or more (in the absence of any power given by the Articles). [Section 313(1)]
20. Appointment of a director or his relative, etc., as the case may be, to any office or place of profit in a company which carries in excess of specified monthly remuneration. [Section 314]
21. Inter-corporate loans and investments and giving guarantee/security in excess of prescribed limits. [Section 372A]

4. Certain powers which can be exercised by the Board of directors only with the approval of the members/Central Government

The Companies Act, 1956 further provides that certain powers cannot be exercised by the directors even if the approval has been given by the members, until and unless the approval of the Central Government has been obtained by the company. Some of these matters are given below:—

1. Change in the name of a company. (powers delegated to the Registrar of Companies). [Sections 21 and 22]

2. Payment of minimum remuneration in excess of limits prescribed in Schedule XIII of the Act. Applicable only in case of a public company and a private company, which is a subsidiary of a public company. [Section 198(4)]
3. Declaration of dividend out of accumulated profits transferred to reserves, if such declaration is not in accordance with the rules framed by the Central Government. [Companies (Declaration of Dividend out of Reserves) Rules, 1975]
4. Appointment of cost auditors. [Section 233B(2)]
5. Amendment of provision relating to managing, whole-time or non-rotational directors. [Section 268]
6. Appointment or re-appointment of managing director or whole-time director in certain cases. [Section 269]
7. Appointment of sole-selling/buying agents in certain cases. [Sections 294AA(2) and (3)]
8. Grant of loans to directors (Applicable only in case of a public company and a private company which is a subsidiary of a public company). [Section 295]
9. Entering into certain specified contracts in which particular directors are interested by companies having a paid up share capital of Rupees One Crore or more. [Section 297(1)]
10. Payment of remuneration of more than 5% of the net profits to a whole-time or managing director or more than 10% to all of them together. [Section 309(3)]
11. Payment of remuneration of more than 1% or 3% of the net profits to other director(s), non-whole time directors. [Section 309(4)]
12. Increase in remuneration of whole-time director or managing director exceeding the limits prescribed under Schedule XIII. [Sections 310 and 311]
13. Appointing relative of director(s) to office or place of profit at a specified remuneration or more per month. [Section 314(1B)]

5. Other major restrictions on powers of the Board

There are many other provisions under the Act, which provides restrictions on the powers of the Board, depending upon the provisions of the Memorandum and Articles of the company and other status of a company. Some of these restrictions may be in the following types:—

1. Restrictions placed under Memorandum and Articles of Association.
2. Restrictions on buy back of securities of the company. [Section 77A]
3. Restrictions on making political contributions. [Section 293A]
4. Restrictions on making investment, giving loans and issuing guarantees and security. [Section 372A]
5. Restrictions on managerial remuneration.

Appendix 1

Specimen of General meeting resolutions to be passed u/s 293(1)

I. For sale of entire undertaking

RESOLVED THAT approval be and is hereby given to the sale of company's undertaking/business carried on by the company under the name and style of "....." to *X Ltd* (hereinafter called the purchaser) at a value not less than Rs. 75 lakhs free from all encumbrances and on the terms and conditions contained in the draft agreement placed before the meeting and initialled by the chairman for purposes of identification, containing *inter alia* the following terms and conditions:—

- (a) The Company shall sell and the *X Ltd* (hereinafter called the purchaser) shall purchase the business carried on by the company under the name and style of (hereinafter referred to as "the said business") and such sale shall include:—

- (i) the goodwill of the said business and all licences, permits and trademarks connected therewith;
 - (ii) all plants, machinery, office furniture, stock-in-trade, implements, utensils, appendages, appurtenances and all other movable property to which the company is entitled in connection with the said business;
 - (iii) all book debts and other debts and the full benefit of all securities for such debts in connection with the said business;
 - (iv) the full benefit of all pending contracts, engagements and orders in connection with the said business; and
 - (v) all other properties including cash in hand or in banks or in transit to which the company is entitled in connection with the said business the valuation whereof is to be made and certified by such qualified valuer, auditor, accountant or other person or persons as may be approved by the company and the purchaser.
- (b) On or before the completion of the sale, the company shall transfer or procure the transfer of all existing licences in favour of the purchaser, obtain the Income-tax and sales tax clearance certificates, obtain contracts or acceptance of transfer of services from all workmen in favour of the purchaser, obtain discharge from all creditors in a form satisfactory to the purchaser and surrender to the purchaser the lease dated
- (c) The purchaser shall pay the company a sum of Rs. 7,50,000 as earnest money either in cash or approved securities at cost or both and shall before the completion of the sale pay by way of part payment of the purchase price such further sum or sums not less than in the aggregate Rs. 20,00,000 as may be required by the company for implementation of the sale agreement, provided the purchaser is satisfied that the book value of the items (ii) and (iii) mentioned in paragraph (a) above is not less than Rs. 22,00,000.
- (d) The sale shall be completed within, time being the essence of the contract.
- (e) On the failure of the associate to perform or comply with its obligations the purchaser shall have the right to determine the agreement and on such determination the company shall refund all moneys paid by the purchaser to the company by way of earnest money or part payment of the purchase price with interest at% per annum till such repayment.

II. For transfer of division to a subsidiary company

RESOLVED THAT subject to the consents, approvals and permissions being obtained from appropriate authorities to the extent applicable or necessary, consent of the Company be and is hereby given pursuant to Section 293(1)(a) of the Companies Act, 1956 to the transfer of the Division of the Company engaged in the business of manufacture and sale of Sanitaryware and trading in allied products, with all assets and liabilities including the manufacturing facilities at (under construction) to a wholly owned subsidiary of the Company by way of sale or assignment at such consideration being not lower than the net book value and with effect from such date as the Board of Directors of the Company may think fit and that the Board of Directors of the Company (which shall include a Committee of Directors that may be constituted for this purpose) be and is hereby authorised to complete the transfer of the said Division with such modifications as may be required by any of the concerned authorities or which it may deem to be in the interest of the Company and do all such acts, deeds, matters and things as may be deemed necessary and/or expedient in the interest of the Company.

Explanatory Statement

As the shareholders are aware the Company's Division is a market leader in India in sanitaryware. The Division comprises of manufacture and marketing of washbasins, pedestals, water closets, cisterns and bathroom accessories, amongst others. The Division also markets a range of allied bathroom products such as plastic cisterns, toilet seat covers, taps & fittings. The products are sold under the well-known brand name "....."

The Division contributed a turn over of about Rs.200 crore for the year ended 31st March 2006. The Division presently has manufacturing facilities at, in the State of, and in the State of The plant at in is under construction and is expected to be operational by March 2007.

With the boom in the housing sector and emergence of multiplexes and large residential apartments the construction sector is growing at an accelerated rate which promises growth potential for the Sanitaryware Business as well.

..... Division aspires to build on its brand strength through better products, technology upgradation and process improvements to continue its market leadership. This could be achieved by partnering with an internationally reputed bathroom products player. To this intent, the Board at its meeting held on, approved in principle, subject to shareholder and other regulatory approvals, to transfer the Division into a wholly owned subsidiary to facilitate the invitation to a strategic foreign partner. The management is currently in discussion with interested international players for this purpose.

The transfer of the Division upon completion of necessary formalities would be at a consideration to be determined by the Board of Directors being not lower than the net book value of the assets of the Business on the date of transfer.

The services of concerned employees including the workmen engaged in the Division would also be transferred with continuity of service and terms and conditions of service no less favourable than existing today.

The Board of Directors consider that it would be in the best interest of the Company, its shareholders and its concerned employees and trade associates to transfer the said Division as referred to in the draft Ordinary Resolution to a wholly owned subsidiary of the Company.

Accordingly, in terms of Section 192A of the Companies Act, 1956, approval of the members is being sought through postal ballot for passing the Ordinary Resolution as set out in the Notice.

The Directors of the Company are deemed to be concerned or interested in the resolution as set out in the Notice pursuant to Section 192A of the Companies Act, 1956 only to the extent of shares held by them in the Company.

III. For powers for disposal of assets u/s 293(1)(a)

RESOLVED THAT pursuant to the provisions of section 293(1)(a) and other provisions, if any, of the Companies Act 1956, the consent of the Company be and is hereby accorded to the Board of directors of the Company to mortgages or charges all or any part of immovable or movable properties of the Company, wheresoever situated, both present and future, and whole or part of the undertakings of the Company of any nature and kind whatsoever and/or creating a floating charge in all or any immovable properties of the Company together with the powers to takeover the management of the business and concern of the Company, in certain events, to or in favour of banks, financial institutions any other lenders to secure the amount borrowed/to be borrowed by the Company from time to time for the due payment of the principal monies together with the interest payable by the Company in respect of such borrowings.

RESOLVED FURTHER THAT the Board of directors of the Company be and is hereby authorized to negotiate and settle the terms and conditions with the concerning Banks/Financial Institutions etc., finalize the agreement/contracts and documents for creating the aforesaid mortgages and/or charges and to do all such acts, deeds, matters and things as may be necessary to give effect to this resolution.

Explanatory Statement

Looking into requirements of the business activities carried by the Company, it may require additional funds. Hence, the Board of directors of the Company should be authorised to borrow moneys from Banks, Financial Institutions and any other sources. The Company also requires to give securities for due repayment of loan amount and interest thereon to the Banks & Institutions as per their stipulated terms and conditions with right to take possession of the assets in the event of default, if any. In terms of provisions of

section 293(1)(a) of the Companies Act, 1956 it is required to provide necessary powers to the Board to sell, lease, mortgage, and/or otherwise dispose off the whole or substantially the whole of the undertaking(s).

Hence, this resolution is proposed as an ordinary resolution for approval of the members.

None of the directors is concerned or interested in the resolution.

IV. For mortgage/charge assets of company u/s 293(1)(a)

RESOLVED THAT the consent of the Company be and is hereby granted in terms of Section 293(1)(a) and all other applicable provisions of the Companies Act, 1956, (including any statutory modification or re-enactment thereof, for the time being in force), to the Board of Directors(hereinafter referred to as "the Board" which term shall be deemed to include any Committee which the Board may constitute for this purpose) to mortgage and/or charge, in addition to the mortgages/charges created/to be created by the Company, in such form and manner and with such ranking and at such time and on such terms as the Board may determine, on all or any of the moveable and/or immoveable properties of the Company, both present and future and/or the whole or any part of the undertaking(s) of the Company together with the power to take over the management of the business and concern of the Company in certain events of default, in favour of the Lender(s), Agent(s) and Trustee(s)/Trustee(s), for securing the borrowings availed/to be availed by the Company and/or any of the Company's holding/subsidiary/affiliate/associate company, by way of loan(s) (in foreign currency and/or rupee currency) and Securities (comprising fully/partly Convertible Debentures and/or Non Convertible Debentures with or without detachable or non-detachable Warrants and/or secured premium notes and/or floating rates notes/bonds or other debt instruments), issued/to be issued by the Company, from time to time, subject to the limits approved under Section 293(1)(d) of the Companies Act, 1956, together with interest at the respective agreed rates, additional interest, compound interest in case of default, accumulated interest, liquidated damages, commitment charges, premia on prepayment, remuneration of the Agent(s)/Trustees, premium (if any) on redemption, all other costs, charges and expenses, including any increase as a result of devaluation/revaluation/fluctuation in the rates of exchange and all other monies payable by the Company in terms of the Loan Agreement(s)/Heads of Agreement(s), Debenture Trust Deed(s) or any other document, entered into/to be entered into between the Company and the Lender(s)/Agent(s) and Trustee(s)/Trustee(s), in respect of the said loans/borrowings/debentures and containing such specific terms and conditions and covenants in respect of enforcement of security as may be stipulated in that behalf and agreed to between the Board of Directors or Committee thereof and the Lender(s)/Agent(s) and Trustee(s)/Trustee(s).

RESOLVED FURTHER THAT for the purpose of giving effect to this resolution, the Board and/or its duly constituted Committee be and are hereby authorised to finalise, settle and execute such documents/deeds/writings/papers/agreements as may be required and do all such acts, deeds, matters and things, as it may in its absolute discretion deem necessary, proper or desirable and to settle any question, difficulty or doubt that may arise in regard to creating mortgages/charges as aforesaid.

Explanatory Statement

The borrowings by a Company, in general, is required to be secured by mortgage or charge on all or any of the movable or immovable properties of the Company in such form, manner and ranking as may be determined by the Board of Directors of the Company from time to time, in consultation with the lender(s).

The mortgage and/or charge on any of the movable and/or immovable properties and/or the whole or any part of the undertaking(s) of the Company, to secure borrowings of the Company or of any of its holding, subsidiary, affiliate or associate company, with a power to the charge holders to take over the management of the business and concern of the Company in certain events of default, may be regarded as disposal of the Company's undertaking(s) within the meaning of Section 293(1)(a) of the Companies Act, 1956. Hence, it is necessary for the Members to pass a resolution under the said Section.

The Board of Directors accordingly recommend the resolution set out at Item No. of the accompanying Notice for the approval of the Members. Your approval is sought by voting by Postal Ballot

in terms of the provisions of Section 192A of the Companies Act, 1956, read with the provisions of the Companies (Passing of Resolutions by Postal Ballot) Rules, 2001.

None of the Directors of the Company is, in any way, concerned or interested in the said resolution

V. Extending time of repayment of debt due by a director u/s 293(1)(b)

RESOLVED THAT pursuant to the provision of section 293(1)(b) of the Companies Act, 1956, consent be and is hereby accorded to the Company for extending the time for the repayment of the balance amount of Rs.12.00 Lacs advanced to Shri AK, the Director of the Company, by a further period of six months ending on 31st Oct., 2007.

RESOLVED FURTHER THAT the said balance of Rs.10.00 Lacs is repaid by monthly installments of Rs. 2.00 Lacs payable on 1st day of every calendar month commencing from 1st May, 2006 and in case of default in paying any installment, the balance outstanding shall become due and payable immediately.

Explanatory Statement

Section 293(1)(b) of the Companies Act, 1956, requires the approval of the members of general meeting for giving time for the repayment of any debt due by any Director of the Company. An advance of Rs. 12.00 Lacs had been given to Shri AK, the Director of the Company, under section 295 of the Companies Act, 1956, for the construction of his house under the Company's rule in force for the grant of such advances to Directors for house building purposes. Shri AK has not been receiving remuneration for which necessary application is pending with the Central Government.

In order to help the director to overcome the financial difficulties approval of the members is sought to the grant of extension of time for a further period of six months. Hence, this resolution is proposed for the approval of the members.

Except Shri AK, none of other directors of the Company is interested in the resolution.

VI. For investment of compensation u/s 293(1)(c)

RESOLVED THAT the Board of Directors be and are hereby authorised to deal with the money representing compensation received and/or to be received from the Government of India, in terms of the Coal Mines (Nationalisation) Act, 1973, for the taking over of the undertaking of the company, in such manner as is considered necessary and expedient

VII. For authority for borrowing powers to the Board u/s 293(1)(d)

RESOLVED THAT pursuant to provisions of section 293(1)(d) of the Companies Act, 1956, the consent of the Company be and is hereby accorded to the Board of directors of the Company to borrow any sum or sums of money from time to time, on such terms and conditions and with or without security as the Board of directors may in its discretion think fit notwithstanding that the money or monies to be borrowed together with monies already borrowed by the Company (apart from temporary loans obtained from the Company's Bankers in the ordinary course of business) may exceed the aggregate of the Paid-up Share Capital of the Company and its free reserves, that is to say, reserves not so set aside or any specific purposes, provided however, that the total amount so borrowed and remaining outstanding at any particular time shall not exceed 3.00 Crores (Rs. Three Crores only).

Explanatory Statement

Looking into requirements of the business activities carried by the Company, it may require additional funds. Hence, the Board of directors of the Company should be authorised to borrow moneys from time to time, from Banks, Financial Institutions and any other sources. The moneys to be borrowed by the Company may exceed the aggregate of paid-up capital and its free reserves, provided however, the total amount of such borrowings shall not exceed the sum of Rs. 3.00 Crores at any time. This authority can only be exercised by the Board in accordance with the provisions of section 293(1)(d) of the Companies Act, 1956.

Hence, this resolution is proposed as an ordinary resolution for approval of the members.

None of the directors is concerned or interested in the resolution.

VIII. For contributing to charitable fund

RESOLVED THAT the pursuant to the provisions of the section 293(1)(e) of the Companies Act, 1956 and other applicable provisions, if any the consent of the Company be and is hereby accorded to contribute to charitable and other funds not directly related to the business of the Company or the welfare of its employees from time to time in any financial year to the extent of Rs. 20.00 Lacs (Rs. Twenty Lacs) only or 5% of the Company's average net profit as determined in accordance with the provisions of section 349 & 350 of the Companies Act, 1956 during the three financial year immediately preceding, which ever is greater.

FURTHER RESOLVED THAT the Board of directors of the Company be and are hereby authorised to contribute to any charitable and other funds not directly related to the business of the Company or the welfare of its employees from time to time subject to maximum of Rs. 20.00 Lacs (Rs. Twenty Lacs) per annum and to do all such acts, deeds and things as they may consider appropriate to make charitable contribution for and on behalf of the Company.

Explanatory Statement

The Company is often called upon to fulfill certain obligations for the social welfare and to further charity work of charitable organisations.

In the larger interest of the business of the Company and also fulfillment of social responsibilities it is necessary to make certain contributions/donations and other payments to the institutions, organisations, trusts, companies or other persons, not directly relating to the business of the Company or the welfare of the employees, from time to time, in any financial year to the extent of Rs. 20.00 Lacs (Rs. Twenty Lacs) or 5% of the Company's average net profit as determined in accordance with the provisions of section 349 & 350 of the Companies Act, 1956 during the three financial years immediately preceding which ever is greater.

Your director recommend to pass the resolution as set out in the notice, empower to the Board of directors to make necessary charitable contribution for fulfillment of the social obligations of the Company.

None of the director are interested or concerned in the resolution for the charitable contribution if any made to charitable trust.

Appendix 2

Clarifications issued by the Department of Company Affairs

I. Restrictions under section 293 whether applicable to section 25 companies

The question for consideration is whether the Federation of Indian Chambers of Commerce and Industry has to comply with the provisions of section 293 of the Companies Act in connection with its proposal to raise additional resources by issue of debentures. It is stated that the Federation is a company limited by a guarantee to which a licence has been granted under section 25.

Section 293 in terms places a limitation on the powers of the Board of directors of a company to borrow moneys. It states *inter alia* that the amount to be borrowed should not exceed the aggregated of paid-up capital of the company and its free reserves. The argument that is advanced is that the Federation has no paid-up capital, and no free reserve and so provisions of section 293 would not apply to that company. This argument is not sustainable. If a company has no such capital or free reserves, it means that the amount of such capital or reserve is arithmetically zero and in consequence the Board of directors cannot borrow at all. This interpretation is not inconsistent with the scheme of the Act relating to companies granted licence under section 25. There is nothing in section 25 to indicate that the provisions of section 293 would not apply to a company coming within the scope of that section. On the other hand, it is expressly stated in sub-section (2) of that section that the company shall be subject to all the obligations of limited companies, imposed by the various provisions of the Act.

Source: Circular No. 38/2/68-CL III.

II. Borrowing for capital expenditure attracts ceiling under section 293(1)(d)

Section 293(1)(d) as amended does not prohibit the Board from incurring loans without any limit if these loans are temporary loans in the sense defined in *Explanation II*. As regard loans other than temporary loans, if the Board desires to borrow moneys, it can do so only when the amount intended to be borrowed together with the moneys already borrowed does not exceed the aggregate of the paid-up capital of the company and its free reserve or where the limit is exceeded, by obtaining the consent of the company in a general meeting. Thus, if the whole or part of the loan intended to be borrowed is raised for the purpose of financing expenditure of a capital nature, the ceiling specified in section 293(1)(d) will apply. As the loan for financing expenditure of a capital nature is raised only occasionally it is felt that it is not difficult to separate such loans from temporary loans.

Source: Letter No. 8/16(1)/61-PR, dated 9-5-1961.

III. Statutory ceilings on donations to be checked by Registrars — Valuation of shares given as donation under section 293(1)(e)

The provisions of section 293(1) of the Companies Act require the Board of directors of a public company, or of a private company which is subsidiary of a public company, to obtain the consent of the company in general meeting, in case the amount of contribution made by the company to any charitable and other funds in any financial year exceeds the ceiling prescribed in clause (e). In this connection, it has been brought to the notice of this Department that there is a tendency among some companies to make contributions in the form of fully paid-up shares (held by them in other companies) instead of cash. Such a practice has been particularly noticed in a prominent and well-known group of companies, which generally donate in the shape of shares to their own Charity Trusts. Although no objection need be taken to this arrangement so long as the amount represented by the shares donated does not exceed the prescribed ceiling and the statutory requirements are duly complied with in this regard, this Department would like the Registrars to be vigilant in regard to such donations in kind so as to see that the statutory ceilings are not circumvented by intentional undervaluation on the part of companies. It may be mentioned in this connection that the quantification of any donation in kind is necessary for the purpose of disclosure in the profit and loss account. There should, therefore, be no difficulty in examining whether or not the provisions of section 293(1)(c) of the Companies Act have been duly complied with in such cases.

Source: Circular Letter No. 12/13/60-PR(S), dated 18th March, 1960.

IV. Contribution to National Defence Fund not included for determining ceiling under section 293(1)(e)

Any contribution made by the Board of directors of a company to the National Defence Fund need not be taken into account in calculating and determining the limit up to which the Board can contribute under clause (e) of section 293(1).

Source: Letter No. 8/51 (293B)/66- CL-V, dated 31-8-1966.

V. Contributions to political parties

This section does not empower any company to make any contribution to any political party or for any political purpose, to any individual or body, in the absence of provisions to that effect in the 'objects' clause of its Memorandum of Association.

Source: Letter No. 8/16(1)/61-PR, dated 9-5-1961.

VI. Expenditure on advertisement in souvenir issued by political parties

In case of any expenditure incurred by companies on advertisement in souvenirs issued by the political parties, the applicability of the provisions of section 293A of the Act would depend upon the facts of each case as to whether there is a genuine *quid pro quo* in respect of the advertisement or whether it is a donation in the guise of advertisement. In case it is held on the facts of a particular case that the expenditure incurred on such advertisements is a donation in a guise of advertisement, the provisions of section 293A(2) of the Companies Act, 1956 shall be applicable.

Source: Letter No. 8/20(293A)/69-CL.V, dated 12-2-1970.

VII. Expenditure incurred by companies on advertisements in souvenirs issued by political parties

As regards the specific point raised in your letter, it may be stated that section 293A(1) of the Companies Act, 1956 does not prohibit advertisement in newspapers, periodicals or souvenirs. The law does not make any distinction between advertisements in the newspapers, periodicals or souvenirs, whether published by political parties or anyone else. A political party or its branches may publish any number of souvenirs on any occasion including the election period and there is no prohibition under the Companies Act against giving advertisements by a company to such souvenirs. The question of issuing advertisements to newspapers, journals, souvenirs or other publications, is essentially a matter for the internal management of the company and it is left to the wisdom and judgment of the letter to decide on the number and frequency of advertisement at which a company would like to give in the interest of its business. In order to ensure that any such advertisements do not amount to contributions to political parties or for political purposes, it is necessary that the amount paid for each such advertisement should be reasonable and the advertisements are in the interest of the business of the company.

Source: Letter No. 8/20(293A)/69-CL-V, dated 13-1-1971, Circular No. 10/72, dated 10-5-1972.

VIII. Contributions to political parties through dealers and distributors

Any contribution by companies to any political party or for any political purpose to an individual or body is specifically prohibited by sub-section (1) of section 293A. Any contravention of the said prohibition is punishable under sub-section (2) of that section. Any attempt by any company to circumvent the said prohibition by making contributions to a political party or for a political purpose through its dealers and/or distributors is also punishable under the said section read with the relevant provisions of the Indian Penal Code relating to conspiracy and/or abatement, as the case may be. Under the Companies Act, the Central Government has ample powers to detect, from the books of accounts of the companies, any circumvention of the said provisions of the Act. Accordingly, any person agreeing to circumvent the provisions of section 293A would do so at his own risk.

Source: Press Note, dated 18-9-1979.

Chapter 3

Duties and obligations on the Board

Synopsis

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 - 8.11. False loan claims to be criminal offence
 - 8.12. Directors are not liable for offences after they resign
 9. Duty of Court to restrict the powers of the board
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The nature of duties of a director would depend not only on the nature of the company's business but also on the manner in which the work of the company is distributed between directors and other officials.

The position of directors in their relationship to the company are not only as the agent, but they are in some sense and to some extent, trustee or in the position of trustees, as an employee, etc.

1. General position of directors

The directors are in the eyes of the law, the agents of the company in which they are directors. This follows from the position that a company, which is a legal entity, cannot act by itself and it can act only through the medium of human agency, which is known under the Companies Act, 1956 as the Board of directors. Therefore, the general principles of the law of principal and agent regulate the relationship of the company and its directors. Accordingly, where the directors enter into contracts on behalf of a company in the ordinary course the company will be liable and not the directors.

In addition to being agents of a company, the directors are also in the nature of trustee for the assets and properties of the company. They are trustees because they have to hold the company's properties with utmost trust and manage the affairs of the company for the benefit of the shareholders primarily. The duties attached to the directors are fiduciary in nature and they are required to display good faith towards the

company. They are not trustees in the legal sense as the rigid and strict rules applicable to trustees under the Trustees Act do not apply to directors.

Where a director, in addition to being a director, is also in the employment of the company as for instance as managing director or whole-time director or secretary, he will be treated as an employee.

What a board of directors is empowered to do in relation to a particular company depends upon the role and functions assigned to directors as per the memorandum and articles of association of the company. There is nothing, which suggests that simply by being a director in a company, one is supposed to discharge particular functions on behalf of a company. [*S.M.S. Pharmaceuticals Ltd. v Neeta Bhalla* (2005) 63 SCL 93 (SC)].

2. Fiduciary position of directors

Fiduciary capacity, within which directors have to act, enjoins upon them a duty to act on behalf of a company with utmost good faith, utmost care and skill and due diligence and in interest of company they represent. [*Dale & Carrington Investment (P.) Ltd. v P.K. Prathapan* (2004) 54 SCL 601 (SC)].

Even though section 81, which contains certain requirements in matter of issue of further share capital by a company, does not apply to private limited companies, directors in a private limited company are expected to make a disclosure to shareholders of such a company when further shares are being issued. [*Dale & Carrington Investment (P.) Ltd. v P.K. Prathapan* (2004) 54 SCL 601 (SC)].

Power of the directors to issue shares to the members of the company is a fiduciary power to be exercised by them bona fide for the general advantage of the company and the directors are not entitled to use their power of issuing shares merely for the purpose of maintaining their control over the affairs of the company or merely for the purpose of altering a majority shareholding. [*Smt. Shantadevi Pratapsinh Gaekwad v Sangramsinh P. Gaekwad* (2002) 37 SCL 339 (Guj)].

3. Position of an individual director

No director of a company in his individual capacity has power to act on behalf of a company in any way unless the Board of directors delegates any power to him as provided in the Articles.

In *State of Haryana v Brijlal Mittal* (98) (3) Scale 383 (SC), it was held that vicarious liability of a person for being prosecuted for an offence committed under the Act by a company would arise if at the material time he was in charge of and was also responsible to the company for the conduct of its business. Simply because a person was a director of the company it did not necessarily mean that he fulfilled both these requirements to make him liable. Conversely, without being a director a person could be in charge of and responsible to the company for the conduct of its business.

Any director acting individually has no power to act on behalf of the company in respect of any matter except to the extent to which any power or powers of the board have been delegated to him by the board within the limit permitted by the Companies Act or any other law. The position of the Chairman of the board of directors is not substantially different from an individual director. [*Shubh Shanti Services Ltd. v Manjula S. Agarwalla* (2005) 60 SCL 280 (SC)].

Where a director, who was empowered under articles of associations to enter negotiations and contracts, and rescind and vary all such contracts, executed a lease agreement for and on behalf of company, such lease agreement was binding on company even though no separate resolution was passed by Board of directors of company authorising director to execute such an agreement. [*Mohta Alloy & Steel Works v Mohta Finance and Leasing Co. Ltd.* (1997) 89 Comp Cas 227 (Del)].

Unless the power to institute a suit is specifically conferred on a particular director, he would have no authority to institute a suit on behalf of the company. Individual directors are vested with only such powers as are available to them either under the memorandum or articles of the company, or otherwise by the board of directors. [*Floating Services Ltd. v MV 'San Fransceco Dipalola'* (2004) 52 SCL 762 (Guj)].

4. Pooling agreement arrangement between Board of directors

A pooling agreement cannot be used to supersede the statutory rights given to the board of directors to manage the company, the underlying reason being that the shareholders cannot achieve by pooling agreement that which is prohibited to them, if they are voting individually. Therefore, the power of

shareholders to unite is not extended to contracts, whereby restrictions are placed on the powers of Directors to manage the business of the Corporation. It is for this reason that a pooling agreement cannot be between directors regarding their powers as directors. There is vast difference in principle between the case of a shareholder binding himself by such a contract and the Director of the company undertaking such an obligation by compromising his fiduciary status. The shareholder is dealing with his own property. He is entitled to consider his own interests, without regard to interests of other shareholders. However, directors are fiduciaries of the company and the shareholders. It is their duty to do what they consider best in the interests of the company. They cannot abdicate their independent judgment by entering into pooling agreements. [*Rolta India Ltd. v Venire Industries Ltd.* (2000) 24 SCL 13/100 Comp Cas 19 (Bom)].

5. Obligations to have Directors Identification No.

As per the proviso of the section 253 of the Companies Act, 1956 (inserted by the Companies Amendment Act, 1956), every director is compulsorily required to apply for DIN and have a Director Identification No. issued by the Ministry of Company Affairs and give the intimation of the same to every company in which he is a director.

6. Duties of a Nominee Director

Nominee directors being appointed ostensibly to safeguard and protect the interests of the institutions they represent and generally to oversee that the affairs of a company are managed in an efficient manner. But while such nominee directors sit in the Board meeting they are required to consider the proposals that come up before the Board primarily from the interest of the host company. The position of the nominee directors had been very appropriately given by Lord Denning M.R. in *Boulting Act* (1963) 2 Q.B. 606, 626 (as reported in *Palmer's Company Law Vol. 1* 1982) when he observed therein as under:

"There is nothing wrong in it. It is done every day. Nothing wrong so long as the director is left free to exercise his best judgment in the interest of the company which he serves but if he is put upon terms that he is bound to act in the affairs of the company in accordance with the directions of his patron, it is beyond doubt unlawful. It therefore, follows that a nominee director cannot act always as if he is a watch dog of his patron, but he has to consider the interest of the company as a whole including the financial stake of his patron. When the two interests are in harmony, there is no problem. Where on any matter there is a clash of interest between the company in which he is a director and his patron, the nominee director may be in a difficult situation, in which eventuality he is not expected to act against the patron."

7. Directors' duties of care, due diligence and skill

The non-executive directors in a company are required to display such care, diligence and skill as would reasonably be expected from a director who is appointed and who is entrusted with duties pursuant to his special qualification. The nature of duties of ordinary directors has been clearly spelt out in *City Equitable Fire Insurance Co.* (1925) Ch. 407, 427. The general principles enunciated therein and reported in *Palmer's Company Law Vol. 1* 1982 are given below:—

7.1. Directors not expected to be experts

A director is generally expected to exhibit in the performance of his duties that amount of skill that may reasonably be expected from a person of his knowledge and experience. He need not show the knowledge of an expert. The position was so nicely put in the said case when the judge said that a director in a life insurance company does not guarantee that he has the skill of an actuary or physician.

7.2. Directors must exercise reasonable care and judgment

If directors act within their powers, honestly for the benefit of the company with such care as is reasonably expected from them, they discharge their equitable as well as their legal duty with the company. They are bound to take independent outside advice and must exercise their judgment on such advice. However, they are not personally liable for error in judgment.

Where the company was the offender or defaulter it would be the company as a person from whom the fine would be realizable. In the absence of fixation of liability on any particular person on behalf of the company, it would be the liability of the company alone. The company having a separate legal personality and independent corporate existence, issuance of a non-bailable warrant or distress warrant against the

Managing director or a director to realise the same is not permissible. [*Hreeshikesh Panda v State of Orissa* (97) 89 Comp Cas 613 (Ori)].

7.3. Director may rely on the work of other officers and employees

In respect of duties that may be left to some other officials considering the exigencies of business, a director in the absence of grounds for suspicion, is justified in trusting that official to perform such duties honestly.

Where the directors are required by the articles of association to control the management of the company, and they have blindly trusted the dishonest manager, they are acting unreasonably, if not dishonestly, and thus they are liable.

7.4. Attendance at the Board meetings

A director is not bound to attend every Board meeting but he ought to attend them whenever, he is reasonably able to do so. However, deliberate and persistent non-attendance may amount to such a dereliction of duty as to constitute negligence. Section 283(1)(g) provides that the office of the director shall become vacant if he absents himself from 3 consecutive meetings or from all meetings of the Board continuously for three months, whichever is longer, without leave of absence from the Board.

8. Obligations on the Board of directors

The Companies Act, 1956 has cast certain obligations on the Board of directors of a company which must be carried out by it. The obligations cast upon the Board by the Act are illustrated below:—

8.1. To Call an Extraordinary General Meeting on requisition of members

Section 169(1) of the Companies Act, 1956 casts an obligation upon the Board of directors of a company to call an extraordinary general meeting when the requisition to this effect is made by the requisite number of members of the company. The Board shall on the requisition of such number of members of the company as is specified in section 169(4), forthwith proceed duly to call an extraordinary general meeting to comply with all the obligations placed on them by the Act.

The Board should, within 21 days from the date of the deposit of a valid requisition in regard to any matter, proceed duly to call meeting for consideration of such matters on a day not later than 45 days from the date of the deposit of the requisition, otherwise, it would be the turn of the requisitionists to call a meeting by themselves.

8.2. Approval and authentication of Balance Sheet and Profit and Loss Account

Section 215(1)(ii) *inter alia* provides that every balance sheet and profit and loss account shall be signed by its manager or secretary, if any and by not less than two directors of the company, one of whom shall be a managing director where there is one. It is an important obligation cast upon the Board of directors of a company that the balance sheet and the profit and loss account is compulsorily required for approval by the Board of directors before they are signed on behalf of the Board in accordance with the provisions of section 215 and before they are submitted to the auditors for their report thereon.

8.3. Laying the annual accounts before each annual general meeting

Section 210(1) casts an obligation upon the Board of directors of each and every company to lay down following documents before each annual general meeting of the company:—

- (a) a balance sheet as at the end of the period specified under section 210(3); and
- (b) a profit and loss account for that period.

In the case of a company, which is not carrying on business for profit, an Income and Expenditure Account shall be laid before the company in every annual general meeting instead of a profit and loss account. [Section 210(3)]

8.4. Preparation and attachment of the Directors' Report to every Balance Sheet laid before the members in an annual general meeting

Since the members are ultimate owners they should be kept abreast of the important affairs of the concerned company. Board has been made duty bound to attach a Directors' Report to every Balance Sheet laid before a company in general meeting. [Section 217]

8.5. Appointment of first auditors

Section 224(5) of the Act states that the first auditor or auditors of a company shall be appointed by the Board within one month of the date of registration of the company and the auditor or auditors so appointed shall hold office until the conclusion of the first annual general meeting.

8.6. Obligation to exercise certain powers only at meeting

Section 292 casts an obligation upon Board of directors of a company to exercise certain powers only at Board meeting.

8.7. Restrictions on powers of the Board

The Board is under an obligation as per section 293 to exercise certain powers stated therein and in accordance with the provisions of the Memorandum and Articles, only with the consent of the company in general meeting.

8.8. Whether claim to be exonerated for violation of law committed by director?

A person who had enjoyed certain benefits, status and privileges as a director could not contend that he would receive only garlands and sitting fee; he is expected to discharge functions of a director and is answerable for acts of omission or commission on his part. He must be prepared to receive brickbats as well.

A director either full time or part time, either elected or appointed or nominated, was bound to discharge his functions and should take all diligent steps and care of the company's affairs. In proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of statutory provision of the act and the rules there is no distinction between the whole-time director or part time director or nominated or co-opted director. The liability for such acts of commission and omission is equal. [*Madhavan Namibiar v RoC* (2002) 46 CLA 90 (Mad)].

8.9. Status of any private agreement between shareholders

In *V B Rangraj v V B Gopal Krishnan* AIR 1992 SC 453 (1991), it was held that any private agreement between shareholders is not binding and cannot be enforced by the company, as long as it is not incorporated in Articles. In *Volvo Lastvagar v Morgardshammer India Ltd.* (1998) 30 CLA 382 (CLB), it was held that Company cannot enforce private agreement between two shareholders prohibiting transfer of shares to another group, when there is no such restrictive stipulation in Articles of the company.

In *Mrs. Pushpa Katoch v Manu Manharani Hotels* (2001) 31 SCL 97 (CLB), it was held that private arrangement among members regarding pre-emption rights which is not part of Articles of the company cannot bind the company. It has been held that a family arrangement not incorporated in the Articles cannot bind the company. [*V. B Gopalkrishnan v New Theatres* (2001) Comp Cas 98 40 CLA 289 (CLB)].

8.10. All the directors not liable for cheque bounces

The Supreme Court held that directors of a company could not be prosecuted if a cheque is issued by the company was dishonoured because of insufficient funds, instead the director responsible for the particular deal would be liable under the Negotiable Instrument Act.

It was said in case of *SMS Pharmaceutics Ltd.* that there is no universal rule that a director of a company is in charge of its everyday affairs. There is no magic as such, in a particular world be it director, manager or secretary, it all depends upon the respective roles assigned to the officers in the company. The court said the liability of issuance of cheques could not lie with a person simply because he held an office or a position in a company as involved act or omission on the part of a person and there is no deemed liability of a director in such cases.

8.11. False loan claims to be criminal offence

The Reserve Bank of India has directed the Banks to file criminal proceedings alongwith civil suits against the companies and its directors that had furnished mis-leading information that influenced the credit decisions of the Bank. In case of directors stand as guarantor in their personal capacity the bank may ask to declare on oath their borrowings, assets, and all other material facts, which can be the basis of criminal action, if the details are not found to be correct.

8.12. Directors are not liable for offences after they resign

In case of *Suresh Prabhu* (BOM)(2003) 113 Comp Cas. the Bombay High Court held that the director has resigned on 6th May, 1996 and it was accepted on 7th May, 1996 and Form 32 filed with the Registrar of Companies shows that he has resigned w.e.f. 15th March, 1997. The Articles of Association of the company provided for tendering resignation and for the person ceasing to be a director with immediate effect, the Court held that that in respect of date 6th May, 1996 on which he ceased to be a director can not be he held responsible for any default committed by the company thereafter.

9. Duty of Court to restrict the powers of the board

It is the duty of the court to recognise the corporate democracy of a company in managing its affairs. It is not for the court to restrict the powers of the board of directors. It will not be open to the court to interdict the functions of the board-managed companies. It will not be open to the court to interfere with the day-to-day functions, management and administration of a company unless it is established that the decision taken by the Board are *ultra vires* the Act or articles of association of the company. It is not for the court to dictate to the board as to how it should function. When the matter comes before the Court, the Court is not concerned with *inter se* relationship of the parties. But, it has to keep in mind the corporate democratic principles. [*Vivek Goenka v Manoj Sonthalia* (1995) 83 Comp Cas 897 (Mad.)].

If power to purchase shares is exercised by directors not for benefit of company but simply and solely for their personal aggrandisement, court will interfere and prevent them from doing so. [*Saurashtra Cement Chemical Industries Ltd. v Esma Industries Ltd.* (2001) 32 SCL 524 (Guj)].

Appendix 1

Specimen of Power of Attorney

BY THIS POWER OF ATTORNEY, I, S. R. A., S/o Shri R.D.A. in the capacity of the Chairman cum Managing Director of M/S AEC Limited (a company incorporated under the Companies Act, 1956) having its Registered Office at XXXA, Pithampur (M.P.) hereinafter called 'the Company' duly authorised by the Board and/or by the Articles of Association of the Company, do hereby nominate, appoint and constitute the Power of Attorney Holder to Mr. AD, S/o Shri JKD, R/o C-396, Saraswati Vihar, Delhi - 110034, the General Manager (Operations) (hereinafter referred to as the 'said attorney holder') of the Company to do all the following acts, deeds, matters and deals, on my behalf for and on behalf of the Company.

The said attorney holders shall be empowered and authorised to do the following activities independently:—

1. To make total marketing and arrange for sales function of the Company including planning and execution of sales orders from time to time.
2. To recruit and appoint intermediary agencies and staff and to negotiate and decide their terms, conditions, remuneration, etc.
3. To make suitable arrangement for the purchase department and to negotiate and decide terms, value, quantity and other conditions and to control the centralised purchasing for the Company.
4. To prepare and form personnel policies and decide the functions of the staff and executive from time to time.
5. To handle the total administration of the plant at Pithampur and to arrange for the security of the plant.
6. To sign and also authorise for signing gate passes for inward and outward movement of goods and materials from the plant of the Company.
7. To handle and supervise all the matters relating to PF, ESI, Customs, Excise, Sales Tax, Income Tax, Labour Laws, Factories Act, Import-Export Policies, Foreign Currency management and dealing with all the Government authorities for and on behalf of the Company as a principal officer of the Company.

8. To supervise and control on cash accounting functions of the Company including passing and signing of all cash and general expenses vouchers of the company from time to time.
9. To appoint and remunerate any consultant for the legal, secretarial, taxation, finance, labour and other related works of the company.
10. To appear and defence in any matter which is pending before the Courts or Tribunals which has been filed against the company and/or as may be filed later on and to file any suit, proceeding, case with any Court or Tribunal, authority to protect the interest of the company from time to time.

And I, do hereby agree and undertake to ratify all acts, deeds and things which may be lawfully done by my said attorney on my behalf in pursuance of this Power of Attorney and the same shall be binding on me and be in full force and effect.

And that the powers herein delegated shall be exercised by the said attorney.

Given at on thisth day of,

For AEC Ltd.
(S.R.A.)
Chairman cum Managing Director

Accepted By
AD
General Manager (Operations)
Signature of Shri AD
attested
(S.R.A.)
Chairman-cum-Managing Director

Witness: 1

2.