SECTION 210

ANNUAL ACCOUNTS AND BALANCE SHEET

Drawing up of final accounts in respect of companies which are under process of amalgamation - Whether obligatory

A question has been raised whether a company which is in the process of being amalgamated with another company is required to draw up its final account as required under sections 210 and 211. This matter has been examined in the Department and it has been decided that till the amalgamation order is made by the court and the amalgamation scheme is in fact sanctioned, the transferor company is required to continue complying with the various provisions of the Act including those relating to preparation, presentation, circulation and filing of accounts as and when they become due for compliance. The failure to do this will, among others, mean the denial to the shareholders and the public knowledge about the financial position of the company because the amalgamation petition for some reason or the other may not be decided for quite some time.

* CIRCULAR NO.12/77[1/1/77-CL-V AND 2/331/75-CL II], DATED 21.11.1977.

Whether accounts once adopted and passed in annual general meeting can be revised in a subsequent meeting

Query : Whether annual accounts once adopted and passed in an annual general meeting can be revised in a subsequent meeting?

Answer : The matter relating to revision of accounts already adopted and any amendment in the articles of association containing any provisions to the contrary has since been re-examined in this Department in consultation with Department of Legal Affairs. The view that has emerged is that the accounts once adopted and passed in an annual general meeting become final and cannot be reopened in subsequent meeting. The special resolution passed empowering the company to amend its accounts also become invalid under the provisions of section 9(b).

Note: The view has since been revised as per the deliberations of the Conference of Regional Directors, Registrars of Companies and Joint Directors held on 25th/26th June, 1986. the revised view is that revision of annual accounts for meeting technical requirements of taxation laws is not prohibited under the Companies Act and as such it may be taken as permitted.

LETTER NO.3(4)80-CL-VI, DATED 17.8.1981 [EXTRACTS] ADDRESSED TO THE REGISTRAR OF COMPANIES, BOMBAY.

Laying accounts at annual general meeting within statutory period laid down in sub-section(3) of the section - Whether mandatory on the part of board of directors.

Attention is invited to this Department's Circular No.4/74, dated 2.2.1974 (reproduced on p.3.127 post) the defaults under sections 159, 166, 210 and 220 are separate offences. A plea has been raised that in accordance with the aforesaid Circular, dated 2.2.1974, it is possible for a company to adjourn the annual general meeting in case the accounts are not ready, without complying with the requirements of section 210. In this connection, it may be stated that it is mandatory on the part of the board of directors of the company to lay the accounts at every annual general meeting within the statutory period, laid down in sub-section (3) there of. In case the annual general meeting is held in accordance with the provisions of section 166, and the accounts are not placed thereat, the same not being ready, it is no doubt open to the company concerned to adjourn the said general meeting to a subsequent date for laying the accounts but then the adjourned annual general meeting must itself be held within the statutory period (including the period of extension thereof, if any, allowed as provided in section 166(1)]. That being so, procedure of adjo8ring the annual general meeting cannot be so adopted as to bypass the provisions of section 210. Thus, in case the accounts are not placed at the annual general meeting or the adjourned annual general meeting, in either case, within the statutory period laid down in sub-section (3) of section 210, the delinquent directors are liable for prosecution under sub-section (5) thereof. In this connection, a reference may be make to a decision of the Division Bench of Calcutta High court in Bejoy Kumar Karnani v. Asstt. Registrar of Companies [1985]58 Comp. Cas. 293 wherein it has been held that if the said Circular dated 2.2.1974 is to be literally construed divorced of the provisions of sections 166 and 210 such adjournments may go on ad infinitum and in such an event not only the provisions of section 166 but also the provisions of sections 168 and 210 would be rendered nugatory, leading to chaos and confusion in the matter of enforcement of the relevant provisions of the Act by the Registrar of Companies.

It is requested that the aforesaid views of the Department may be brought to the notice of your constituents, by way of further clarification to this Department's Circular, dated 2.2.1974.

* CIRCULAR NO. 2/85[8/1(210/220]/85-CL-VI DATED 20.3.1985.

Compliance with requirement as Financial year as the uniform accounting year under the Income-tax Act, 1961 - Grant of extension of time for holding annual general meetings under section 166(1) and permission to extend financial year under section 210(4), proviso

I am directed to say that the concept of a uniform accounting year is being brought in from the assessment year 1989-90, as per section 3 of the Income-tax Act, 1961, as amended by the Direct Tax Laws (Amendment) Act, 1987, so that the first uniform date on which all companies are required to furnish to the assessing authorities statement of affairs is as at 31st March, 1989. You are, therefore, advised to grant extension of time for holding annual general meetings under the second proviso to sub-section (1) of section 166 and permission to extend financial year under the proviso to sub-section (4) of section 210 of the Companies Act, 1956, liberally, to the extent permissible under the Companies Act, 1956, if the companies make such request of purposes of compliance of the aforesaid provisions of the Direct Tax Laws (Amendment) Act, 1987).

* CIRCULAR NO.7, DATED 23.5.1988.