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DELEGATION OF POWER TO INVEST/ADVANCE LOANS BY BOARD OF DIRECTORS TO OFFICERS

By T V Narayanaswamy

Board of directors – Delegation of power to make investment and give loans by Board of directors to officers – The Board of directors could pass an omnibus resolution identifying the class of persons or entities and the ceiling up to which the investment could be made, loans granted, guarantee provided or security given. If need be the Board also could broadly lay down the terms and conditions subject to which the investment could be made or loans given, etc. These powers could be delegated to the officers of the company at various levels either singly or jointly.

QUERY

Whether the power to make investment and give loans could be delegated by the Board of directors of a company to its officers?

REPLY

Under clauses (e) and (f) of sub-section (3) of section 179 of the Companies Act, 2013 ('the Act') the Board of directors of a company can invest the funds of the company, and grant loans or give guarantee or provide security in respect of loans, respectively. First proviso to this sub-section empowers the Board by passing a resolution in a meeting to delegate, inter alia, the aforementioned powers to any committee of directors, the managing director, the manager or any other principal officer of the company or in the case of a branch office of the company to the principal officer of the branch office. This provision is similar to the provision in section 292 of the Companies Act, 1956 ('1956 Act'). In this regard a question would arise as to whether these powers could be delegated by the Board through a resolution passed at its meeting to any other officer or officers of the company?

The phrase ‘principal officer of the company’ used in the first proviso to sub-section (3) of section 179 has not been defined. In such a situation the normally understood meaning of the said phrase should be assigned to it to understand the meaning of the said phrase. There is no difficulty in understanding the meaning of all the words occurring in the said phrase except the word ‘principal’. The dictionary meaning of the said word is ‘first in order of importance; main’. In this light apart from the committee of directors, the managing director, the aforesaid powers could be delegated only to the main, i.e., chief executive officer (‘CEO’) of the company. This is so because there cannot be more than one principal officer in a company. So would be the case in the case of the branch office of the company.

Strictly speaking the aforesaid powers can be delegated only to a committee of directors, the managing director, the manager or the principal officer (i.e., the CEO) of the company. Such a delegation should be workable in the case of a small size or a medium size company and not in the case of a big or giant company. It would not be practicable or workable for such a big company to delegate these powers apart from the Committee of directors, the managing director or manager to only one other person, i.e., the CEO for there will be innumerable cases of this type which may at certain times may consume the entire working time of the CEO, thereby depriving him to attend to other useful or profitable activities of the company which are of course, in the interest of the company and of the large body of shareholders such a company would have.

This practical difficulty could be warded off by such companies by the Board of directors passing an omnibus resolution identifying the class of persons or entities and the ceiling up to which the investment could be made, loans granted, guarantee provided or security given. If need be the Board also could broadly lay down the terms and conditions subject to which the investment could be made or loans given, etc. Within the aforesaid parameters powers could be delegated in this regard to the officers of the company at various levels either singly or jointly.

Such a delegation would establish substantial compliance of the provisions of sub-section (3) of section 179. Such a delegation is in consonance with rule 13(2) of the Companies (Meetings of the Board and its Powers) Rules, 2014, which permits of passing of such an omnibus resolution for the purposes of enlarging the powers of the Board of directors to making investments, etc., under sub-section (3) of section 186 of the Act and as such would impliedly be recognised by the Central Government.