

ADJOURNMENT OF ANNUAL GENERAL MEETING

BACKGROUND:

Many professionals have been raising question on interpretation/provisions relating to adjourned meeting:-

Situation:

The Companies Act, 2013 permits to adjourn the Annual General Meeting ("here after called as AGM") for want of quorum or for any other purpose. Exp. Financial statements are not ready on the date of AGM therefore same may be approved at adjourned AGM.



- ❖ Whether Adjournment of AGM after the prescribed period (eg. 30th September) is default of Section 96 of Companies Act, 2013 or not?

Let's first discuss the questions:

Whether holding of adjourned AGM after expiry of period mentioned in section 96 is compliance of provisions of section 96 or not. Some people holds a view that holding of AGM with in time and then adjournment of meeting and holding of adjourned meeting after expiry of time as prescribed u/s 96 is compliance of section 96. One of the arguments put forth by the people supporting the first school of thought is that section states about holding of AGM within time not about conclusion of AGM within time.

Statutory Provisions Contained Under the Act:

Provisions of the Companies Act, 2013 to the extent relevant for our discussion, are stated as under (with necessary comments and modifications, wherever felt necessary).

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1. As stated in Section 196(1) Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next.
Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year.
2. As stated in 103(2): If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company– (a) the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine.
3. As stated in clause 15.6 of Secretarial Standard 2 At an adjourned Meeting, only the unfinished business of the original Meeting shall be considered.
4. If any default is made in holding a meeting of the company in accordance with section 96 or section 97 or section 98 or in complying with any directions of the Tribunal, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lacs rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

Interpretation Note:

Therefore, as per the language of section 96 discuss about the time period of holding of AGM. This section doesn't states about provisions relating to adjournment of AGM.

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 137 of

the Act. 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. In case the annual general meeting is held in accordance with the provisions of section 96 of the Act, 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 annual general meeting to a subsequent date for laying the accounts to comply with the provisions of section 129(2).

In Bejoy Kumar case (supra) referred to in the Circular (Circular No. 4 of 1974, dated February 2, 1974) the Calcutta High Court did not accept the contention that an annual general meeting could be adjourned beyond the statutory period limits as laid down in sections 96 and 129 of the Act. As stated in section 137(1) {extract of provision given below} it obligatory for the companies to file with the Registrar annual accounts within the time-limit prescribed in section 137(1) even if the meeting is adjourned without adopting the annual accounts.

Extract of Section 137(1)

A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting.

where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such Unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose was amended by the Companies (Amendment) Act, 1988

CONCLUSION:

Hence, considering the provisions of Section 96, 137(1) one can opine that every company must file the annual accounts with the Registrar within thirty days of the annual general meeting irrespective of whether the annual general meeting is held or not or whether the annual accounts are adopted or not. Needless to state, consistent with the view taken by the Calcutta High Court, every annual general meeting, including its adjournment, if any, must be held within the period limits laid down in section 96(1). One can refer the following below mentioned cases:

Thus, here opine that the adjourned annual general meeting should be held within the maximum time-limit allowed by this section 96.

The adjourned annual general meeting must be held within the maximum time-limit allowed by this section. In *Mundhra (M.D.) v. Asst. Registrar of Companies, (W.B.), (1990) 50 Com Cases 346 (Cat)(DB)*; *Bejoy Kumar Karnani v. Asst. Registrar of Companies, (W.B.), (1985) 58 Com Cases 293 (Cal)*; *Subal Dutta & Sons Pvt. Ltd. v. Asst. Registrar of Companies, W.B., (1986) 59 Com Cases 822 (Cal)*.

Any other opinion is also welcome for further clarity of the provision of the Companies Act.

FAQ's:

- ❖ Section 96(2) provides that every annual general meeting shall be called for a time during business hours 9 a.m. and 6 p.m. on any day that is not a National Holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situate.

Is it necessary that notice of the adjourned general meeting is to be given to the members of a Company?

As per Section 103(2) If the quorum is not present within half-an-hour from the time appointed for holding a meeting of the company—

- ❖ the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine; or
- ❖ in case of an adjourned meeting or of a change of day, time or place of
- ❖ meeting under clause (a), the company shall give not less than three days notice to the members either individually or by publishing an advertisement in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated

❖ Whether a Company can adjourn meeting by subsequent notice?

In *Smith v. Paranga Mines Ltd.*, (1906) 2 Ch 193, it was held that once a notice of the meeting is given, it cannot be adjourned by a subsequent notice. The Board of Directors does not have this power. The proper course will be to hold a meeting and resolve the adjournment of it to any future convenient date.

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