

Vacation of Office by Directors (Sections 283 – 284)

Removal of Directors (Section 284)

Question 1

Mr. Stubborn is a director of M/s Doubtful Industries Ltd. He along with other two directors has been running the Company for the past twenty years without declaring any dividends or giving any benefit to the shareholders. Frustrated by this, some shareholders are desirous of giving notice to pass a resolution with the support of other shareholders for his removal as a director in the Annual General Meeting of the Company to be held in the month of December of 2001. State the procedure to be followed for the removal of Mr. Stubborn as a director and the right of Mr. Stubborn to defend his position. **(November, 2001)**

Answer

Mr. Stubborn a director of M/s Doubtful Industries Ltd., can be removed by following the procedure laid down in Section 284 of the Companies Act, 1956. The procedure is as under:

- (i) An ordinary resolution is required to be passed at the general meeting of the company.
- (ii) A special notice, as provided in Section 190 of the Act is required to be given to the company at least 14 days before the general meeting.
- (iii) On receipt of the notice, the company has to send a copy of the notice to Mr. Stubborn and he is entitled to be heard on the resolution at the meeting.
- (iv) Mr. Stubborn is also entitled to make a representation in writing to the company and the same has to be sent to all the members by the company.
- (v) In case the representation has reached or the same could not be sent to all the members the same has to be read out at the meeting.
- (vi) Such a representation need not be sent to the members or read out at the meeting if on the application of the company or any person aggrieved, the Company Law Board is satisfied that the rights conferred under this section are being abused to secure needless publicity for defamatory matter and passes an order to this effect.

If at the general meeting the resolution is passed by a simple majority, Mr. Stubborn will have to step down from the office as director of the company.

10.2 Corporate and Allied Laws

Question 2

- (i) *Mr. SDR, a shareholder in M/s JKP Ltd. holding ten equity shares of ₹ 10 each fully paid up wants to give a special notice to the company for removal of Mr. EDM, a Director of M/s JKP Ltd. without stating any reason in the notice. You are required to state as per the provisions of the Companies Act, 1956 and/or any decided case law whether Mr. SDR is entitled to do so.*
- (ii) *Would your answer be different, if Mr. EDM was a Director appointed by the Central Government under Section 408 of the Companies Act, 1956?*
- (iii) *Explain briefly the provisions of the Companies Act, 1956 relating to removal of a Director in case of receipt of an appropriate special notice by the company for this purpose.*
(May, 2004, May 2007)

Answer

- (i) The problem as stated in the question is governed by the provisions of section 284 of the Companies Act, 1956. Sub-section (2) of the said section states that a special notice is required of any resolution to remove a director. The section does not put any condition in respect of the number of members or their shareholding and furnishing any reason therefore. Accordingly, the Karnataka High Court in the case of *Karnataka Bank Ltd. Vs. A.B. Datar & Others* reported at [1994] 79 Comp. Cases 417 held that there is no requirement with regard to the number of members or their shareholding and even one member is entitled to give special notice for removal of director. The court also held that there is no need to give any reason for removal of a director in the resolution proposed to be moved. Hence Mr. SDR holding only ten equity shares can alone give a special notice for removal of Mr. EDM from the office of director of M/s JKP Ltd.
- (ii) According to section 284(1) of the Companies Act, 1956, the provisions relating to removal of directors are not applicable to the directors appointed by the Central Government under section 408 of the said Act. Hence, in case Mr. EDM was a director appointed by the Central Government under the said section 408, Mr. SDR would not be entitled to give any special notice under section 284 for removal of director.
- (iii) On receipt of notice of a resolution to remove a director, the relevant provisions of the Companies Act, 1956 in this regard are as follows:
 - (a) The company has to forward a copy of the notice to the concerned director. [Section 284 (3)].
 - (b) The concerned director, whether he is a member of the company or not, shall be entitled to be heard on the resolution at the meeting. [Section 284 (3)].
 - (c) In case the concerned director makes any representation in writing of reasonable length and requests the company to notify the same to the members of the company, the fact of receiving the representation should be stated in the

notice of the meeting and a copy should be circulated to all the members of the company. [Section 284 (4)].

- (d) In case the representation received by the company is too late for inclusion in the notice or if there is an omission of the part of the company, the same should be read out at the meeting [Section 284(4)].
- (e) The company or the person who claims to be aggrieved may make an application to the Central Government seeking exemption from circulating or reading out the representation if the rights are sought to be abused to secure needless publicity for defamatory matter and the Central Government may pass an order granting such exemption. [Proviso to Section 284 (4)].

Question 3

Mr. Adam, a 15% shareholder of a company and other shareholders have lost confidence in the Managing Director (MD) of the company. He is a director not liable to retire by rotation and was re-appointed as Managing Director for 5 years w.e.f. 1.4.2005 in the last Annual General Meeting of the company.

Mr. Adam seeks your advise to remove the MD after following the procedure laid down under the Companies Act, 1956.

- (i) *Specify the steps to be taken by Mr. Adam and the Company in his behalf;*
- (ii) *Draft a suitable resolution to be passed for removal of MD;*
- (iii) *Is it necessary to state reasons to support the resolution for his removal? (May 2006)*

Answer

- (i) Under Section 284 of the Companies Act, 1956, a company may, by ordinary resolution, remove a director before the expiry of his tenure. For the purpose, special notice from a shareholder (Mr. Adam in the present case) shall be required to be given to the company for moving a resolution to remove a director. On receipt of notice, the company shall forthwith send a copy thereof to the director concerned (MD in the present case) and he shall be entitled to be heard on the proposed resolution at the meeting. Copy of the representation, if any, made by the director be also sent to all members of the company to whom notice of the general meeting is normally sent. In case, the representation is received too late, the same shall be read at the meeting. The representation need not be sent if the Company Law Board is satisfied that it will cause needless publicity for defamatory matter.

Under Section 190, special notice of the intention to move the resolution shall be given not less than 14 days before the meeting.

In the present case, if the AGM is due to be held, Mr. Adam may send the special notice 14 days before the AGM. Otherwise, he may request the company to convene EGM under section 169 for consideration of the special notice and resolution for removal of MD. He already holds more than 10% shares in the company.

10.4 Corporate and Allied Laws

Once the ordinary resolution is passed in the general meeting, MD will cease to be a director of the company and consequently MD of the company.

- (ii) Mr. Adam may give special notice of his intention to move the following resolution, as ordinary resolution: "RESOLVED THAT Mr., Managing Director of the Company be and is hereby removed as a director of the company under Section 284 of the Companies Act, 1956 with immediate effect."
- (iii) A statement of reasons is not necessary to support the resolution for removal of a director. *LIC vs. Escorts Ltd. (1986) 59 Comp. Cases 548(SC)*