

Meetings of Board (Sections 285 – 290)

Board to meet at least once in every three calendar months (Section 285)

Question 1

The Board of Directors of ABC Ltd. met thrice in the year 2004 and the 4th Meeting, though called, could not be held for want of quorum.

Examine with reference to the relevant provisions of the Companies Act, 1956, the following:

- (i) *Whether any provisions of the Companies Act, 1956 have been contravened?*
- (ii) *Is a Director bound to attend the Board Meetings and when his frequent absence from the Board Meeting may be excused?* **(November 2005)**

Answer

- (i) As per Section 285 of the Companies Act, 1956, a company must hold a meeting of its Board of Directors at least once in every three calendar months and there should be at least four directors' meeting every year. However, the Central Government may by notification in the official Gazette, direct these provisions will not apply in relation to any class of companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification. But in the terms of Section 288(2), a company shall not be deemed to have contravened the provisions of Section 285 where the meeting had been called but could not be held for want of a quorum.
- (ii) Though a director is not so bound to attend the Board meetings, nonetheless, he will be guilty of breach of duty if he fails to attend the Board meetings with reasonable regularity without sufficient cause being shown for his non-attendance. Willful non-attendance on his part may give rise to his liability on ground of negligence if it is patently prejudicial either to the company or to the general body of shareholders. Fairly frequent absence from the Board meetings may, however, be excused if the entire control is exercised by a single director or if the Board is pretty large in number (*Re Denhom & Co. D.25 ch. D. 752 Marquis of Bute's Case (1892)2 Ch. 100*). The fewer the directors, the more onerous is the duty to attend.

Question 2

What is the procedure to be followed, when a board meeting is adjourned for want of quorum?

Answer

- (i) Section 288 of the Companies Act, 1956 provides: that if a Board meeting could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall

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automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place. It is also provided that section 285 (i.e. frequency of Board meetings) shall not be deemed to have been contravened merely by reason of the fact that a meeting of the Board which had been called in compliance with the terms of that provision, could not be held for want of quorum.

- (ii) Section 289 of the Companies Act, 1956 provides for passing a resolution by circulation, or what are commonly known as circular resolutions. No such resolution shall be deemed to have been duly passed by the Board or a committee thereof, of a company, unless the following conditions are complied with, viz:
- (a) the draft resolution, together with supporting papers has been circulated, to all the directors, or members of the Committee of the quorum for a Board meeting and
 - (b) to all directors of the Board or members of the Committee who are not in India, at their usual address in India, and
 - (c) the same has been approved by such of the directors then in India, or by a majority of them, who are entitled to vote on the resolution.

Question 3

PQR Limited held three board meetings till 31st December, 2008 during the financial year 2008-09. The next board meeting was due to be held on 27th March, 2009, but for want of quorum the meeting could not be held. A group of shareholders complained that the Company has violated the provisions of Section 285 of the Companies Act, 1956 in not holding the required board meeting. Further, Mr. P and Mr. Q who are the directors of the Company informed the Company their inability to attend the meeting because the notice of the meeting was not served on them. Discuss whether there is any default on the part of the Company and the consequences thereof. What will be the quorum in the given situation? (November 2009)

Answer

Section 285 of the Companies Act, 1956 requires Board of Directors to meet at least once in every three months, irrespective of whether it is the board of a public Company or a private Company and at least four such meetings must be held in every year. However, the Central Government may, by notification in the Official Gazette, direct that these provisions will not apply in relation to any class of Companies or will apply in relation thereto subject to such exceptions, modifications or conditions as may be specified in the notification.

As per Section 288 of the Act, if a meeting of the board could not be held for want of quorum, then, unless the articles otherwise provide, the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a public holiday, till the next succeeding day which is not a public holiday, at the same time and place.

The provisions of Section 285 shall not be deemed to have been contravened merely by reason of the fact that a meeting of the board which had been called in compliance with the terms of that Section could not be held for want of a quorum.

As the meeting could not be held for want of quorum, it cannot be said that PQR Ltd has violated the provisions of Section 285 of the act.

Notice of every meeting has to be served in writing on each director for the time being in India, and at his usual address in India to every other director (Section 286). Every officer of the Company whose duty is to serve the notice as aforesaid and who fails to do so shall be punishable with fine extending to Rs.1000 (Section 286).

As no notice, was served on officer of the Company who is responsible for the default shall be punishable with fine to the extent of one thousand rupees.

The Supreme Court, in case of *Parmeshwari Prasad vs. Union of India* (1974) has held that the resolutions passed in the board meeting shall not be valid, since notice to all the Directors was not given in writing. Notice must be given to each Director in writing. Hence, even though the directors concerned knew about the meeting, the meeting shall not be valid and resolutions passed at the meeting also shall not be valid.

In relation to board meeting quorum implies fully qualified and disinterested directors who must be present at the meeting, so as to enable the board of which they are the constituents to legally transact the business thereat. According to Section 287 the quorum of board meeting is one third of the total strength of board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strengths are to be derived after deducting the number of directors whose offices are vacant.

Notice of meetings (Section 286)

Question 4

A director goes abroad for a period of more than 3 months and an alternate director has been appointed in his place under Section 313(1). During the period of absence of the original director, a board meeting was called. In this connection, with reference to the provisions of the Companies Act, 1956, advice whom should the notice of Board meeting be given to the "original director" or to the "alternate director"?

Answer

Notice of every Board meeting has to be served in writing on each director for the time being in India, and at his usual address in India to every other director. Every officer of the company whose duty is to serve the notice as aforesaid and who fails to do so shall be punishable with fine extending to ₹ 100 (Section 286). It is usually the secretary of the company on whom it casts the duty to serve the notice as aforesaid. It should be noted that the company is not liable for the default in the service of the said notice; it is only the officer in default who is subject to the said penalty. Although there is no legal precedence in this regard, it would be a

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prudent practice on strictly construing Section 286 that the notice should be served to the alternate director as well as on the original director who is outside India for the time being.

Question 5

The Board of Directors of M/s Infotech Consultants Limited, registered in Calcutta, proposes to hold the next board meeting in the month of May, 2000. They seek your advice in respect of the following matters:

- (i) *Can the board meeting be held in Chennai, when all the directors of the company reside at Calcutta?*
- (ii) *Whether the board meeting can be called on a public holiday and that too after business hours as the majority of the directors of the company have gone to Chennai on vacation.*
- (iii) *Is it necessary that the notice of the board meeting should specify the nature of business to be transacted?*

Advise with reference to the relevant provisions of the Companies Act.

(May, 2000)

Answer

- (i) There is no difficulty at all in holding the board meeting at Chennai even if all the directors of the company reside at Calcutta and the registered office is situated at Calcutta provided requirements regarding signing of register of contracts, etc. are complied with.
- (ii) Under provisions of Section 166 of the Companies Act, 1956, the annual general meeting shall be held during business hours and on a day that is not a public holiday. There is no similar provision in the Act with regard to board meetings. Therefore, in the absence of any specific restrictive provision, the board meeting can be held even on a public holiday and out of the business hours. The term "public holiday" in this context should be understood. According to the proviso to Section 2 (38) no day declared by the Central Government to be a public holiday shall be deemed to be a public holiday unless the declaration was notified before the issue of the notice of the meeting. Suppose, the notice of a meeting was issued on April 1st where by it was to be held on May 3. If on April 2, the Central Government declares the 3rd day of May as a public holiday, there is no bar to the holding of the meeting on May 3 in spite of its being declared as a public holiday. If, however, the declaration is notified before the issue of the notice convening the meeting, say on 31st March, the meeting cannot be held on May 3.
- (iii) If the articles of association of the company are silent, the notice of board meeting is not required to specify the nature of business to be transacted thereat [*Compagnie de Mayville v. Whitley (1896) 1 Ch. 788 (CA)*]. If, however, the articles provide otherwise, then the notice must specify the nature of business to be transacted. All said and done, a better course seems to be that the notice should specify the purpose of the meeting, if it is an extra-ordinary or special meeting.

Question 6

The Articles of Association of M/s ABC Ltd. provide that a meeting of the Board of Directors shall be held at 11.00 A.M. on the last day of every quarter ending on 31st March, 30th June, 30th September and 31st December. Relying on the said provision, the company did not send notices to the directors in respect of a board meeting held on 31.3.2002. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to directors. **(May 2002)**

The Articles of Association of Big Limited provide that a meeting of the Board of Directors of the company shall be held at 11.00 A.M. on the last day of every quarter ending 31st March, 30th June, 30th September and 31st December. Relying on such a clause in the Articles, the company did not send notices to the directors in respect of the board meeting held on 30th September, 2008. Some of the directors have questioned the validity of the board meeting on the ground that individual notices have not been sent to the directors. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956 and/or decided case laws. **(CA Final, New Course, May 2009)**

Answer

If the Articles of Association of Big Limited provides that a meeting of the board of directors shall be held on the last day of each quarter, it is not necessary that separate notices are required to be served on the directors. It was held in the case of *Arunachalam Chettiar vs. Kaleswarar Mills Ltd.* [(1956) 26 COMP. CAS. 431] that where articles of the company provide that there will be a meeting of the board of directors on the first Saturday of every month, there will be no necessity of service of notice to individual director and such clause in the articles of association is sufficient compliance of Section 286(1) of the Companies Act, 1956. In view of the said judgement the clause in the article is sufficient compliance of the requirement of sending the notice for a board meeting and the contention of some of the directors is not legally valid. However, as a good secretarial practice, notice for every board meeting should be sent to all the directors eligible to receive the notice.

Question 7

XYZ Ltd. is a foreign collaborator in ABC Ltd incorporated in India under the Companies Act, 1956. The foreign collaborator holds 49% of the shareholding. The Board meetings of ABC Ltd are usually held in India and sometimes meetings of the Board are called at a very short notice for which there is a provision in the Articles of Association that during such situations notices of the meetings of the Board can be sent by e-mail. State in this connection whether such a provision in the Articles of Association of a foreign collaborated company is valid within the purview of the provisions of the Companies Act, 1956.

Answer

In the post-Independence period, there is an upsurge of foreign consortia. Articles of foreign collaborations frequently provide that notice of Board meetings should be sent by Air Mail to foreign directors so that they may be able to attend the statutorily prescribed minimum number

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of meetings (i.e. 3 consecutive meeting without obtaining the leave of absence from the Board) so as to prevent the vacation of their office due to continuous non-attendance under Section 283(1) (g) of the Act. *Now a vital question crops up as to whether such a provision in the articles of foreign collaborations is valid*, because of the provisions of Section 286(1) which, as we have already stated earlier, requires the service of the said notice on a director out of India at his usual address in India. Such a question is not free from doubt. In England, such a notice is required to be given to a director abroad, only when he is within easy reach, else not. But a moot point arises whether a foreign director falls within the purview of the expression “a director other than a director for the time being in India.” On a scrutiny of the act we find that whereas Section 53 provides for service of documents like notices, etc. on members by a company there is no such or similar Section providing for services of notice on directors.

Question 8

The Articles of the company provide that there will be a meeting on the first Saturday of every month, and no notice of the meeting will be given in this regard. State in this connection whether there will be any necessity of the service of the notice under provisions of the Companies Act, 1956 and whether the proceedings of the meeting will become invalid.

Answer

It has been held in *Arunachalam Chettiar vs. Kaleshwarar Mills Ltd. (1957) I.M.L.J.254-A.I.R. 1957 Mad. 309* that where articles of the company provide that there will be a meeting on the first Saturday of every month, there will not be no necessity of the service of the notice under Section 286(1) in as much as a provision in the articles is sufficient compliance of Section 286(1).

Suppose, the above-mentioned notice, as required by Section 286(1) has not been served, in such a situation the proceedings at the meeting shall not become invalid provided (i) all the directors attend the meeting and do not raise any objection to the non-service of notice; or (ii) where the absent directors make no complaint about the want of notice, particularly when the proceedings are ratified at a subsequent meeting whereat the absentee directors are present [*Re State of Wyoming Syndicate (1901) 2 Ch. 431*].

Quorum for meetings (Section 287)

Question 9

The Board meeting of MNO Ltd. was held on 10th May, 2008 at Chennai at 11a.m. At the time of starting the board meeting the number of directors present were 7. The total number of directors were 10. The board transacted ten items in the board meeting. At 12 noon after the completion of four items in the agenda 4 directors left the meeting. Examine the validity of these transactions explaining the relevant provisions of the Companies Act, 1956.

(CA Final, New Course, November, 2008)

Answer

Section 287 of the Companies Act, 1956 provides for the quorum for meeting. The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in the said one third being rounded off as one), or two directors, whichever is higher. Where at any time the number of interested directors exceeds or it's equal to two thirds of the total strength, the number of remaining directors, that is to say, the number of directors who are not interested present at the meeting being not less than two shall be the quorum during such time. In this case, the quorum is 4 (i.e. $\frac{1}{3}$ rd of 10 = $3\frac{1}{3}$ rounded off as 4). Hence the quorum was present at the time of commencement of meeting.

As a rule, in the case of a meeting of the Board of Directors, the meeting cannot transact any business, unless a quorum is present at the time of transacting the business. It is not enough that a quorum was present at the commencement of the business.

The quorum of the Board is required at every stage of the meeting and unless a quorum is present at every stage, the business transacted is void. (*Balakrishna vs. Balu Subudhi AIR 1949 Pat 184*). In the given situation four items were transacted with the quorum and thus they are valid. Six items were transacted after 4 Directors left the meeting resulting in the reduction of quorum as only 3 Directors were present as against the required quorum of 4 Directors. Such six transactions are void.

Question 10

ABC Ltd. has 12 directors on its Board and has the following clause in its Articles of Association:

"The questions arising at any meeting of the Board of Directors or any Committee thereof shall be decided by a majority of votes, except in cases where the Companies Act, 1956 expressly provides otherwise."

In one of the meetings of the Board of Directors of ABC Ltd., 8 directors were present. After completion of discussion on a matter, voting was done. 3 directors voted in favour of the motion, 2 directors voted against the motion while 3 directors abstained from voting.

You are required to state with reference to the provisions of the Companies Act, 1956 whether the motion was carried or not. It is clarified that the motion being voted upon was not concerning a matter which requires consent of all the directors present in the meeting.

(CA Final, New Course, May 2009)

Answer

Regulation 74(1) of Table A of Schedule 1 to the Companies Act, 1956 provides that save as otherwise expressly provided in the Companies Act, 1956, questions arising at any meeting of the Board shall be decided by a majority of votes.

In the problem given in the question, the similar article exists in the Articles of Association of ABC Ltd. In the given case, only 8 directors out of a total strength of 12 directors are present and out of those 8 directors present only 5 directors have exercised their votes. In such a

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case, only those directors who are present and vote on a motion are considered for determining whether the motion is carried or not. That means out of the 5 directors who voted on the motion are to be considered. Accordingly, since number of directors who voted in favour of the motion being 3, is higher than the number of directors who voted against the motion being 2, the motion is carried or is considered to be passed by majority.

Question 11

The articles of Association of XYZ Computers Limited provide for a maximum of 15 Directors. But the company has only 10 Directors and for two of them representing Foreign Collaborators, alternate Directors have been appointed. Board Meeting held on 1st August, 2003 was attended by 4 Directors including 2 alternate Directors.

Examine with reference to the relevant provisions of the Companies Act, 1956 whether quorum was present at the Board Meeting held on 1st August, 2003.

Will your answer be different, if the articles provide for a Quorum of 6 Directors? (May, 2004)

Answer

Section 287 of the Companies Act, 1956 prescribes a quorum for meetings of Board of Directors of Companies. According to Section 287(2) quorum for a meeting of the Board of Directors of any company, public or private shall be one third of the total strength of the Board, or two directors, whichever is higher. According to Section 287(1), 'total strength' means the total strength of the Board of Directors of a company as determined in pursuance of the Act, after deducting there from the number of directors, if any, whose place may be vacant at the time. Hence the total strength is 10 directors (excluding 2 alternate directors) even though the Articles provide for a maximum of 15.

Section 287(2) provides that the quorum for a meeting of the Board of Directors of a company shall be one third of its total strength (any fraction contained in that one-third being rounded off as one), or two directors, whichever is higher. Hence, in this case $\frac{1}{3}$ of 10 i.e. $3\frac{1}{3}$ the fraction being rounded off as one i.e. 4 is quorum.

The alternate directors present at a meeting will be counted for quorum, if the original director is not present, the alternate directors present at a meeting will be counted for quorum. The Board meeting held on 1.8.2003 was attended by 4 directors including 2 alternate directors quorum was present at the meeting. Hence, it is a valid meeting.

Section 287 only provides for a minimum quorum. It does not forbid a company to fix a higher quorum. A company in its articles cannot provide a quorum of lesser number of directors than what is provided in Section 287(2). However, it can provide for a higher number. Hence, if the articles provide 6 as quorum, the meeting held on 1.8.2003 is not valid as it was attended only by 4 directors.

Question 12

Analyse and Advise with reference to the provisions of the Companies Act, 1956, the following situations.

- (a) *The Articles of a company want to fix the quorum for the Board Meeting.*
- (b) *There are 9 directors in a company and out of which 2 offices of the directors have fallen vacant. What will be the quorum for the Board Meeting?*
- (c) *There are 15 directors in a company and during discussion of a particular item, 13 of the directors are said to be 'interested'. What shall be quorum of the meeting?*
- (d) *Continuing with above situation, what will be your advise, when all the 15 directors are said to be interested in the concerned resolution?*
- (e) *What are the situations, when interested directors will be counted for the purpose of counting quorum for the meetings of the Board?*

Answer

- (a) A quorum is the prescribed minimum number of qualified persons authorised to transact the business at a meeting. In relation to a Board meeting quorum implies fully qualified and disinterested directors who must be present at the meeting so as to enable the Board of which they are the constituents to legally transact the business thereat. In view of Section 287 which has fixed the quorum of the Board meeting, the Articles of Association of the company cannot fix the quorum for the Board meeting.
- (b) Accordingly such a quorum is one third of the total strength of Board (any fraction contained in the said one third being rounded off as one) or two directors whichever is higher. The total strength is to be derived after deducting the number of directors whose offices are vacant. Therefore, the Quorum = $\frac{1}{3}$ (of the total strength vacancies). Where total number of directors are 9 and 2 offices of the directors have fallen vacant, we find: $\frac{1}{3}$ of $(9-2) = \frac{1}{3}$ of 7 = $2\frac{1}{3}$ directors. If the fraction of 3^{rd} were to be rounded off as one then 3, i.e. 2+1 directors would constitute the quorum for the Board meetings. If at any time the number of the remaining directors exceeds or is equal to two thirds of the total strength, the number of the remaining directors who are non-interested but present at the meeting, not being less than two shall constitute the quorum.
- (c) For example, there are in all 15 directors and the Board meeting commences with all the 15 directors. During the currency of the meeting, an item comes up for discussion in respect of which 13 happen to be "interested" directors. In this case, in spite of the excess of the interested directors being more than two-thirds, the prescribed minimum number of non-interested directors constituting the quorum, namely, 2 present at the meeting are to transact the particular item of business.
- (d) If all the 15 directors cited in the above illustration are equally interested in that particular item of business and the time is so vital that but for a decision thereon, the business of the company will be greatly hampered. How to resolve this *impasse*? The Act has not made any direct provision to take with such a situation, but the Article 48 of Table A of Schedule 1 of the Act, provides a remedy. According to the said article, the Board may, whenever it thinks fit, call an extraordinary general meeting. By invoking

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this Article, the Board should get the aforesaid *impasse* resolved by the shareholders at the general meeting. Since according to Section 173(1) (b), all business in the case of any other meeting than the annual general meeting is to be deemed special, by virtue of sub-section (2) the notice of the extraordinary meeting must annex to it a statement setting out all the material facts concerning the item of business, including, in particular, the nature of the concern or interest there in of every director.

- (e) The interested directors are excluded from the computation of the quorum under Section 300(1). However, in the terms of Section 300(2), the interested directors can be counted for the purpose of quorum in the following cases, namely – (a) where the company is a private company which is neither a subsidiary nor a holding company of a public company; (b) where the company is a private company which is a subsidiary of a public company, in respect of any contract or arrangement thereof; (c) where there is any contract of indemnity against any loss which the directors or any one or more of them may suffer by reason of becoming or being sureties or surety for the company; (d) in respect of any contract or arrangement entered or to be entered into with a public company, or a private company, which is a subsidiary of a public company in which the director's interest consist solely (i) in his being a director holding shares of such number or value as to be just enough and not more than enough to qualify him for appointment as director, or (ii) in his being a member holding not more than 20% of the paid-up share capital of the company; (e) where it is a public company in respect of which the Central government has, through a notification in the official Gazette, waived the necessity to comply with the requirements of Section 300(1) on considerations of establishing or promoting any industry, business or trade in the public interest.

Question 13

The Articles of Association of AB Limited provide for a maximum of 15 directors but the company has only 10 directors. The Board Meeting held on 16th August, 2010 was attended by 6 directors out of which 3 directors were interested in an item which was considered and approved by 3 non-interested directors. Examine the validity of the resolution passed at the Board Meeting explaining the relevant provisions of the Companies Act, 1956.

(November 2010)

Answer

- (a) **Board Meeting:** According to Section 287(2) of the Companies Act, 1956, quorum for a board meeting shall be one-third of total strength of the Board, or two directors, whichever is higher.
- (b) Directors whose place is vacant, should not be considered for the purpose of deciding 'total strength' of the Board [Section 287(1)(a)].
- (c) Further, fraction of one-third should be rounded off as one [Section 287(2)].

- (d) In this case articles of AB Ltd. provide for a maximum of 15 directors, but the company has only 10 directors i.e. the total strength is 10. $\frac{1}{3}$ rd of total strength is 3.33, fraction being rounded off as one. Hence the quorum for the Board Meeting is 4.
- (e) However, there is an exception. If the number of interested directors exceeds or is equal to two thirds of total strength, the number of remaining directors who are not interested present at the meeting being not less than 2 shall be the quorum during such meeting. [proviso to section 297(2)]
- (f) Proviso to section 287(2) is not applicable in this case as number of interested directors is only less than two third of total strength.
- (g) The Board Meeting held on 16.8.2010 was attended by 6 directors out of which 3 directors are interested and hence they cannot be counted for the purpose of forming a quorum (section 287(1)(b)). The number of non-interested directors is only 3 which is less than the quorum. Hence the resolution passed at the Board Meeting in respect of an item where 3 directors are interested is not valid.

Question 14

A Board meeting could not be held for want of quorum and therefore it was adjourned to next week, same time, place. At the adjourned meeting also, the requisite quorum was not present. What advise will you give with reference to the relevant provisions of the Companies Act, 1956?

Answer

Inability to hold a Board meeting for want of quorum results, as has already been stated in the automatic adjournment thereof under Section 288. According to Section 191, a resolution passed at an adjourned meeting is deemed as having been passed thereat itself; it does not date back to an earlier date, i.e., the date of the original meeting. It would be worthwhile to recapitulate here the provisions of Sections 174(2) to (5), which deal with adjournment of the general meeting for want of quorum so as to compare them with the provisions relating to adjournment of board meetings. Unless the article of a company whether public or private – provide otherwise, if the quorum is not present within half an hour from the time fixed for the general meeting, it shall stand dissolved in case the meeting has been convened, under Section 169, on the requisition of members; in regard to any other class of meeting, it shall stand adjourned to the same day in the next week at the same time and place of to such other day and at such other time and place as the board may determine. If again at the adjourned meeting the quorum is not present within half an hour of the scheduled time then the members present shall constitute the quorum. According to Article 53 of Table A of Schedule I to the Act, where a meeting is adjourned for 30 days or more, a fresh notice of the adjourned meeting has to be served. Section 288 does not throw any light on what happens if the quorum is not there at the adjourned meeting as well whether the Board meeting is to be adjourned over and over again till the quorum is procured. Secondly, for want of quorum, the Board meeting automatically stands adjourned to the same day in the next week and at the

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same time and place. But the Board has no power to fix any other day or place or time for such adjourned meeting: where as in the case of general meeting, the Board can adjourn it to any other day or other time and place. Thirdly Section 288 implies that a Board meeting can be called on a public holiday, though not the adjourned meeting. Under Section 166(2) annual general meeting cannot be held on a public holiday. But in the absence of any specific prohibitions by the Act, a statutory and an extraordinary meeting can be held on a public holiday.

Procedure where meeting adjourned for want of quorum (Section 288)

Question 15

Some urgent items are left over in the agenda of Board meeting which concluded and decision cannot be deferred till its next meeting

Answer

Items of business left unconsidered at the Board meeting and which cannot be deferred till the next Board meeting may be referred to the Directors for consideration by circulation in terms of Section 289. For the purpose, of passing a resolution by circulation, requirement is that the draft resolution should be circulated to all the directors in India, who are not below the quorum fixed for a board meeting and to all other directors at the usual address in India and the resolution should be approved by the directors in India or by a majority of them.

Question 16

A meeting of the Board of 'No Holiday Ltd' was held on a public holiday. However due to lack of quorum, the proceedings of the meeting could not be held and therefore the Chairman of the meeting decided with the consent of the majority that the Board meeting be adjourned to next Monday. However, the date fixed for the adjourned meeting happened to be a 'public holiday'. Advise and draw your analogy with reference to the provisions of the Companies Act, 1956, whether the adjourned meeting of the Board can be held on a day which is a public holiday.

Answer

Whether or not the Board meeting can be held on a public holiday and out of business hours is a question open to conflict. Under Section 288, the adjourned Board meeting is to be held on a day which is not a holiday but no such restriction has been levied on the matter of holding the original Board meeting. On the basis of the provision of Section 288, one set of arguments may be that like the adjourned meeting, the holding of the original Board meeting is equally a normal and usual work of a company and that is why it should be held during usual business hours and on a day, which is not a public holiday. On this analogy, a similar inference may be drawn from the provision of Section 166(2) as well, because it prescribes only for each annual general meeting that it held on a day which is not a public holiday and during the business hours and also because annual general meeting is normal work of the company. Another set of arguments is that a meeting of the board can take place even on a public holiday and out of business hours because there is not such restriction as contemplated either by Section 166(2)

or by Section 288. It would be prudent to subscribe to latter set of arguments. This is because if the Legislature could think of imposing similar restrictions twice-once at the time of drafting Section 166(2) in respect of only annual general meeting and the other at the time of drafting Section 288 in respect of adjourned Board meetings-it could rationally think of similar restrictions for the third time in respect of original Board meetings. If the human element of forgetfulness on the part of the draftsmen is to be given any consideration, even then it can be upheld on the first occasion when Section 166(2) was drafted. But definitely such forgetfulness is not tenable on second occasion when Section 288 was enacted especially in respect of adjourned Board meeting. Had it been the intention of the legislature, it could easily enact a provision and add it as a sub-section to Section 288. It, therefore, seems that the legislature did not deliberately think it necessary to provide for original board meeting to be held on a day other than a public holiday and during usual business hours. The law will take its course, however the course may sound irrational. Therefore, in the absence of any specific provisions in Act it seems that the original Board meeting can be held even on a holiday and out of the business hours.

Question 17

Examine, with reference to the relevant provisions of the Companies Act, 1956, the validity/legality of the following:

A meeting of the Board of Directors of OPQ Co. Ltd. due to be held on 30.9.2001 did not take place for want of quorum. As a result, the Company did not hold any Board meeting for the quarter ended 30.9.2001 and there is a complaint that the Company has violated the provisions of the Act in this regard. **(November, 2001)**

Answer

Suppose a meeting of the Board has been convened within the prescribed period in strict conformity with the said Section but for want of quorum, the said meeting could not take place. In such a situation, the meeting automatically stands adjourned by virtue of Section 288(1) till the same day in the next week, at the same time and place. And if that "same day" is a public holiday, then the meeting stands adjourned till the next succeeding day, which is not a public holiday, at the same time and place. And because of this adjournment the meeting is obviously held after the period specified in Section 285. In terms of Section 288(2), which in not clearly couched, a company shall not be deemed to have contravened the provisions of Section 285 where the meeting does not take place for want of quorum. In view of these legal provisions, a pertinent question for our consideration comes up. For holding the next Board meeting, *which date should we take into account for the purpose of calculating the statutory period of once in every three months.* Whether the date of the original meeting, which was adjourned, for want of quorum or the adjourned date on which the meeting was actually held?

A practical difficulty arises in this regard owing to the silence of the Act on this point. Our confusion gets worse confounded when we come across Section 191 which states that where a resolution is passed at an adjourned meeting *inter alia*, of the Board of Directors of a company, it must "for all purposes" be deemed to have been passed at the date of the

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adjourned meeting and not on an earlier (i.e., the original) meeting. For resolving our question indicated in italics above, should we take the indirect provisions of Section 191 and conclude, by correlating the phrase 'for all purposes' with the expression 'be treated as having been passed on the date on which it was in fact passed, and shall not be deemed to have been passed on any earlier date' appearing in Section 191, that for holding the next meeting for the Board, the statutory period should be calculated from the date at which the adjourned meeting was held? There is no judicial decision to warrant this conclusion.

According to the provisions contained in Section 288(2) of the Companies Act, 1956, the provisions of Section 285 relating to the holding of at least one Board meeting in a quarter cannot be deemed to have been contravened merely by reason of the fact that a Board meeting which had been called in compliance with the terms of the said section could not be held for want of a quorum. Thus the allegation that the company has contravened the provisions of Section 285 in the matter of holding the Board meeting is not correct.

Passing of Resolution by Circulation (Section 289)

Question 18

In course of administration of the affairs of a limited company, Chairman of its Board of Directors came across a matter, which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board Meeting. The Chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board Meeting. You are required to advise him on the matter as per the provisions of the Companies Act, 1956. **(May 2007)**

Chairman of Board of Directors of ABC Ltd. came across a matter, which required the approval by way of a board resolution. In the prevailing circumstances, it is not possible to convene and hold a Board Meeting. The Chairman approaches you to advise him of the way and the relevant procedure to obtain such approval without holding the Board Meeting. You are required to advise him on the matter as per the provisions of the Companies Act, 1956.

(CA Final, New Course, May 2009)

Answer

As per the provisions of the Companies Act, 1956, several Board Resolutions are required in course of carrying on the affairs of a limited company. But it may sometimes so happen that a Board Meeting can not be held. To meet such eventualities, the Companies Act, 1956 contains the solution in section 289. According to this section, the board resolution can be passed by way of circulation. It may however be noted that the matter listed in the provisions of section 292 and other sections requiring passing of resolution at the board meetings only can not be passed by way of circulation and can be passed only at the Board Meeting. The Chairman of the company is advised that the approval in the form of a Board Resolution may be obtained by way of passing the relevant resolution by circulation if the matter is not covered by the barring sections of the said Act.

The procedure to be adopted for the purpose shall be as follows:

- (i) Send the draft of the resolution in duplicate together with the necessary papers, if any, to all the directors then in India. It is to be ensured that the number of such directors is not less than the directors required to form the quorum for a Board meeting.
- (ii) Send the draft of the resolution in duplicate together with the necessary papers, if any, to all other directors at their usual address in India.
- (iii) Obtain one copy of the draft resolution duly signed by the directors, whether approving the resolution or disapproving the same. It may be noted that the resolution shall be deemed to be passed by the Board if all the directors then in India or majority of all directors as are entitled to vote on the matter approve the resolution by signing one copy and returning the same to the company.
- (iv) The resolution passed by circulation shall be placed before the next Board Meeting for confirmation.

The resolution shall be recorded in the minutes of the next Board Meeting.

Question 19

Proximo Limited has 9 Directors out of whom 3 Directors have gone abroad. The Chairman had an urgent matter to be approved by the Board of Directors which could not be postponed till the next Board meeting. The Company, therefore, circulated the resolution for approval of the Directors. 4 out of 6 Directors in India approved the resolution. The Company claimed that the resolution was passed. Examine with reference to the provisions of Section 289 of the Companies Act, 1956 the validity of the resolution. (CA Final, New Course, June 2009)

Answer

According to Section 289 of the Companies Act, 1956, a resolution by circulation shall not be deemed to have been passed, unless the resolution has been circulated in a draft, together with the necessary papers, if any to all the directors then in India (not less in number than the quorum fixed for a meeting of the Board) as the case may be, and all other directors at their usual addresses in India, and has been approved by such of the directors as are then in India or by majority of such of them, as are entitled to vote on the resolution. In this case, the resolution has been approved by 4 directors out of 6 in India; the majority of total number of directors who were entitled to vote was 5 as against 4 directors who approved the resolution. Thus both the alternate conditions were not fulfilled. The resolution cannot be deemed to have been passed.

Validity of acts of directors (Section 290)

Question 20

State whether the acts done by the Board meeting be invalid if it was found afterwards that there was some defect in the appointment of directors or any person acting as a director?

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Answer

All Acts done by the Board meeting by its committee meeting or by any person acting as a director shall be as valid as if every such director or such person had been duly appointed and was qualified to be a director. The validity of all such acts done is not affected even if it discovered later on that there was some defect in the appointment of any one or more of such directors or of any person acting as a director. The said acts will also remain unaffected even the directors are later on discovered to be disqualified (Article 80). This provision has been intended to prevent the validity of transactions from being questioned where there has been a slip in the appointment of a director. But the provision cannot be utilized to ignore or override the substantive provisions pertaining to such appointment. It is applicable only to acts of directors whose appointment or qualification is later on discovered to be faulty. Where, however, their appointments have not taken place at all but they merely choose to act on the company's behalf, the protection prescribed by either Article 80 or Section 290 cannot be invoked [*Morris vs. Danssen (1964) 1, A.E.R. 586 (H, L.)*] This is because the said subsequent discovery must be a discovery of the defect; it must not be discovery of facts which go to constitute the defect [*British Asbestos Co. vs. Body (1903) 2 Ch. 439*].

Suppose a regulation like Articles 80 is included in the Article of association of a company. What would be the possible impact of this? The impact has been summed up in Halsbury's Laws of England (*vide p. 277, 3rd Edition, Vol. VI*) thus: "An Article validating the acts of persons acting as directors, though it is afterwards discovered that there was a defect in their appointment or qualification, operates not only between the company and outsiders but also as between the company and its members; as where *defecto* directors make a call, summon meetings of the company, elect other directors or allot shares, A *defecto* director may be ordered to furnish a statement of affairs in winding up. Directors can not take advantage of any infirmity in their proceedings in which they have themselves participated; they are stopped as between themselves and the company; they are also stopped from saying they have been improperly appointed if, they have acted after appointment, persons dealing with them who know of the invalidity are likewise stopped."

It should also be noted that Section 290 applies to act of an individual director, whereas Article 80 covers Act of the Board and of its committee.

Question 21

Mr. MTP was appointed as a director at the Annual General Meeting of a limited company held on 30th September, 2005 and he carried on his duties and functions as a director. In the month of August, 2006, it was found out that there were certain irregularities in his appointment and on 31st August, 2006, his appointment was declared invalid. But Mr. MTP continued to act as director even after 31st August, 2006. You are required to state, with reference to the provisions of the Companies Act, 1956, whether the acts done by Mr. MTP are valid and binding upon the company ?

(May 2007)

Answer

In accordance with the provision of the Companies Act, 1956 as contained in section 290, acts 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:

The Proviso to section 290 further provide that nothing in this section shall be deemed to give validity to acts done by a director after his appointment has been shown to the company to be invalid or to have terminated.

In view of the provision of section 290 of the Companies Act, 1956, the acts done by Mr. MTP prior to 31st August, 2006 are to be treated as valid and binding on the Company.

However in view of the Proviso to the said section 290, the acts done by Mr. MTP after 31st August, 2006 shall be deemed to be invalid and not binding upon the Company.

Minutes of Board Meeting

Question 22

Accurate Arcs Ltd. maintains the Minutes Book of the Board Meetings in loose-leaf system and get them bound once in three months. Can it do so? Board meetings were held on 24th March, 2000 and 15th April, 2000. Mr. Rameshwar, who was the Chairman of these two Board Meetings died on 1.5.2000, without signing the Minutes. How should be the Minutes be signed and by whom?
(November, 2000)

Answer

Ordinarily minutes cannot be kept in loose-leaf system. Section 193(1) of the Companies Act, 1956 enjoins the Minutes must be entered within 30 days of the conclusion of the relevant meeting. Ordinarily Minutes cannot be kept in loose-lead system. The Department of Company Affairs, however, has expressed that it would refrain from taking any action against a company which maintained its minutes in the loose-leaf form, provided that adequate safeguards are taken against falsification, and loose-leaves are bound in books at reasonable intervals, say six months.

In this case, since the Minutes Book leaves are bound once in three months (January to March, 2000), and as such the same is in order.

The minutes of the Board Meeting are required to be written within a period of 30 days from the date of the meeting held. [Section 193(1)]. But there cannot be any insistence that the same must be signed within a period of 30 days from the date of the Board Meeting. (Dept.'s circular No. 25/76 dated 1.9.1976). According to section 193(1A), the minutes of a Board Meeting may be signed by the Chairman of the said meeting or the Chairman of the next succeeding meeting.

In this case, Mr. Rameshwar, who was the Chairman of the Board Meeting held on 24.3.2000 and 15.4.2000 died on 1.5.2000 without signing the minutes.

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The Chairman of the Board Meeting held after 15th April, 2000 for the first time may sign the minutes of Board Meeting, held on 15th April, 2000 in accordance with section 193(1A)(a).

According to the provisions of section 193(1) read with section 193(1A) the minutes of Board Meeting held on 24th March, 2000 should have been signed by Mr. Rameshwar himself as he was the Chairman of the Board Meeting held on 24th March, 2000 as well as the Chairman of the next succeeding meeting. There is no specific provision in the Companies Act, 1956 as to the person who can sign the minutes of Board Meeting held on 24th March, 2000 in this case. Hence a board meeting may be convened and the Chairman of the said meeting may sign the minutes of Board Meeting held on 24th March, 2000.