

Political Contributions (Sections 293A – 293B)

Prohibitions and restrictions regarding political contributions (Section 293A)

Question 1

The Board of Directors of Very Well Ltd., are contributing every year to a charitable organization a sum of Rs.60, 000/-. In a particular year, the company suffered losses and the directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so?

Answer

The power to donate to general charities is not conditional to existence of any profit. In such a case they may contribute up to the limit given in sec. 293(1) (e), even though the company may be working at a loss. Under the section a public company can contribute in any financial year not exceeding Rs 50,000 or 5% of its average net profits during the three preceding financial years whichever is greater.

Question 2

M/s XYZ Ltd. was incorporated on 1st January, 2000. On 1st November, 2002 a political party approaches the company for a contribution of ₹ Ten lakhs for political purpose. Advise in respect of the following:

- (i) *Is the company legally authorised to give this political contribution?*
- (ii) *Will it make any difference, if the company was in existence on 1st October, 1999?*
- (iii) *Can the company be penalised for defiance of Rules of this regard?*

Answer

- (i) No. prior to amendment of Section 293 A, by the Companies (Amendment) Act 1985, there was a blanket ban on political Contributions by Companies. But the amended section seeks to continue the existing blanket ban against political contributions in case of government companies and companies which have been in existence for less than three financial years.

Since XYZ Co. has not completed three years of existence on 2nd November 2002, it is not eligible to give political contribution.

- (ii) Yes, because in that case, XYZ ñ. limited shall complete three financial years of its existence, therefore, will be eligible to give political contribution subject to the condition

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that such a political contribution should not exceed five percent of the average net profits and a resolution authorising such contribution is passed at a meeting of the Board of Directors.

- (iii) The Amended Section 293A seeks to impose an obligation on every company to disclose in its profit and loss account contributions made by it to any political party or for any political purpose. Contravention of the provisions of this section will make a company liable to fine which may extend to three times the amount so contributed. Further every officer of the company in default would be liable to imprisonment for a term which may extend to three years and also to fine.

Question 3

X Ltd. was registered in the year 2005 under the Companies Act 1956. The management of the company decides to make donation to recognized political party. Advise the management about the restrictions and the extent up to which such donation can be made under the said Act. Will it make any difference if X Ltd. was registered in the year 2009? (May 2011)

Answer

Donation to Recognized Political Party:

According to Section 293A of the Companies Act, 1956, no Government Company and no other company which has been in existence for less than three financial years shall contribute any amount or amounts directly or indirectly (i) to any political party, or (ii) for any political purpose to any person. Any other company may however, contribute any amount directly or indirectly to any political party or for any political purpose to any person, provided that the aggregate of the amount so contributed by the company in any financial year shall not exceed 5% of the its average net profits determined in accordance with the provisions of Sections 349 and 350 of the Act during the three immediately preceding financial years.

Thus X Ltd., in the present case, can contribute to the recognized political party provided it is not a Government Company within the meaning of Section 617 of the Act and it is in existence for more than three financial years at the time of making the donation. Further political donations can be made by X Ltd. only out of its profits.

Further, the political donation is required to be authorized by a resolution passed at a Board of Directors meeting (Section 293A (2)). In addition, the company is also required to disclose in its Profit & Loss Account particulars of total amount contributed and the name of the political parties to which such amount has been contributed. [Section 293A (4)].

If X Ltd. Was registered in the year 2009 it cannot make political donations because the company has not been in existence for three years.