

Powers of CG Under (Sections 388B – 388E)

Powers of Central Government to remove managerial personnel from office on the recommendations of the Tribunal (Section 388B – 388E)

Reference to Tribunal of cases against managerial personnel (Section 388B)

Question 1

The Central Government came into possession of certain facts and documents, which indicated that some of the managerial personnel of a Company concerned with the management of the affairs thereof are acting in a manner, which is not desirable and if allowed to carry on, it is likely to cause serious injury to the interest of the trade, industry and business to which the company pertains. You are required to state the circumstances and manner in which the Central Government can initiate the process of removal of managerial personnel under the provisions of the Companies Act, 1956. **(November 2005)**

Answer

As per provisions of Section 388B of the Companies Act, 1956, if in the opinion of the Central Government, there are circumstances suggesting:

- (a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or
- (b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices, or
- (c) that a company is or has been conducted and managed by such person in a manner which is likely to cause or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or
- (d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest.

Then, in any of the above circumstances the Central Government may state a case in the form of an application against the such person and refer the same to the Company Law Tribunal with a request that the Company Law Tribunal may enquire into the case and record a

decision as to whether or not such person is a fit and proper person to hold the office of Director or any other office connected with the conduct and management of any company.

The Company Law Tribunal is empowered to record its decision under the provisions of Section 388D of the Companies Act, 1956 and such decision shall be recorded by it after concluding the hearing of the case in which such person shall join as the respondent.

Section 388E of the Companies Act, 1956 states that the Central Government shall, by order, remove from office any director or any other person concerned in the conduct and management of the affairs of a company, against whom a decision of the Company Law Tribunal under Section 388D has been recorded.

NOTE: Powers of the Company Law Board has been transferred to the National Company Law Tribunal by the Companies (Second Amendment) Act, 2002 and assented by the President of India on 13.01.2003. This will take effect from the date of full enforcement. Till then, powers being currently exercised by the Company Law Board shall continue to be exercised.

Power of CG to remove managerial personnel on the basis of Tribunal's decision (Section 388E)

Question 2

X Ltd. is being managed by Mr. Clever as the Managing Director. Serious allegations have been made by some shareholders and creditors of the company that the Managing Director has misused his position and caused enormous loss to the company. The said shareholders and creditors of the company make a complaint to the Central Government to intervene and provide relief to them. Their main prayer is that the Managing Director should be removed from the post. Explain the powers of the Central Government in this regard. (May, 2001)

Answer

On receipt of the complaint from some of the shareholders and creditors of X Ltd., that its managing director Mr. Clever has misused his office and thereby caused loss to the company, the Central Government, if satisfied with the contents of the complaint may make a reference to the Company Law Board with a request to inquire into the case and record a finding whether or not Mr. Clever is a fit and proper person to hold the office of Managing Director. The application made to CLB must contain a concise statement of the circumstances and material as the central Government may consider necessary for the purpose of the enquiry. The Company Law Board will hear both the parties viz. (1) The Central Government and (2) The Respondent Mr. Clever as well as the company. The CLB has powers to pass any interim order to the effect that the respondent Mr. Clever shall not discharge any of the duties of his office until further orders and appoint a suitable person in place of the respondent. At the conclusion of the hearing the CLB will record its finding. If the finding of the CLB is against the respondent, the Central Government, by order, shall remove him from office, as provided in Section 388E(1) of the Companies Act, 1956. The person against whom such an order is passed is debarred from holding the post of director etc., for a period of 5 years from the date of order of removal. Also no compensation is payable to him for termination of office.