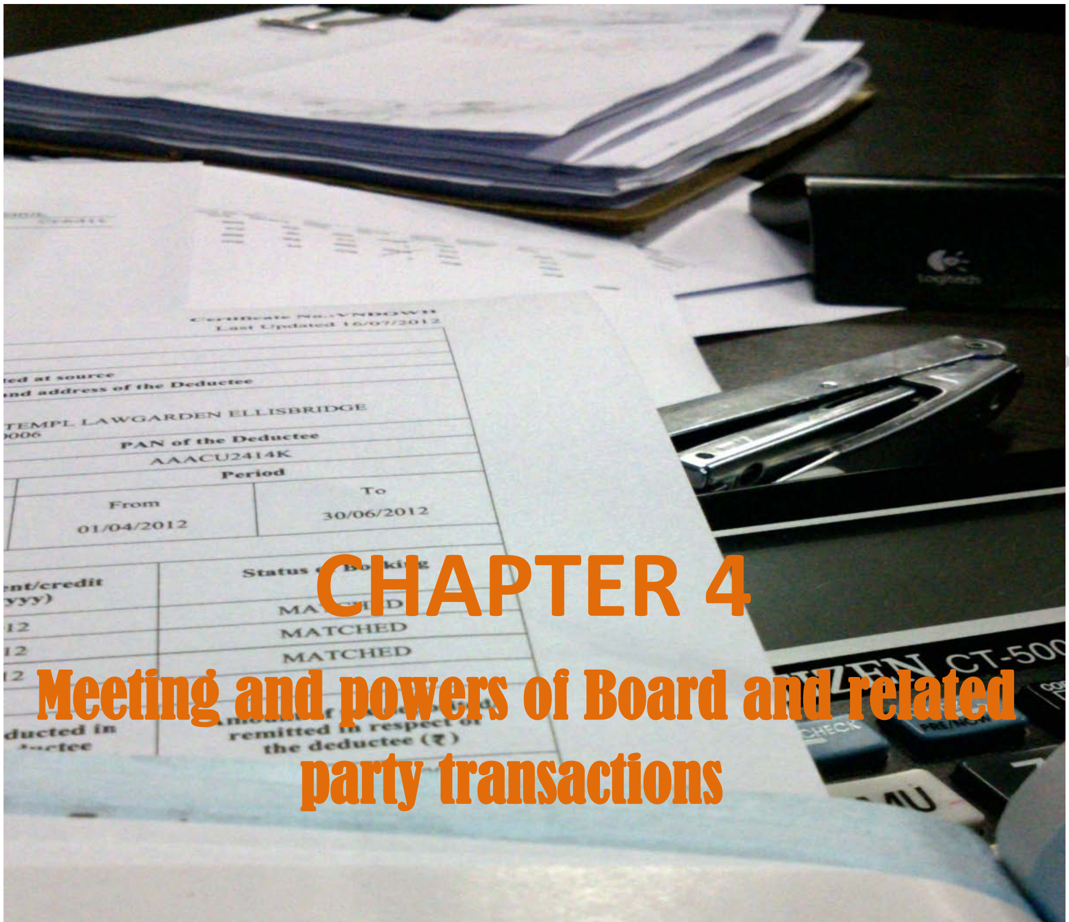

CHAPTER 4

Meeting and powers of Board and related party transactions

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<u>INTRODUCTION:</u>

A company is corporate body, recognized by the law which can act on its name. A company however cannot think and take decisions by way of meetings of the members. They must collectively not individually. A company delegates most of the functions to directors, who must meet together **(MEETING)** to perform the tasks.

Following are types of meeting:

A. **Meeting of shareholders / Members:**
   - Statutory Meeting
   - Annual General Meeting
   - Extraordinary General meeting
   - Class Meeting

B. **Meeting of debenture holder.**

C. **Meeting of creditors and contributories in case of winding up.**

D. **Meeting of creditor otherwise than in winding up.**

E. **Meeting of directors:**
   - Board Meeting
   - Committee Meeting

Subject to any special provisions in the articles **(Means if article provide something, it will prevail),** powers delegated by the company to its directors must be exercised at **properly convened meeting** referred to as board meeting.

Acts done at duly constituted meeting are therefore valid, unless article provides otherwise.

<u>BOARD MEETING: FREQUENCY OF MEETING</u> (Minimum Board meeting)

SECTION **285** required the board to meet **atleast once in every 3 months i.e.** atleast once in a quarter. As such board meeting to be held **atleast 4 times in a year.**

JAN
FEB
MARCH

Atleast 1 meeting

As such total minimum board meeting to be held in a YEAR is 4.

ATTENDING BOARD MEETING: (Directors have to come to meeting)

Ques???? Whether director is bound to attend the meeting of the board?

Ans………. No he is not bound. But if it is proved that he is not attending meetings willfully or without any sufficient cause, then he will be guilty of negligence.

NOTICE OF BOARD MEETING: (Directors will come by way of notice)

1. Notice has to be served to each and every director for the time being in India,
2. And at his usual address in India to every director.
3. Every officer whose duty is to **serve the notice &** fails to do so, **shall be punishable with FINE extending to Rs. 100**
4. Here company is not liable for any default in the service of the said notice; it is only officer who is subject to penalty amount.

ISSUES INVOLVED:

1. **If director is abroad India for more than 3 months,** & alternate director is appointed, then to whom notice of meeting to be served?

A1. In this case, it will be prudent practice to send the notice to **ALTERNATE DIRECTOR** as well as original director who is outside India for time being.

2. **If director states that** he will not be able to attend the meeting, is it necessary to give him notice under section 286?

A2. In this case,

IF ARTICLE IS SILENT : Notice of board meeting is not required to specify business nature to be transacted.

IF ARTICLE PROVIDES : Notice of board meeting is required to specify business nature to be transacted.

TIME & PLACE OF BOARD MEETING:

- Board meeting can even be held **OUT OF USUAL BUSINESS HOURS** even on **a public holiday.**

QUORUM OF BOARD MEETING:

PURPOSE : It prescribes the minimum number of person required to transact the business at a meeting. Quorum implies **fully qualified and disinterested directors,** who must be present in meeting so as to ensure that transactions are legally carried on.

QUORUM : 1/3 of **total strength of board.** (Fraction is to be taken as 1)

Some example on quorum:

Now take a situation where the quantity of the interested director is more for various transactions that has to be discussed at board meeting:

1. **For instance, in a board meeting (15 directors)of ABC ltd, transaction discussion cropped up in which 13 directors happens to be "interested Directors". Now what will be the quorum???**

   In this case, 2 **uninterested directors will form the quorum & will be eligible to transact the particular item of the business.**

2. **For instance, in a board meeting (15 directors) of ABC ltd, transaction discussion cropped up in which all 15 directors happens to be "interested Directors". Now what will be the remedy???**

   ARTICLE 48 of TABLE A of SCHEDULE 1 of the act, says that if board may call **extraordinary general meeting.** By this way the issue can be solved shareholders at general meeting.

As we have seen that the interested directors are not eligible to form quorum of board meeting, following are the exception to the aforesaid:

A. Company is a private company & which is neither subsidiary nor holding co. of public company.
B. Company is a private company & which is subsidiary of public company in respect of any contract or agreement.
C. Where there is contract of indemnity against loss, which the director may suffer by reason of being surety of the company.

ADJOURNMENT : Where the board meeting not held due to inadequate quorum, then it is automatically get adjourned at **SAME TIME, DAY** & **PLACE** next week.

ISSUES RELATED:

1. A resolution passed at adjourned board meeting is deemed as having passed thereat itself. i.e. it doesn't relates to **original board meeting.**

2. If the quorum is not present within **HALF AN HOUR** from time fixed for the meeting, it **SHALL STAND** dissolved and get adjourned to **SAME TIME, DAY** & **PLACE** next week.

3. If at adjourned meeting too, **quorum is not** present within **HALF AN HOUR** of the **scheduled time,** then the **MEMBERS PRESENT** shall form the quorum.

4. What will happen if the meeting is adjourned for 30 days or more:
   In this case, a fresh notice of adjourned meeting has to be served- ARTICLE 53 OF TABLE A OF SCH-1.

5. Adjourned board meeting **CAANOT BE HELD ON PUBLIC HOLIDAY.**

RESOLUTION OF BOARD MEETING:

Basically , resolution of board meeting can be categorized in to:

S.N.	CATEGORY OF RESOLUTION	Appl. Section	NATURE OF TRANSACTION
1	Resolution passed at Board Meeting	**262** **297** **316** **372**	1. **Resolution for filing up casual vacancy U/S 262.** 2. **Resolution for giving consent with directors.** 3. **Resolution for appointing managing director or manager of company who is holding such a post in other company.** 4. **Resolution for making investments in company under the same management group.**
2	Resolution passed by circulation	**289**	1. **Resolution has been circulated in draft with the necessary papers.** 2. **To all directors or to all members of committee then in India.**

CHAIRMAN OF THE BOARD:

APPLICABLE PROVISION: ARTICLE 76 OF TABLE A

LAW STATE : Board may elect a **chairman** of its meeting and determine the period for which he holds office.

If no chairman or if in meeting chairman is not **present within 5 minutes** from the scheduled time, then **directors may choose anyone among them as chairman.**

MISCELLANEOUS PROVISIONS:

1. DIRECTORS, ATTENDANCE BOOK:

- **It is important that records of the attendance of board meeting are kept carefully.**
- **Regulation 71 of TABLE A** states that "**Every director present in meeting of the board or of a committee shall sign** HIS NAME IN A BOOK TO BE KEPT FOR THAT PURPOSE".
- A soon as director sign the minutes book, he has to sign the book.

2. VOTING AT BOARD MEETING:

- **Regulation 74 of TABLE A** states that→
  - a. **Any question arising in the board meeting to be resolved by way of majority of votes.**
  - b. **In case of equality of votes, CHAIRMAN shall have casting vote to resolve the issue.**

3. MINUTES OF BOARD MEETING:

- **Same as that of applicable to general meetings of the company.**

4. PARTICIPATION BY DIRECTORS IN MEETING OF BOARD/COMMITTEE THROUGH E-MODE:

- **MCA (Ministry of Corporate Affairs)** vide circular No. 28/2011 **has clarified that directors of a company may participate in a board/ committee meeting through ELECTRONIC MODE.**

- **Date of the circular -- 20th may 2011**

- **Following are the requirements that a company has to comply with for holding meetings:**

  a. Electronic mode means **audio visual electronic communication.**

  b. Every director must attend atleast 1 meeting in the financial year through electronic mode.

  c. Chairman & secretary shall assume responsibilities:

     - **Safeguard integrity of the meeting via videoconferencing.**
     - **Ensure proper videoconferencing facilities.**
     - **Prepare minutes of the meeting.**
     - **Ensure that directors on other side are attending the meeting through electronic mode.**
     - **If the statement of person is interrupted & not heard,** then **chairman or secretary may request to repeat the statement.**

- MCA vide circular No 35/2011, **dated 06th June 2011,** clarified that it is not mandatory for companies to provide its director, the facility to **attend meeting through video conferencing.**

5. PROTECTION AGAINST ABUSE OF FIDUCIARY CAPACITY OF DIRECTORS:

For a company, director is both **an agent and trustee.** He is expected to undertake transactions for benefit of the company.

Companies act has several provisions that preclude the director in entering in to contract which are prejudicial to the company. If then also he enters into contract then company **may set aside the contract and sue the director.** The provision contained in **sections 297,299,300, 301 and 303.**

A. Disclosure of interest in the contract

A director who is **directly or indirectly** interested into an agreement or contract, a **DISCLOSURE** has to be made in **director's Board meeting.**

IMP:	Director must disclose his interest in **first board's meeting** held after he become interested.
PENALTY:	Any director who fails to comply aforesaid provision shall be punishable with **RS 5,000**
MODE OF DISCLOSURE	A director may give a **GENERAL NOTICE** to the board that he is related to firm with which the company is going to transact & therefore he is to be regarded as **CONCERNED / INTERESTED** **The notice will automatically get expired at the end of the financial year in which it was given.**

Section 297	A director of the company or his relative, **a firm in which such director or relative is a partner,** must not enter into **contracts with the company** for sale, purchase, supply of goods, services, **except the CONSENT OF THE BOARD.** **In case company has PAID UP capital is 1 CRORE OR MORE:** Prior approval of central govt. is needed if the director intended to enter into the contract. Consent of the board is deemed to be made if it is **accorded by RESOLUTION OF BAORD** 7 if not then **within 3 months of date of entering into the contract.** In the following cases, there is no requirement of taking consent of the board of director by interested director: A. **Purchase & sale of goods, materials at prevailing MARKET PRICES.** B. **Value of goods or services doesn't exceed RS 5000 in aggregate in any year.** C. **Transaction by banking/ insurance company entered into with any director, firm, relative** in the **ordinary course of his business.**
Section 299	In case of any contract or agreement between two companies where **any of the directors** of one company (**two or more of them together)** holds NOT MORE THAN **2% of the paid up share capital in other company, then** **NO DISCLOSURE IS REQUIRED** about the disclosure of the interest
Section 300	**A director is FORBIDDEN** from taking part in discussion or voting on any contract or any agreement when he is **directly or indirectly** interested in it. If he votes, then his **vote will be INVAILD OR VOID.**

6. SOLE SEELING AGENT:

A. Following are the provisions related to sole selling agent:

PROVISONS	PARTICULARS
APPOINTMENT MODE	**SSA** appointment must be made by the company in its **GENERAL MEETING.** Appointment shall **cease to be VALID** if it is not approved in the **first general meeting** held after the appointment of sole selling agent.
APPOINTMENT PERIOD	A company can't appoint SSA of any area exceeding **5 YEARS.**
RE-APPOINTMENT TERMS	It can re-appoint or extend the term for further **5 YEARS.**

FURNISH INFORMATION TO CENTRAL GOVERNMENT	Central govt. may require the company to: **- Furnish information i.r.o. terms & conditions of appointment** **CG** has to ascertain whether the appointment is not prejudicial to the interest of the company.
CASE OF MORE THAN 1 SOLE SELLING AGENT	In case of more than 1 sole selling agent. **Central government** may ask the company for terms and conditions of appointment of all sole selling agents. **If the company refuses to provide information, then** the central government **MAY APPOINT A suitable person to investigate and report** on the terms and conditions of the appointment of all sole selling agent.

B. Prohibition on payment of compensation to sole selling agent for loss of office: { SEC-294A}

Following are the cases in which there is prohibition on payment of compensation to sole selling agent for loss of office:

CODE TO REMEMBER : **T.I.G.A.R.**

A. **T**ermination : **Where SSA himself indulges in bringing about termination of sole selling agency.**

B. **I**nvalid Appointment : **Where SSA appointment ceases to be VALID** i.e. without approval in general meeting.

C. **G**uilty: **In case SSA is guilty of fraud or breach of trust or of gross negligence in his duty.**

D. **A**malgamation : **Where SSA resigns from the office as a result of amalgamation or reconstruction of** the company and is **appointed as sole selling agent of the amalgamated or reconstructed company.**

E. **R**esignation: **Where he resigns his office other than mentioned in point D.**

AMOUNT OF COMPENSATION:

Amount of compensation in no case shall exceed:

The remuneration which he would have earned has he been in the office:

FOR UNEXPIRED TERM **OR** 3 YEARS **(Which is shorter)**

BASIS OF CALCULATION :

The amount of calculation shall be calculated on the **average remuneration** actually earned **by him during a period of 3 years immediately preceeding the date on which he had ceased to be in office or his appointment was terminated**

C. Power of the central government to prohibit appointment of sole selling agent in certain cases: { SEC-294A}

If government is of opinion that **DEMAND** of particular **GOODS & SERVICES** exceeds the supply and the services of sole selling agent is not required to create market for goods and services, central government by **NOTIFICATION IN OFFICIAL GAZETTE,** declare that SSA **shall not be appointed by the company** for the sale of such goods for period as specified in the notification.

Now certain facts about the appointment of sole selling agent and required approval of their appointment:

APPOINTMENT OF SSA	**APPROVAL FROM**
If company appoints any **individual, firm or body corporate which has** ***SUBSTANTIAL INTEREST*** **in the company**	PRIOR **APPROVAL FROM CENTRAL GOVERNMENT**
If Company has paid up capital of **RS 50 lakhs or more,** [In case, **appointment is done by complying all conditions, but CG thinks it is prejudicial to the company,** CG may refuse to grant approval] **—Ramesh B Desai Vs Union Of India**	CONSENT OF THE COMPANY **given by SPECIAL RESOLUTION** & **APPROVAL OF CENTRAL GOVERNMENT**

Here I am explaining the meaning of **substantial Interest:**

- In relation to an individual:

  <u>*Beneficiary interest held by*</u>

  INDIVIDUAL
  +
  ANY OF HIS RELATIVE

  } ***singly or together in s hare of company*** →

  Aggregate amount paid on which **EXCEEDS:**

  Rs. 5,00,000 or 5% of paid up share capital of company

  (Whichever is Lesser)

- In relation to firm or body corporate:

  <u>*Beneficiary interest held by*</u>

  INDIVIDUAL
  +
  ANY OF HIS RELATIVE

  Singly or together

  OR

  Singly or together

  ONE OR MORE PARTNER OF FIRM
  +
  ANY OF HIS RELATIVE

  BODY CORPORATE
  +
  ONE OR MORE DIRECTOR OR ANY RELATIVE OF SUCH DIRECTOR

  Singly or together

  THEN

  ⇓

  Aggregate amount paid on which **EXCEEDS:**

  Rs. 5,00,000 or 5% of paid up share capital of company

  (Whichever is Lesser)