

7. Sole Selling Agents

Introduction

- The expression 'sole selling agents' refers to a person who is given an exclusive right to sell the goods of the company in a particular area to the exclusion of others, including the company.
- The agreement nowhere provided that the distributor was the sole distributor of an area. Thus, however, the tenor of the agreement showed that the distributor was the *sole distributor* for areas. Thus, the appointment of the distributor was held to be an appointment of 'sole selling agent'.

Appointment (Section 294)

- Requirements for appointment of sole selling agents are as below
 1. *Appointment subject to approval in general meeting*: where the board of directors of a company appoints a sole selling agent, such appointment shall be subject to the condition that appointment shall cease to be valid if it is not approved by the shareholders in the first general meeting held after date of the appointment.
 2. *Disclosure of material facts to the shareholders*: the notice convening the meeting for approving the appointment of sole selling agents must give full information so that the shareholders can know the exact nature of the agreement.
 3. *Appointment must be conditional*: the sole selling agreement must incorporate the condition that the appointment shall cease to be valid if not approved in the general meeting. If there is no such condition, the agreement will be *void ab initio* even if it is approved by the general meeting.
- Tenure of office [Section 294(1)]

A company shall not appoint a sole selling agent for a term exceeding 5 years at a time.

Restriction on appointment of sole selling agent (Section 294AA)

The act has given wide powers to the CG to regulate the appointment of sole selling agents by a company. These provisions shall also apply to the reappointment of sole selling agent as that applies to their appointment.

1. Demand exceeds supply of goods

Such prohibition may be imposed if the CG is of opinion that

 - a. The demand for goods of any specified category is substantially in excess of the production or supply of such goods; and
 - b. The service of the sole selling agents is not necessary to create a market for such goods.
2. Substantial interest of sole selling agents in the company

A company shall not appoint any person having a substantial interest in the company as a sole selling agent, unless such appointment has been *previously approved* by the CG. An important point to be noted about this section is that no retrospective effects of this section apply means in other words, acquisition of substantial interest after the appointment is not regulated by this section.

‘Substantial Interest’: means beneficial interest (BI) in the shares of the company exceeding Rs. 5 Lakhs or 5% of paid up share capital of the company, WEL

i. In case of individual: BI may be held by such individual with any of his relatives

ii. In case of a firm: BI may be held by one or more partner of the firm together with any of their relatives.

iii. In case of a body corporate: BI may be held by such body corporate together with one or more of its directors and any of the relatives of directors.

3. Companies having share capital of Rs. 50 Lakhs

A company having a share capital of Rs. 50 lakhs or more shall not appoint a sole selling agent except –

a. With the consent of the company accorded by a special resolution; and

b. With the approval of central government.

Effect of disapproval: the appointment of SSA shall cease to be valid, if –

a. The CG disproves the appointment; or

b. Special resolution approving the appointment is not passed in the GM

➤ Where the paid up capital of the company is increased to 50 lakhs after the appointment of SSA, the provisions of this section are not attracted.

Powers of the CG (Section 294)

The powers of CG to investigate the terms of appointment of SSA are as follows:

1. Investigation by the CG

a. Where a company has appointed a SSA

i. Calling of information

ii. Appointment of inspector

iii. Variation in terms and condition: if after perusal of the information furnished by the company or report of the inspector, the CG is of the opinion that the terms and condition of appointment of SSA are prejudicial to the interest of the company, it may make variation in terms and condition. The variation will be effective from the date specified in order.

b. Where a company has appointed more than one selling agent

i. Calling of information

ii. Appointment of inspector

iii. Appointment of a SSA

2. Penalty

The company and every officer of the company who is in default shall be punishable with fine up to Rs. 50,000 plus Rs. 500 for every day till the default continues.

3. Limitation on the power of CG

a. Limitation on power to order investigation: only if the company violates any rules or in the interest of the company otherwise CG can not exercise his power.

b. Limitation on power to appoint inspectors

c. Limitation on power to make variation

d. Principle of natural justice to be followed: the CG must give the SSA an opportunity of being heard before making any order prejudicial to him.

- e. No power to terminate the sole selling agency: section 294 limits the powers of CG to make an order of variation in the terms of a SSA. It does not authorize the CG to cancel the appointment of SSA.

Prohibition of payment of compensation to SSA (Section 294A)

1. Compensation not payable

- a. Where his appointment is not approved in the first GM after his appointment. Where the appointment of SSA is disapproved by the shareholders at a GM, the sole selling agency terminates from the date of such disapproval. If the meantime, if the agent has done some work, he is entitled to remuneration thereof.
- b. Where the SSA resigns because of the reconstruction or amalgamation of the company and is appointed as the SSA of the reconstructed or amalgamated company.
- c. Where the SSA resigns voluntarily.
- d. Where the SSA is guilty of fraud or breach of trust or gross negligence in the conduct of his duties.
- e. Where the SSA has instigated or is directly or indirectly responsible for the termination of the sole selling agency.

2. Restriction on quantum of compensation

- a. Period: the compensation shall be admissible only for the lower of the following periods:
 - i. The unexpired period of the agency; or
 - ii. 3 years
- b. Basis
The compensation shall be based on the 'average remuneration' average remuneration shall be calculated taking into account the remuneration actually earned by the SSA during 3 years immediately preceding the date of cessation of office.

Sole buying agents

However the following provisions relating to SSA are not applicable to SBA agents:

- a. A sole buying agent may be appointed for more than 5 years at a time. However, no public company shall appoint any firm or body corporate in any office or place of profit under the company for a term exceeding 5 years at a time. Further, the term of office of any firm or body corporate shall not exceed 5 years in case of reappointment or extension of term of office. With the approval of CG, the term of office may exceed up to 10 years.
- b. The appointment of a SBY does not require the approval of the shareholders in the GM.
- c. The CG has no power to issue a notification restricting the appointment of a SBA.
- d. There is no provision prohibiting payment of compensation for loss of office of a sole buying agent. As such, the compensation may be paid to a SBA as per the agreement between the company and the SBA.