CHAPTER XII

MEETINGS OF BOARD AND ITS POWERS

UNDER
THE COMPANIES ACT, 2013
SECTION 173 TO 195)
Meetings of the Board (S:173) (R : 3&4)

- First Meeting within 30 days from incorporation

- Minimum four meetings in a year with a gap of not more than 120 days between the two meetings.

- Participation of Directors may be either in person, through video conferencing or through audio visual means.

- An OPC, Small Company and Dormant Company shall hold at least one Board Meeting in each half of calendar year such that gap between two meeting is not less than 90 days
Notice of the Meeting

- Minimum 7 days notice for calling Board Meeting.

- Notice can be sent by hand delivery, post or electronic means.

- Shorter notice is allowed only if at least one Independent Director is present at the meeting.

- Notice shall indicate the option of participating through video conferencing or other audio visual means.

- In the absence of Independent Director, decisions taken at such meeting shall be circulated to all the directors and shall be final only on ratification by at least one Independent Director.
Matters not to be dealt in a meeting through video conferencing and other audio visual means.

- Approval of annual financial statements;
- Approval of Board’s Report;
- Approval of prospectus;
- Audit Committee Meetings for consideration of Accounts;
- Approval of matters relating to amalgamation, merger, demerger acquisition and takeover.
Quorum of the Meeting (S:174)

- 1/3rd of total strength or 2 directors whichever is higher. (Participation of directors through video conferencing or other audio visual means shall also be counted for the purpose of quorum.

- If number of Interested Directors is 2/3rd or more of total directors than, the other directors not less than 2 shall be the quorum for that time.

- For this section fraction shall be rounded off as one.

- If the Board meeting could not be held for want of quorum, then the meeting shall automatically adjourned to the same day same time same place, next week.
Passing of Resolution by Circulation  
(SEC-175) (R : 5)

- A draft resolution shall be circulated to all the directors at their registered address for seeking their approval, even by electronic means i.e. by Email or Fax.

- Where 1/3\textsuperscript{rd} or more directors require the said resolution to be decided at the meeting, the Chairman shall put the same to be decided at the meeting.
Committees of the Board (S :177 & 178) ( R : 6 & 7)

- Following are the mandatory Committee that are to be constituted by the Companies given below:
  
1. Audit Committee

2. Nomination and Remuneration Committee

3. Stakeholders Relationship Committee (if number of shareholders, debenture holders or deposit holders are more than 1000)
Following Companies to have Audit Committee, Nomination and Remuneration Committee:-

• Every Listed Company;

• All Public Companies with a paid up capital of 10 crores or more, turnover of 100 crores or more;

• All Public Companies having outstanding dues exceeding fifty crores or more.

• (Note: All this figures shall be taken as existing on the date of last audited financial statements)
• The Audit Committee shall consists of minimum of three directors with majority of Independent Directors.

• The Chairman of the Audit Committee shall be Independent Director.

• Nomination and Remuneration Committee shall consists three or more non – executive directors with not less than one half of members of the Committee shall be Independent Directors.
Stakeholder Relationship Committee

- The Board of a company which consist of more than 1000 shareholders, debenture holders, and deposit holders or any other security holder any time during the financial year shall constitute a stakeholder relationship committee with a chairperson to be non-executive director and such other members as may be decided by the Board of directors.

- Non consideration of resolution of any grievance in good faith shall not constitute contravention of this Section.
Establishment of Vigil Mechanism

- Companies belonging to following class shall establish a vigil mechanism of their directors and employees to report their genuine concerns.
  1. All listed Companies
  2. Companies which accepted deposits from the public
  3. Companies which have borrowed money from banks and public financial institutions in excess of Rs. 50 Crores
Powers of Board (S:179)(R :8)

- The Board of Directors of a Company shall be entitled to exercise all the powers and to do all the acts, as the Company is authorised to exercise.
- The Board of Directors shall exercise the following powers on behalf of Company:
  1. To make calls on shareholders
  2. To authorise buy back of securities
  3. To issue securities including debentures
  4. To borrow money
  5. To invest funds of the Company
  6. To grant loans or give guarantee or provide security in respect of loans
  7. To approve financial statement and Board’s Report
  8. To diversify the business of the company
  9. To approve amalgamation, merger or re-construction
  10. to take over a company or acquire a controlling or substantial stake in any Company.
Rule 8 of the Companies (Meetings and Powers of Board) Rules, 2014 provides for additional powers which shall also be exercised by the Board only at the Board Meeting.

- To take note of appointment or removal of one level below the KMP;
- To appoint internal auditor and secretarial auditor;
- To buy, sell investments held by the Company constituting 5% or more of the paid up capital of the investee Company;
- To invite/accept/renew public deposits and related matters;
- To review or change the terms and conditions of public deposit;
- To approve quarterly/half yearly/annual financial statement or results.
Restrictions on powers of Board (S:180)

- Applies to all Companies (Earlier only public companies)
- This section now requires special resolution instead of ordinary resolution to exercise specified powers i.e. to sell lease or otherwise dispose of the whole or substantially the whole of the undertaking, to invest otherwise in trust securities, to borrow money, to remit or to give time for the repayment of any debt due from any director
- Section 180 also defines the expression “undertaking” and “substantially the whole undertaking” using 20% threshold criteria.
- Section 180(1)(b) covers the power to invest the amount of compensation received as a result of any merger or amalgamation.
- This sub-section shall not authorize the Company to reduce its share capital, except in accordance with the Act.
Company to contribute to bona fide and charitable funds, etc. (S:181)

- This Section specifies the limit of 5% of its average net profits for the three immediately preceding financial year.
- There is no stipulation that net profits shall be calculated for this purpose as per section 198 of 2013 Act.
- Donations to charitable and other funds directly relating to the business of the Company or the welfare of its employees not so excluded from the ambit of Section 181 of the 2013 Act.
- Prior permission of the members of the Company in general meeting is required in case amount of expenditure exceeds the limit of 5% as specified.
Prohibitions and restrictions regarding political contributions (S:182)

- A Non Govt. Company and a Company which is in existence for at least 3 financial years can make political contributions up to 7.5% of average net profits for three preceding financial years. There is no stipulation that net profits shall be calculated for this purpose as per Section 198 of the 2013 Act.

- No such contribution shall be made unless resolution has been passed in the Board of Directors meeting for such contribution.

- Company shall disclose name of the political party and amount of contribution in its P/L account.

- Contribution made to a person who may affect support to political party, the same shall also be regarded as contribution to political party.
Power of Board and other persons to make contributions to national defence fund, etc. (S:183)

- Notwithstanding Section 180, 181 & 182 and the Act, the Board or any person so authorized to act on behalf of Board & Company in General Meeting may contribute any amount to National Defence Fund or any other fund as approved by Central Government.

- Company shall disclose amount so contributed in P/L account.
Disclosure of interest by director.  
(SEC-184) ( R : 9)

• Every director shall:-
  - At the first Board Meeting attended;
  - At the first Board Meeting of every F.Y.;
  - If there is any change in disclosure already made,
    disclose his interest in any Company or Companies, body corporates, firms or concerns in which he/she is director or member, in Form “MBP-1”.

• This Section shall not apply to any contract between two Companies where the directors do not hold more than 2% of the paid-up capital.

• All such notices of the directors shall be kept at the registered office and shall be preserved for a period of 8 years and shall be kept in the custody of a Company Secretary or person authorized by the Board for the purpose.
Loan to directors, etc. (S:185) ( R : 10)

- Under Section 185 there is total prohibition on making of loans to Directors or giving guarantee/providing security in connection with loan taken by director or company and specified parties.

- This sub-section shall not apply to:
  
a. Loan to MD or WTD:
     - as a part of service provided to all employees;
     - under any scheme approved by a special resolution;

b. By a Company in ordinary course of business where the interest charged is not less than that fixed by RBI.

c. Loan/Guarantee/Security provided by a holding Company to its WOS.

d. Providing of Guarantee/Security by a Holding Company for a loan provided by a Bank to its WOS.
   (Provided such loan is utilised by the subsidiary for its principal business activities)

- No Central Government approval is required under this Section now.
A Company unless otherwise prescribed, shall not make investment through more than two layers of investment companies.

This section shall not affect:
- A company acquiring a foreign Company with more than two layers of investment subsidiaries;
- A subsidiary company from having an investment subsidiary as required under any law/rule/regulation.

Approval by special resolution is required where the loan/guarantee/security exceed 60% of its paid up capital, free reserves and securities premium account or 100% of its free reserves.

Where a loan/guarantee/security has been provided by a Company to its WOS, JV or acquisition is made by a Holding Company of shares of WOS no special resolution is required even if it exceeds the limit under Section 186(2).
• The company shall disclose in its financial statement the amount of loan/guarantee/security and the purpose for which it was provided.
• No investment/loan/guarantee/security shall be made unless a Board Resolution is passed with the consent of all the director present.
• Approval by special resolution is required where the loan/guarantee/security exceed the limit given under Section 186(2).
• Every Company giving loan/guarantee/security or making acquisition shall maintain a register in Form “MBP-2”.
• Such register shall be kept at R.O of the Company, it shall be open to inspection, extracts may be taken by a member or copies may be provided on payment of requisite fees.
Investments of company to be held in its own name. (S:187)( R : 14)

- All investments made by a Company shall be held in its own name.
- Nothing in this section shall prevent a Company:
  - from depositing with the bankers shares or securities for interest/dividend thereon.
  - from depositing/transferring with the bankers or holding in the name of SBI or Scheduled Bank (being the bankers), shares or securities for transfer thereof.
  - From depositing with, or transferring to, any person any shares or securities by way of security for the repayment of any loan.
  - From holding investment in the name of a depository when such investment is in the form of securities held by the Company as beneficial owner.
• If such shares are not transferred for a period of six months from the date when the shares were deposited/transferred than Company shall as soon as possible re-transfer the same in its own name.

• Company shall maintain a register in Form “MBP-3” which shall contain particulars of shares or securities which are not held in its own name, the same shall be open to inspection by members/debenture holders subject to restrictions in the articles or G.M.
Related party transactions (S :188)) R: 15)

- No Company shall enter into any contract/arrangement with related party without the consent of Board regarding:-
  - Sale, purchase, supply of goods/materials;
  - Selling/disposing/buying of any property;
  - Leasing of any property;
  - Availing/rendering any service;
  - Appointing any agent for purchase/sale of goods/materials/services/property;
  - Appointment of related party to any office or place of profit in the Company/its subsidiary/its associate and
  - Underwriting subscription of securities/derivatives of the Company.
- The name of the related party and nature of relationship;
- The nature, duration of the contract and particulars of the contract or arrangement;
- The material terms of the contract or arrangement including the value if any;
- Any advance paid or received from the contract or arrangement;
- The manner of determining the pricing and other commercial terms;
- Whether all factors relevant to the contract have been considered;
- Any other relevant information.
• A member who is a related party shall not vote on a special resolution approving contract/arrangement with such related party.
• Nothing in this section shall apply to transactions entered into the ordinary course of business and on an arm’s length basis.
• The Contract entered into under sub-section (1) shall be reflected in the Board’s report along with justification for such contract.
• Where any contract under this section is not entered into with the approval of the Board or by a special resolution or if it is not ratified by the Board or by members within 3 months of the contract entered into, than the said contract shall be voidable at the option of the Board.
• For the purpose of Section 188(1), except with the prior approval of members by way of special resolution;
1. A Company having paid up capital of ten crores or more shall not enter into a contract or arrangement with any related party
2. A Company shall not enter into a transaction or transactions where the transactions are entered into
a) as contracts or arrangements with respect to clauses (a) to (e) of Section 188(1).
b) Appointment to any office or place of profit in the Company, its subsidiaries or associates at a monthly remuneration exceeding 2.50 Lakhs.
c) Remuneration for underwriting the subscription of any securities or derivatives thereof of the Company exceeding 1% of the networth.

In case of wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between wholly owned subsidiary and holding company.
Register of contracts or arrangements in which directors are interested. (S:189)(R :16)

- Company shall maintain a register in Form “MBP-4” for contracts entered into under Section 184(2) or 188.
- Disclosure made by directors and KMP to be also entered.
- The register shall be placed before next Board Meeting and signed by all the directors present at the meeting.
- Register shall be kept at the R.O of the Company and shall be open for inspection by the members, copies may be furnished to members as required.
- It shall also be produced at the commencement of every AGM and remain accessible during the meeting.
Contract of Employment with managing or whole-time directors. (S:190)

- This Section shall not apply to Private Companies.

- Every Company shall keep at its registered office:-
  - A copy of contract of service with MD or WTD, if in writing;
  - If it is not in writing a memorandum setting out terms of contract.

- Such copies of contract shall be open for inspection by members without payment of any fee.
Payment to director for loss of office, etc., in connection with transfer of undertaking, property or shares. (S:191)(R : 17)

- No director shall receive any payment for loss of office, for loss of retirement, for loss or retirement from transferee of undertaking or property or of shares unless the following particulars for the payment have been disclosed to the members for approval in General Meeting:-
  - Name of the Director;
  - Amount proposed to be paid;
  - Event due to which compensation became payable;
  - Date of Board Meeting recommending such payment;
  - Basis for the amount determined;
  - Reason or justification for the payment;
  - Manner of payment;
  - Sources of payment;
  - Any other relevant particulars.
• This section shall not affect compensation for loss of office or consideration for retirement made to MD, WTD or Manager within the limits prescribed.

• No payment shall be made to MD, WTD or Manager (except notice pay and statutory payments as per the terms of appointment) if:-
  - The Company is in default in repayment of deposits and interest thereon;
  - The Company is in default in redemption of debentures;
  - The Company is in default in repayment of any liability secured/unsecured, to any bank/financial institution;
  - The Company is in default in payment of any statutory dues;
  - Outstanding dues to employees and workmen;
  - The Company has not paid dividend on preference shares or not redeemed preference shares on due date.
Restriction on non-cash transactions involving directors. (S:192)

- No director shall enter into arrangement by which:-
  - director of the Company/its holding/subsidiary/associate or any person connected with him, acquires assets for consideration other than cash from the Company;
  - The Company acquire assets of the director/person connected with him for consideration other than cash

Unless approval is obtained in GM, if the director/person connected are of holding company approval at GM of holding is also required.

- Notice for calling such meeting shall contain details of arrangement and also value of assets according to registered valuer.

- Any arrangement entered into contravening this Section, shall be voidable at the option of the Company unless:-
  - Money has been restituted or consideration being subject matter of arrangement is no longer possible or the Company is indemnified;
  - When rights are acquired bona fide for value or in ignorance of contravention of this Section.
Contract by One Person Company. 
(SEC:193)

- Where an OPC limited by shares or guarantee enters into contract which is not in the ordinary course of business, with the sole member of the company who is also the director of the company & if such contract is not in writing the company shall ensure that the term of the contract or offer are contained in memorandum or in the minutes of the 1st BM held next after entering into contract. (This section does not apply where the contract entered is in the ordinary course of its business)

- The Company shall inform to the registrar about such contract within 15 days of the date of approval by the board of directors.
Prohibition on forward dealings in securities of company by director or key managerial personnel (S: 194)

- No director or KMP of Company shall buy in the company or its holding company or associates company
  - A right to call for delivery or right to make delivery of specified number of relevant shares or specified amount of relevant debentures, with specified price & time’
  - A right as he may elect to call for delivery or to make delivery of specified number of relevant shares or specified amount of relevant debentures, with specified price & time.
• Such director or KMP shall be liable to surrender the securities to the company & the company shall not register these securities in his name in register.

• If such securities are in dematerialize form, company shall inform to the depository not to record.

• Such securities in above both the case continue to remain in the name of transferors.
Prohibition on Insider trading of securities.  
(S:195)

- No person including any director or KMP shall enter into insider trading.
- Any communication required in ordinary course of business or profession or employment shall not be treated as insider trading.
- Insider Trading means
  - An act of subscribing, buying, selling, dealing, or agreeing for the same in any securities by a director or KMP or any other officer either as principal or agent, if such persons are reasonably expected to have access to any non-public price sensitive information in respect of securities of the company or
  - Any act of counseling about procuring or communicating directly or indirectly any non-public price sensitive information to any person.
- Price Sensitive information means any information which if published is likely to affect the price of securities of the company.
• If a person contravenes the above provisions he shall be punishable with
  - Imprisonment for term which may extend to 5 years or
  - Fine not less than 5,00,000 but may extend 25,00,00,000 or three times the amount of profit made out of insider trading whichever is higher or
  - With both