

## Manager [Sec 2(53)] and Managing Director [Sec 2(54)]

### 1. Meaning of Manager

Manager means an individual who, subject to the-

- i. superintendence, control and direction of the board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and
- ii. includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not.

The definition of 'Manager' has not changed under the Act, as compared to the Companies Act, 1956 except for the removal of the words "not being the managing agent". The definition in the Companies Act, 1956 excluded managing agent from the definition of manager because Companies Act, 1956 had specific definition for 'managing agent' which was later omitted by the Companies (Amendment) Act, 2000.

A manager also is identified as Key Managerial Personnel under clause (51) of section 2 of the Act.

### 2. Pre-requisites to be treated as a manager

The conditions mentioned in *CIT, Kerala v. Alagappa Textiles (Cochin) Ltd [83 (1980 SCR(1)723]* by the Supreme Court were as follows:

"Section 2(24) of the Companies Act requires three conditions to be satisfied: (a) the Manager must be an individual, which means that a firm or body corporate or an association is excluded and cannot be a Manager (a fact which is expressly made clear in section 384). (b) he should have the management of the whole or substantially the whole affairs of the company and (c) he should be subject to the superintendence, control and directions of the Board of Directors in the matter of managing the affairs of the company. Subject to the changes made in the aspect covered by (a) and (b), in both the definitions [s.2(9) of 1913 Act and s. 2(24) of the 1956 Act], the aspect that a Manager has to work or exercise his powers under the control and directions of the Board of Directors is common and essential."

An individual who is not entrusted by the whole or substantially whole of the affairs of the business or company cannot be termed as the manager of the company. It was held in *Basant Lal v. Emperor [84 (1917Cr LJ 215]* that a person who is not in charge of the whole of the affairs of the business cannot be termed as the manager. The underlying principle laid down by the case was in light of facts that the person who is in charge of a branch but not whole or substantially the whole business, cannot be termed as manager.

It was held in various court judgments that merely designating a person as the manager such as factory manager or shop manager or branch manager without entrusting to him the whole or substantial powers of the business or company cannot become a manager under the Companies Act, 1956. A person in order to get qualified as the manager should be entrusted with whole or substantial powers of the business or company, he should be in a position to take decisions, he should be in a sort of governing role relating to the affairs of the company.

In the department clarification dated 26.04.1956, it was clarified that a factory manager who was in charge of production and was not concerned with buying raw materials, selling finished goods, finances of the Company, would not be termed as manager under Companies Act.

### 3. Number of managers

Unlike a managing director or whole-time director, a company cannot appoint more than one manager at a time. When a person is entrusted with either whole or substantially the whole of powers of the company, it is presumed that only one person can have the management of the whole or substantial powers.

### 4. Comparison of manager and managing director

A manager need not be a director whereas a managing director should be a director. The mode of appointment of both of them differs. In case of a manager who is also a director of the company, if for any reason the Director resigns or his office gets vacated, then the office of the Manager does not get affected. In case of Managing Director, the vacation of office as Director results into cessation of office of the managing director.

Sub-section (1) of section 196 provides that a company can either have a manager or a managing director but not both at the same time. It is due to the reason that a manager or a managing director is entrusted with whole and substantially whole of powers of the Management of affairs of the Company and a Manager can't be again entrusted with such powers at a same time.

Unlike managing director, who is entrusted with the substantial powers of the management, a manager has the management of the whole or substantially the whole of the affairs of the company. The powers are subject to superintendence, control and direction of the board of directors.

### 5. Meaning of 'Managing Director'

Managing Director (MD) means a director who, by virtue of –

- i. the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and

- ii. includes a director occupying the position of managing director, by whatever name called.

The stipulation contained in the proviso to clause (26) of section 2 of the Companies Act, 1956, that the managing director shall exercise his powers subject to the superintendence, control and directions of the Board is not contained in the Companies Act, 2013.

Managing Director is entrusted with substantial powers to manage the affairs of the company. The removal of the stipulation does not enhance the position of the managing director who continues to operate with the terms of reference set by the board. The board remains superior to the MD. Managing director plays a significant role in managing the affairs of the company and is recognized as KMP under clause (51) of section 2.

Further, as per the explanation appended with the definition, the substantial powers of management does not include the power to do administrative acts of a routine nature when so authorised by the Board such as the power to affix the common seal of the company to any document or to draw and endorse any cheque on the account of the company in any bank or to draw and endorse any negotiable instrument or to sign any certificate of share or to direct registration of transfer of any share. In *Wasava Tyres v. Printers (Mysore) Ltd.* [85 (2007) 139 Comp. Cas..446(Kar.)], the Court held that:

“The words ‘substantial powers of management’ as occurring in section 2(26) of the 1956 Act [corresponding to section 2(54) of the 2013 Act] specifically excludes certain acts from its purview. Therefore, except the excluded acts the managing director has power and privilege of conducting the business of the company in accordance with the memorandum and articles of association of the company. The institution of the suit on behalf of the company by the Managing Director is deemed to be within the meaning of ‘substantial powers of management’ since such a power is necessary and incidental for managing the day-to-day affairs and business of the company. Therefore, by virtue of provisions of Section 26 the suit instituted by the Managing Director is deemed to be within his power and authority. The suit is obviously filed for the benefit of the company. In that view of the matter, the contention that the Managing Director had no authority to file a suit is untenable and the same is rejected.”

## 6. Managing director to be appointed first as a director

Prerequisite for the appointment of managing director is that he should be first appointed as a director of the company. However, a managing director cannot be equated with an ordinary director due to the extra powers vested in him.

A managing director can tender his resignation in the capacity of managing director and continue to be the director of the company but whereas once a director has tendered his resignation he cannot be deemed to continue as the managing director of the company.

## 7. Position of the managing director

A person may be deemed to be a managing director, although he is not so appointed and designated as such. It is the position he holds which determines whether he is a managing director or not, not his designation or name.

It was held in the case of *CIT v Sarabhai Sons Ltd.* [86 (1983) 1 Comp LJ 203 (Guj)] that where the Chairman of the board had exercised the powers of management and rendered his services to the company in managing its business, although he was not appointed as managing director was deemed to be the managing director.

A managing director occupies the dual capacity of being a director as well as an employee of the company. In *Employees State Insurance Corpn. v. Apex Engineering P. Ltd.* [87 1998 (1) LLJ 274], the apex Court upon taking into consideration various decisions, inter alia, held that a managing director of a company having limited liability would be employee within the meaning of the said Act. In that case, the apex Court clearly held in the facts and circumstances thereof, that all the requisite conditions for applicability of the term 'employee' as defined by the Act stood satisfied in the case of the Managing Director, holding that a Managing Director of a company could not be treated at par with partner of a partnership firm who has been given some remuneration for his extra work.

In *Happy Home Builders (Karnataka) P. Ltd. v. Delite Enterprises* [88 (1994) 13 Corpt LA 405 (KA), Halsbury's Laws of England 4<sup>th</sup> Edn was quoted as : A director or managing director of a company is its agent for carrying on its business and not a mere servant of the company.

*Contents of Geeta Saar, as extracted from ICSI Premier on Company Law, is as per notified law as on 30<sup>th</sup> September, 2016.*