

Representation of corporations at meetings (Sec 113)

1. Legislative background

The notes on clauses to the Companies Bill, 2011 read as follows:

"Clause 113.— This clause corresponds to section 187 of the Companies Act, 1956 and seeks to provide that where a body corporate is a member or a creditor including a holder of debentures of the company and it authorises any person as its representative at any meeting of the company or any class of members of the company or at any meeting of creditors of the company, such representative shall be entitled to exercise the same rights and powers including right to vote by proxy and by postal ballot on behalf of the body corporate which he represents."

2. Representation of body corporate when it is a member

Clause (a) of sub-section (1) of section 113 provides that where a body corporate is a member of a company, such body corporate may authorize any person it thinks fit to act as its representative at any meeting of the company or at any meeting of any class of members of the company. Such body corporate may or may not be a company within the meaning of clause (20) of section 2. Such body corporate shall pass a resolution of its board or other governing body for the purpose of such authorisation. It was held in *Dineker Rai D. Desai And Others vs R.P. Bhasin And Others [1986 60 CompCas 14 Delhi]* that "the section does not contemplate a fresh resolution being filed for every meeting."

It was held in *Re: United Western Bank Limited [[2002] 38 SCL 34 (CLB - N. DELHI)]* that the date of resolution may precede the date of becoming a member by entry in the register of members. It was held that "There is nothing specific in that section to indicate that prior membership is necessary to pass such a resolution and if a company passes a resolution in anticipation of acquisition of shares, then the same cannot be considered as invalid."

Further, the object of the section was explained in the above case while holding that there is no nexus between the date of resolution and date of acquisition of shares. It was held that "the purpose of a resolution under Section 187 is twofold. One is to enable the company to attend/vote and the other is to satisfy the other company in which shares are held that the person attending the meeting has been duly authorized. As long as the name of a company is in the register of members on the date of the meeting of the other company, and the board of directors had passed a resolution under Section 187 on any day prior to the meeting and present the same to the other company before or at the time of the meeting, the other company need not have to look into whether the shares were acquired before or after the date of the resolution."

In the case of Manoj Kumar Sonthaliav. Nariman Point Building Service and Trading Pvt. Ltd. [[1995] 84 Comp. Cas. 559 (Mad.)] it was held that “Under section 187 a body corporate may appoint only one representative. There is no question of appointing a joint representatives.”

3. Representation of body corporate when it is a creditor

Clause (b) of sub-section (1) of section 113 provides that where a body corporate is a creditor of a company including a debenture-holder, such body corporate may authorize any person it thinks fit to act as its representative at any meeting of creditors of the company which is being held in pursuance of the provisions of the Act or rules or in pursuance of the provisions of any debenture or trust deed, as the case may be. Such body corporate may or may not be a company within the meaning of clause (20) of section 2. Such body corporate shall pass a resolution of its board or other governing body for the purpose of such authorisation.

The rationale behind this provision was explained in Arjun Prasad v. Shantilal Shankarlal Shah [1962 AIR 1192], which dealt with the validity of representation of creditor companies in meeting of creditors, in the following words: “Can a corporation be present at a meeting “in person”?

It appears to us that unless there is some special provision by a law, a company which is not a physical person cannot “be present” at any place “in person.” It is true that under the General Clauses Act, 1897, a company is a “Person”, so that whenever the word “person” is used in any statute a company would be included thereunder. The definition in the General Clauses Act can however be of no assistance in interpreting the words “to be present in person”, and the difficulty in the way of a company being present in person can be obviated only by statutory provisions or rules having the force of law.... In the Companies Act, 1956, a provision has been introduced under which a company which is a creditor of another company may by resolution of its directors, authorises such person as it thinks fit to act its representative at any meeting of any creditors of the company held in pursuance of the Act and a person authorised in this manner shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company, (s. 187(1)(b) and 2). No such provision however is to be found in the Indian Companies Act, 1913.”

4. Rights of the person appointed under sub-section (1)

A person who is authorised by resolution under sub-section (1) shall be entitled to exercise the same rights and powers as that body corporate would be entitled to exercise the said body corporate were an individual member, creditor or holder of debentures of the company as the case may be. Such rights include the right to vote by proxy and by postal ballot. Such exercise of rights however is on behalf of the body corporate which he represents. This representation and exercise of rights, however, is limited to the rights exercisable at the meeting and not for all membership rights.

Further, para 3.2 of Secretarial Standard – 2 provides that such representative is deemed to be a member personally present. It additionally provides that one person can be an authorised representative of more than one body corporate. In such a case, he is treated as more than one member present in person for the purpose of quorum provided minimum two members are personally present for the purpose of quorum.

5. Representation of body corporate under liquidation

Once the company goes under liquidation, all powers exercisable by the company are exercisable by the company liquidator as provided in clause (b) of sub-section (1) of section 290. Hence, such liquidator shall be empowered to appoint the representative on behalf of the company.

6. Representation of partnership firms

A partnership firm can be a member of section 8 company. However, section 113 shall not apply to such firm as held in *Dineker Rai D. Desai And Others vs R. P. Bhasin And Others [1986 60 CompCas 14 Delhi]*. The Court ruled that “This section is limited to companies and body corporates and does not apply to partnership firms.”

7. Authority of chairman

It was held in *Nand Prasad And Ors. vs Arjun Prasad And Anr. [AIR 1959 Pat 293]* that “The right of a person to vote as the representative of a company under such circumstances depends essentially on the question whether he has been validly appointed or not and not upon evidence produced by him in support of that authority. And so far as the evidence is concerned, it is meant only to satisfy the chairman that he is the person duly authorised so that he may be in a position to admit the vote cast by such a representative which is generally done by the simple production of the copy of the authorised resolution.” Hence, the Chairman needs to be satisfied about the authority to attend.

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