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BEYOND GOVERNANCE

Case Study

In order to make the Chartered Secretary Journal (CSJ) more interactive for the members and students, the Case Study section has been introduced from April issue. Each Case Study is followed by question(s) which are to be solved by member(s)/student(s). The answer(s) are to be sent to cs.journal@icsi.edu latest by 25th of each month.

The answer(s) will be reviewed by a Panel of reviewer(s). The winner will be given:

- (i) Certificate of Appreciation.
- (ii) His/Her name will be published in the next issue of the Journal.
- (iii) He/She will be awarded cash award of ₹ 2,500.

Crossword

A new section 'Crossword' containing terminologies/concepts from Companies Act, IBC, NCLT and such related areas of profession is introduced. Members/students are to send the answers of Crossword to cs.journal@icsi.edu latest by 25th of each month.

- The answer(s) will be published in the next issue of CSJ.
- The winners will be selected randomly.
- The name of three winners will be published in the next issue of CSJ.



CASE STUDY

On 08.11.1917, MN Sons Private Limited (hereinafter referred as “MN Sons”) was incorporated as a Private Limited Company under the Companies Act, 1913. Over the years, the shareholding of SP Group (consisting of two investment private companies) in MN Sons has grown to 18.37% of the total paid up share capital. Around 66% of paid up share capital of the company was held by two trusts belonging to group of MN Sons. PCM was appointed as Executive Deputy Chairman of the company for a period of five years from 01.04.2012 to 31.03.2017. PCM hold controlling interest in companies belonging to SP group. By a Resolution dated 18.12.2012, the Board of Directors of MN Sons redesignated PCM as its Executive Chairman with effect from 29.12.2012, even while designating TNR (trustee of MN group trust) as Chairman Emeritus.

By a Resolution passed on 24.10.2016, the Board of Directors of MN Sons replaced PCM with TNR as the interim Non-Executive Chairman. It is relevant to note that PCM was replaced only from the post of Executive Chairman and it was left to his choice to continue or not, as Non-Executive Director of MN Sons. Consequently, PCM resigned from directorship of other group companies of MN Sons group. Thereafter, two companies belonging to the SP Group, in which PCM holds a controlling interest, filed a company petition in 2016 before the National Company Law

Tribunal under Sections 241 and 242 read with 244 of the Companies Act, 2013, on the grounds of unfair prejudice, oppression and mismanagement. But these two companies, hereinafter referred to as ‘the complainant-companies’, together had only around 2% of the total issued share capital of MN Sons.

The complainant companies also moved an application for stay of an Extraordinary General Meeting (“EGM” for short) of MN Sons, in which a proposal for removing PCM as a Director of MN Sons had been moved. The NCLT refused stay, as a consequence of which the EGM proceeded as scheduled and PCM was removed from the Directorship of MN Sons, by a Resolution dated 16.02.2017.

MN Sons Limited passed a resolution in its 99th Annual General meeting held on 21.09.2017 to alter the Memorandum and Articles so as to insert the word “private” in between the words “Sons” and “Limited” in its name. The company was actually incorporated as a Private Limited Company, but was deemed to have become a Public Limited Company, with effect from 01.02.1975, by virtue of Section 43A (1A) of the Companies Act, 1956 which was later removed in 2000 and had no place in the Companies Act, 2013. The company’s AoA continued to retain the provisions relating to the matters specified in Section 3 of the

1956 Act. After rejection of application of complainant companies by RoC, MN Sons was issued amended certificate of incorporation.

NCLT rejected the applications of complainant companies. The order of NCLT was challenged in Appellate Tribunal which allowed appeal. Appeal was filed by MN Sons group before the Hon'ble Supreme Court.

Arguments of SP Group – complainant companies:

1. The affairs of MN Sons are carried out as though it was a proprietary concern of TNR and that the oppressive conduct of the respondents was such that it would be just and equitable to wind up MN Sons, but such winding up would unfairly prejudice the interest of the petitioners and that therefore the Tribunal should pass such orders so as to bring to an end, the acts of oppression and mismanagement.
2. TNR allegedly treating MN Sons as a proprietorship concern with all others acting as puppets, resulting in the Board of Directors failing the test of fairness and probity.
3. Change in status of MN Sons from public to private is illegal.

Reliefs sought by complainant companies:

- (i) To direct the respondents to reinstate the representative of the complainant companies on the Board of MN Sons; and
- (ii) To direct the amendment of Articles of Association of MN Sons to provide for proportional representation of shareholders on the Board of Directors of MN Sons.

Response of MN Sons to the allegations made in the Company Petition

- (i) That PCM, who was removed from the post of Executive Chairman, after having lost the confidence of 7 out of 9 Directors, has sought to use the complainant companies to besmirch the reputation of MN Group;
- (ii) That 65.3% of the issued ordinary share capital of MN Sons is held by philanthropic trusts which support education, health, livelihood generation and art and culture;
- (iii) That it was at the instance of PCM that TNR was designated as Chairman Emeritus and he was requested to attend Board Meetings as a special and permanent invitee and continue to guide the Board;

- (iv) That PCM's leadership gave rise to certain issues such as insufficient detail and discipline on capital allocation decisions, slow execution on identified problems, lack of specificity and follow through in strategic plan and business plan, failure to take meaningful steps to enter new growth businesses, weak top management team and reluctance to embrace the Articles of Association that spelt out the governance structure of the company and the rights of MN Sons Trusts;

- (v) That even when the Directors of MN Sons resolved on 24.10.2016 to replace PCM as Executive Chairman, the Board agreed to his continuance as a Director of MN Sons; however PCM addressed a vitriolic mail on 25.10.2016 to the Directors making false allegations and the same was leaked in press.

Decide the following:

- Q.1. Can the complainant companies move an application under Section 244(1)(a) to invoke Sections 241 and 242 or what is the course available to them for moving such an application?
- Q.2. Whether the decision of the Registrar of Companies for changing the status of MN Sons Limited from being a public company (by virtue of end of deeming provisions of Section 43A (1A) of the Companies Act, 1956) into a private company was legal?
- Q.3. Whether demand can be made for amendment of AOA to provide for right of proportionate representation on the Board of any company, be it public or private, being minority shareholder?

Disclaimer: The case study has been framed from the facts and figures available in the public domain with some modifications/assumptions so as to enable members to apply their professional skills to answer the same and hide the identity of the case. Author is not to be held liable for any resemblance of the facts and figures with any case.

Winners of Case Study – March 2024

Part (I)

CS Bharatsinh Chandrasinh Parmar
ACS-20704

Part (II)

CS Babu Ramachandran
ACS-28852

CROSSWORD PUZZLE – MARCH 2024 ANSWERS

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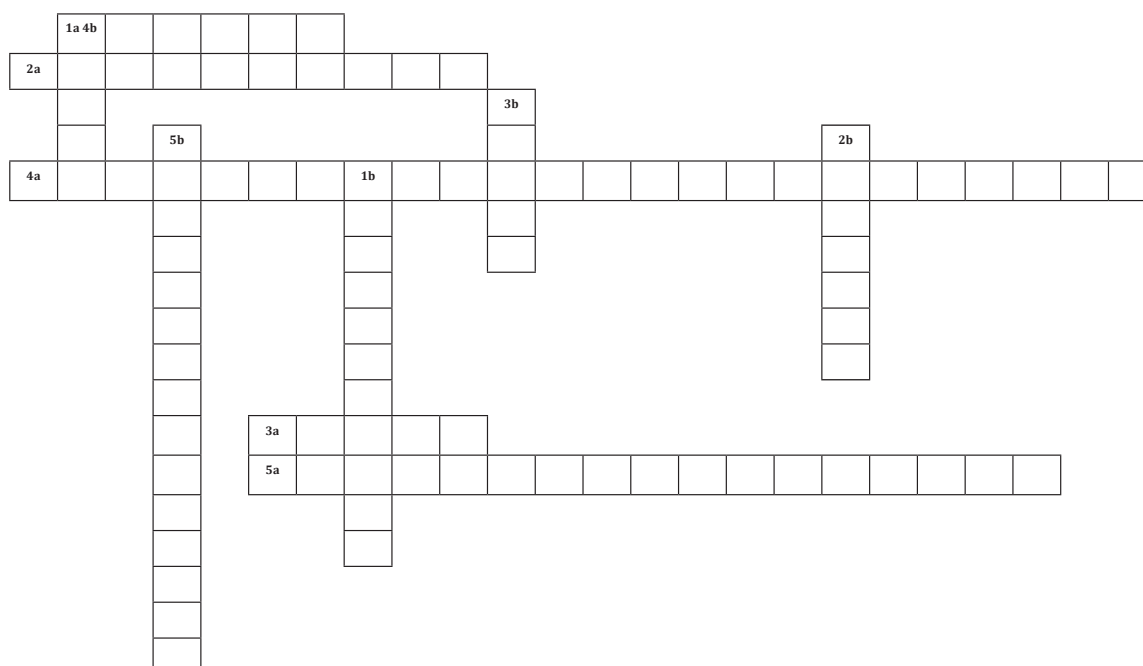
Winners - Crossword March 2024

1ST CS Dr. M. Govindarajan FCS-8533

2ND CS Vijay Khandelwal ACS-38922

3RD CS Richa Jain ACS-23144

CROSSWORD PUZZLE – COMPANY LAW - APRIL 2024



ACROSS

- 1a. Under The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 The employer shall be liable to pay simple interest at the rate of _____ per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.
- 2a. Under the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2021, Neither any company shall apply for nor any recognised stock exchange shall permit delisting of equity shares of a company unless a period of _____ has elapsed since the listing of that class of equity shares on any recognised stock exchange.
- 3a. Under Companies Act, 2013, Where the licence granted to a company registered under section 8 has been revoked, the company shall apply to the Registrar in _____ along with the fee to convert its status and change of name accordingly.
- 4a. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, a creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit his claim with proof to the interim resolution professional or the resolution professional, as the case may be, up to the date of issue of _____ under regulation 36B or ninety days from the insolvency commencement date, whichever is later.
- 5a. Under SEBI (LODR) Regulations, 2015, The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a _____.

DOWNWARDS

- 1b. Under Companies Act, 2013, A company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, the rate of commission paid or agreed to be paid shall not exceed, in case of shares, _____ of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
- 2b. Under the MSME Act, 2006, the appointed day is the day following immediately after the expiry of the period of _____ days from the day of acceptance or the day of deemed acceptance of any goods or services by a buyer from a supplier.
- 3b. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Insolvency Professional shall file form _____ within seven days of the issue of RFRP under regulation 36B.
- 4b. Under SEBI LODR 2015, The listed entity shall formulate a policy on materiality of related party transactions and on dealing with related party transactions including clear threshold limits duly approved by the board of directors and such policy shall be reviewed by the board of directors at least once every _____ years and updated accordingly.
- 5b. Under the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016., The Progress Report for the fourth quarter of the financial year shall enclose _____ of the liquidator's receipts and payments for the financial year.