Under the Companies Act, 2013, the scope and coverage of related party transactions has been made more complex and intricate. Besides strict procedural compliances have been foisted. Section 188 is still liberal as compared to previous Section 297 of Companies Act, 1956. In this Article, an attempt has been to explain and amplify the coverage, scope and intent of ‘related party transactions’.

It would be beneficial to first understand the scope and intent of Sections 184, 188 and other applicable provisions of Companies Act, 2013 (hereinafter called Act) and rules made there under. Section 2(76) defines ‘related party’ with reference to a company, means:-

i): a director or his relative;
ii): a key managerial personnel or his relative;
iii): a firm, in which a director, manager or his relative is a partner;
iv): a private company in which a director or manager is a member or director;

*Council Member, ICSI.
v): a public company in which a director or manager is a director and holds along with his relatives, more than two percent of its paid up share capital;

vi): a body corporate whose Board of Directors, Managing Director or manager is accustomed to act in accordance with the advice, directions or instructions of a Director or Manager;

vii): any person whose advice, directions or instructions a director or manager is accustomed to act;

Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

viii): A company which is:

(A) A holding, subsidiary or associate company of such company or;

(B) A subsidiary of a holding company to which it is also a Subsidiary;

As per section 2(77) of Act, a person shall be treated as a 'relative' to another if (i) they are members of HUF (ii) they are husband and wife (iii) they are related to each other in any of the following manner:-

1. Father (including step-father)
2. Mother (including step-mother)
3. Son (including step-son)
4. Son’s wife
5. Daughter (including step-daughter)
6. Daughter’s husband
7. Brother (including step-brother)
8. Sister (including step-sister)

In Section 2(76), sub-clause (vi) and (vii), (i.e. in the definition of the term ‘related party’), the three words i.e. "accustomed to act" are appearing and one needs to know the meaning and scope of these words. To some extent, two judgments, as follows, amplify these three words.

The SEBI in its final order in the case of Sahara India Real State Corporation Ltd. [MANU/SB/0045/2011] observed, while defining “accustomed to act” has observed as under:

a) After the death of late Madhav Prasad Birla in or about July, 1990 the deceased who has had no formal education relied and continued to rely on the petitioner and reposed and continued to repose complete trust and confidence in the petitioner in the matters pertaining to all her financial affairs by reason whereof, the petitioner was at all material times, privy to all information concerning the personal and financial affairs of the deceased. The deceased also sought and obtained advice from the petitioner with regard to her assets, savings and investments and with regard to and in the management and affairs of several companies and institutions where the deceased had a stake in the shareholding and/or management and the deceased was at all material times accustomed to act as per the wishes and dictates of the petitioner. The petitioner is and was at all material times aware of the same.

Further, The Ministry of Corporate Affairs, has also come out with The Companies (Accounting Standards) Rules, 2006 dated 07.12.2006, (Accounting Standards -18) which, inter-alia, as is relevant for our purposes reads as under:-

14. Key management personnel are those persons who have the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. For example, in the case of a company, the managing director(s), whole time directors), manager and any person in accordance with whose directions or instructions the board of directors of the company is accustomed to act, are usually considered key management personnel.

A non-executive director of a company is not considered as a key management person under this Standard by virtue of merely his being a director unless he has the authority and responsibility for planning, directing and controlling the activities of the reporting enterprise. The requirements of this Standard are not applied in respect of a non executive director even if he participates in the financial and/or operating policy decisions of the enterprise, unless he falls in any of the categories in paragraph 3 of this Standard.

SCOPE OF SECTION 188(1)

Section 188(1) says that no company (both public or private) shall enter into “contract” or “arrangement”, except with the consent of
the Board of Directors of the company, with a related a party. The contract or arrangement of a company may be related to any of the following in terms of section 188(1):

(a) sale, purchase or supply of any goods or materials.
(b) selling or otherwise disposing of, or buying, property of any kind.
(c) leasing of property of any kind.
(d) availing or rendering of any services.
(e) appointment of any agent for purchase or sale of goods, materials, services or property.
(f) appointment to any office or place of profit in the company or its subsidiary or associate company as defined and reproduced in the illustration above.
(g) underwriting the subscription of any securities or derivatives thereof of the Company.

WHAT IS THE MEANING OF WORD ‘ARRANGEMENT’

In Section 188(1), the words appearing are “contract or arrangement”. Difficulty arises in understanding the meaning of the word “arrangement”. The Bombay High Court in the case of Bank of India v. Ahmedabad Manufacturing & Calico Printing Co Ltd.[MANU/MH/0077/1971 : 1972 (42) Comp. Cas. 211 (Bom)] while interpreting the word ‘arrangement’ as appearing in section 390 of the Companies Act, 1956, has observed as under:-

“The word ‘arrange’ has, as one of its meaning, in the Shorter Oxford Dictionary, 3rd Edition, "to come to an agreement or understanding", and the word ‘arrangement’ has, as its primary meaning, "the action of arranging". As a matter of plain language it would, therefore, follow that the term ‘arrangement’ means any agreement or understanding between the parties concerned”.

The Division Bench of Karnataka High Court in the case of KV Kuppa Raju v. Government of India [MANU/KA/0624/1999] has noted the report of an Expert Group to rationalize and simplify Income Tax law had given the following report [see MANU/TN/0288/1996 : [1997]224 ITR 169 (Mad) ] : In the said report, the word “arrangement” has been defined thus:-

“Sub-section (2) : In this section, 'arrangement' means any scheme, trust, grant, understanding, covenant, agreement, disposition, transaction and includes all steps by which it is carried into effect”.

WHAT IS THE MEANING OF WORD ‘GOODS’

The Supreme Court in the case of Vikas Sales Corporation v. Commissioner of Commercial Taxes [MANU/SC/0519/1996 : AIR 1996 SC 2082] has explained the words ‘Goods’ and ‘Property’ in the following words:-

13. Clause (7) in Section 2 of the Sale of Goods Act, 1930 defines the expression ‘goods’ thus: ‘goods' means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale” (Emphasis added). Since the said definition defines the ‘goods’ to mean, "every kind of movable property other than actionable claims and money”, it would be appropriate to notice the definition of ‘property’ in Clause (11). It reads :‘property’ means the general property in goods, and not merely a special property. It is noteworthy that both these definitions seek to spread the net as wide as possible. While the definition of goods includes every kind of movable property within its ambit, the definition of property says that it includes not merely special property, but general property in goods as well.

The General Clauses Act, 1897 defines “movable property” to mean "property of every description except immovable property". The expression “immovable property” is defined to include land, benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth”.

MEANING OF THE WORD ‘SERVICE’

One will have to understand the meaning of the word ‘service’. ‘Service’ has been defined in various judgments delivered by the Supreme Court.

The term ‘service’ as appearing in the Consumer Protection Act, 1986, came up for consideration before the Supreme Court in Lucknow Development Authority v. M.K. Gupta [MANU/SC/0178/1994 : AIR 1994 SC 787] wherein it was observed as under:-

The term has variety of meanings. It may mean any benefit or any act resulting in promoting interest or happiness. It may be contractual, professional, public, domestic, legal, statutory etc. The concept of service thus is very wide. How it should be understood and what it means depends in the context in which it has been used in an enactment.

The Supreme Court in the case of Union of India & Ors. v. M/s. Martin Lottery Agencies Ltd.,[MANU/SC/0739/2009 : (2009) 12 SCC 209], noticed the dictionary meaning of the word ‘Service’, inter alia, meaning as “work done or duty performed for another or others; a serving; as, professional services, repair service, a life devoted to public utility service”.

Section 65B (44) of Finance Act, 2012 defines ‘Service’, (for the purpose of levy of Service Tax) as follows:

(44) Service means any activity carried out by a person for another for consideration, and includes detailed service, but shall not include
a) An activity which constitutes merely:

(i) a transfer of title in goods or immoveable property, by way of sale, gift, or in any other manner, or

(ii) such transfer, delivery or supply of any goods which is deemed to be a sale within the meaning of Clause (29A) of Article 366 of Constitution or;

(iii) a transaction in money or actionable claim;

In view of the above discussions, it is manifestly clear that the definition of word ‘Service’ is extremely wide and expansive and would include any ‘act’ ‘deed’ or ‘step’ done by a person for another on payment of consideration either in cash or kind or for forbearance. Hence, ‘service’ so defined in the preceding paras would fall under section 188(1)(d) Companies Act, 2013.

WHAT IS THE MEANING OF THE WORD ‘PROPERTY’

As per Salmond’s Jurisprudence, the word ‘property’ means - in its widest sense, property includes a person’s legal rights, of whatever description. A man’s property is all that is his in law. This usage however, is obsolete at the present day, though it is common enough in the older books.

Section 2(v) of Prevention of Money Laundering Act defines ‘property’ to read as follows:-

‘property’ means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

Section 2(1)(t) of SARFAESI Act defines ‘property’ and read as under:-

“(t) ‘property’ means-

(i) immovable property;
(ii) movable property;
(iii) any debt or any right to receive payment of money, whether secured or unsecured;
(iv) receivables, whether existing or future;
(v) intangible assets, being know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature;"

The eleven Member Bench of the Supreme Court in the case of R C Cooper v. Union of India [MANU/SC/0111/1970 : AIR 1970 SC 564], has defined the ‘property’ as under:-

“In it normal connotations, ‘property’ means the highest right a man can have to anything, being that right which one has to lands or tenements, goods or chattels which does not depend on others’ courtesy. It includes ownership, estates, and interests in corporeal things and also rights, such as, trade-marks, copyrights, patents and even right in personam capable of transfer or transmission, such as debts, and signifies a beneficial to, or a thing considered as having a money value, especially with reference to transfer or succession, and to their capacity of being injured.

WHAT IS THE MEANING OF THE WORDS “IMMOVEABLE PROPERTY”


“If we concentrate on the relevant provisions of Chapter XX-C as applicable in the present appeals, it will be seen that immovable property means any right in or with respect to any building or part of a building which is yet to be constructed which right accrues or arises from any transaction including that by way of any agreement or any arrangement of whatever nature or being a transaction by way of sale exchange or lease of such building or part of a building. ‘Transfer’ in relation thereto means the doing of anything including by way of an agreement or arrangement which has the effect of transferring or enabling the enjoyment of such immovable property.”

Rule 15 (3) of the Companies (Meetings of Board and its Powers) Rules, 2014 (as amended vide Notification dated 14th August, 2014) provides as under:-

“(3)For the purposes of first proviso to sub-section (1) of Section 188, except with the prior approval of the company by a special resolution, a company shall not enter into a transaction or transaction, where the transaction or transactions to be entered into:

(a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of Section 188 with criteria, as mentioned below:-

(i) sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding ten percent of the annual turnover or rupees one hundred crore, whichever is lower, as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;

(ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent of net worth, or rupees one hundred crore, whichever is lower, as mentioned in clause (b) and clause (e) respectively of sub-section (1) of Section 188;

(iii) leasing of property of any kind exceeding ten percent of the net worth of the company or ten percent of turnover related party transactions: a critical study of the scope and coverage
The word ‘interest’ appearing in sections 184 and 188 means personal interest. However, it may not be restricted to financial interest only but may also include interest arising out of fiduciary duties or closeness of relationship. The interest may be direct or indirect.

of the company or rupees one hundred crore, whichever is lower, as mentioned in clause (c) of sub-section (1) of Section 188;

(iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent of the turnover of the company or rupees fifty crore, whichever is lower, as mentioned in clause (d) and clause (e) of sub-section (1) of Section 188;

Explanation: It is hereby clarified that the limits specified in sub-clauses (i) to (iv) shall apply for transaction or transactions to be entered into either individually or taken together with the previous transaction during a financial year.

(b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188;

(c) is remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent of the net worth as mentioned in clause (g) of sub-section (1) of section 188.

EXPLANATION

(1) The turnover or net worth referred in the above sub-rules shall be on the basis of the Audited Financial Statement of the preceding financial year.

(2) In case of a wholly owned subsidiary, the special resolution passed by the holding company shall be sufficient for the purpose of entering into the transactions between the wholly owned subsidiary and the holding company.

(3) The explanatory statement to be annexed to the notice of a general meeting pursuant to Section 101 shall contain the following particulars.

(a) Name of the Related party;
(b) Name of the Director or KMP who is related, if any
(c) Nature of relationship;
(d) Nature, material terms, monetary value and particulars of the contract or arrangement;
(e) Any other information relevant or important for the members to take a decision on the proposed resolution;

MEANING OF THE WORD ‘INTEREST’

The word ‘interest’ appearing in sections 184 and 188 means personal interest. However, it may not be restricted to financial interest only but may also include interest arising out of fiduciary duties or closeness of relationship. The interest may be direct or indirect. In simple words, the interest should be an ‘interest’ conflicting with that of his duty as a Director [Public Prosecutor v. T.P. Khaitan (1957) 27 Comp. Cas. 77 (Mad.)].

A reference may be made to the case reported as Needles Industries Ltd v. Needles Industries Newey (India) Holding Ltd AIR 1982 SC 1298.

The next question that arises is as to whether all the transactions with related party have to bear the scrutiny and compliances of Section 188 of Act. To find an answer, one may have to look to the third proviso to Section 188 (1) of the Act which is in the nature of exemption clause. The same is reproduced below:-

“Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm’s length basis.”
The word “in its ordinary course of business” has not been defined under the Companies Act, 2013 and hence its meaning, intent and scope has to be gathered from judgments of various High Courts.

The Division Bench of Delhi High Court in the case of Onassis Axles (P) Ltd v. Commissioner of Income Tax [MANU/DE/0445/2014], was examining the genuineness of the investments made in shares by three independent entities and after examination, negated the contentions of the assessee that the investment by way of shares are genuine in the following words:-

“It is not mere co-incidence that all the three parties located at two different places in Delhi went to the same Bank on the same day at the same time and got the Pay Orders for requisite amounts in the same series. It will not be possible in the ordinary course of business that all the three persons would go to Noida for purchase of pay orders from the same bank at the same time and with the same running serial numbers. M/s. Hub Services P. Ltd is located at Laxmi Nagar, New Delhi. There is no dearth of banks in Laxmi Nagar or Pusa Road Delhi. It has to be understood as to why anyone would go for purchase of pay orders from a bank located at long distance in Noida.”

The Division Bench of Karnataka High Court, in the case of BNP Paribas v. United Breweries Ltd [MANU/KA/3008/2013] while dealing with Section 562 of Companies Act, 1956, on the issue of disposition of property, during the pendency of winding up petition before the Company Judge, has defined the words “in the ordinary course of business, and observed as under:-

Honest dispositions made in the ordinary course of business are usually allowed. While passing orders, the Court considers whether the transaction in question is in furtherance of the company’s business and/or in the interest of the company in liquidation and/or its creditors. Before a winding up petition is presented, it is in the ordinary course of business for a company to pay all its debts and incidentally to give security to its bankers for any overdraft or loan it may arrange. But after a petition is presented the situation is different. Prima facie all debts will have to be paid paripassu. Therefore, it is no longer in the ordinary course of business to pay one creditor in full to the detriment of his fellow creditors. However, it is difficult to lay down that all dispositions of property made by a company during the interregnum i.e., between the presentation of a petition for winding up and the passing of the order for winding up would be null and void. If such a view is taken the business of the company would be paralyzed, for, the company may have to deal with very many day-to-day transactions, make payments of salary to the staff and other employees and meet urgent contingencies.

The Allahabad High Court in the case of Darshan Agroils Ltd v. Commissioner of Trade Tax [MANU/UP/0060/2014] has observed as under:-

"In the present case the purchases were shown to have been made by firms at Ghaziabad and Noida but the said firms were found closed when subsequent queries were made and the notices were issued to them. The transaction of payment through bank account is also not in the ordinary course of business inasmuch as the firms claiming their addresses at Noida and Ghaziabad, opened their accounts at Aligarh, collected cheque money and withdrawn the same in quick succession of two to three days and that too in cash. Thirdly the alleged transport companies whereby huge quantity of oil and tin containers were claimed to have been transported from Ghaziabad and Noida to Aligarh, were found non-existing and bogus.”

The Division Bench of Orissa High Court in the case of Dilip Kumar Swain v. Executive Engineer, Cuttuck Municipal Corporation [MANU/OR/0136/1996] has defined “ordinary course of business” in the following words:

“In the context Section 32(2) of Indian Evidence Act, 1872 (in short, ‘Evidence Act’) may be noted. Expression "in the ordinary course of business" means " on the ordinary course of a professional avocation or currant routine of business" which was usually followed by the person whose declaration it is sought to be introduced. Expression "in the ordinary course of business" means in the usual course of routine of business. It is used to detect current routine of business. It is trite law that definition or interpretation given in respect of a particular entry has to be judged in the background of the statute itself and cannot always throw a guiding light in respect of other statutes. It has to be judged in the background and context in which it is used in a particular statute."

At the same time, one may also examine another point which may also come for interpretation as to what is the meaning of the words “arms length transaction”? The “arms length transactions” have been defined as follows:-

According to ‘Black’s Law Dictionary’, 8th Edition, the phrase "arm's length" means, "of or relating to dealings between two parties who are not related or not on close terms and who are presumed to have roughly equal bargaining power." In the 'Advanced Law Lexicon' by Ramanatha Aiyar, the phrase "arm's length" is defined as "a transaction negotiated and entered into by unrelated parties, each of whom acts in his or her own best interest using fair market values", and the phrase "arm's length price" is defined as "the price at which a willing seller and an unrelated willing buyer will freely agree to a transaction".

A Three Member Bench of Income Tax Appellate Tribunal, in the case of IndusInd Bank v. Addl. Commissioner of Income Tax [MANU/IU/0262/2012], has defined “arms length transaction” in the following words.

'The amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.'

The Division Bench of the CESTAT in the case of Commissioner
of Central Excise v. TFL Quinn India (P) Ltd. 2011(267) ELT 641 has observed as under:-

“...Their lordships had ordered that prompt payment discount did not form part of the assessable value in terms of Section 4. We find that in an arms length transaction, conditions for payment & delivery remaining same, the value for assessment of excisable goods did not undergo change on introduction of the ‘transaction value’. The relevant value is the net consideration exchanged for delivery of the goods at the place of removal in an arms length transaction”.

The Ministry of Corporate Affairs has issued a Notification No GSR 179(E) dated 03.03.2011 Companies (Accounting Standards) (Amendment) Rules, 2011 in which “arms length transaction” has been implicitly explained in the following words:

“Fair value is the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.

(b) The expression “arm’s length transaction” means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest”.

PROCEDURAL COMPLIANCES

A contract or arrangement can be entered into by company with a related party, only with the prior consent of the Board given at a meeting subject to such conditions as may be prescribed. It needs to be noted that the contract can either be oral or in writing [Section 7 Indian Contract Act,1872]. In other words, the approval of the Board of Directors cannot be obtained by way of passing of resolution by circulation. The law specifically requires that resolution can be passed in a duly convened meeting of the Board of Directors and only thereafter contract or arrangement can be entered into. The Agenda Note must contain full details and disclosure as specified in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014. In case any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement.

When the Companies Act, 2013 was notified initially, it provided that in case of company having paid up share capital of Rs.10 Crore or more, such contract or arrangement shall be entered into only after seeking prior approval of the shareholders of the company by way of Special Resolution – first proviso to Section 188(1).

PROCEDURAL COMPLIANCES

However, the above limits of Rs.10 Crores stood deleted vide Notification dated 14th August, 2014. After deletion, if a contract or arrangement exceeds the limits as indicated in Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, approval of the shareholders by way of special resolution would be required. The Ministry of Corporate Affairs, vide their Circular No. 30/2014 dated 17th July, 2014 has clarified that “the related party, if he is a member of the Company, shall not take part in the voting on Special Resolution – second proviso of Section 188 (1).

It is clarified that ‘related party’ referred to in the second proviso has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed. Thus, the term ‘related party’ in the above context refers only to such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.

PAST TRANSACTIONS

The Ministry of Corporate Affairs has, vide above Circular, has further clarified that contracts entered into by companies, after making necessary compliances under Section 297 of the Companies Act, 1956, which have already came into effect before the commencement of Section 188 of the Companies Act, 2013 (i.e. before 1.04.2014), will not require fresh approval under the said Section 188 till the expiry of the original term of such contracts. Thus, if any modification in such contract is made on or after lst April, 2014, the requirements under section 188 will have to be complied with.

EXEMPT CONTRACTS/ARRANGEMENTS

The following contracts/arrangements shall fall outside the purview of Section 188 of the Companies Act, 2013 by virtue of third proviso to Section 188.

a) The “Contract” or “Arrangement” has been entered into “in the ordinary course of business” or are “arms length transactions”. The “ordinary course of business” and “arms lengths transactions” have been extensively discussed in the preceding paras.

b) Where a contract or arrangement has been entered into between two companies and any of the directors of one
company or two or more of them together holds or hold not
more than two percent paid up share capital in the other
company.

c) If a contract or arrangement is sought to be entered into
between a company (be a public or private) on the one hand
and the “related party” on the other hand and so long as
the value of such contract or arrangement does not exceed
the limits as prescribed in Rule 15 of Companies (Meetings
of Board and its Powers) Rules, 2014 as amended vide
Notification dated 14th August, 2014, (limits also shown
in para 6 of this Article), no Special Resolution shall be
necessary.

CONSEQUENCES OF NON-COMPLIANCES

Section 188(3) lays down the consequences arising out of
non-compliances. In the event a director or the other employee
enters into a contract or arrangement with a related party (a)
without obtaining the consent of the Board of Directors by
way of a resolution in a meeting of the Board of Director or (b)
without obtaining prior approval of the shareholders by way of
Special Resolution at a general meeting or (c) where contract
or arrangement has not been ratified within a period of three
months from the date of entering into contract or arrangement,
the following consequences shall ensue:-

i) The contract or arrangement is not void but voidable. The
contract or arrangement shall be voidable at the option of
the company.

ii) In terms of Section 188(4) of the Act, the directors or other
employees shall indemnify the company against any loss
incurred by the company. In the event of company initiating
any legal proceedings, i.e. suit for recovery of money in
the court of law for claiming losses and damages, the
directors shall be liable to pay the amount adjudicated and
determined by the court.

iii) A person shall not be entitled to be appointed as a Director
by virtue of Section 164(1)(g) of the Companies Act, 2013
upon such director being convicted of an offence dealing
with related party transactions under Section 188 of the
Act at any time during the preceding five years.

iv) In case of a listed company, both on directors and employee
of company shall be liable to (a) imprisonment up to one
year or fine up to Rs.5 lac but not less than Rs.25,000/-
or both (b) in case of company whose shares are not listed,
fine up to Rs.5 lacs but not less than Rs.25,000/-. However,
there is no imprisonment prescribed.

CONCLUSIONS

Section 188 of Companies Act, 2013 read with Rule 15 of Companies
(Meetings of Board and its Powers) Rules, 2014, at best, envisage
approval of the shareholders by way of special resolution and needless
to say approval of the board of directors in a duly convened meeting but
does not require any approval of the Central Government. It may be
seen that in Section 297 of the Companies Act, 1956, in case of having
paid up share capital of Rs. 1 Crore or more, the contract for sale,
purchase or supply of goods, materials or services could be entered
into only with the approval of the Central Government save and except
where the sale, supply and purchase of goods and materials were
only in cash and at the prevailing market price. However, in relation to
services in excess of Rs.5,000/- per year, the approval of the Central
Government was called for. As pointed out earlier, the Section 188
applies to both public and private companies. It is strongly felt that
there is no reason as to why the rigors of Section 188 be applied to
purely private companies where neither public is interested nor any
public funds are infused.