VEDANAM

A monthly newsletter by Mehta & Mehta

What makes Vedanam different?

KNOWLEDGE IS POWER

Vedanam is aimed at spreading knowledge at all levels. It is accessible to Students, Professionals, Businessmen, etc.

We strive to cover latest amendments, case laws, articles on varied corporate laws and other relevant knowledgeable topics.

Inside:

AMENDMENTS

MINISTRY OF CORPORATE AFFAIRS

The Central Government has exempted certain companies from the provisions of sections 387 to 392.

https://www.mca.gov.in/bin/dms/getdocument?mds=Is22cx67XZW0vh1aS%252Fy72A%253D%253D&type=open

Limited Liability Partnership Act has been amended

https://www.mca.gov.in/bin/dms/getdocument?mds=8ylTG8LOgTgQPakjVO2fRg%253D%253D&type=open

FAQs on Corporate Social Responsibility have been updated in line with recent amendments

https://www.mca.gov.in/bin/dms/getdocument?mds=GTatbQatWaZKl7Zzifcd9Q%253D%253D&type=open

In the Companies (Registration of Foreign Companies) Rules, 2014, in clause (c) of sub-rule (1) of rule 2, an explanation has been inserted.

https://www.mca.gov.in/bin/dms/getdocument?mds=OhiAmBDG37Yyf743tXeFeA%253D%253D&type=open

In the Companies (Specification of definitions details) Rules, 2014, in clause (h) of sub-rule (1) of rule 2, an explanation has been inserted.

https://www.mca.gov.in/bin/dms/getdocument?mds=tNqRdFZSB569p6ed%252Bx7BZw%253D%253D&type=open

SECURITIES AND EXCHANGE BOARD OF INDIA

SEBI updates Disclosure of shareholding pattern of promoter(s) and promoter group entities

https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html

SEBI updates Automation of Continual Disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 - System driven disclosures - Ease of doing business

https://www.sebi.gov.in/legal/circulars/aug-2021/automation-of-continual-disclosures-under-regulation-7-2-of-sebi-prohibition-of-insider-trading-regulations-2015-system-driven-disclosures-ease-of-doing-business_51848.html

INCOME TAX

CBDT amends Income Tax Rules regarding Income Tax Return verification and Authorised Representative during CIRP and Liquidation

https://www.incometaxindia.gov.in/communications/notification/notification_93_2021.pdf

100 DAYS
100 CANDIDATES PLACED
100 HAPPY EMPLOYER
100 CR. COMING SOON

CASE LAWS

INSOLVENCY AND BANKRUPTCY CODE

There is no bar in law to the amendment of pleadings in an application under Section 7 of the IBC, or to the filing of additional documents, apart from those initially filed along with application under Section 7 of the IBC

Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr - Supreme Court

The Supreme Court on Wednesday ruled that plea by financial creditor for initiation of insolvency resolution process against a corporate debtor before the adjudicating authority will not get time barred on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account as NPA. A bench of Justices Indira Banerjee and V Ramasubramanian set aside an order of National Company Law Appellate Tribunal (NCLAT) by which it had said that application under section 7 of Insolvency and Bankruptcy Code (IBC) of Dena Bank (now Bank of Baroda) for initiation of insolvency process was time barred.

NCLAT set aside the order of admission under Section 7 initiated by a Home Buyer

Ankit Goyat Vs. Sunita Agarwal - NCLAT New Delhi

NCLAT set aside the order of admission under Section 7 and held that the facts and circumstances peculiar to the attendant case indicate that the Allottee sought benefit from a 'lucrative Agreement' as he is 'securing' his money by way of this Agreement which gives him a lien over the flat. In Clauses 2(f) & (g) of the Agreement, the Home Buyer herein is given a choice to retain the apartment or to sell the earmarked unit. In a regular Builder Buyer Agreement, the Home Buyer does not have this option of exercising his choice of taking or not taking the possession of the subject unit. In a normal Builder Buyer Agreement if the Buyer does not accept the possession, the EMD is forfeited. In this case, the Buyer gets his money plus 25% assured return even if he chooses not to retain the apartment. This Agreement is only a camouflage of actually financing the construction of the flat. Hence, we hold that the Home Buyer sought to benefit from this 'lucrative Agreement' and is squarely covered by the ratio of the Hon'ble Supreme Court in Pioneer Urban Land and Infrastructure Ltd. SC. The IBC proceedings is not a recovery proceeding and we place reliance on the ratio of the decision of this Tribunal in 'Binani Industries Limited' Vs. 'Bank of Baroda & Anr. wherein it is observed that the IBC is not a recovery proceeding. In fact, the I&B Code prohibits and discourages recovery in several ways.

Due towards mutually agreed genuine pre-determined compensation for the cost incurred due to the pre-mature termination of leave and licence agreement does not qualify as an Operational Debt

Wellspring Helathcare Pvt. Ltd. Vs. Jatoyah Investments & Holdings Ltd. - NCLT Mumbai Bench

Adjudicating Authority observed that the amount claimed by the Petitioner is due towards mutually agreed genuine pre-determined compensation for the cost incurred due to the pre-mature termination of leave and licence agreement by the Corporate Debtor. Therefore, it is very clear from the above definitions that the Petitioner does not qualify as an "Operational Creditor" and the amount claimed by it is an "Operational Debt" within the meaning of the Code.

SECURITIES & EXCHANGE BOARD OF INDIA

SEBI Vs Titan India Limited

Facts:
Titan Company Limited (TCL) sent a letter to Securities and Exchange Boardof India (SEBI) intimating about the contravention of SEBI(Prevention of InsiderTrading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations') and Company's Code of Conduct for Prevention of Insider Trading by some of its designated persons/employees named Jayaraj P, Arjun Vishwakarma, Mekat George, Gangadhar Sudheer Kallihal and Punit Juneja.

CASE LAWS

SEBI then investigated the matter and found that aforesaid employees have traded in excess of Rs. 10 lakhs and failed to make disclosures within two trading days under Regulation 7(2)(a) of PIT Regulations.

The concerned employees admitted that they were unaware of the disclosures required under PIT regulations. The Adjudicating Authority after duly an opportunity of being heard to all the employees, considered the provisions and penalties under the Regulation and levied a penalty of Rs. 100000/- on each employee for contravention of Regulation 7(2)(a) of PIT Regulations.

Provisions:
Disclosures by certain persons.
7(2) continual disclosure.
(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

Case Referred:
·Virendrakumar Jayantilal Patel vs. SEBI
·SEBI v/s Shri Ram Mutual Fund
·M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI

Judgement:
Adjudicating Officer ordered a penalty of Rs. 100000/- to each employee of the Company under the provisions of Section 15A(b) of SEBI Act.

COMPANIES ACT, 2013

Niklesh Tirathdas Nihalani v. Shah Poddar Nihlani Organisers (P.) Ltd.

Facts:
Company was constituted by three families, namely Shah, Nihalani and Poddar, as the name reflects.

In case of transfer of shares of the Company, the Articles of Association provided pre-emptive rights to the shareholders. However, the alleged transfer of shares was made to the outsiders, i.e. not to the Company's existing shareholders and without giving them the right under Articles of Association to exercise their pre-emptive right. The Appellant, being aggrieved by the said transfer of shares and getting the knowledge of the transfer, had filed Appeal U/S 59 of the companies act 2013 before the NCLT.

However, during the pendency of the Appeal, the Respondents called EOGM and replaced the entire sets of Articles of Association of the Company and removed the pre-emptive right given to the existing shareholders. Therefore, the transfer of shares to outsiders was not permitted under the Articles of Association of the Company. Therefore, it is evident that the Respondents have transferred shares in complete violation of the Articles of Association of the Company.

Rules:
Appeal before NCLT was filed under section 59 of the Companies Act 2013 which says that If the name of any person is, without sufficient cause, entered in the register of members of a company, or after having been entered in the register is without sufficient cause than the person aggrieved, or any member of the company, or the company may appeal in such form as may be prescribed to the Tribunal or to a competent court specified by the Central Government.

Analysis:
The Appellant came to know from other sources that the Company's land has been transferred to some other persons by transferring the Company's shares and there had been an illegal transfer of 3250 shares with complete disregard of Articles of Association about the transfer of shares, more specifically Articles 13 to 20 of AOA. These provisions were not followed by the management and were done fraudulently. As the Company has no business activities and there were no plans to sell or dispose of assets. The Directors have no other role to play in the Company except to do their fiduciary duties, as stated in Section 166 of the Companies Act, 2013

CASE LAWS

The Appellant, being aggrieved by the said transfer of shares and getting the knowledge of the transfer, had filed Appeal U/S 59 of the companies act 2013 before the NCLT. However, during the pendency of the Appeal, the Respondents called EOGM and replaced the entire sets of Articles of Association of the Company and removed the pre-emptive right given to the existing shareholders. Therefore, the transfer of shares to outsiders was not permitted under the Articles of Association of the Company. Therefore, it is evident that the Respondents have transferred shares in complete violation of the Articles of Association of the Company.

The Articles of Association was amended pending the Company Appeal No. 34 of 2017 for rectification of register of members Such an act is nothing but an act of grass oppression and mismanagement on the minority shareholder, especially the Appellant, who has already challenged the illegal and fraudulent share transfer before the NCLT. Hence Appellant was left with no other option but to move before the NCLT with the Company Petition No. 24 of 2018 filed under sections 241 and 242 read with Section 244 of the Companies Act, 2013 against alleged acts of oppression and mismanagement.

Judgement:
This Appeal emanates from the combined judgment and final Order dated 3rd August 2020 passed by the Adjudicating Authority/National Company Law Tribunal, Ahmedabad Bench, Ahmedabad in Company Appeal No. 34/59/NCLT/2017 in CP No. 24/NCLT/AHM/2018 whereby learned NCLT has rejected Company Appeal No. 34 of 2017 filed under section 59 of the Companies Act, 2013 as barred by limitation, given Section 433 of the Act. By the same common Order, the NCLT has dismissed the Company Petition being CP No. 24 of 2018, filed under sections 241 and 242 of the Companies Act 2013. The Petitioner has failed to prove any ingredient of operation and mismanagement. The Parties are represented by their original status in the Company Petition for the sake of convenience.

WEEKLY KNOWLEDGE SESSION

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- RELATED PARTY TRANSACTIONS
- EMPLOYEE STOCK OPTION
- COMPLIANCES OF PRIVATE LIMITED COMPANIES
- MANAGERIAL REMUNERATION
- SEBI LODR AMENDMENTS
- STRIKE OFF OF A COMPANY
- CORPORATE SOCIAL RESPONSIBILITY
- ONE PERSON COMPANY
- RISK MANAGEMENT
- AND MANY MORE..

ARTICLES

TYPES OF RESOLUTION

What is a Resolution?

The items of business that are transacted at Board Meeting or General Meeting are presented in the form of various types of resolutions. Such things mentioned in Agenda are taken up for discussion and further decision is taken in the meeting. If all matters discussed is approved by the required majority, it further becomes a resolution. A resolution represents the collective approval of one or more item that was taken up for discussion in the same meeting or adjourned meeting.

Resolutions which are passed at the Board Meeting-

1. Board Resolution

Any decision taken up by Board of Directors in writing is known as Board Resolution. It's a Formal and Legal document which binds the Company. Every company should hold its first board meeting within a period of 30 days from its date of incorporation and subsequently should held 4 board meetings every Calendar year in such a manner that not more than 120 days will intervene between two board meetings.

Participation of directors in Board meetings can be in physical form, by video conferencing or any other audio-visual means which are recorded, and which are capable of recognizing participation of every director attending it.
Such notice for the meeting should be served in not less than 7 days. The notice should be in writing to every director at his address registered with the company and can be sent by means of hand delivery or post or by any electronic modes.

2. Resolution by Circulation

Resolution by circulation means the resolution which is passed by the written circular among the directors or members of the Board. It should be circulated in draft to all directors or members of the committee. It should be approved by a majority of the directors or members. Resolution passed by circulation shall be noted in next Board Meeting.

Every resolution can be passed by the circulation except the following resolutions:

- Meetings of Audit Committee and other Committees.
- Approving financial statements or Board's Report.
- Appointment of Secretarial Auditors and Internal Auditors.
- Borrowing money other than by issue of debentures.
- Granting loans or giving guarantee in respect of loans.
- Political contributions.
- Making calls in respect of money unpaid by shareholders.
- Approving Remuneration of Managing Director, Whole-time Director and Manager.
- Appointment or Removal of KMP.
- Appointment of a person as a Managing Director or Manager in more than one company.

3. Resolutions to be passed at Adjourned Meeting

Section 116 deals with those Resolutions which are passed at Adjourned Meeting of—

(a) a company; or
(b) the holders of any class of shares in a company; or
(c) the Board of Directors of a company,
the resolution for such adjourned meeting shall for all purpose be treated as having been passed on the date on which actual meeting was held it was in fact passed, and shall not be deemed to have been passed on any earlier date.

Resolution which are passed at the General Meeting-

1. Ordinary Resolution:

Section 114 of Companies Act 2013 specifies ordinary resolution as: An ordinary resolution is that which is passed at a general meeting by a simple majority by the shareholders. The resolution can be passed either by a show of hands or by a poll.

ARTICLES
TYPES OF RESOLUTION

A 21 days' notice must have been given for the meeting in which such a resolution is passed or such meeting can be held at shorter notice by approval by 90% of shareholders.

FOLLOWING ARE THE ORDINARY BUSINESS REQUIRING ORDINARY RESOLUTION:

1. ADOPTION OF FINANCIAL STATEMENT
2. DECLARATION OF DIVIDEND
3. APPOINTMENT OF DIRECTOR IN PLACE OF THOSE RETIRING
4. APPOINTMENT OF AUDITORS AND THEIR REMUNERATION

2. Special Resolution:

Section 114 of Companies Act 2013 specifies special resolution as a resolution in which at least 3/4th majority of the members should be required to vote on specific matter at the General Meeting.

The following are some matters which can be decided by a special resolution:

(1) Any Alteration in the name of company.
(2) Alteration in the object clause of the company.
(3) Alteration in Articles of Association.
(4) Change of registered office from one place to another.

3. Resolution requiring Special Notice

Section 115 deals with Resolutions requiring Special Notice as some matters specified in the Act cannot be moved for discussion at General Meeting unless a special notice is given to the company.

The company in turn should give the notice of such resolution at least seven days before the holding it. Such resolution can be ordinary or special in nature.

Following are some resolutions which require special notice:
(1) In case of removal of any director.
(2) To fill up a casual vacancy by the director.
(3)To appoint new Auditor.
(4) Resolution to appoint a new Director

4. Resolution passed with specific majority

Resolution passed with specific majority means a resolution duly approved at a meeting of the Shareholders by a majority of all the votes cast on such resolution by all shareholders of the Company entitled to vote thereon who are present in person or by proxy.
Such Resolution shall be proposed as a Majority Resolution, unless all Regulations are followed and Articles of Association have provision for it. Subject to the provisions of the Company Law any or all of the directors may be removed with or without cause only by a Majority Resolution.

5. Resolution passed at the meeting of preference shareholders

Shareholder Resolution refers to the proposals submitted by the preference shareholders to the Board of Directors of the Company where shareholders take decision by passing resolution. Such resolution can only be discussed by the shareholders with the consent of Board of directors at the annual general meeting of the company.

6. Resolution passed at the meeting of creditors

At a meeting of creditors a resolution shall be passed when a majority of the creditors personally or by proxy vote on the resolution. Notice of such meeting should be sent to the creditors at least 7 days before the meeting.
The meeting should be advertised in two newspapers in the area where the company has its principal place of business. Resolution passed at a creditors meeting shall be filed by the company to the Registrar within ten days of the passing thereof.

ARTICLES

HIGHLIGHTS OF LLP AMENDMENT ACT

- The LLP Act is brought in line with Companies Act, 2021
- Concept of Small LLP is introduced
- The time period for stay of Designated Partner in India in preceding financial year is reduced to 120 days
- Penal provisions have been updated to bring them under In-house Adjudication Mechanism
- Accounting and Auditing Standards may be introduced for certain classes of LLPs
- Various penal provisions have been decriminalized
- New sections have been introduced for setting up Special Courts by Central Government
- Different fee structure is to be introduced for late filing of forms and penalty of ₹100 for every day is removed.
- New sections have been introduced to streamline existing LLP Act

MCA TO ELIMINATE STATUTORY AUDIT FOR SMALL COMPANIES?

Ministry of Corporate Affairs (MCA) has been promoting Ease of Doing Business (EODB) in order to stimulate start-ups and small business. In the wake of EODB, MCA is proposing to eliminate Statutory Audit for small Companies.

This was confirmed in a tweet by @CNBC_Awaaz on 26th August 2021 on Twitter. However there is no official circular or notice issued by MCA on this behalf as of now.

What is a small company?

A company whose:
-paid-up share capital does not exceed Rs. 50,00,000 or higher amount of Rs. 10 crores
and
-turnover does not exceed Rs. 2 crore or higher amount of Rs. 100 crores.

Other initiatives for EODB:

In order to reduce audit burden, Turnover limit of Tax Audit under Income Tax Act, 1961 was increased w.e.f. 1-4-2021.

In addition to this, the prerequisite of GST audit and certification by Chartered Accountant/Certified Management Accountant is done away with. Taxpayers will now file Form GSTR-9C on a self-certification basis. However, this is applicable only to taxpayers with a turnover exceeding Rs.5 crore in the previous financial year. Also, the format of Form GSTR-9C will be changed for self-certification. This is from FY 2020-21 onwards.

Impact of proposal to remove statutory audit for small companies:

Government of India is taking varied initiatives for companies for ease of doing business. Audit exemptions to companies reduces overall burden of the Company from audit requirement. It saves the audit cost of the Company. In addition, self-certification of Form GSTR-9C will motivate Taxpayers to comply duly with GST norms.
This proposal of MCA might have positive as well as negative impact on companies. This will boost the small companies to concentrate on important areas other than annual audit. They can save audit cost and costs for maintenance of audit software. However, with removal of statutory audit, the question arises as to how the company will stay compliant? Will there be self-audit requirement like self-certification in GSTR-9C? However self-audit is not possible as none of the Companies will highlight its own non-compliance.
Now the small companies will be more self-reliant for compliances.

ARTICLES

WOMEN DIRECTOR

INTRODUCTION

The Companies Act is considered as one of the of the landmark legislations to having considered the presence of Women Directors on Board of Directors of the Company. This was introduced to enhance gender equality and support women empowerment.

As per below appearing statutory requirement, certain companies are required to have Women Director mandatorily.

STATUTORY REQUIREMENT

According to second proviso to sub-section (1) of Section 149 Companies Act, 2013, prescribes that the following class of companies shall appoint at least one Woman Director.

- Every Listed Company.
- Every other Public Company having -
  ·paid-up share capital of Rs. 100 crore or more; or
  ·turnover of Rs. 300 crore or more.

For the above purpose, the paid-up share capital or turnover, as on the last date of latest audited financial statements shall be taken into account.

ADVANTAGES OF WOMEN INCLUSION IN BOARD ROOMS

In our view, women have this power of doing Multitasking and men are very bad at it. But women can work on different things at a time and excel in it. The boards that have more women are able to develop a comprehensive understanding of the central company stakeholders.

Women can provide a deeper insight into consumer trends and priorities for the companies of the boards they serve.
We believe that companies with women directors deal more effectively with risk. Not only do they better address the concerns of customers, employees, shareholders, and the local community, but also, they tend to focus on long-term priorities.

Women directors are likely to be more in tune with women's needs than men, which helps develop successful products and services.

CONCLUSION

It is important to note that women should be accepted for their skills than for who they are. Only a woman who is competent and is skilled enough for that, should be assigned with responsibility to act as a director on Board.

I also feel women should not be appointed just for the sake of Statutory Provision imposed by government, but women should be included in Boards of the Company because Women are known to be careful, more focused on ethics and conduct and prudent in reviews. All things considered, women help to balance the board room discussion and bring different perspectives to deliberations. They are the key to striking the right balance between short term rewards and long term sustainability.

-Keval Vikmani, Mehta & Mehta

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