

Shareholders' right to remove a director

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The affairs of a company are managed and controlled by a team of directors. Every private limited company shall have a minimum of two directors and a public limited company shall have a minimum of three directors and, of course, in one person company, one director. The maximum number of directors a company can have is fifteen which can be increased after obtaining shareholders' approval by way of a special resolution. However, section 8 companies are exempt from such minimum and maximum number of directors. The

Companies Act (the Act) also mandates the appointment of different categories of directors, such as independent director, woman director, resident director, nominee director, managing director, and whole time director. Generally, all such directors are initially appointed by the Board of directors and finally approved by the shareholders for their continuance. Shareholders can also identify and recommend names to the Board of directors for consideration and approval of shareholders. However, the Board has the powers to appoint additional directors, alternate directors and to fill casual vacancies, if any.

Removal of directors

The shareholders are supreme for the appointment of directors. Similarly, they have the powers to remove a director appointed by them by passing an ordinary resolution. The majority in number of votes cast is the final nail in the coffin for removal of a director. This does not apply to the appointment and removal of directors by the National Company Law Tribunal. Shareholders holding not less than one per cent of total voting rights or holding shares on which an aggregate sum of not less than five lakh rupees has been paid up can issue a special notice for removal of a director. Such special notice may be given not earlier than three months of the meeting or at least fourteen clear days before the date of meeting at which the resolution is to be considered for removal of director. However, shareholders who are eligible to demand for convening an extraordinary general meeting may request the company to convene an EGM for consideration of the special notice given for removal of director. It is also very important that such notice received from a shareholder as well as the notice convening the meeting of shareholders shall be sent to the director concerned whose

removal would be considered at the general meeting. The said director has a right to be present at the meeting even though he may not be a shareholder of the company and his submission be heard at such shareholders meeting.

Besides, the director is also entitled a make any written representation to the company and the company shall take every effort that his representation is sent to all shareholders of the company for their consideration and to take decision at the meeting. If for any given reasons, the said representation could not be sent to the shareholders, the same needs to be read out at the general meeting.

Shareholders voting method

The Act mandates that every listed company and a company having not less than 1,000 shareholders have to pass any resolution by shareholders through electronic mode. However, those shareholders who do not exercise electronic voting may present themselves at the meeting and vote thereat through ballot paper. Other companies do pass such resolution at the meeting on show of hands or by ballot paper. Therefore, it is very important that the representation of the director reaches the shareholders before the commencement of electronic voting process for the shareholders to take a decision and vote electronically. However, the ordinary resolution for the removal of director should not be passed through postal ballot as the Secretarial Standard which deals with general meetings provides that any business in respect of which directors or auditors have a right to be heard at the meeting shall not be passed through postal ballot.

Removal of permanent director

There is no concept of a permanent director or lifetime director in a company under the Act. However, some of the private limited companies do contain an article in the Articles of Association regarding permanent or lifetime director and appoint directors in that fashion. This does not mean to say that such directors cannot be removed by the shareholders. The Act

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overrides Memorandum or Articles of Association or agreement or any resolution to the extent they are repugnant to the provisions of the Act and, therefore, shareholders do have a right to remove any director who has been appointed as permanent or lifetime director in a company.

However the required notice of the Board meeting and the general meeting for the removal of any director (including director named as permanent or life directors) must be served on that director also in order to call the meeting valid and thereby removal of such director can be established. The Hon'ble Karnataka High Court, in the matter of *Khathim K v. Astrix Technologies (P.) Ltd*, [2016] 133 CLA 47, held that the provision for removal of director in the Act is general and applies to all kinds of directors and includes all those not retiring by rotation.

Removal of independent director

The Act also has in place provision about compulsory appointment of independent directors by shareholders. Recently, one of the Tata Group of companies passed an ordinary resolution for removal of an independent director. The director in place challenged the position of allowing the promoters to vote on a resolution for removal of independent director since the independent directors are supposed to protect the rights of non-promoter shareholders. The concept of related party transactions and not having a right to vote by the related party is not attracted for removal of a director and the shareholders including the promoter shareholders voted in favour of removal of such independent director.

Conclusion

The shareholders in a company are supreme in appointment as well as removal of directors. Any provisions in the Articles of Association or any agreement or resolution passed for appointment of permanent or lifetime director do not hold good and the shareholders are having every right to remove a director. The requirement is that a special notice is to be given for convening a shareholders meeting. The special notice and the notice convening the meeting are to be given to the director to be removed with a right for him to represent at the meeting. The representation of the said director is to be circulated amongst the shareholders. An ordinary resolution is sufficient for removal of a director and every shareholder has a right to vote at the resolution.

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