

Notice to director by post for Board meeting during COVID pandemic

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Section 286 of the Companies Act, 1956 (previous Act) mandated that notice of every meeting of the Board of directors of a company shall be given in writing to every director for the time being in India, and at his usual address in India. There is a deviation in section 173(3) of the Companies Act, 2013 (the Act) and, now, it is mandatory to give notice in writing to every director at his address registered with the company. Therefore, notice of every Board meeting in writing has to be given to every director whether in India or abroad. Such notice shall be sent by hand delivery or by post or by electronic means. Secretarial Standard 1 (SS-1), on meeting of the Board of directors issued by the Institute of Company Secretaries of India, further extended to say that notice in writing of every meeting shall be given to *every director by hand or by Speed Post or by registered post or by facsimile or by e-mail or by any other electronic means*. It further provides that where a **director specifies a particular means of delivery of notice, such notice shall be given to him by such means**. However, in case of a meeting conducted at a shorter notice, the company may choose an expedient mode of sending notice.

Company Law Board, **in the matter of A. Arumugam v Pioneer Bakeries Pvt Ltd** (2007) 80 CLA 103, held that where a director requested that notice of Board meeting should be sent to him by registered AD post, the same mode of service has to be followed for sending notice to every director. There are decided case laws where failure of company to serve the notice of Board meeting to every director would render the resolutions passed at the meeting null and void.

Relaxations given by the Ministry of Corporate Affairs during COVID-19 pandemic

The Ministry of Corporate Affairs (MCA), vide its General Circular No 11/2020 dated 24th March, 2020, in order to support and enable companies against the COVID-19 threat, including economic disruptions caused by it, extended several relaxations and one among them is:

“the mandatory requirement of holding meetings of the Board of the companies within the interval provided in section 173 of the Act (120 days)

stands extended by a period of 60 days and with such relaxation the gap between two consecutive meetings of the Board may extend to 180 days instead of 120 days.”

Similarly, MCA relaxed by notifying the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and periodically amended the said Rules. Accordingly, restrictions imposed in the Act for transacting certain matters through video conferencing or other audio visual means have been relaxed and the latest amendment is on 30th December, 2020 by extending the period from 31st December, 2020 to 30th June, 2021.

Disruption in postal services

During the COVID-19 pandemic, one of the disruptions in the country was of the postal services. The MCA has also, vide General Circular No 17/2020 dated 13.04.2020, given relaxation for companies from sending general meeting notices to shareholders by means of postal ballot. Notices were issued to shareholders electronically who had registered their e-mail addresses with the company or with the depository participants. The disruptions in postal services during this COVID-19 period is also one of the reasons for the relaxations extended by MCA from physical Board meetings and general meetings and issue of physical notices through postal services.

Decision would be on a case to case basis

Relaxations were given to companies from sending physical notices to shareholders for convening general meetings/ postal ballot. It is a clear-cut message to the public at large that postal services were disrupted and it would be impossible for companies to comply with the provisions for physical sending of notices. If a director does not receive the notice of Board meeting by hand delivery or registered post during COVID -19 pandemic, he can claim that the proceedings of the meetings are invalid as he does not receive any notice from the company as per the request made by him to the company.

However, considering the current situation of COVID 19 pandemic and its continuing impact, if the company uses the feasible mode to send the notice of Board meeting to each and every director and does away with the request of director to send notice of Board meeting by registered post, where the postal services are badly affected due to this pandemic, it will be presumed by the company that it has complied with the provisions of section 171(3) of the Act. There being no clear answer, **time alone will decide the matter as and when it reaches the Tribunal/ Courts.**

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