

Analysis of the Bombay High Court Judgment on Court convened meetings & Voting by Postal Ballot



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The Bombay High Court passed a landmark judgment on May 8, 2014 clarifying the provisions for holding a court convened meeting, passing a resolution through postal ballot and passing a resolution by electronic voting under Section 391 and 394 of the Companies Act, 1956 & Section 230 and Section 232 of the Companies Act, 2013 [yet to be notified]. The Bombay High Court also discussed about the validity of the Rules posted on the website of Ministry of Corporate Affairs [“MCA”] under the Companies Act, 2013 and the Circulars issued by SEBI.

Facts of the Case:

1. Wadala Commodities Limited [“Transferor Company”] and Godrej Industries Limited [“Transferee Company”] filed a Company Summons for Direction under Section 391 and 394 of the Companies Act, 1956;
2. Based on the provisions of the SEBI Circulars, Section 110 of the Companies Act, 2013 [relating to provisions Postal Ballot]; Companies (Management and Administration) Rules, 2014; the companies applied for the dispensation of the members meeting.

Issues involved:

1. Based on the provisions of Section 110(1)(b) of the Companies Act, 2013 and the Circulars issued by SEBI relating to amendment in Equity Listing Agreement – Can a company pass a resolution by Postal Ballot for approving the scheme of amalgamation?
2. How can the Scheme of Arrangement be amended in case of voting by Postal Ballot?
3. What is meant by - “Calling of Meeting” under sections 391 and 394 of the Companies Act, 1956?
4. What is the validity of the Rules on the MCA Portal?
5. How to determine the votes in Electronic voting?

These issues are analysed and discussed below in detail in relation to the judgment passed by Bombay High Court.

Discussion: Issue 1 - Can a company pass a resolution by Postal Ballot for approving the scheme of amalgamation?

At the heart of corporate governance lies in transparency and a well-established principle of indoor democracy which gives the shareholders vital rights in matters relating to the functioning of the company. The principle is not merely to vote on any particular item of business; but it also includes the right to use the vote as an expression of an informed decision i.e. the shareholder has the following absolute and inalienable rights like:

