

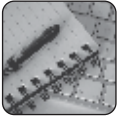
Articles

ANALYSIS OF SECTION 297, 299 & 300 OF THE COMPANIES ACT, 1956 (PART 2)

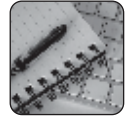
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In the previous issue, we discussed about the object of the sections, common theme and parties covered under Section 297, 299 and 300 of the Companies Act, 1956 and its applicability. This is the Second Part of the series, which will focus on the exceptions to the Section 297, 299 and 300 of the Companies Act, 1956.

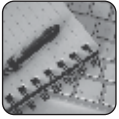
Sr. No.	Points of Comparison	Section 297	Section 299	Section 300
1.	Exceptions to the Section (By interpretation of the provisions)	<p>1. Transaction between two Public Limited Companies.</p> <p>2. If a transaction is for cash (+) for purchase or sale of goods and materials (+) for prevailing market prices.</p> <p>Therefore, if the Contract relates to rendering of Services (+) for cash (+) at prevailing Market Prices; then provisions of Section 297 are applicable.</p> <p>Section 297 (2) (a) relates only to "Goods" and not "Services".</p> <p>3. Applicability of the Section is to be determined at the time of entering into a contract. If no permission under this section is required at the time of entering into a contract, then subsequent permission is not</p>	<p>1. Section 299 (6) relates to the transaction between two "Companies" and does not include the term "Body Corporate". Therefore, a director of a Company has to; in any case, disclose if he/she is a Director or Member in a Body Corporate.</p> <p>2. Section 299(6) intends to identify the shareholding of one Director (in say, XBRL) in other company (PDF). If the shareholding of the Directors (singly or together) of XBRL is more than the prescribed limit (2% of the Paid Share Capital) in PDF, the Directors of XBRL are under an obligation to comply with provisions of Section 299.</p>	<p>1. A Private Limited Company, which is not a Subsidiary of a Public Company.</p> <p>2. A Private Limited Company, which is not a Holding Company of a Public Company.</p> <p>3. In relation to a contract or an arrangement (entered into or to be entered into) by a Private Limited Company (which is subsidiary of a Public Company) with its Holding Company.</p> <p>4. Contract of Indemnity against any Loss – for which the Director is a surety to the Company.</p> <p>5. Contract/ Arrangement between a Company and Public Company or Private company which is a subsidiary of Public Company, in which:</p> <p>a) The Directors do not hold Shares more than prescribed Qualification</p>



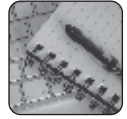
		<p>necessary even though there may be a change in the circumstances which would require permission to be taken for a fresh contract.</p> <p>4. Where the contract entered into by the companies when the paid up capital was less than Rupee One Crore, and raised further, then in such case, approval of the Central Government would not be necessary until the expiry of the contract.</p>		<p>Shares (of the Public Company or Private Company which is a subsidiary of Public Company). or b) Director is a member holding not more than Two percent of its Paid up Share Capital (of Public Company or Private Company which is a subsidiary of Public Company) in respect of which the Notification is issued by the CG.</p>
2.	<p>Specific Exceptions to the Section (Issued by DCA/MCA)</p>	<p>1. Immovable Property The transactions in the immovable properties are not covered by the provisions of Section 297. <i>(Letter No. 9/41/90-LC-X dated 27.03.1990).</i></p> <p>2. Ratification by the Board & approval of the CG The presumption is not correct that the proviso to Section 297 (1) introduced by the Companies (Amendment) Act, 1974 is relevant only in respect to those cases for which approval of the Board is necessary.</p>	<p>1. "Indirect Interest" The term "Interest" in Section 299(1) is clarified in the Circular. "<i>Direct Interest</i>" means the contract or arrangement in which the Director has personal interest conflicting with his duties as Director. "<i>Indirect Interest</i>" means contract or arrangement in which Director is not personally interested but any of his relatives are interested in it. <i>(Circular F.No.8/33 (299)/65-CLV).</i></p> <p>2. Scope Section 299 refers to the interest of a Director in</p>	<p>1. Quorum The difficulties in getting required quorum at Board Meetings where the Directors are interested should be solved by the company whether by increasing the strength of the Board of Directors or Co-opting new members, if so authorized by the AoA. If it is not found practicable to do so, it might be desirable to place the proposed contract before the general meeting for consent of the shareholders. <i>(File No. 7(22)CL-VI/68).</i></p> <p>2. Unsound Practice It should, therefore, be held to be a clearly unsound company practice if a</p>



		<p>i) For the companies having a paid up share capital of not less than Rs. 1 crore, no contract shall be entered into except with the previous approval of the CG.</p> <p>ii) The only exception to this requirement is the one provided in Section 297 (2).</p> <p>iii) The relaxation provided in Section 297 (3) does not apply in the case of companies having a Paid-Up Share Capital of not less than Rs. 1 crore as they will be covered by proviso to Section 297(1).</p> <p><i>(Letter No. 8/11/75-CL-V dated 29.03.1975).</i></p> <p>3. Clarity on the Term "Cash"</p> <p>Cheque may be treated as the equivalent of a cash payment for the purpose of this provision.</p> <p><i>(Letter No. 8/ 2 (Misc.)/ 75 – CL – V dated 06.06.1975).</i></p> <p>4. Multiplicity of Applications</p> <p>The provisions of Section 297 are of</p>	<p>"any way directly or indirectly"; therefore the scope is wider than Section 297. The provisions of Section 299 also extend to the contracts and arrangements with companies, firms and Body Corporates (as defined under Section 2 (7)).</p> <p><i>(Circular No. 8 dated 15.06.1956).</i></p> <p>3. Clarity on Section 299 (6)</p> <p>It is the collective responsibility of the directors of a company to see that requirements of Section 299(6) are duly complied with.</p> <p>In practice, an easy course for a director would be:</p> <p>i) To give a General Notice; when his holding in another company exceeds 2% of its paid up capital and;</p> <p>ii) When his holding is less than 2%, the Director to disclose his holding at the meeting of the Board in which a contract with such company is considered.</p>	<p>director, whose near relative is proposed to be appointed to the Board, were to participate in the discussions at the Board meeting and vote on the proposal for such appointment.</p> <p><i>(Letter No. 8/46/(300)/64).</i></p> <p>3. Remuneration & Voting</p> <p>With regard to the provisions of Section 309(1), any resolution of the Board in regard to the fixation of or increase in the Director's fees should be subject to the approval of the company in general meeting, and the provisions of section 300(1) would not be attracted in case such a resolution is to be considered by the Board, because the final decision in the matter would be that of the company in General Meeting.</p> <p><i>(Circular No. 2/32/63-PR, dated 20.09 1963).</i></p>
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	<p>general nature and those of Section 269, 294AA and Section 314(1B) are of special nature.</p> <p>To avoid multiplicity of applications where facts and circumstances of a case requires approval of the CG U/s 269 or 314(1B) or 294AA and 297; such approval would be enough and no separate approval U/s 297 of the Act is necessary.</p> <p><i>(Circular No. 18 of 1976, dated 29.06.1976).</i></p> <p>5. S e r v i c e s o f Professional Nature</p> <p>Services of the nature of a legal practitioner are not obtained on the basis of say lowest tender but on account of their professional expertise irrespective of the cost involved. The Dept. view is that these services fall outside the scope of Section 297, and the scope of the Section does not extend to supply of Professional Services of the nature given by firms of solicitors and advocates, etc.</p> <p><i>(Circular No. 13 of 1975, dated 05.06.1975).</i></p> <p>6. E m p l o y m e n t Contracts</p> <p>'Supply of service' is not the same as 'rendering of personal service' as a</p>	<p>It would be the duty of the other directors to disclose all their individual holdings in the said company at the same Board meeting.</p> <p><i>(Circular No. 4 [8/16(1)/61] dated 19.05.1961).</i></p> <p>4. Director as a "Trustee"</p> <p>Where a Director is a Trustee; it would be necessary for him to disclose to the company his "interest", arising out of his membership in the companies concerned as a Joint holder or as a Trustee, as the case may be.</p> <p><i>(Company News and Notes, dated 1-7-1963, Page 81 & 82).</i></p> <p>5. What is "Interest"?</p> <p>Mere relationship is not enough to establish "interest" of a Director. Some pecuniary interest has to be proved.</p> <p><i>(Letter No.: F. No. 42 (207)-CL-II/57).</i></p>	
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		<p>director or managing or whole-time director. Furthermore, there are specific provisions in the Companies Act for regulating such appointments. The Dept. is of the view that proviso to Section 297(1) does not apply to the contract of employment of a director as Managing or Whole - Time Director.</p> <p><i>(Circular No. 8/11/75-CL-V, dated 05.06.1975).</i></p>		
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References

- 1) The Bare Act – Companies Act, 1956 and
- 2) Guide to the Companies Act, 1956. A Ramaiya, Sixteenth Edition (2004).

Note

- 1) Sections specifically relate to the Companies Act, 1956.
- 2) Relevant Case laws, Circulars, Notifications, Letters issued by the Ministry are mentioned, wherever necessary, and same have also been summarized for brevity purpose.

(to be continued.....)

