

# Can Financial Statements of company be approved through Video Conferencing ?

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The Board of directors of the company formulates the policies and establish organisational set-up for implementing those policies and to achieve the objectives as provided in Memorandum of Association. With an objective to execute strategic, managerial and administrative decisions, the directors are vested with certain powers and obligations. The Companies Act, 2013 ('Act') prescribes the mode of obtaining approval and exercising such powers. The Act provides for: (i) Certain powers to be exercised by board of directors, (ii) Certain powers to be exercised by board of directors at its meeting only and (iii) Certain powers to be exercised by Board of directors with the approval of the shareholders. The article analyses the provisions of the Act with respect to the director's powers. The article deliberates on the contentious issue - Whether Board of directors can approve the financial statements of company in its meeting held through Video Conferencing?

## **Powers of the Board of Directors**

Section 179 of the Act relates to "Powers of the Board of Directors". It provides that company's Board of Directors shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do. However, such powers of the Board of Directors are subject to the provisions contained in any of the following:

- (i) The Act,
- (ii) Memorandum of Association ('MOA'),
- (iii) Articles of Association ('AOA'),
- (iv) Any resolution passed by the company in general meeting.

The Board of Directors shall not exercise any power or do any act which is directed, whether under this Act or by MOA or AOA or to be exercised or done by the company in general meeting.

## **Powers of the Board of Directors that can be exercised in Board Meetings only (under Cos. Act)**

Sub-section (3) of Section [179](#) of the Act prescribes the powers of Board of Directors that can be exercised only by means of resolutions passed at meetings. That means such powers cannot be exercised by the board by passing a circular resolution or by any other means. Following are such powers:

- (a) To make calls on shareholders in respect of money unpaid on their shares;
- (b) To authorise buy-back of securities;
- (c) To issue securities, including debentures, whether in or outside India;
- (d) To borrow monies;
- (e) To invest the funds of the company;
- (f) To grant loans or give guarantee or provide security in respect of loans;
- (g) To approve financial statement and the Board's report;
- (h) To diversify the business of the company;
- (i) To approve amalgamation, merger or reconstruction;
- (j) To take over a company or acquire a controlling or substantial stake in another company;

Certain powers of the company (that are to be exercised by the Board of Directors at its meeting) may be delegated to any committee of directors, MD, Manager or any other principal officer of the company or company's branch office. Such delegation of powers by the Board shall be subject to the conditions as prescribed by the board of directors. The powers which can be delegated by the Board of Directors are as follows:

- (a) To borrow monies;
- (b) To invest the funds of the company;
- (c) To grant loans or give guarantee or provide security in respect of loans;

### **Powers of the Board of Directors that can be exercised in Board Meetings only (under Rules)**

Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes some more powers that can be exercised by the Board only by means of resolutions passed at meetings:

- (a) To make political contributions;
- (b) To appoint or remove Key Managerial Personnel (KMP);
- (c) To appoint internal auditors and secretarial auditor;

Considering the operational difficulties, interpretation issues and with an objective to smoothen the compliance for companies, MCA amended Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 (w.e.f. March 19, 2015). Certain powers that were to be exercised only at Board Meeting have been omitted. Now, the following powers can be exercised by the board of directors by passing circular resolution or any other mode of approval (other than passing a resolution at board meeting only):

- (a) To take note of appointment(s) or removal(s) of one level below KMP,
- (b) To take note of the disclosure of director's interest and shareholding,

- (c) To buy, sell investments held by the company (other than trade investments), constituting 5% or more of the paid up share capital and free reserves of the investee company,
- (d) To invite or accept or renew public deposits and related matters,
- (e) To review or change the terms and conditions of public deposit,
- (f) To approve quarterly, half yearly and annual financial statements or financial results as the case may be.

### **Meetings of the Board of Directors**

Section [173](#) of the Act relates to "Meeting of the Board". It states that the participation of directors in a Board Meeting may be either in person or through video conferencing or other audio visual means, which are capable of recording and recognising the participation of the directors and of recording and storing the proceedings of such meetings along with date and time. Therefore, there are only two ways or conducting meeting of the board of directors:

- (a) At a Board Meeting conducted in person or,
- (b) At a Board meeting through video conferencing or other audio visual means [in prescribed manner].

### **Certain matters that cannot be dealt in Board Meeting through video conferencing or other audio visual means**

Rule [4](#) of Companies (Meetings of Board and its Powers) Rules, 2014 prescribes the matters that shall not be dealt with in any meeting held through video conferencing or other audio visual means. Such matters are:

- (i) Approval of Annual Financial Statements;
- (ii) Approval of Board's Report;
- (iii) Approval of Prospectus;
- (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Therefore, the said matter can be dealt with only in the meeting of board of directors or Audit Committee in person. Usually, approval of Annual Financial Statements and approval of Board's Report are dealt with in the same board meeting. Therefore, the Board can discuss the other agenda items w.r.t. the accounts approval process in a meeting held through video conferencing or other audio visual means. For the said two matters, the Board of directors ought to separately deal with the same in a meeting held in person, irrespective of the fact of the that quorum is physically present at the meeting.

### **Proposed amendment by Companies (Amendment) Bill, 2016**

The Companies (Amendment) Bill, 2016 proposes to amend provisions of Section 173 of the Act. Pursuant to the proposed amendment, if there is quorum in a meeting through physical presence of directors, then any other director may participate through video conferencing or other audio visual means matters specified in Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014. The only requirement is that quorum is physical present, whereby the following matters can be discussed through video conferencing or other audio visual means:

- (i) Approval of Annual Financial Statements;
- (ii) Approval of Board's Report;
- (iii) Approval of Prospectus;
- (iv) Audit Committee Meetings for consideration of financial statement including consolidated financial statement, if any, and
- (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

### **Conclusion**

It's interesting to note that there is reference to one agenda item (in Rule 4) that relates to Audit Committee Meeting. Such matter cannot be dealt in the meeting of Audit Committee held through video conferencing or other audio visual means. Other agenda item relates to the matters to be discussed by the Board of Directors. Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 mandates the Audit Committee to consider the financial statements (including consolidated financial statement, if any) in its meeting conducted in person. However, it is interesting to note that in Rule 4, there is reference to Annual Financial Statements and not quarterly or half-yearly financial statements. Therefore, Board of directors or Audit Committee can approve quarterly or half yearly Financial Statements in a meeting held through video conferencing or other audio visual means.

It can be concluded that the matters as prescribed in Rule 4 can only be discussed at a Board Meeting conducted in person i.e. neither by means of meeting through video conferencing or other audio visual means nor by means of Circular Resolution. The provisions are applicable to private company and public company (listed or unlisted), both.

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