



A Private Limited is holding the entire equity share capital (along with a Nominee) of B Private Limited (i.e., total 5,00,000 Equity Shares of ₹ 10 each). By virtue of the shareholding, B Private Limited is the wholly-owned subsidiary company of A Private Limited. B Private Limited proposes to issue 1,00,000 compulsory convertible preference shares of ₹ 10 each to another identified company. Whether by the issue of such compulsory convertible preference shares, there is a change in the relationship of A Private Limited vis-à-vis B Private Limited?

As per the provisions of the Companies Act, 2013, A Private Limited is a holding company and B Private Limited is its wholly-owned subsidiary company. Pursuant to sub-section (87) of section 2 of the Act, subsidiary company or subsidiary, in relation to holding company, means a company in which the holding company: (i) Controls the composition of the Board of Directors; or (ii) Exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies. 'Total voting power' has been defined in sub-section (87) of section 2 of the Act as total number of votes which may be cast in regard to that matter on a

(Contributed by CS Gaurav Pingle)

poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes. Pursuant to Section 47 of the Act, holders of preference shares (in present case, compulsory convertible preference shares) have a right to vote only on resolutions placed before the company which directly affects rights attached to his preference shares and, any resolution for the winding-up of company or for the repayment or reduction of its equity or preference share capital. Taking into consideration the said provisions, the issue of such compulsory convertible preference shares will not change any relationship of A Private Limited vis-à-vis B Private Limited (i.e., holding company and wholly-owned subsidiary company). However, it is also necessary to refer to the second proviso to sub-section (2) of section 47 of the Act, which states that where the dividend in respect of a class of preference shares has not been paid for a period of 2 years or more, such class of preference shareholders shall have a right to vote on all the resolutions placed before the company. In such cases, there may be a change in the relationship of A Private Limited vis-à-vis B Private Limited.

YOUR QUERIES

Mr. G is an employee of G Private Limited. The board of directors of G Private Limited proposes to appoint Mr. G as an Alternate Director for a director who resides in Singapore. In such case, whether Mr. G is a whole-time director of G Private Limited?

Sub-section (94) of section 2 of the Companies Act defines 'whole-time director' as "whole-time director" includes a director in the whole-time employment of the company". The provision of the Act does not create any exception. In fact, it only stipulates a condition, i.e., director in the whole-time employment of the company. As Mr. G is an employee of the company, Mr. G will be a whole-time director in addition to alternate director.

It is proposed that a director of the company will be appointed as whole-time director of Delta Private Limited for a period of 10 months, i.e., less than

5 years. Whether such appointment is in accordance with the provisions of section 196 of the Act?

Section 196 of the Act relates to 'Appointment of managing director, whole-time director or manager'. Sub-sections (1), (2) and (3) of Section 196 of the Act are applicable to private companies and sub-sections (4) and (5) of section 196 of the Act are not applicable to private companies [MCA Notification, GSR 464 (E) dated June 5, 2015]. Sub-section (2) of section 196 of the Act states that "No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time". As Managing Director or whole-time director or Manager cannot be appointed for a term exceeding 5 years, appointment of whole-time director in Delta Private Limited for a period of 10 months is in accordance with the Act.