



*Can the board of directors of the company give consent or approval to the related party transactions by passing a circular resolution?*

Sub-section (1) of section 188 of the Companies Act, 2013, states that the company shall enter into any contract or arrangement with a related party w.r.t. prescribed transactions only with the consent of the board of directors by a resolution at a meeting of the board of directors. The company shall also comply with Rule 15 of the Companies (Meetings

*(Contributed by CS Gaurav Pingle)*

of Board and its Powers) Rules, 2014. As there is an explicit mention in sub-section (1) of section 188 of the Act, the board of directors shall pass a resolution at its meeting. Therefore, the board of directors cannot give its consent by passing a circular resolution. The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose: (a) Name of the related party and nature of relationship, (b) Nature, duration of the contract and particulars of the contract or arrangement, (c) Material terms of the

contract or arrangement including the value, if any, (d) Any advance paid or received for the contract or arrangement, if any, (e) Manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract, (f) Whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and (g) Any other information relevant or important for the Board to take a decision on the proposed transaction.

*In case of a private company a, few directors of the company are interested in a related party transaction. How will the voting at the board meeting be done on such resolution?*

Sub-Rule (2) of Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014 states that where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement. However, in case of private companies, the interested director may participate in such meeting after disclosure of interest (MCA Notification No. GSR 464(E) dated June 5, 2015 as amended by Notification No. GSR 583(E), dated June 13, 2017). The disclosure made by the interested directors shall be noted in the minutes of the meeting of the board of directors.

*In case of private company, a related party has entered into a contract on arms length basis and in the ordinary course of its business. Will such transaction require approval of the board of directors?*

Where a company enters into any contract or arrangement with a related party with respect to certain prescribed transactions, the consent of the board of directors of the company shall be given by a resolution at a meeting of the board of directors (sub-section (1) of section 188 of the Companies Act, 2013). A company shall not enter into a contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, except with the prior approval of the company by an ordinary resolution (First proviso to sub-section (1) of section 188 of the Act). Sub-section (1) of section 188 of the Act shall not apply to any transactions entered into by the company in its ordinary course of business, other than transactions which are not on an arm's length basis (Fourth proviso to sub-section (1) of section 188 of the Act). Therefore, the consent of the board of directors at its meeting is not required where a company has entered into a prescribed transaction with a related party on arms length basis and in the ordinary course of its business. However, the board should note the said related party transactions in the minutes of the meeting of the board of directors.