



Mr. S is a partner in SS & Co. and also a director in SWP Services Pvt. Ltd. Whether provisions of section 185 of the Companies Act, 2013 will apply for the loan provided by SWP Services Pvt. Ltd. to SS & Co.?

Pursuant to sub-section (1) of section 185 of the Companies Act, 2013 (substituted w.e.f. May 7, 2018) a company (whether a private company or public company) shall not, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by certain parties. Sub-section (1) of section 185 of the Companies Act, 2013 imposes complete restriction on giving loan, guarantee and security (in connection with any loan) taken by certain parties. Clause (b) of sub-section (1) of section 185 of the Companies Act, 2013 prescribes one of the parties as 'any firm in which any such director or relative is a

(Contributed by CS Gaurav Pingle)

partner'. Therefore, the loan by a company to a firm in which director is a partner will fall under sub-section (1) of section 185 of the Act. Therefore, the provisions of section 185 of the Companies Act, 2013 would be applicable for the loan provided by SWP Services Pvt. Ltd. to SS & Co.

Mr. S is a partner in SS & Co., LLP and also a director in SWP Services Pvt. Ltd. Whether provisions of section 185 of the Companies Act, 2013 will apply for the loan provided by SWP Services Pvt. Ltd. to SS & Co., LLP?

According to sub-section (1) of section 185 of the Companies Act, 2013 (substituted w.e.f. May 7, 2018) a company (whether a private company or public company) shall not, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken

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by certain parties. Sub-section (1) of section 185 of the Companies Act, 2013 imposes complete restriction on giving loan, guarantee and security (in connection with any loan) taken by certain parties. Clause (b) of sub-section (1) of section 185 of the Companies Act, 2013 prescribes one of the parties as 'any firm in which any such director or relative is a partner'. LLP is not a 'firm'. Section 3 of the LLP Act, 2008 states that LLP is a body corporate formed and incorporated under LLP Act and is a legal entity separate from that of its partners. LLP shall have perpetual succession and any change in the partners of LLP shall not affect the existence, rights or liabilities of the LLP. Section 4 of the LLP Act, 2008 states that the provisions of the Indian Partnership Act, 1932 (9 of 1932) shall not apply to a LLP. Taking this into consideration, the transaction of loan by a company to a LLP in which director is a partner will not fall under sub-section (1) of section 185 of the Act.

Mr. G is a director in Gamma Advisors Ltd. and Beta Consultants Pvt. Ltd. Whether provisions of section 185 of the Companies Act, 2013 will apply for the loan provided by Gamma Advisors Ltd. to Beta Consultants Pvt. Ltd.?

Pursuant to sub-section (2) of section 185 of the Companies Act, 2013 (substituted

w.e.f. May 7, 2018) a company may advance any loan, including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that: (i) Special Resolution is passed by the company in general meeting and (ii) Loans are utilized by the borrowing company for its principal business activities. Pursuant to the *Explanation* to sub-section (2) of section 185 of the Companies Act, 2013, one of the parties under the head 'any person in whom any of the director of the company is interested' is 'any private company of which any such director is a director or member'. Therefore, Section 185 of the Companies Act, 2013 is applicable for a prescribed transaction by the company (*i.e.*, private company or public company) with a private company of which any such director is a director or member. Therefore, the provisions of section 185 of the Companies Act, 2013 will apply for the loan provided by Gamma Advisors Ltd. to Beta Consultants Pvt. Ltd.

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