



Corporate Laws

(Contributed by CS Gaurav Pingle)

A private company has appointed a Managing Director under the Companies Act, 1956 (i.e., on or before March 31, 2014) for an undefined term (because provisions of section 267 and section 269 of Companies Act, 1956 were not applicable). Whether the provisions of section 196 of the Companies Act, 2013 are applicable to such director w.r.t. the tenure of 5 years appointment?

Sub-section (1) of section 196 of the Act states that a company (private company or public company) shall not appoint or employ at the same time a managing director and a manager. Sub-section (1) of section 196 of the Act states that the company (private company or public company) shall not appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding 5 years at a time. However, the re-appointment shall not be made earlier than 1 year before the expiry of his term. In *Sridhar Sundararajan v. Ultramarine & Pigments Limited* [2016] 66 taxmann.com 167 (Bombay), the question before the High

Court was Whether, after the amendment to the Companies Act in 2013 which was brought into force with effect from 1-4-2014, any Managing Director who was appointed prior to the Amendment Act, i.e., before 1-4-2014 would have a right to continue to act as Managing Director after his attaining the age of 70 years without special general resolution being passed by the company in its general meeting? Though the issue was relating to passing of special resolution and age of 70 years, the observations of the High Court are of great significant. The Division Bench of Bombay High Court observed that "if appointment to the post of Managing Director is made after coming into force of the Amendment Act, 2013 on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfilment of the proviso. On the other hand, if he was already appointed prior to 1-4-2014 when he was below the age of 70 years, on account of operation of statute, disqualification, whenever incurred after the Amendment Act, would operate automatically,

subject to proviso, i.e., special resolution being passed by the company." Therefore, the provisions of section 196 of the Act are applicable to Managing Director w.r.t. the tenure of 5 years appointment. There should be a specific re-appointment of the managing director in a private company.

Can Chairman participate in the board meeting conducted through video-conferencing?

Pursuant to sub-section (2) of section 173 of the Act, the participation of directors in a meeting of the board of directors may either be in person or through video-conferencing or other audio-visual means, as may be prescribed, 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. There is no explicit prohibition on

the Chairman's participation in the meeting of the board of directors through video-conferencing or other audio-visual means, as may be prescribed. The provisions are applicable to all directors of the company (i.e., executive directors and non-executive directors or Chairman of the board or not). The Secretarial Standards (Clause No. 1.2.3) also state that any director may participate through electronic mode in a meeting unless the Act or any other law specifically prohibits such participation through electronic mode in respect of any item of business. In Secretarial Standard there is a reference of 'director' and no specific restriction/prohibition on the Chairman. Therefore, the Chairman can participate in the board meeting conducted through video-conferencing.

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