

# The Companies Act, 2013

some efforts – some pain – some side effects

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# Topics for discussion

- Share Capital & Debentures
- Registration of Charges
- Management & Administration

# Cultural Changes

- Changes in provisions are not only in letter but compliance in spirit of law is desired.
- More responsibility is cast on Professionals, KMPs of the company.
- Penalties have gone up multifold

# Frauds & Management Responsibility - Key Drivers

- Sec 2(6) – Associate Company – One co. Having Significant Influence on the another – Co. Which holds at least 20% of the paid up capital or control of business decisions under an agreement. (Subsidiary Co. Not included)
- Sec 2 (51) - ‘Key Managerial Personnel’ – includes CEO, MD CFO, WTD, CS and such other officer as may be prescribed – co is expected to identify and designate in adopting policy for KMPs

# Frauds & Management Responsibility - Key Drivers

- Sec 2(60) – ‘Officer in default’ - KMP and Board of Directors. Further any job or responsibility delegated by either KMP or Board, such authorized person will be an officer in default
- **All Cos. needs to have policy on KMPs.** - though u/s 203 - cos. Having paid up cap of 10 cr or more are required to appointment KMPs
- Sec 2 (76) – Related Party – wider coverage – now also includes – ‘any body corporate who is accustomed to act’ , KMPs, Holding –subsidiary – Associate Co. (***Co needs to pay attention***)

# Share Capital & Debentures

- Share – Sec2(84) – means a share in the Share Capital of the company and includes Stock.
- Indian Depository Receipt – Sec 2(48) – any instrument in the form of a depository receipt created by domestic depository in India and authorised by the company incorporated outside India making of an issue of such depository receipts. –
- Forward looking step – as it may allow foreign cos. to tap Indian securities markets., give more options to Indian investors, ultimately leading to capital formation and growth.

# Share Capital & Debentures...

- Debenture – Sec 2(30) – it includes debenture stock, bonds or **any other instrument of the co. evidencing a debt**, whether constituting a charge on assets of the company or not. ( now it will also cover OFCDs – Sahara case)
- Global Depository Receipts – Sec 41

# Share Capital & Debentures...

- Types of share capital – Sec 43
  - Equity Capital – with or without differential rights as to dividend, voting..
  - Shares with variable rights – Rule 4 of The Companies (Share Capital & Debentures) Rules, 2014
    - authority in AOA & Ordinary Resolution
    - in case of listed companies – Postal Ballot
    - such shares can not exceed 26% of post issue paid up equity capital.
    - consistent track record of last 3 years distributable profits
    - no default on filing of Financial Statements & Annual Returns for 3 preceding years.
    - subsisting default in payment of declared dividend to equity & preference capital.
  - Preference Capital
  - Voting Rights - no material changes as compared C A 1956.



# Share Capital & Debentures...

- Further Issue of Capital – Sec 62
  - On rights basis to the existing shareholders – (same as in earlier case of Sec 81) –
  - If such offer is renounced or declined then BOD can dispose the shares **which is not disadvantageous to the shareholders and the company** (in the best interest of the company)- which clearly suggests that BOD can not issue at discount to other applicants.

# Share Capital & Debentures...

- To employees under the ESOPs Scheme – Special Resolution.
- To any persons – for cash or for consideration other than cash – provided price of such shares is determined by valuation report by the Registered Valuer.
- As of now any professional recognised by his parent professional body as Registered Valuer, can act so.

# Share Capital & Debentures...

- Notice for alteration of share capital - Sec 61 – in form SH.7
- Co. Not to convert existing equity share capital with voting rights into equity share capital with differential voting rights and vice-versa.
- Such shares will enjoy all other rights like bonus, rights etc.
- Discuss example of Tata Motors.

# Share Capital & Debentures...

- Issue of Bonus Shares – Sec 63 - out of –
  - free reserves, securities premium account or CRR amount
  - But not out of Revaluation of its assets reserves.
  - Procedure for issue of bonus shares –
    - authorised by AOA, first Board approval and then general meeting.

# Share Capital & Debentures...

- Not defaulted in payment of - interest and principal on fixed deposits, statutory dues.
- partly paid shares are made fully paid up.
- can not be issued in lieu of dividend.
- company which has once announced the decision of its board recommending bonus issue, shall not withdraw the same. (Rule 14)

# Share Capital & Debentures...

- Issue of Employees Stock Options – Rule 12
- **Clear guidelines in the Act, earlier, confusion whether to follow SEBI guidelines.**
- Listed companies have to follow SEBI Guidelines & other companies will have to follow –
  - **‘Employee’ means** – permanent employee working in India or outside India,
  - director including WTD but excludes Independent director.

# Share Capital & Debentures...

- employee of a subsidiary/holding/associate co. In India or outside India.
- **but does not include –**
- employee who is a promoter or belongs to promoter group.
- director who by himself or thru his relative or thru any body corporate, directly or indirectly, **holds more than 10% of the outstanding equity shares of the company**

# Share Capital & Debentures...

- Procedure for issue of ESOPs –
  - Special Resolution
  - Exercisable price is calculated in conformity with applicable accounting policies.
  - separate resolution for grant of options to employees of subsidiary or holding co.
  - Options to identified employees during any one year equal to or exceeding 1% of the issued capital.



# Share Capital & Debentures...

- Minimum period of 1 year between grnt of option and vesting of option.
- Lock-in period as decided by the company.
- Option granted to employee is not transferable to any other person, neither it shall be pledged, mortgaged, hypothecated...
- in case of death – options will vest in legal heirs.
- in case of permanent incapacity – options shall vest in him on very same day.

# Share Capital & Debentures...

- In case resignation, termination – options not vested shall expire. Options which are vested can be exercised within period as may be approved by Board.
- Disclosure in Directors' Report on ESOPs
- Register of ESOPs in form SH.6
- Compliance with applicable Income Tax Rules for the purpose of tax impact.

# Share Capital & Debentures...

- Buy Back of Shares – Rule 17
  - It is authorised by AOA.
  - Approval by shareholders by Special Resolution.
  - Offer letter signed by two directors one of whom shall be MD.
  - Offer letter to be filed with ROC in form SH.8 and immediately but not later than 21 days of filing with ROC it should be despatched to the shareholders.
  - Offer should be open for not less than 15 days but not more than 30 days from the date of despatch.

# Share Capital & Debentures...

- BOD should make full enquiry into the affairs and should form an opinion that co. is solvent.
- No default on payment dues to deposits, debentures, redemption of Preference shares, payment of dividend which is declared.
- Co. Should make certain disclosures about the buy back in explanatory statement u/s 102.

# Share Capital & Debentures...

- In case no of shares offered for buy back by shareholders is more than the no of shares proposed to be bought back, then it should be accepted on proportionate basis.
- within 15 days of closure of offer BOD to complete verification and in case of rejection within 21 days it should be communicated to the shareholder.
- Immediately, open a separate bank account and deposit entire sum required for buy back.

# Share Capital & Debentures...

- Company shall not withdraw the offer once it is announced.
- any money borrowed from Banks and Financial Institutions shall not be used for the purpose of buy back.
- Register of such bought back securities to be maintained in form SH.10.
- File a return with ROC in form SH.11 confirming compliance with the applicable provisions of law.

# Share Capital & Debentures...

- Transfer & Transmission of Shares: Sec 56
- (corresponding to earlier Sec 108, 109, 110 & 111 of C A 1956.)
- Transfer is a voluntary act whereas transmission is by operation of law.
- Transfer instrument in form SH.5 duly stamped, signed and executed, to be delivered by either transferor or transferee within 60 days along with relevant share certificate.

# Share Capital & Debentures...

- Applicable to all Pvt. & unlisted Public Cos.
- Request for share transfer to be approved by Committee constituted for this purpose or by BOD.
- Transfer of any security or other interest of a deceased person made by his legal representative is valid as if he was a holder on the date of execution.
- **discuss case study of B.**



# INFRASTRUCTURE PROJECTS

- To finance Infra projects, co. may issue Preference Shares for a period for more than 20 years (Sec 56) – subject to redemption of such % of shares as may be prescribed on annual basis at the option of Preference Shareholders.
- Except Sec 186 (1) – (loans & investments by the company), rest of the provisions are not applicable to a company engaged in the business of financing of companies **or of (which)** providing infrastructural facilities.
- discuss e.g. Of IDFC.

# INFRASTRUCTURE PROJECTS...

- Schedule VI – Some e.g. Of Infra projects which are approved – some e.g.
  - Transportation including roads, rails, ports, aviation, **logistic services.**
  - Agriculture – including storage, construction of agro processing units.
  - Water Management – including irrigation, water treatment.
  - Telecommunication
  - Industrial Parks, SEZs.
  - Power including generation, distribution, transmission.
  - **Disaster management services**
  - **Preservation of Monuments & icons**

# Registration of Charges

- Charge to be created on -
  - Property, Assets or Undertaking
    - whether tangible or otherwise
    - within India OR outside India
  - within 30 days of creation of charge i.e. Execution of instrument/s in favour of Charge holder,
  - with the permission of the Registrar, within 300 days with late filing fees (progressive provision) and unless the charge is Registered, it can not be taken into account by liquidator/creditor.
  - It has introduced rationality in the process.

# Registration of Charges...

- However, non registration of charge will not absolve the borrower from his responsibility of repayment.
- It will make a difference at the time of priority for repayment. In all possibilities it will be treated as unsecured.
- If co. fails to register the charge then lender can approach to ROC in form CHG 1 and within 14 days of receipt of such application serve notice on the co. – and if no response is received then go ahead and Register the charge. **Welcome provision against erring cos.**

# Registration of Charges...

- Registrar to keep Register of Charges – Sec 81
- Welcome provision as it will reduce the stress on the new lenders and existing lenders to know the status of the property under charge.
- Appointment of receiver OR manager of the property under charge will have to be intimated to ROC – in form CHG 6 – welcome provision as in many instances manager used to dispose off the property which used to lead to disputes.

# Registration of Charges...

- Satisfaction of Charge – Sec 82
  - within 30 days of repayment of all the dues
  - Co. May apply in CHG 4 for satisfaction with signature of the charge holder, IF NOT
  - Co. May apply to ROC and then ROC will send Notice to the charge holder and within 14 days he need to respond, if not ROC may go ahead and issue Satisfaction of Charge Certificate in CHG 5.

# Management & Administration

- Members' Meetings;
- Annual General Meeting (AGM) – Sec 96
  - 1 meeting per year – (earlier calendar year)
  - Gap between 2 successive AGMs not more than 15 months.
  - from 2<sup>nd</sup> AGM onwards, within 6 months from the date closing of Financial Year.

# Management & Administration...

- 1<sup>st</sup> AGM within 9 months of the end of first Financial Year. ( **earlier within 18 months from the date of incorporation.**) No need of holding AGM in the year of incorporation.
- ROC has power to extend time period by 3 months for special reasons.
- ROC has no power to extend time period for 1<sup>st</sup> AGM.



# Management & Administration...

- Prerequisites w.r.t Day –
  - It can not be National Holiday ( earlier term was Sunday & Public Holiday.) Public Holiday
  - could be state wise but National Holiday has to be Nationwide.
  - **So if Sunday is a working day for the co. It can hold AGM.**

# Management & Administration...

- Prerequisites w. r. t. Time:
  - It has to be during business hours – 9 to 6.
  - **Earlier it was business hours of the co.**
- Prerequisites w. r. t. Place:
  - At the Registered Office or within city, town, village, where Register Office is situate.

# Management & Administration...

- Prerequisites w. r. t. Quorum: Sec 103
  - For Pvt Co. – 2 members personally present.
  - For Public Co. – No. of Members not more 1000 – 5 members personally present.
  - For Public Co. – No. of Members up to 5000 – 15 members personally present.
  - For Public Co. – No. of Members exceeding 5000 – 30 members personally present.
  - **It AOA provides for higher no. then such no.**

# Management & Administration...

- Quorum must be present within half an hour of the scheduled start of the meeting.
- If the quorum is not present within ½ Hour, it stands adjourned on same day, time and place in the next week OR such other date as Board may decide. (it may difficult to get the same premises in the next week.) if called on requisition then stand cancelled.
- In such case, co. must give not less than 3 days Notice to the members – individually (not possible) OR thru advertisement.

# Management & Administration...

- If at the adjourned meeting, quorum is not present then the members present shall be the quorum.
- w.r.t. Proxies – Sec 105(1)
  - this sub-section shall not apply to co. Not having share capital.
  - Person can not be proxy for more than 50 members or holding in aggregate of not more than 10% of the total share capital.
  - Proxy need not be member
  - It has to be prominently stated in Notice (**generally in capital letters.**)

# Management & Administration...

- Proxy shall not have a right to speak at the meeting and vote except on a Poll.
- It has to be deposited before 48 hours of the meeting.
- It must be in writing signed by the appointer or his attorney, if the appointer is body corporate then under its seal and signed by the officer under the authority.
- It has to be in form MGT -11 – **Rule 19(3)**

# Management & Administration...

- Right of proxy to vote can not be restricted unless there are calls-in-arrears. (Sec 106)
- Unless Poll is demanded or voting in electronic mode is carried out, voting should be on show of hands. (Sec 107)?
- Chairman's declaration of result and its entry in the Minutes book is conclusive evidence.

# Management & Administration...

- Voting thru' electronic means – (Rule 20)
  - Applicable to every listed co. and co. Having not less than 1000 shareholders.
  - casting and counting of votes should be real time basis thru' centralised server with adequate cyber security.
  
- Procedure for e-voting: {Rule 20(3) }
  - Notice should be to all the members, auditors **or**
  - **directors (it should have been and directors) –**
  - thru' Registered Post/Speed Post/ electronic means/
  - courier - **No provision of serving thru' Ordinary Post**





# Management & Administration...

- Notice to be put on Website of the co. and R & T 's website.
- Notice in 2 newspapers about fact that Notice is sent and facility of e-voting provided on the agenda points – **FIVE days** before the date of beginning of e-voting.
- E-voting should remain open for atleast 1 day and not more than 3 days and **should be completed 3 days prior to the date of general meeting.** Once the vote is cast, it can not be changed.
- Co. to appoint scrutinizer – within 3 days of conclusion of voting period – unblock the votes and in presence of 2 witnesses make report (Form – MGT 13)and submit it to Chairman.

# Management & Administration...

- Result declared to be placed on website within 2 days of passing of resolution at general meeting.

- Postal Ballot – Sec 110 –
- Not applicable to OPC and cos. having members up to 200.
- Following businesses must be thru' Postal Ballot –

# Management & Administration...

- Following businesses must be thru' Postal Ballot –
  - Alteration of Objects Clause of MOA (for existing co. Alteration in Main Objects Clause.)
  - Alteration in AOA – for changing the status from Private to Public.
  - Shifting Registered Office out of local limits.
  - Change in Objects for which money was raised from Public and remaining unutilised.

# Management & Administration...

- Issue of shares with differential voting rights
- variation in rights of class of debentures.
- buy-back of shares.
- Election of a director by small shareholders.
- Sale of Whole or substantially the Whole of the Undertaking.
- Giving of loans, guarantees, securities exceeding the limits prescribed u/s 186.

# Management & Administration...

- Ordinary and Special Resolution – Sec 114 (corresponding to Sec 189 of C A 1956).
- For Ordinary Resolution – No. of votes (thru' whichever means (physical, postal, electronic) in favour are more than no. of votes against.
- For Special Resolution - No. of votes (thru' whichever means (physical, postal, electronic) in favour are three times that of no. of votes against.

# Management & Administration...

- Resolutions requiring Special Notice – Sec 115(corresponding to Sec 190 of C A 1956).
- Such members holding not less than 1% of total voting power OR
- Such members holding not less than shares of the value 5 lacs ( here value should be face value or consideration including premium)
- **In my opinion, it should be face value.**

# Management & Administration...

- Resolutions required to be filed with ROC – ( Sec 117) - (corresponding to Sec 192 of C A 1956).
- Additional and important insertion –
  - resolutions passed u/s 179(3) – Board's Powers. (corresponding to Se 292 of C A 1956)

# Management & Administration...

- Annual Return (AR) – Sec 92 ( corresponding sec 159, 160, 161 and 162 of C A 1956)
- Within 60 days of AGM or the last date on which it should have been held with reasoning why AGM was not held. –(status as on the date of financial year (as against as on date of AGM))
- AR to be signed by a director and a Company Secretary or where there is no Company Secretary, by CS in practice.
- AR of listed co OR Co. Having paid-up share capital of 10 cr or more, OR turnover of 50 cr or more must be certified by CS in practice.(form MGT 8) – new requirement
- Extract of Annual Return – to form part of Directors' Report - Form MGT -9 (NEW REQUIREMENT)



# Management & Administration...

- AR has to be in the prescribed form MGT 7
- Some new disclosures in AR –
  - Promoters, directors and KMPs with changes from close of previous Financial Year.
  - Details of meetings(with attendance details) of members/directors/committees.
  - Remuneration of directors/KMPs.
  - Details of penalties or punishments imposed on company, directors with corresponding details of such offences.
  - details on certifications on compliances, disclosures.

# Management & Administration...

- Extra-ordinary General Meeting -Sec 100 – (corresponding to Sec169 of C A 1956)
  - As and when Board deems it fit OR
  - On requisition by members holding not less than 10% of total paid up capital carrying the voting powe.
  - 
  - All businesses will be of a nature of Special Business.

# Keep in touch

- CS Anant Amdekar –



THANK YOU