

Directors liable for Dishonor of Cheque

The Supreme Court of India (“SC”) ruled that all directors involved in the day-to-day running of a company can be made liable for a bounced cheque, however, directors who resigned before such a cheque was issued cannot be held liable. This was held by the apex court while adjudicating a case filed by a private company (under the Negotiable Instruments Act) that had lent money to another. The suing company also made the four directors of defaulting company a party to the suit. In this case, the Calcutta High Court has earlier quashed the proceedings against the directors on the ground that it is not sufficient to merely state that the directors were involved on a day to day basis and their roles shall be clearly stated. The SC, however, asserting that vicarious liability is contemplated in the Negotiable Instruments Act clarified the law; it stated that the directors should normally face prosecution if there is no incontrovertible evidence to show their non-involvement such as long illness, resignation, etc. The apex court said that a specific averment that a person is in charge of and is responsible for the conduct of the business of the company shall suffice and it is not required to elaborate on the role of each of the directors played in the transaction.

Any other director can also be made liable if the person was in charge of and was responsible for the conduct of business. Other officers of a company can also be made liable if a specific role by way of consent, connivance or negligence is alleged against them. Moreover, managing directors in charge of company affairs, directors or officers who sign cheques can be arraigned as accused. Further, SC pointed out that a case can only be quashed under Section 482 of the Criminal Procedure Code by a high court if a director is wrongly arraigned.

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Right of persons other than retiring directors to stand for directorship & refund of deposit on non-election

The Ministry of Corporate Affairs (“MCA”) vide general circular No. 38/2014 has come out with a clarification on the deposit made by people desiring to be appointed as directors under Section 160 of the Companies Act 2013 (“Act”). A clarification was sought by companies registered under Section 8 of the Act (corresponding to Section 25 of Companies Act, 1956) about the manner in which the amount of deposit of rupees one lakh received by them under section 160 of the Act is to be handled if the depositor fails to secure requisite more than twenty five per cent of the total valid votes. It has been noted that the relevant provision is silent on such issue. The matter has been examined by MCA and it is clarified that in such cases, the Board of

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India Juris

F-116

Lajpat Nagar-1

New Delhi - 110 024, India

Ph: +91-11-29814816 / 29814817

Fax: +91-11-29815116

E: newdelhi@indiajuris.com

www.indiajuris.com

International Desks

Asia & Australia

M.P.Mehani

asia@indiajuris.com

Americas

Shivkumar Idnani

directors of a Section 8 company is to decide as to whether the deposit made by or on behalf of the person failing to secure more than twenty-five percent of the valid votes is to be forfeited or refunded.

americas@indiajuris.com

UK & Europe

Sameer Rastogi

europe@indiajuris.com

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Africa

Surabhi Tyagi

africa@indiajuris.com

Middle East

Dinesh Sabharwal

middleeast@indiajuris.com

Public Sector Companies to mandatorily spend on CSR

Ministry of Heavy Industries & Public Enterprises (Department of Public Enterprises) (“DPE”) on 21st October 2014 issued Guidelines on Corporate Social Responsibility and Sustainability for Central Public Sector Enterprises (“Guidelines”), which shall supersede the previous guidelines issued by DPE on the subject. These Guidelines would supplement the Corporate Social Responsibility Rules (“CSR Rules”) [under Companies Act, 2013 (“Act”)]. The key takeaways of these Guidelines are as under:

- It is mandatory for all profit making Central Public Sector Enterprises (“CPSEs”) to undertake Corporate Social Responsibility (“CSR”) activities as per the provisions of the Act and the CSR Rules. Even the CPSEs which are not covered under the eligibility criteria based on threshold limits of net-worth, turnover, or net profit as specified by Section 135 (1) of the Act, but which made profit in the preceding year, would also be required to take up CSR activities as specified in the Act and the CSR Rules, and such CPSEs would be expected to spend at least 2% of the profit made in the preceding year on CSR activities.
- All CPSEs must adopt a CSR and Sustainability Policy specific to their company with the approval of the Board of Directors. The philosophy and spirit of CSR and Sustainability must be firmly ingrained in the policy and it must be consistent with the CSR provisions of the Act, Schedule VII of the Act, CSR Rules, the Guidelines, and the policy directions issued by the Government from time to time. The CSR and Sustainability policy of a CPSE should serve as the referral document for planning its CSR activities in accordance with Schedule VII of the Act and give a road map for formulation of actionable plans.
- While selecting CSR activities / projects from the activities listed in Schedule VII of the Act, CPSEs should give priority to the issues which are of foremost concern in the national development agenda, like safe drinking water for all, provision of toilets especially for girls, health and sanitation, education, etc. The main focus of CSR and Sustainability policy of CPSEs should be on sustainable development and inclusive growth, and to address the basic needs of the deprived, under privileged, neglected and weaker sections of the society

which comprise of Scheduled Caste (SC), Scheduled Tribe (ST), Other Backward Classes (OBCs), minorities, Below Poverty Line (BPL) families, old and aged, women / girl child, physically challenged, etc.

- It would be mandatory for all CPSEs which meet the criteria as laid down in Section 135(1) of the Act, to spend at least 2% of the average net profits of the three immediately preceding financial years in pursuance of their CSR activities as stipulated in the Act and the CSR Rules. This stipulated percentage of average net profits is to be spent every year in a manner specified in the Act and CSR Rules. In case a company fails to spend such amount, it shall have to specify the reasons for not spending it. However, in case of CPSEs mere reporting and explaining the reasons for not spending this amount in a particular year would not suffice and the unspent CSR amount in a particular year would not lapse. It would instead be carried forward to the next year for utilisation for the purpose for which it was allocated.
- If the CPSEs feel the necessity of taking up new CSR activities / projects during the course of a year, which are in addition to the CSR activities already incorporated in the CSR policy of the company, the Board's approval of such additional CSR activities would be treated as amendment to the policy.
- As mentioned in the Act, CPSEs should give preference to the 'local area' in selecting the location of their CSR activities. It is desirable that the Board of Directors of CPSEs define the scope of the 'local area' of their commercial units / plants / projects, keeping in view the nature of their commercial operations, the extent of the impact of their operations on society and environment, and the suggestions / demands of the key stakeholders, especially those who are directly impacted by the company's commercial operations / activities. The definition of 'local area' may form part of the CSR policy of the CPSE.

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