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IMPLEMENTATION OF INDIAN ACCOUNTING STANDARDS (IND AS)

MCA vide its circular dated February 16, 2015 hereby states that the Indian Accounting Standards apply to all the companies earlier exempted from the applicability of Indian Accounting Standards (Ind AS) i.e The Insurance Companies, The Banking Companies and Non-banking Finance Companies for preparation of their financial statements either voluntarily or mandatorily. Reserve Bank of India vide its circular no. RBI/2015-16/315 DBR.BP.BC dated 11th February, 2016 has implemented Indian Accounting Standards to all the Schedule Commercial Banks (excluding Regional Rural Banks).

- In this connection, it is advised that scheduled commercial banks (excluding RRBs) shall follow the Indian Accounting Standards as notified under the Companies (Indian Accounting Standards) Rules, 2015, subject to any guideline or direction issued by the Reserve Bank in this regard, in such a manner that Banks shall comply with the Indian Accounting Standards (Ind AS) for financial statements for accounting periods beginning from April 1, 2018 onwards, with comparatives for the periods ending March 31, 2018 or thereafter. Ind AS shall be applicable to both standalone financial statements and consolidated financial statements. "Comparatives" shall mean comparative figures for the preceding accounting period. Banks shall

apply Ind AS only as per the above timelines and shall not be permitted to adopt Ind AS earlier.

SEBI AMENDED ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS, REGULATIONS 2009

SEBI has notified a new set of norms to provide an exit route to the dissenting shareholders in case a listed company diverts from its stated objective of raising funds from the public. The SEBI has amended SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 and prescribed the conditions and manner of providing Exit Opportunity to dissenting shareholders when Company proposes to make variations in terms of contracts or objects of Prospectus. The move is aimed at helping the shareholders make an exit if they feel dissatisfied with any change in business plan of the company concerned after raising funds through IPOs, FPOs or any other capital-raising exercise involving public investors. The exit price would be based on the pricing parameters applicable in case of the exit offer given to the existing shareholders in terms of SEBI's Takeover Regulations.

The relevant date for pricing would be the date of the board meeting in which the proposal for change in objects is approved and new provisions would be applicable on prospective basis for issues which



opened after April 1, 2014, the date of commencement of related provisions of the Companies Act, 2013.

PRIOR APPROVAL OF RBI REQUIRED FOR INDIAN COMPANIES TO ACQUIRE IMMOVABLE PROPERTY OUTSIDE INDIA

RBI has issued a circular No. 43/2015-16 [(1)/7(R)] dated 4th February, 2016 which relates to acquisition and transfer of immovable property. In respect of the acquisition of property by the Indian Company, the circular states that



An Indian company having overseas offices may acquire immovable property outside India for its business and residential purposes provided total remittances do not exceed the following limits prescribed for initial and recurring expenses, respectively:

- a) 15 per cent of the average annual sales/ income or turnover of the Indian entity during the last two financial years or up to 25 per cent of the net worth, whichever is higher
- b) 10 per cent of the average annual sales/ income or turnover during the last two financial years.

SHAREHOLDERS APPROVAL MANDATORY FOR RE-APPOINTMENT OF MANAGING DIRECTOR ABOVE 70 YEARS BOMBAY HIGH COURT- JUDGEMENT (Sridhar Sundararajan vs Ultramarine & Pigments Limited 8 February, 2016)

Brief Facts Rangaswamy Sampath, was appointed as Chairman and Managing Director ("MD") of Ultramarine & Pigments Limited. Later on Rangaswamy Sampath, was reappointed as Chairman and Managing Director of Ultramarine & Pigments Limited, for a period of further five years till 2017 and Sridhar Sundararajan was appointed as Joint Managing Director of the Ultramarine & Pigments Limited.

Sridhar Sundarajan, the Plaintiff filed a case that Rangaswamy Sampath, defendant 2 could not continue as MD as he had crossed the age of 70 years and, therefore, the plaintiff has sought an order of injunction, restraining defendant from functioning or continuing to exercise his powers as Chairman and MD of Ultramarine & Pigments Limited.

The single bench of High Court on 16th July, 2015 dismissed the plea of Plaintiff and refused to grant an order of injunction, restraining Rangaswamy Sampath, the defendant from functioning or continuing to exercise his powers as Chairman and Managing Director of the Company. Sridhar Sundarajan has challenged the order passed by the Single Bench of the High Court dated 16th July, 2015 from functioning or continuing to exercise his powers as Chairman and Managing Director of the Ultramarine & Pigments Limited on the ground that, on 1st April 2014, Companies Act



was amended and by the Amendment Act of 2013, a sub clause (3)(a) was introduced in Section 196(3) of Companies Act, 2013. An additional disqualification was added in the said provision namely a Managing Director could not be appointed or continued after he had attained the age of 70 years. The said amendment came into force on 01/04/2014. Rangaswamy Sampath was appointed as MD on 01/08/2012 for a period of five years i.e. prior to the amendment. The contention of the Plaintiff i.e Sridhar Sundararajan, is that in view of the incorporation of the said clause in Section 196(3), Defendant No. 2 i.e Rangaswamy Sampath could not continue as MD and, therefore, he has sought an order of injunction, restraining him from functioning or continuing to exercise his powers as Chairman and MD of the 1st Defendant-Ultramarine & Pigments Limited.

JUDGEMENT

The court held that the said amendment could not operate retrospectively but the matter in question was whether, after the amendment of the Companies Act in 2013 which was brought into force with effect from 01/04/2014, any Managing Director who was appointed prior to the Amendment Act i.e. before 01/04/2014 would have a right to continue to act as Managing Director after his attaining the age of 70 years without special resolution being passed by the Company in its general meeting.

The Apex Court held that after the commencement of the Amendment Act no person who has suffered disqualification can be appointed or



continued in appointment as Managing Director of the company. In this case, Rangaswamy Sampath, was appointed as Chairman and Managing Director of Ultramarine & Pigments Limited on 13/08/1990, the amendment came into force on 01/04/2014. He completed the age of 70 years on 11/11/2014 and therefore, from that date, he was disqualified from continuing as Managing Director, unless he fulfilled the requirements of the proviso viz that the Company has to continue his appointment by a special resolution and, secondly, that the resolution must state the reason why the continuation is necessary.

Conclusion

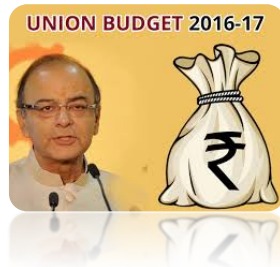
If appointment of a person to the post of Managing Director is made after the Amendment Act, 2013 came into force i.e on 1-4-2014, a person who is above the age of 70 years cannot be appointed on account of disqualification, subject to fulfillment of the proviso. On the other hand, if he was already 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.

The Apex Court therefore held that a new eligibility condition would only be prospective and it would apply only at the stage of appointment. Since the 2nd Defendant i.e Rangaswamy Sampath was already a Chairman and Managing Director of the 1st Defendant Ultramarine & Pigments Limited when he turned 70, the Companies Act 2013 could not operate as an immediate termination of his appointment, as that would give a retrospective application to the 2013

Act. Therefore, his continuation as Managing Director in the company after attaining the age of 70 need to be regularized only by passing special resolution.

HIGHLIGHTS OF UNION BUDGET 2016-17 WITH RESPECT TO COMPANIES

Finance Minister Mr. Arun Jaitley presented Union Budget for 2016-17 in Parliament on February 29, 2016. The key points of the Union Budget with respect to companies are as follows:



- Companies Act to be amended and timely incorporation of companies i.e. in one day in order to facilitate ease of doing business.
- To amend SEBI Act 1992 in coming year to provide for more number of benches of Securities Appellate Tribunal (SAT) so that there is timely disposal of corporate litigations.
- Listing of General Insurance Companies held by Government in the stock exchanges.
- New Derivative product to be developed by SEBI in the Commodity Derivatives Market like options and to take measures to be taken like including introduction of an electronic auction platform for primary debt offer to develop an enabling system in the private placement market in the corporate bonds.
- Corporate Tax rate proposal:
 - i) New manufacturing companies incorporated on or after 01.03.2016 to be given an option to be taxed at 25% +

surcharge and cess provided they do not claim profit linked or investment linked deductions and do not avail of investment allowance and accelerated depreciation.

- ii) Lower the corporate tax for the next financial year for relatively small enterprises i.e companies with turnover not exceeding Rs 5 crore (in financial year ending March 2015), to 29% plus surcharge and cess.

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