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Tech savvy Ministry

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As per the recent Circular issued by the Ministry on May 20, 2011¹, the Ministry has allowed companies to hold General Meetings through video conferencing and members to vote electronically under the provisions of the Companies Act, 1956, with a view to provide larger participation and for curbing costs borne by the shareholders to attend AGMs.

About the Amendment:

This is a part of the MCA's Green Initiative Campaign for Corporate Governance as the Ministry received representations from various industrial bodies to recognize participation by shareholders in meetings under the Companies Act, 1956 through electronic mode after it took a green initiative in the Corporate Governance by allowing paperless compliances by the companies. Accordingly, a company would have to send a notice informing shareholders about *"the availability of participation through video conference, and provide necessary information to enable shareholders to access the available facility of videoconferencing"*.

The genesis of this Circular lies in the Companies Bill, 2009 where participation in meetings through video conferencing was proposed and this has now been put into effect by the MCA. The said Bill proposed holding of board meetings via video conferencing.

Impact of the Amendment on Companies and Members:

This implementation of the proposal by the Ministry would prove quiet useful as it would lead to larger participation and curbed costs for shareholders to attend general meetings. Moreover, this would bring out large transformation in terms of transparency as the general meeting would now be recorded and can be made available for ready reference as and when required by the public/members or the Government Authorities. This would also enable all persons participating in a meeting to communicate with each other directly, without any intermediary and hence enhance the effectiveness of the communication. It would be a better opportunity for shareholders who were not able to attend the meetings physically.

¹ General Circular No. 27/2011

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Also, there are number of members in the remote areas of various companies who were never able to attend the GMs and were thus, left isolated from the discussions held except that of receiving the same on the paper. This step towards introduction of video conferencing would increase the communication between the company and its members. The members are generally aware of the “name” of the company and the performance through the financial results. Through such mode, now they can also get to know the people behind the running of the company and who are responsible for the day to day affairs. The increased communication and know how of the directors would lead to increased faith of the members in the management.

Another striking feature is that meetings need not be adjourned for the purposes of quorum after this service transformation.

Analytical Review:

As per the notification, listed companies would be required to provide video conferencing connectivity during the general meetings at least five places in India. It is recommended that these places would be situated all over India in such a way that it covers top five states/UTs based on maximum number of members or at least 1000 members, whichever is more, residing as per the address registered with the depositories. This would come as a heavy cost burden to the companies and this is quiet a significant disadvantage of the initiative taken by the Ministry. Delivery failures in case of postal dispatch were also high but there were chances with the company to show the postal evidences through the acknowledgements. In case of sending notices via emails there might be instances of delivery failure. In that case the company will have no option other than sending the notice physically. However, there is no such provision mentioned in the Circular. In India, most of the shareholders are small/minority shareholders. Many a times the companies have small shareholders who are not so technology savvy. Hence, though they might register their e-mail ids but the company is not sure whether they would actually access their mails or not. Hence, the idea of sending the notices, documents through electronic mode might not be effective instantly in our country. This might take a little time to be effective.

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The Circular states that the Chairman of the meeting and Secretary shall ensure that no one other than the concerned shareholder or proxy to the shareholder can attend the meeting through electronic mode. This is quite surprising as the entire concept of participating in general meetings through video conferencing is to encourage and ensure greater participation of the shareholders directly and without any ambiguity, then where lies the need to allow proxies to participate in video conferencing on behalf of the shareholders. Hence, we might expect some clarifications on the same in future.

The Circular does not contain any clarification as to the verification of the identity of the shareholders or their proxies attending the meeting. Whereas when the shareholders or their proxies attend the meeting physically, their identity is verified through their signatures which are matched with those in the records of the Depository Participants. These few things create ambiguity regarding the participation by shareholders in general meeting which are yet to be clarified by the ministry.

Thus, similar to a coin with its both sides this initiative also has some advantages and disadvantages as can be foreseen but it would definitely contribute more towards development, transparency and better investor protection. MCA is contributing its bit in the green revolution through service transformation from a paper based to almost paperless environment. It would be a better utilization of available resources as companies can now send notices of the meetings to the shareholders by electronic mail, provided the email IDs of the shareholders are registered with the company. This would save a lot of time and money on the part of the company which could be utilized by the company to enhance its operations or on the other hand it would counter-balance the heavy costs to be borne by the company in order to carry out general meetings through video conferencing.