

Legal Update

VINOD KOTHARI & COMPANY

Filing of conflicting returns by contesting parties- clarification by MCA

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Undeniably, the Ministry of Corporate Affairs (“MCA”) is going ahead breaking all the chains and coming up with new developments each day! The Ministry in the past few instances has been taking land mark steps which are aimed at making procedures time and cost effective and more transparent for better corporate governance. Such measures also lay greater onus on bodies corporate and professionals, making them more responsible. The MCA has also taken steps which are public oriented.

The Ministry had been repeatedly receiving cases of oppression and management under Section 397 and 398 of the Companies Act, 1956 (the Act) filed mostly by the small private and family companies. In these cases, generally directors are removed without consent, shares are transferred to one party to increase the ownership stake and to make the opposite party minority. One of the major problems here was that Registrar of Companies (ROC) registered Form 32 or Form 2 as and when they are filed by the company without considering if the same was filed by a company having management dispute.

The ROC had also intermittently received complaints from directors regarding misuse of their Digital Signature Certificates (DSC) and cessation of their directorships without consent.

Keeping these issues in mind, the MCA had come up with the following circulars:

- i. General Circular No. 19/2011¹ relating to marking a company as having management dispute by ROC under MCA-21 system. The main highlight of this circular was that the ROC should mark a company as having management dispute only if the court or Company Law Board has directed to maintain status- quo particularly with reference to status of directors in the company.
- ii. General Circular No. 20/2011² relating to filing of conflicting return by conflicting parties to intimate the ROC regarding particulars of appointment of directors and changes therein u/s 303(2) of the Companies Act, 1956.

¹ The circular can be viewed at http://mca.gov.in/Ministry/pdf/Circular_19-2011_02may2011.pdf

² The circular can be viewed at http://mca.gov.in/Ministry/pdf/Circular_20-2011_02may2011.pdf

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However, as the above circulars were of not much help in preventing filing of forms by the conflicting parties, the MCA, in supercession of these circulars and all other circulars passed in this respect, has issued a clarification vide its General Circular No. 1/2012³ dated February 10, 2012 on the “**filing of conflicting returns by contesting parties**” in case of companies having any management dispute.

The MCA has, in order to avoid any complexity in case of any management dispute in the companies in future, made it mandatory to file the attachment regarding cause of cessation along with Form 32 irrespective of the cause of cessation like:

1. retirement
2. disqualification
3. death
4. resignation
5. vacation of office u/s 283 or 313 or 260
6. removal u/s 284
7. withdrawal of nomination by appointing
8. authority
9. absence of re-appointment

The Circular further prescribes that in case any director is aggrieved with his cessation in the company, he may file a complaint with the concerned ROC in the Investor Complaint Form. On receipt of such a complaint, the ROC concerned will:

- Examine the complaint and mark the company as having “management dispute”
- Issue a letter to the director and the company to settle the matter amicably or get an order/ interim order from the Court or Tribunal.

Till such matter is settled, the documents so filed either by the company or by the contesting group of directors will not be available for public viewing, as the same will not be approved/ registered/recorded.

³ The circular can be viewed at http://mca.gov.in/Ministry/pdf/General_Circular_No_01_2012.pdf



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Our analysis:

With this Circular, MCA has given a chance to the contesting directors also to voice their concerns in case of any management dispute. Although, this can be seen as a move to grant relief to aggrieved directors in case of a management dispute, it also becomes a tool in the hands of errant directors wanting to prolong any dispute and subsequently, affect the functioning of the company.

This circular will also add a new dimension to the matter of applications to the Tribunal for relief in cases of mismanagement u/s 398 of the Act. In such cases of mismanagement, the Section only allows the eligible members to apply to the Tribunal. With this Circular, the directors can also register a complaint if they feel they are aggrieved. The Circular has not specified any criteria for this.