

Article



“Interested Director”- how far can a director be interested

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The concept of ‘interested’ director is not new to Companies Act. Companies Act, 1956 and Companies Act, 2013 have references to the concept of an interested director. This article attempts to discuss about the extent of interest of a director.

The word ‘interest’ in the context of the term “interested directors” used at various places in Companies Act, 2013 (“Act, 2013) should be construed to mean conflict with the duty of directors and not the generic interest of a director.

Where pursuant to a resolution, any benefit is proposed to be made available to **all** the directors, then the question of considering the ‘interest’ of directors does not arise. In this regard, it is pertinent to draw one’s attention to the ruling of *Yashovardhan Saboo vs Groz-Beckert Saboo Ltd. And Ors*¹ wherein the Company Law Board stated the following *obiter*:

The provisions enacted in sections 297, 299 and 300 of the Companies Act are founded on the principle that a director is precluded from dealing on behalf of the company as himself and from entering into engagements in which he has a personal interest conflicting or which possibly may conflict with the interest of those with whom he is bound by fiduciary duty. A director occupies a fiduciary position in relation to a company and he must act bona fide in the interests of the company. If a director makes a contract with the company and does not disclose his interest he will be committing breach of trust.

Further, in the Company News and Notes dated July 1, 1963 (pages 81 and 82), the Company Law Administration (‘CLA’) had discussed the meaning of the word ‘interest’. In this clarification, the CLA referred to the ruling of *In re Public Prosecutor v. Khaitan*² wherein it was held that only such contract or arrangement is covered by section 299 of Companies Act, 1956 (‘Act, 1956’), in which the director has personal interest conflicting with his duties towards the company and does not cover a case in which there is no personal interest involved. Similar view has also been held in the case of *Fateh Chand Kad v. Hindsons (Patiala) Ltd*³.

There are several instances in the Act, 2013 where an interested director has been explicitly asked not to participate in the discussions and thereby not participate in the agenda in which he is interested.

Based on this idea, the question that arises is whether there is any requirement for approval of general body for enhancement of sitting fees within the allowed limit as per the provision of law if the same is approved by the Board consisting of all the interested directors?

Although, the matter here being discussed does not pertain to section 299 of Act, 1956 or section 184 of Act, 2013 (the corresponding section of section 299 of Act, 1956), one may draw similar conclusion. Under the Act, 2013, section 197(5) gives specific power to the board of a company to decide on the quantum of sitting fee payable to a director.

¹ <http://indiankanoon.org/doc/1893758/>

² (1957) 27 Com Cases 77

³ (1957) 27 Com Cases 340

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Given the discussion above and the provisions of section 197(5) of Act, 2013, it can be concluded that payment of sitting fee does not represent the interest of any particular director of the board. It represents the interest of the entire board as a collective unit. Since the proposal for enhancement of sitting fee is for all the directors, none of them will be taken to be interested. Hence the resolution can be passed at the board meeting without any requirement for approval at a general meeting.

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