

[To be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii)]

GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

ORDER

New Delhi, the 21st February, 2018

S.O. _____ (E).- Whereas, sub-section (2) of section 152 of the Companies Act, 2013 (18 of 2013) (hereinafter referred to as the said Act) provides that every director (including an independent director) shall be appointed by the company in general meeting;

And whereas, sub-section (10) of section 149 of the said Act provides that subject to the provisions of section 152, an independent director shall hold office for a term up to five consecutive years on the Board of a company, but shall be eligible for re-appointment on passing of a special resolution by the company and disclosure of such appointment in the Board's report;

And whereas, sub-section (1) of section 169 of the said Act provides that a company may, by ordinary resolution, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a reasonable opportunity of being heard;

And whereas, the following difficulties have arisen in giving effect to the above provisions of the said Act regarding appointment and removal of independent directors from the boards of companies, namely :-

(i) various stakeholders have suggested difficulties regarding proper monitoring and implementation of corporate governance requirements in companies and in order to strengthen corporate governance process, such stakeholders have suggested for reviewing

section 169 of the said Act, which, *inter-alia*, deals with the removal of independent directors;

(ii) in view of the fact that presently an independent director is re-appointed for second term under sub-section (10) of section 149 of the said Act, only by way of a special resolution, such independent director can be removed by an ordinary resolution and not by a special resolution;

And whereas, in order to remove above said difficulty, and to ensure better corporate governance in companies, and balancing of powers of the board of the company, it is felt that there is a need for an amendment in section 169 of the Companies Act, 2013 to provide for removal of such re-appointed independent director by way of a special resolution;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 470 of the Companies Act, 2013 (18 of 2013), the Central Government hereby makes the following Order to remove the aforesaid difficulty, namely:-

1. Short title and commencement.- (1) This Order may be called the Companies (Removal of Difficulties) Order, 2018.

(2) It shall come into force from the date of its publication in the Official Gazette.

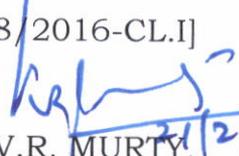
2. In the Companies Act, 2013, in section 169, in sub-section (1), -

(i) before the proviso, the following proviso shall be inserted, namely :-

“Provided that an independent director re-appointed for second term under sub-section (10) of section 149 shall be removed by the company only by passing a special resolution and after giving him a reasonable opportunity of being heard:”;

(ii) in the existing proviso, for the words “Provided that”, the words “Provided further that” shall be substituted.

[F. No. 7/8/2016-CL.I]


K.V.R. MURTY,
JOINT SECRETARY

21/2/18

भारत सरकार
कारपोरेट कार्य मंत्रालय

आदेश

नई दिल्ली, 21 फरवरी, 2018

का.आ. _____ (अ).- कंपनी अधिनियम, 2013 (2013 का 18) (जिसे इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 152 की उपधारा (2) प्रावधान करता है कि कंपनी द्वारा प्रत्येक निदेशक (स्वतंत्र निदेशक सहित) की नियुक्ति साधारण अधिवेशन में की जाएगी;

और उक्त अधिनियम की धारा 149 की उपधारा (10) प्रावधान करता है कि धारा 152 के उपबंधों के अधीन एक स्वतंत्र निदेशक किसी कंपनी के बोर्ड में लगातार पांच वर्ष तक पद पर रहेगा परंतु कंपनी द्वारा विशेष संकल्प पारित किए जाने पर पुनः नियुक्ति के लिए पात्र होगा और ऐसी नियुक्ति का प्रकटीकरण बोर्ड की रिपोर्ट में किया जाएगा;

और उक्त अधिनियम की धारा 169 की उपधारा (1) प्रावधान करता है कि कोई कंपनी किसी ऐसे निदेशक को, जो धारा 242 के अधीन अधिकरण द्वारा नियुक्त किया गया निदेशक न हो, सुनवाई का युक्तियुक्त अवसर देने के पश्चात् उसके कार्यकाल की समाप्ति से पहले साधारण संकल्प द्वारा हटा सकती है;

और कंपनी के बोर्ड में स्वतंत्र निदेशकों की नियुक्ति और हटाने के संबंध में उक्त अधिनियम के उपर्युक्त उपबंधों को प्रवृत्त करते हुए निम्नलिखित कठिनाइयां उत्पन्न हुई हैं, अर्थात्:-

(i) विभिन्न पणधारियों ने कंपनियों में कारपोरेट शासन की अपेक्षाओं को समुचित मानीटर करने और कार्यान्वयन के संबंध में कठिनाइयों का उल्लेख किया है और इन पणधारियों ने कारपोरेट शासन प्रक्रिया को सुदृढ़ बनाने के लिए उक्त अधिनियम की धारा 169 की समीक्षा करने का सुझाव दिया है जो अन्य बातों के साथ-साथ स्वतंत्र निदेशकों को हटाने से संबंधित है;

(ii) इस तथ्य को देखते हुए कि वर्तमान में उक्त अधिनियम की धारा 149 की उपधारा (10) के अधीन स्वतंत्र निदेशक को केवल विशेष संकल्प के माध्यम से दूसरे कार्यकाल के लिए पुनः नियुक्त किया जाता है, ऐसे स्वतंत्र निदेशक को साधारण संकल्प द्वारा न कि विशेष संकल्प द्वारा हटाया जा सकता है;