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Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

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Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8Articles in various reputed Law Journals. Conducted 1Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration.10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

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APPOINTMENT OF KEY MANAGERIAL PERSONNEL BY PRIVATE COMPANIES

Author- Miss. Shivangi Dwivedi,

Co-Author- Miss. Akanksha Singh,

Mrs. Aishwarya Pandey

Student of Research, Assistant professor

Department of Law

Amity university, Lucknow Campus, Uttar Pradesh

ABSTRACT:

To make modifications to the Companies Act, of 1956, the Indian government established an expert group in 2005, under the direction of Dr. J. Irani. The notion of key managerial individuals was incorporated into the Companies Act 2013 as a result of the j.j Irani report's recommendations (KMP).

Key managerial personnel (KMP) could only be appointed under the former Companies Act of 1996 in specific circumstances; however, with the passing of the Companies Act of 2013, KMP was included in the appointment provisions.

Key managerial personnel (KMP) are essential to a business's day-to-day operations in terms of leadership, organization, and inspection. Through their knowledge, unique insight, and ability to get things done, they serve as the company's skeleton and contribute to its success.

To achieve the goals of the enterprise, important management employees assist in the identification, recruitment, and development of qualified talent.

They create plans, offer materials, and offer the assistance required to make the group effective. The board of directors has allowed the KMPs to sign contracts, checks, and other relevant papers on the company's behalf.

- Keyword: Indian government, Companies Act, 1996, Companies Act; 2013, Key Managerial Personnel, Contract, employees.

DEFINITION OF KMP UNDER THE COMPANIES ACT, 2013

Section 2(51) of the Act defines Key Managerial Personnel (KMP). It states that the KMP of a company means:

- * Chief executive officer,
- * manager (section 2 (53))
- * managing director (MD) (section 2(54))
- * Company secretary (CS) (section 2(24))
- * Whole-time director (section 2(94))
- * Chief financial officer (CFO) (section 2 (19))
- * Such other officers, designated by the Board as KMP but are not more than one level below the directors in whole-time employment
- * Such other officer as may be prescribed

Chief Executive Officer, Manager or Managing Director

The company is managed by the Chief Executive Officer and Managing Director. The Managing Director has control over every aspect of the business operations. Also, employees are all in charge of expanding and developing the business.

A director who has significant control over the operation of the firm and its affairs is referred to as the managing director under the Act.

Any of the following procedures can be used to designate a managing director:

- * A resolution adopted at a general meeting
- * The firm's bylaws
- * an agreement with the corporation

A manager is defined by the Act as the person in charge of overseeing all business operations under the direction, control, and supervision of the board of directors.

A director or someone who holds a manager role within a corporation, even while working under a contract of service, is also considered a manager.

A firm cannot, however, designate a managing director and manager simultaneously.

Manager

Administrator refers to a person who manages all or almost all of a company's affairs under the supervision, control, and direction of the board of directors. This definition includes directors and anybody else holding the title of manager, regardless of whether they are employed by the

firm or otherwise.

Managing Director

The term "managing director" refers to any director who has been given significant management authority over the company's affairs, whether through an agreement with the company, a resolution adopted at its general meeting, or by the board of directors. This includes any director who holds the title of managing director, regardless of their name.

Company Secretary

The effective management of the firm is the responsibility of the company secretary. They handle the organization's regulatory and compliance needs. Additionally, they guarantee that the board's directives and objectives are carried out.

A company secretary is described as a company secretary under section 2 of the Company Secretaries Act, 1980, according to the law. According to the Company Secretaries Act, a company secretary is someone who adheres to administrative requirements and is a member of the Institute of Companies.

Whole-Time Director

According to the statute, a Whole-Time Director is a director who works for the company full-time. A whole-time director is one who works all of the business's normal business hours. They differ from an independent director in that they are involved in day-to-day operations and have a large financial stake in the business.

A full-time director is another title for a managing director.

Chief Financial Officer

The company's financial situation is managed by a chief financial officer.

They provide financial planning, keep track of cash flow operations, and develop backup plans for monetary emergencies. They oversee the company's treasury and financial operations.

Companies Required to Appoint KMP

Some classes of corporations are required to appoint the KMP, which includes the managing director, manager, or chief executive officer, company secretary, and chief financial officer, according to Section 203 of the Act.

Without a CEO, manager, or managing director, the corporation must hire a full-time director. The class of firms that are required to appoint the whole-time KMP is listed as follows in Rule 8 of the Companies (Appointment and Compensation of Management People) Regulations, 2014:

Each listed business

- * A publicly traded firm with a paid-up share capital of at least Rs. 10 crores
- * A private business with a paid-up share capital of at least Rs. 10 crores

KMP is appointed on a full-time basis in accordance with a board resolution that specifies the terms and conditions of the appointment, including compensation. Except for its subsidiary company, a full-time KMP may not hold office in more than one organization at once.

Within six months of the vacancy, the board is in charge of filling any KMP positions that become vacant. A person can serve as managing director, full-time manager, or manager for a corporation for a maximum of five years.

Persons Who Cannot Be Appointed as KMP

The Act states that a company cannot continue the employment of or appoint a managing director, whole director, or manager if that person meets the following criteria:

The Act states that a company cannot continue the employment of or appoint a managing director, whole director, or manager if that person meets the following criteria:

- Has reached the age of 70 or is under 21;
- Has been found to be insolvent or is an uncharged insolvent;
- Has at any time suspended payment to creditors;
- Has been found guilty of an offense by a court and given a sentence of more than six months.

Role and Responsibilities of KMP

The KMPs are in charge of both the staff and important business decisions. Investors also are responsible if the business does not adhere to the Act's strict compliance issues. The main duties and responsibilities of KMP seem to be:

- * In accordance with Section 170 of the Act, the following information must be declared and documented in the Register regarding the securities held by KMPs in the Company or its subsidiaries
- * The KMPs are permitted to voice their opinions, particularly during Audit Committee meetings, but they are not permitted to vote.
- * Within 30 days of their appointment, KMPs must report their affiliations with other organizations and businesses in accordance with Section 189(2) of the Act.

The KMPs of the business are crucial individuals that handle the management matters of a business. Businesses that fall under the definition of Rule 8 of the Companies (Appointment and Compensation of Management People) Regulations, 2014 are required by law to appoint KMP to run the company.

Section 203 of the Companies Act deals with the appointment of KMP, limited to:

- * Managing director, chief executive officer, manager, and, in their absence, full-time head,
- * Company secretary, and
- * CFO and applied only to a specific class of companies.

Additionally, it stipulates that the KMP is not permitted to serve as an expert in more than one company at once. Private companies were not included, with the exception of Rule 8A of the Companies (Appointment and Compensation of Management Staff) Rules, 2014, which mandates the employment of a full-time company secretary by any private company with a paid-up share capital of at least 10 crore rupees.

Compliance with Section 203 of the Companies Act 2013 of the Companies Act 2013 by Private Companies

Every listed business and every other public company with a paid-up share capital of ten crore rupees is required to have a CFO as a full-time key management, according to section 203 of the Companies Act, 2013.

A full-time key managerial employee is likewise prohibited from holding a position in more than one company at once, with the exception of a subsidiary. The does not, however, make any mention of private businesses.

It is important to remember that Section 203 neither forbids voluntary KMP appointments nor mandates that private enterprises appoint KMPs.

Hence the question which arises is whether Section 203 applies to private companies appointing a KMP on a voluntary basis.

In the case of "Hamlin Trust & Ors vs LSF 10 Rose Investment & Ors," the NCLAT provided an answer, holding that private firms that freely choose to appoint KMPs are subject to the provisions of Section 203 of the Companies Act.

Limitations on Important Management Person's Appointment:

1. A managing director and a manager cannot both be employed by the same company at the same time.
2. A corporation may not appoint or re-appoint a managing director, a full-time director, or a manager for a period of time that exceeds five years prior to the end of the term of office.
3. A firm may not appoint or retain as a managing director, full-time director, or management anyone who:

- * Is under the age of 21 or is at least 17 years old: (Given that a special resolution may be passed to designate someone who is at least 16 years old.).

- * Has ever suspended payments to his creditors or entered into a settlement agreement with them;

- * He is an undischarged insolvent or has ever been found to be one; • He has ever put off paying his creditors or entered into a settlement agreement with them;

- * He has ever been found guilty of a crime and received a sentence of at least six months in jail.

- * He is an Indian resident.

- * He has received a prison sentence or a fine of more than Rs. 1000 after being found guilty of a crime under specific acts.

- * He was just not held in accordance with the 197 Act to Prevent Smuggling Activities and Conserve Foreign Currency.

Case Fact:

Rattan India Finance Private Limited had 50% of its shares owned, respectively, by Hamlin Trust and LSF 10 Rose Investment.

According to the company's Articles of Association (AOA), Rose Investments has the authority to choose the CFO, however, the other 50% of shareholders have the right to reject the first two candidates Rose Investments suggests, with the third candidate being chosen by all shareholders. Those who were already affiliated with other organizations and were not readily available full-time for Rattan Finance were the candidates for the position of CFO as recommended. The nomination was opposed by the remaining 50% of shareholders on the grounds that it violated Section 203 of the 2013 Companies Act.

The NCLT held that since the AOA of Rattan Finance does not specify any criteria for an appointment of a CFO and Rattan Finance is a private company can therefore appoint anyone as the CFO even if such a person is not a full-time employee of such company in its ongoing Oppression and Mismanagement petition. The company petition was filed by LSF 10 Rose Investment (50% shareholder of Rattan India Finance Private Limited).

The NCLAT overturned the NCLT's decision to designate Rattan Finance's CFO. It was argued that

there were no requirements for the appointment of the CFO in the AOA of Rattan Finance. According to the NLCAT, if a private firm that is exempt from hiring a CFO decides to do so, the CFO—who must be a KMP—must comply with Section 203 of the Companies Act. It further stipulated that the CFO is a full-time KMP and is not permitted to simultaneously hold office in more than one firm, with the exception of its subsidiary company.

The NCLAT ruling also held that it would be logical to use Section- 203 of the Companies Act to nominate the CFO in the absence of any qualifying requirements and process of selection in the AOA. also take into consideration the KMP's eligibility is covered by the other clause, Sections 184 and 189 of the Companies Act.

Therefore. Since the AOA's regulations are silent about the eligibility requirements for KMP appointments, it makes sense to take those of the Act into consideration instead of those of the AOA. Hence, the company's shareholders are instructed to name a CFO in compliance with the AOA and to observe Section 203 of the Companies Act 2013.

Thus the, if some business, including private businesses, voluntarily names a person as a KMP, that business must abide by the Companies Act's requirements for KMPs.

Following this ruling by the NCLAT, private enterprises that voluntarily choose to appoint a KMP are now required to abide by the Companies Act's requirements, which will raise their compliance burden and costs.

The Registrar of Companies (ROC) order on mandamus Reality Private Limited, dated February 7, 2022, made the observation earlier. It was discovered that a director had submitted a return while acting as the CEO and chairman.

Unfortunately, neither a resolution nor a field on the DIR-12 form for a fee in such a designation was passed. The designation of a CEO without the necessary compliances violates the Companies Act, it was decided, even though Landomous did not belong to the category of businesses that must select a KMP.

Conclusion

For private corporations that intend to appoint a Finance Information Officer, Chief Risk Officer, Chief Financial Officer, Managing Director, Chief Executive Officer, etc., the ROC order on Landomus and the NCLAT order on Rattan Finance will have a significant influence

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