

## VIRTUAL BOARD MEETINGS UNDER THE COMPANIES ACT POST CORONAVIRUS – 19

*by*

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### PART A

**Abstract:** This essay analyses the extent to which the Companies Act 2013 as well as the Ministry of Corporate Affairs grants companies the right to hold virtual Board Meetings through Audio-Visual means in light of the lockdowns imposed due to Coronavirus. In Part A of the below essay, this author considers relevant provisions of the 2013 Companies Act in terms of the conditions that must be met for virtual board meetings to be conducted. In Part B, this author considers relevant provisions of the Ministry of Corporate Affairs Circulars in terms of the conditions that must be met for virtual board meetings to be conducted. Part C outlines the findings and recommendations of the Company Law Committee Report in terms of the conducting of virtual board meetings.

Section 173 of 2013 Companies Act outlines provisions and guidelines for holding meetings of the board of directors. Clause 2 of Section 173 of the Companies Act enables directors to have the option of attending a meeting through video conferencing or other audio-visual means, as may be prescribed, provided that they contain features for recording and recognising the participation of the directors and the storage of recordings with date and time. The recent case of *Achintya Kumar v Barthkur* [2018] 91 taxmann.com 123 stated that section 173 of the Companies act when understood with the 2014 Companies Rules provide the right to Company directors to take part in board meetings through non physical and audio visual means such as through video conferencing. This is because allowing Directors to join meetings virtually would be a progressive step in the public interest since would enable greater democratic participation of different shareholders in the functioning of the businesses. However, as a caveat, the court did concede that only where the company has the resources to conduct a meeting through audio visual means would it be an absolute right for Directors to join meetings virtually.

Section 108 of the Companies Act along with the Rule 20 of the 2014 Companies Rules enable board directors of those listed companies having more than 1000 members to provide the facility of voting on resolution electronically as long as the directors and auditors are informed of the schedule and procedure that is to take place with regards to voting.

According to section 107 of the Companies Act, at any general meeting, a resolution put to the vote shall, unless a poll is demanded or the voting is carried out electronically, be decided on a show of hands. With an objective to ensure maximum shareholders' participation, listed entities are required to offer a remote e-voting facility. Such facility shall remain open for not less than three days and shall close on the date preceding the date of the general meeting. Once shareholders have cast their votes on a resolution, they it will not be allowed to change them subsequently or cast the votes again. However, shareholders may participate in the general meeting even after exercising their right to vote through remote e-voting, but they shall not be allowed to vote again. In case of virtual meetings, the MCA has stated that only those members who are present in the general meeting through VC and have not cast their vote on resolutions through remote e-voting, and are otherwise not barred from doing so, shall allowed to vote through e-voting system.

#### Part B

The Ministry of Corporate Affairs , in light of the onset of Coronavirus , had permitted companies via its Circular dated 05.05.2022 to allow companies to conduct shareholder meetings such as AGMs ( Annual General Meetings) or EGMs ( Extra-ordinary meetings ) through audio visual procedures.

However, the scope of the abovementioned Ministry of Corporate Affairs Circular is limited in that it only enforces compulsorily the duty to conduct meetings virtually amongst a limited number of companies. This is because under the Circular No 20/2020 of the MCA, companies do not need to conduct virtual meetings if the company does not has less than seventy five percent ownership of the company . Moreover, another factor which limits the extent to which Board Meetings can be conducted virtually is that Rule 4 of Companies Rules, 2014 prohibits certain crucial business decisions from raised in any meeting through Video Conferencing. Issues that are prohibited from being rasied via video conferencing include the approval of the annual financial statements; the approval of the Board's report; the approval of the prospectus.

Rule 3 of the (Meetings of Board and its Powers) Rules, 2014 outline several requirements that are needed to ensure that a successful video conferencing meeting is conducted. For example, the Company must ensure the while choosing the video conferencing application, it chooses which has audio/video recording facility, so that it can be stored as part of the records of the company for at least before the time of completion of audit of that particular year. Similarly There should be clear audio and video for the participants who are attending the meeting through Video Conferencing during the course of the meeting. Companies shall, after thorough check of the various video Conferencing applications, choose the right application

Now the Companies (Meetings of Board and its Powers) Amendment Rules, 2021 has permanently omitted rule 4, which means Companies can freely transact all business in their board meetings conducted through video conferencing or other audiovisual means The MCA *vide*. Notification No. G.S.R. 409(E). Dated 15.06.2021, has notified the Companies (Meetings of Board and its Powers) Amendment Rules, 2021, which seeks to amend the Companies (Meetings of Board and its Powers) Rules, 2014 wherein Rule 4 providing for restriction on matters not to be dealt with in a meeting through video conferencing as specified in Rule 4 of the Act has been omitted. This means that now all the matters can be transacted in a board meeting conducted through video conferencing

### Part C

The Company Law Committee s submitted its report to the Ministry of Corporate Affairs (“MCA”) outlining the various ways in which documents can be served on a company, its officers or the Registrar of Companies . The purpose of Company Law Committee publishes recommendations for reforms directed at promoting greater ease of business in India .

The Committee Report suggested the holding of general meetings virtually. Virtual meetings can be a boon for members who may be attending from remote locations and their adoption as regular practice may lead to a reduction in the statutory notice period for such meetings. This recommendation of the Committee appears to be influenced by the crisis legislation introduced by other jurisdictions like Singapore and Australia which had allowed entities to conduct general meetings via electronic means, and existing regulatory framework in countries like Japan and South Africa which allow entities to conduct meetings virtually or in a hybrid form even in the absence of exigencies due to a pandemic or otherwise.



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