

## **Role of Directors or Board of Directors (BoD) in a Company**

There were many judgements on the role of directors and the responsibility of directors/Board of Directors in any Company. In Private Limited Companies or the Public Companies, the role and responsibility of the Directors or the Board of Directors depend upon the regulations in the Articles of the Company and the provisions of the Companies Act, 1956. When it comes listed Public Companies, other provisions like the SEBI guidelines, regulations, provisions in the listing agreement etc. deserve consideration. In Private Limited Companies or the closely held Companies, we know that the company is actually run by the Directors and we know as to how AGM's are conducted in these companies in reality. It may not be the case when it comes to listed Public Companies in view of various guidelines, regulations and the provisions of listing agreement entered into with the Stock Exchange. Directors or the Board of Directors has a very big role to play in any Company and they conduct the day-to-day affairs of the Company and it may not possible for the AGM to give directions to the Company from time to time though every Company should act as per the provisions of the Companies Act, 1956 and certain decisions can only be taken by the Shareholders in the Annual General Body Meeting (AGM). Taking reality in the corporate world in consideration, considering the legal provisions and on the role of the Directors or the Board of Directors (BoD), the **Hon'ble High Court of Delhi, in Crl. M.C. No. 2652 OF 2010, between Raj Travels & Tours Ltd. & Others Vs. Destination of the World (Subcontinent) Private Limited**, was pleased to observe as follows:

“7. It is a matter of common knowledge that when companies are floated and public issues are brought, big advertisements are issued giving big names as directors and promoters of the company. These names are the names of successful CEOs, or directors who have achieved success in other fields. Due to these names at the very inception and formation of company, when there is no wealth or property of the company, the share of the company is sold at a premium promising big business and success. Once money is mopped up from the public, in all those cases where the companies were created only for the purpose of mopping up hard earned money of public or to befool them, it is found that those big names disappear and in almost every litigation those directors who formed part of the core of the company and gave promises that the Company would do roaring business quietly disappear from the scene or take plea that they were not responsible for business of the company.

8. Let us examine the role of Board of directors (BoD) in terms of Companies Act and other legal provisions. Company is a legal personality and Board of Director acts as its body and mind. Under Section 291 of the Companies Act, BoD is authorized to do what the company is authorized to do, unless barred by restrictions on their power by the provisions of the Companies Act. It is well settled that directors, while exercising their powers, do not act as agents for the majority or even all the members and so the members cannot by a resolution passed by a majority or even unanimously, supersede the directors' power and instruct them how they shall exercise their power. The powers of management are vested in directors and they and they alone can exercise these powers. The only way in which the General Body of a company can overrule the BoD is altering the Articles and refusing to re-elect the directors, whose actions they disapprove. The shareholders cannot themselves usurp the powers, which by Articles are vested

in the directors. Thus the relationship of BoD with the shareholders is more of a federation than that one of subordinate and superior.

9. Under the Companies Act, BoD has powers to make calls on shareholders in respect of money unpaid on their share, power to authorize the buy-back, power to issue debentures, power to borrow moneys otherwise than on debentures, power to invest the funds of the company and power to take and make loans. There is no doubt that BoD may, by a resolution passed at a meeting, delegate to any committee of Directors, the Managing Director, the Manager or any other principal officer of the company, the above powers. However the principal power still vests in BoD and the Manager or Managing Director acts only as an agent of the BoD. Apart from this, BoD has power to form opinion about the solvency of the company in respect of buy back shares (Section 77A), power to fill up casual vacancies in the office of Directors (Section 262), power to constitute Audit Committee and specify terms of reference thereof (Section 292A), power to make donation to political parties [Section 293A(2)], power to accord sanction for specified contracts in which one or more directors are interested [Section 297(4)], power to receive notice of disclosure of director's interest [Section 299(3)(c)], power to appoint or employ a person as Managing Director or Manager [Section 316(2)], power to invest in shares or debentures of any other body corporate (Section 372A), power to appoint or employ a person as its Manager [Section 386(2)], power to make a declaration of solvency, where it is proposed to wind up the company voluntarily [Section 488(1)], power to approve the text of advertising for inviting public deposits [Section 58A r/w Rule 4(4)]. Some of the powers can only be exercised by resolution passed at the meeting with consent of the Directors present at the meeting.

10. Normally, the banks or other financial institutions give huge loans to the companies and in order to protect their interests, they nominate their Directors on the Board of Companies. These directors are called nominee directors and the function of these directors is to safeguard the financial interest of the institution who nominated them and to ensure that no decision is taken by BoD which goes against the financial institution. Such directors are not considered responsible for the business of the company.”

[**Note:** the views expressed are author's personal point of view.]