

registered office of the company, a notice in writing under his hand signifying his candidature as a director.

In the instant case, one nomination was rejected by the directors as it was received after sending the notice of AGM and that too after the working hours of the last day on which nomination should have been received i.e. 14th day. Hence, the contention of the directors are valid.

According to Section 149(1) of the Companies Act, 2013, if the company wants to appoint more than 15 directors, it can do so after passing a special resolution. Hence, the Board of directors of Frontline Limited, before increasing the strength of directors from 11 to 18 by appointing additional directors, have to pass a special resolution.

But, these appointments cannot be done through single resolution. Each director shall be appointed by a separate resolution unless the meeting first agreed that the appointment shall be made by a single resolution and no vote has been cast against such agreement. A resolution moved in contravention of this provision shall be void, whether or not objection thereto was raised at the time it was so moved. [Section 162 of the Act].

Question 44: (ICAI Exam May 2018 – Old Course)

Referring to the provisions of the Companies Act, 2013, examine the validity of the following appointment of Directors:

(i) Brown Limited, having a turnover of Rs. 60 crore in the financial year 2016-17 appoints Ms. Rose as the women director on 1st March 2017. Ms. Rose already holds directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice.

(ii) Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited.

Answer:

Number of Directorships: As per section 165(1) of the Companies Act, 2013, no person shall hold office as director, including any alternate directorship, in more than 20 companies at the same time. Out of the limit of 20, the maximum number of public companies in which a person can be appointed as a director shall not exceed 10. [Proviso to section 165(1)] Private companies that is either holding or subsidiary company of a public company

shall be included in reckoning the limit of public companies in which a person can be appointed as a director.

In the instant case, Ms. Rose was appointed as a women director on 1st March, 2017 in Brown Limited. She was already holding directorship in twelve companies including ten public companies. She is whole time Cost Accountant in practice. As Ms. Rose was already a director in ten public companies, her appointment in Brown Limited is not valid as it will lead to her directorship in 11 public companies.

In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies & fall within the limits

In the instant case, Ms. Jasmine holds directorship in eight public companies including managing directorship in two companies and directorship in six companies. In addition, she also holds alternate directorship in three companies and independent directorship in three subsidiary companies of Brown Limited. Ms. Jasmine was already holding directorship in eight public companies and alternate directorship in three companies (assuming these companies as private) and independent directorship in three subsidiary companies of Brown

Limited. Directorship in three subsidiary companies of Brown Limited will be considered as directorship in three more public companies.

Hence, total holding of directorship by Ms. Jasmine in public companies amounts to 11 (8+3) which is invalid. In this case, either she can choose between the companies in which she wishes to continue to hold the office of director or resign her office as director in the other remaining companies.

Assumption: As nothing is mentioned that whether three companies in which Ms. Jasmine is holding alternate directorship are private or public, we are assuming that these companies are private in nature. Even if the student writes the answer based on assumption that Ms. Jasmine is holding alternate directorship of a public company, conclusion will not change.

* Sec. 149(6) also prohibits for IO to be director of holding, Subs or

Question 45: (ICAI Exam May 2017 – Old Course)

Mr. Abhi was appointed as an additional director of Pioneer Limited on 14th March, 2016. The annual general meeting of the company was scheduled to be held on 29th September, 2016 but due to heavy rains and floods all records of the company were destroyed. In order to rebuild the records, the