CHAPTER IV

STATUTORY DUTY OF A COMPANY TO KEEP AND MAINTAIN CERTAIN REGISTERS AND DOCTRINE OF DISCLOSURE

In order to have upto date information relating to the company, its members, managerial personnel and their interest in the company, a company is required to keep and maintain certain registers at its registered office. The object of maintenance of these registers is to provide upto date informations about the company and its affairs to the members, persons dealing with the company and also to the officers of the Government. In this chapter I have tried to study and analyse the provisions of the Companies Act relating to maintenance of such registers.

1 REGISTER OF MEMBERS :

As per section 150, every company is required to keep a register of members and as per section 151 a company is also require to keep the index of members, if the number of members exceed fifty. The matters requires to be disclosed in the register are :

(a) the name, address and occupation of each member,

(b) if the company has a share capital, the shares held by each member and the amount paid, or agreed to be paid, on those shares. Further each share should be distinguished

by its number.

(c) the date at which each person was entered in the register as a member, and

(d) the date at which any person ceased to be a member.

Further the proviso to Sub-Section (1) provides for disclosure of stock held by members on conversion of shares into stock and the register must also show the amount of stock held by each of the members instead of the shares and must give notice of conversion to the Registrar.

(I) IMPORTANCE OF REGISTER :

Register to be prima facie evidence :

In addition to its importance to the members of the company, outsider dealing with the company, creditors and in case of winding upto the liquidator of the company, it has evidentiary value. As per section 614, the register of members and also the register of the debenture-holders are a prima facie evidence of any matters contained in them.

Further register of members is a valuable document not only from the view point of the company and of the members but also of creditors. An entry in the register determines the right of a person to participate in the affairs of the company, in the profits and in case of winding up, in the

surplus assets, if any. At the same time he incures the liability of member. Creditors can also act upon an entry in the register of members by treating that person to the holder of that shares.[1]

Looking to the importance of the disclosures made in the registers of members, section 155 provides for the rectification of register of members. Rectification is a term which of itself implies that the register either in what is or what is not upon it, is wrong.[2] In the case of Banarsi Das Saraf V. Dalmia Dadri Cement Ltd.[3] it was held that "rectification implies the prior existence of error, mistake or defect, which after rectification is made right and corrected by removal of flaws". It may be mentioned that disclosures in the register must be flawless and if there is any flaw, it can be removed by rectification. The Court has very wide powers to rectify the register of members. Section 155 empowers the Court to rectify the register while the company is going concern, whereas section 467, empowers the Court to rectify it on the winding up of a company. In the case of Pannala Sood V. Jagajit Distilling & Allied Industries Ltd.[4] it was held that the rectification dates back to the date on which the mistake or default or delay which is being rectified was made.

The fact of rectification is requires to be disclosed to the Registrar of companies as per the provision of section 156.

Limitation on the Powers of the Court

The power conferred by section 155 on the Court is no doubt, very wide power but it is not an absolute power. It is well settled that proceeding under section 155 are of summary jurisdiction. In Puran Devi (Smt) V. S Gurnam Singh & Others[5] it was held that in proper cases the company Court would refuse to exercise jurisdiction under this section when complicated facts involving civil rights of the parties are to be looked into. For example :

(1) Forgery etc.

Where the allegation is of forgery and fabrication of documents in a dispute, the dispute cannot be gone into in the summary proceedings under section 155 of the Act. The Bombay High Court[6] held that "where in an application for the rectification of the register of members under section 155, discovery and inspection are necessary and complicated questions such as forgery and fabricated documents arise for decision the summary procedure of trial by petition under section 155 should not be allowed to be proceeded with, the applicant should be directed to file a suit.

(2) Dispute as to title to the holding of shares:

Where the very title to the holding of shares is challenged, the company Court is bound to refuse to exercise jurisdiction. The Delhi High Court held[7] that "it is well established by... that the scope of section 155 is restricted to a summary inquiry. If on the other-hand, the very title to the holding of shares is challenged than the company judge will not inquire into such a dispute under section 155 for such inquiry a civil suit is the proper remedy."

However, in the case of Shree Gulabrai Kalidas Naick V. Laxmidas Lallubhai Patel[8] and recently in the case of Mathew Micheal V. Teekoy Rubbers India Ltd.[9] it was held that the "Court's jurisdiction under this section, though summary, is very wide and an application under the section is maintainable not only against persons who are directors or shareholders of the company but also against third parties. The jurisdiction extends to a full inquiry in respect of the subject matter connected with the application for rectification.

In the case of Indian Bank V. Bengal Potteries Ltd.[10] it was held that "where the management and the control of a company are taken over by the Central Government in

accordance with the provisions of Chapter III-A of the Industries (Development and Regulation) Act, and proceedings in winding up are stayed, the Court has no jurisdiction to direct rectification of the register of members under this section even in execution of decree, as long as the winding up proceedings are stayed.

Disclosure in Respect of Whom :

As per the wordings of the section the information requires to be entered in the register is in relation to member and shareholder.

In the case of a company limited by shares, limited by guarantee and having a share capital and an unlimited company whose capital is held in definite shares, the term 'member' and 'shareholder' are synonymous and there can be no membership except through the medium of shareholding.[11]

Thus every member of a company is a shareholder and similarly every shareholder is also member. But this is not true in all cases. There are certain cases when a person can become member of a company without being a shareholder. Similarly, in a few other cases a person may become a shareholder without being a member.

Members without being shareholders :

(1) Signatories to the Memorandum of Association:

The signatories to the M.A. becomes members of the

company simply by reason of their having signed the M.A. Sub-Section (1) of section 41 provides that the subscribers of the M.A. of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as member in its register of members.

In their case no application or allotment is necessary to become a member. By virtue of his subscribing to the M.A. he becomes a member.[12]

(2) List B Contributories :

Person who have ceased to be the member of the company during the twelve months preceding the winding up by reason of forfeiture, surrender or transferred can be held liable in the winding up.

But in the case of Rajdhani Grains and Jaggery Exchange Ltd, in Re.[13] it was held that the term 'contributory' and 'member' are interchangeable, since under section 428, while every member would become a contributory the converse would not be true unless the name of the contributory is entered in the register of members. Whereas in the case of Voluntary Liquidator Linsen Finance and Trading Co (P) Ltd. V. Aknar Dawood Ali Kassam Nathoo,[14] it was held that ' a subscribe of a

chit conducted by a chit fund company is not a member of the company and cannot be called a 'contributory' as he is not liable to contribute to the assets of the company on winding up. He is only a debtor of the company.

(3) Company Limited by Guarantee :

A company limited by guarantee having no share capital will have only members but no shareholders.

(4) Membership by Acquiescense :

A person who allows himself to be represented as a member shall be estopped from denying his position subsequently and shall be held liable as a member though he is not a shareholder of the company.

Here it may be mentioned that after the addition of words, 'agrees in writing' in Sub-Section (2) of section 41 by the Companies (Amendment) act, 1960 no one can become a member unless he has agreed in writing to become member. An agreement in writing is required for becoming a member, a person cannot be deemed to have become a member by estoppeal.

But in the case of a person whose name is entered in the register of members and who has in fact accepted the position, and acted as a member, agreement in writing will be presumed untill the presumption is rebutted by proof to the

contrary. The onus is on the person to prove that he is not a member.

(5) Transferor :

A transferor of shares continue to be the member of the company untill his name is replaced by the name of the transferee, though he is no more a shareholder of the company.

Shareholder without being Members :

(1) Holder of share warrants :

A holder of share-warrant is a shareholder but not a member, as his name is removed from the register of members immediately after the issue of such share warrant, unless the Articles provide otherwise and contain a clause giving membership rights to the holder of share warrant also.

(2) Transferee or the legal representatives of the deceased member may hold shares without his name being entered in register of members.

(III) DISCLOSURE IN RESPECT OF JOINT MEMBERSHIP :

In the case of Narandas Mumohandas Ramji V. Indian Manufacturing Co. Ltd[15] it was held that if more than one person jointly apply for and are allotted shares in a company each one becomes a member. In the case, however,

of a private company, the private company may refuse to split any holding of shares if such splitting will cause an increase in the number of its members beyond the statutory maximum provided for a private company by Section 3(1) (iii) (b). For the purpose of determining whether the number of members of a private company does not exceed fifty as required by section 3(1) (iii), and for determining the number of members required for making application under Sections 397 & 398, joint holders of shares are counted as one member.

Further in case of joint holders they can insist on having their names registered in such order as they may require, and they may also require their holding to be split into several joint holdings with their names in different orders, so that all of them may have a right to vote as first named holder in one or other of the joint holding.[16]

The department of Company's Affairs is of the view that s there is no need of transfer deeds for transposition of names i.e change in the orders of names of joint holders provided such a request is made by all shareholders jointly to the company. However, where the change in the order of names required in respect of a part of the holding, execution

of transfer deed will be required.[17]

In the case of firm, a firm as such cannot be registered as a member, as a firm is not, in law a person but the partners in their individual names may be registered as noint holders of the shares.[18]

(IV) NON-RESIDENT AND RESIDENT FOREIGNERS :

As per the provisions of section 19 (1) (b) and (d) & Section 29 (1) and 26 (5) of the Foreign Exchange Regulation Act, 1973 a non-resident cannot be a subscriber or member of a company without the general or special permission of the Reserve Bank of India. For a person non-resident in India to become a member, Reserve Bank permission is necessary eventhough be may be a Citizen of India.

Here it may be stated that before the name of non-resident or resident foreigner is enter into register of members, the company must ascertain that the permission of Reserve Bank has been obtained.

Minor as a Member :

In connection with the register of members a question arise as to whether a company can refuse to register the name of a minor in the register of members?

Here it may be mentioned that minor is incompetent to contract,[19] and, therefore, a minor cannot be a member of

a company. Neither be nor his legal guardian can be made responsible for the payment of calls.

In the case of Palniappa V. Official Liquidator[20] it was held that "as minor is wholly incompetent to contract, the allotment of shares to the minor is void ab-initio. Moreover, the company, in this case, had the knowledge about the minority of the allottee. The father of a minor cannot be deemed to have contracted for the shares and cannot be placed on the list of contributories in the event of the company being wound up". According to this case a minor cannot be a allottee of shares and secondly his guardian cannot be held liable for minor's liability.

However, in the case of Fazalbhoy V. Credit Bank of India Ltd. A.I.R.[21] a minor held shares in a company and was on its register of members. He accepted dividends from the company on attaining majority. The company was on liquidation. It was held that a minor could be put on the list of contributories since he intentionally permitted the company to believe him to be member. This decision seems to be based on the ground that on attaining majority and becoming aware of the presence of his name in the company's register of members, he may repudiate the shares within a reasonable time. But if he fails to do so or does something which shows that he has decided to be a member of

the company, he will be liable as a member. This rule is recognised under the partnership Act.[22]

Here it may be submitted s respectfully that this decision is not a good law as it based on the belief that a minor contract is voidable. In fact, an agreement with or by minor is wholly void and it is void ab initio.[23]

The Delhi High Court, held that 'the Registrar cannot refuse to accept a Return of allotment only on the ground that a minor's name has been entered in it as an allottee.[24]

However, Company Law Board has held that 'a minor applying (through her natural guardian) for being a registered as a member of a company, was entitled to be so registered if the shares were fully paid up.[25] The Board relied upon observations made in Pennington's Company Law[26] and in Buckley's company Law[27] and observed that :

(a) the minor's liability to exercise some of the rights of a member under the Act and under the Memorandum and Articles is not material in this context.

(b) The contractual obligation between a member and the company or between members inter se under section 36 of the Act is also not relevent in this context,

(c) Where the shares are fully paid up no personal convenant to pay for the share arose.

Here it may be submitted respectfully that this decision of Company Law Board requires reconsideration. Under the India Law a minor's agreement is void ab initio.[28]

Observations made in the context of English Law of Contract, under which such a contract was voidable are of little value. Under section 41 (2) of the Companies Act, 1956 a member is defined as a person who 'agrees in writing' to become a member. The company, therefore, cannot register a person unless the person desiring to be a member applies in writing : a minor cannot agree to be a member of the Company.

Here attention may be drawn to the circular[29] wherein Company Law Administration has expressed views that "since a minor cannot enter into a contract or agreement, except through a guardian holds a share in trust for a minor, it follows that this name cannot be entered in the register of members, and, therefore, he cannot become a member of a company. A subscriber to the Memorandum also enters into an implied agreement to become a member of the company by acceptance of the number of shares of the company written against his name. Since a minor cannot enter into a contract, it follows he cannot subscribe his

name to the Memorandum of a company. There is, however, no objection in law to the guardian of a minor entering into a contract on behalf of a minor, or a minor entering into contract by or through his guardian. In such an event however, owing to the operation of section 153 of the Companies Act, the name of the minor cannot be entered in the register of members alongwith that of his guardian nor can the name of the guardian be entered in the register of members in a manner which will show that the person concerned (the guardian) is holding the shares in question on behalf of another person, viz. the minor".

(V) DISCLOSURE REGARDING CESSATION OF MEMBERSHIP :

A person will cease to be a member of the company when his name is removed from the register of members in any of the following ways :

1. When he transfers his shares,
2. When shares allotted to him are validly forefeited by the company,
3. When he makes a valid surrender of his shares to the company,
4. When his shares are expropriated,
5. When his shares are sold by the company in exercise of its right of lien over them or in the execution of a decree of the Court,

6. When he is adjudicated insolvent. The shares of an insolvent vest in the Official Receiver or Assignee.

When the Official Receiver or Assignee transfer the shares to another person, the insolvent ceases to be a member on the registeration of the transfere as a member.

8. When he recinds the contract to take shares on the ground of mis-representation in the prospectus or on the ground of irregular allotment.

9. When he was holding the redeemable preference shares which are being redeemed.

10. When share-warrants are issued in exchange of fully paid up shares and Articles do not recognise holder of share-warrant as member, and

11. when the company is being wound up. But he continues to be liable as a contributory and is also entitled to share in the surplus assets, if any.

In the case of Vasant Investment Corporation Ltd. in Re.[30] the Court referred to Sections 41 (2) and 150 (1) (a) to (d) and held that the applicants were shareholders of the original company as their names continued to be on the Register of members. At page 143 it was observed that under Section 536 (2) any transfer of shares in the company or

alterations in the status of its members made after the commencement of the winding up required sanction of the Court. This section goes to show that member do not cease to be members on a company being wound up nor do they cease to be members on receiving a return of capital ... because handing over of share certificate to the Official Liquidator does not amount to a surrender of shares to the company".

Effect of Insolvency on Membership :

One of the mode of cessation of membership is insolvency. When a member becomes insolvent he ceases to be member of the company.

However, it may be mentioned that insolvency does not deprive member of his right to vote in the company's general meetings or to participate as a signatories in requisition under section 169 or an application to the Court ander sections 397 & 398, so long as the Official Receiver or Assignee does not get himself substituted in the register of members of the company in the place of the insolvent or sell the shares in the course of the administration of the insolvent estate and the purchaser gets his name registered in the place of the insolvent. Insolvency has no effect on the membership. No doubt an insolvency is a disqualification to become director of a company.

EXPULSION OF A MEMBER FROM MEMBERSHIP - POWER OF THE COMPANY :

There is no express provision dealing with the expulsion of a member from the membership of the company, however, there is nothing in the companies Act, 1956 to prevent a company from including in its Article provision conferring a power of expulsion of any member if his act or conduct found to be detrimental to the interest of the company.

In England, the Court of Chancery[31] held that if under the articles the director have been given the discretion to exercise the power to expel any member they can do so, even without giving the member prior notice of the charge against him and giving him an opportunity to show cause against such expulsion. With respect, it may be submitted that the power of expulsion eventhough, it may have been given under the Articles which on registration bind each member of the company as a contract made by him with the company, being of a confiscatory nature, cannot be exercised without first giving that member a 'show cause notice' and also giving him an opportunity to be heard. Whatever might be the reason for the decision it is certainly unjust and opposed to the principle of natural justice to deprive a person of his right of membership without hearing him.

Position in India :

The Department of Company Affairs' view[32]:

"The Department, after considering the scheme of the Act, is of the view that amendment of Articles of Association of a company providing for explusion of a member by the management is opposed to the fundamental principles of company's jurisprudence and is ultra vires of the company. Such a provision is repungnat to the various provisions in the Companies Act pertaining to the rights of a member in a public limited companies and cut across the scheme of the Act as it has the effect of rendering nugatory the very powers of the Central Government under Section 111 or the Companies Act 1956 and the powers of the Court under Section 107 and 395 of the Act, and is, therefore void by the operation of the provisions of section 9 of the Act. The Articles of Association is a contract between the company and its members setting out the rights of members inter se under the contract, and the explusion of a member is not only violation of this contract but it is also opposed to the principles of natural justice. Moreover, under Section 23 of the Indian Contract Act, any agreement which is contrary to any law or opposed to public policy would be deemed to be unlawful and void. The Supreme Court in the case of Bajaj Auto Ltd (1971) 41 Comp. Case (S.C.) has laid

down the law as to the conditions on the basis of which directors could refuse a person to be admitted as a member of the company. The principles laid down by the Supreme Court in this, eventhough pertaining to the refusal of a company to the admission of a person as a member of the company, are applicable even with greater force to a case of explusion of an existing member. As under Article 141 of the Constitution of India the law declared by the Supreme Court is binding on all courts winin the territory of India, any provision pertaining to expulsion of member by the management of a company which is against the Law as laid down by the Supreme Court will be illegal and ultra vires. In the light of the aforesaid provision, it is clarified that assumption by the Board of Directors of a company or any power to expel a member by amending it Articles is illegal and void".

Looking to the importance of the matter a question may be posed, How far this view is correct?

It may be submitted that there is nothing illegal or ultra vires in respect of articles or in the exercise of a power of expulsion of the member, if it is exercised bona fide to protect the interests of the company where the members act or conduct is considered to be detrimental or injurious to the interest of the company. The

comparision with section 23 of the Indian Contract Act is unwarranted as there is nothing contrary to law or the power of the company to exepl a member for his act or conduct which is likely to be injurious to the company as a whole, cannot be considered to be opposed to public policy. The principle of public policy is apply to national interest at large and not to an individual interest.

Further, the case of Bajaj Auto Ltd. V. N.K. Firodia relied on by the Department does not decide or through light on the question whether a shareholder can or cannot be expelled from the company for good cause. There is no reason why, where a member's act of conduct is so repugnant as to be considered detrimental to the interest of the company by say, 90% of the members (both in number and value of shares) he should not by resolution of such majority in general meeting be expelled and his shares compulsory purchased in the name of a nominee of the company, at the face value of the shares which ever is higher. It will be open to the expelled members to seek relief through Court and it cannot be contended that expulsion is a mere matter of internal or indoor management as it deprive a member of his personal rights, no doubt alongwith this right to recourse to the Court, member should be given a right to be heard.

Place of Keeping and Inspection of Register[33]

A company's register of members, including the register and index of debenture holders are public documents and open to member and public for inspection during business hours, except when the register is closed. In order to enable members and other to locate these documents at a proper place, the Act provides for keeping these documents at a fixed place. As per the provisions of the Act they must be kept at the registered office of the company. They may, however, be kept at any other place within city, town or village in which the registered office of the company is situate. The company is bound to give due notice about the place where these documents are kept.

(VII) POWER OF THE COMPANY TO KEEP FOREIGN REGISTER OF MEMBERS OR DEBENTURE HOLDERS :

India is developing country and for its various development project, requires huge foreign exchange and investment by persons residing in other countries. Many Indian and person of Indian origin are staying in many foreign countries. Recently Government of India has liberalised policy to encouraged Non-Resident Foreigners and Resident foreigners for investment in India. They must be given facilities for investment in Indian companies. One of the facility provided under the Companies Act is to

provide them an opportunity for inspection of register of member and debentures holders. Section 157 provides that a company having share capital or which has issued debentures to keep in any state or country (formarely limited to United Kingdom only) outside India, a branch register of members or debenture holders resident in that state or country. However, this power of the company is subject to the following conditions :

(a) The articles of the company must authorise the company to do so, and

(b) The company must file, within thirty days of the opening of foreign register, with the Registrar notice of the situation of the office where such register is kept. Similar notice is required to be given in the case of change or discontinous of the such office. Section 158 lays down the details provisions as to foreign registers.

(VIII) DECLARATION IN RESPECT OF BENAMI SHAREHOLDING

Benami or quasi-trust transactions were/ are part of the activities in the world of commerce and trade over centuries though very little progress has been made to codify the law governing them. As a result the practice of benami and constructive or quasi-trust dealings have taken deep roots within the economic and commercial activities in such

a way that custom and usage still hold a dominant role to explain and expose the hidden realities of such transactions. Whatever may be the points for and against the existence of benami or other concept in any commercial dealings or between the parties interse. In India this practice was prevailing in shareholdings in Indian companies. In the Original Act, there was no provision dealing with the benami shareholding. However, in 1974 the Act was amended and two new sections i.e. sections 187-C & 187-D were insertted.

Now, under section 187-C, it is made obligatory that all benami holdings of shares in existnece at the commencement of the Amendment Act must be declared both by the benamidar and the beneficial owner and failure to do is made punishable.

Likewise, all beneficial interest in shares in future also to be declared. In order to prevent the evasion of the statutory provisions it is also provided that the benami holdings of shares must be reported both by the benamidar and the beneficial owner within specified time and failure to do so is made punishable. Further all collateral agreements entered into or instrument executed in connection with benami holdings, which are not so

reported cannot be enforced by the beneficial owner or any person claiming through him.

It further provides that the company shall make a note of these declaration in the registered of members. Here, attention may be drawn to the provisions of section 153 which clearly states that no notice of any trust, express or implied or constructive, shall be entered on the register of members or debenture holders. Sub-Section 4 of the Section 187-C creates an exception to section 153. The other consequence of sub-section 4 is that fact of benami shareholding can be ascertained or found out by any member on the inspection of the register of members. It also impose obligation on the company for filing a return within thirty days of the receipt of the declaration with the Registrar of companies. Further in order to provide upto date information to the interested party, any change in the beneficial interest is requires to be intimated to the company by the beneficial owner within thrity days of the date of such a change.

These provisions are intended to disclose the names of actual persons who stand to benefit by particular shares. It is expected that these provisions would be helpful as a check upon any possible evasion of the provision relating to take over. It will be seen that the object of this

section is only to ensure the disclosure of all benami transactions in shares and not to effect the legal rights as regard the holding of beneficial interest in shares in any way. However, the dividend will be paid to the registered holders in accordance with section 206 of the Act.

The duty of an ostensible owner to make a declaration in terms of Sub-Section (1) may be said to arise in the following cases[34]:

(a) Where shares are held in his name, benami for any other person or persons.

(b) Where share are held in trust for any other person or persons, in his individual name or jointly in the names of himself and others. Unless there is a known beneficiary or beneficieries in existence there is no duty to make the declaration. The beneficiary may be living human being or legal or juristic person like a body corporate or Hindu idol. In all cases the person in whose name the shares are held has the duty to make the declaration as required by Sub-Section (1). As regards private trust the Department clarified[35] that the provisions of section 187-C are applicable to private trust governed by the Indian

Trust Act. It is therefore, the duty of the trustee to make the declaration as person legally entitled and specify the names of the beneficiaries.

(c) Where in the case of partnership firms, shares are acquired in the names of one or more or other partners, the partners will have to make declaration both under sub-section (1) and (2) because they have also beneficial interest in the shares held by them on behalf of all the partners.

(d) In the case of a joint Hindu Family, where, the karta or manager of the family holds shares on behalf of the family, and not as his separate property, he will have to make declarations, one as ostensible owner and another as one of the beneficial owner constituting the corparcenary. Though no member of the corparcenary can point to shares as his property, yet all the corparceners have right to enjoy the usufruct of the shares in common with others.

HINDU UNDIVIDED FAMILY -DEPARTMENT OF COMPANY AFFAIRS VIEWS :[36]

"As regards shares belonging to a Hindu Undivided Family held by the Karta of the family having regard to peculiar position of the Karta and to the peculiar character

of the interest which accrues to the coparceners in the joint estate it is not possible to postulate separate legal and beneficial interests of such shares as between the Karta and other members of the family. Hence, the Rules under reference do not apply. However, where any person who is in the position of the Karta happens to have any special relation with any person who is a member of the Hindu Family inrespect of shares not comprised in the family estate, section 187-C and rules thereunder will apply.

Commenting upon this circular Ramiaya[37] observes "with great respect, it is submitted that this is not quite a correct view. As the member of a coparcenary at any particular time ascertainable, all of them including the Karta will have to make a joint declaration under Sub-Section (2) while, Karta will have to make another declaration under Sub-Section (1) as ostensible holder of the shares on behalf of all the members of the coparcenary".

(e) Where shares are acquired by agents in their names on behalf of their principals, they are bound to make declaration under Sub-Section (2).

(f) In the case of guardians etc. of minors, lunatics and other persons under disability, the guardian or other person will have to make declaration under sub-section under Sub-Sections (1) & (2),

declaring on their own behalf in the one case and on behalf of their ward in the declaration under Sub-Section (2).

(g) In cases, where shares are transferred to a Bank and the transfer has been registered in the company's register of members, whatever may be the purpose for which the transfer has been effected, if the Bank holds the shares not on its own behalf but on behalf of another person as the real owner the Bank must make the declaration under Sub-Section (1) while the real owner must declare as beneficiary under Sub-Section(2)

(IX) BLANK TRANSFER - Provisions of Section 187-C.:

In the case of blank transfer, it may be stated that unless and untill the transferee is ascertained, and his name registered, there is no obligation on the part of the transferor, to make a declaration, simply because, there is no beneficiary. The shares continued to stand in the name of transferor untill the transferee's name is registered. Sub-Section applies only in cases where the transferee who is the beneficial owner by purchase, comes to known.

Non-Registration :

In the case of refusal by the company to register shares in the name of transferee, an important question arises.

Is the transferor bound to comply with the provisions of section 187-C? The answer is in positive. In such cases transferor becomes trustee for the transferee in-respect of shares. In the case of Mathlone V. Bombay Life Assurance Co. Ltd.[38] it was held that the ordinary result of a refusal to register a transfer of shares is that the transferor will be the trustee for the transferee, inrespect of rights relating to the shares. Here it may be added that where a transfer of shares is not register, position of the transferee is that of a beneficial owner of the shares, while the transferor continues to be legal owner of the shares. Therefore, both must make declaration under Sub-Sections (1) and (2) respectively i.e. as ostensible owner and beneficiary.

However, in the case of Commissioner of Income Tax (Madurai) V. M.Ramaswamy[39] following the decision of the Supreme Court in Shelat V.P.J.Thaker[40], the Madras High Court held that the Ownership of shares stood transferred from the Assessee to the purchaser, notwithstanding the fact that the transfer of shares had not been registered in the company's book.

(X) SHARES TRADED IN STOCK-EXCHANGES :

As regards shares traded in stock exchanges, "An apprehension has been expressed that the Rules will hinder trading in shares of companies listed on the stock exchanges.

On this, the Department of Companies Affairs issued clarification,[41] which is worth noting :

> That the rules apply to completed transfer where the names of transferor and transferee are known, and where the physical possession of shares passes, alongwith formal documents executed by both transferor and transferee and presented to the company concerned in terms of section 108 of the Act of 1956. It is well settled that untill that stage, the person who deals in such shares on the stock exchanges through a stock broker without executing the prescribed form of transfer deed, gets only equity in respect of consideration paid by him, which is enforceable in the event of company's non-registration of the transfer of shares against the purported transferor of shares and untill that stage, the property in the shares, a species of goods transferable only in the manner contemplated by the law does not pass. In view of this legal position, the apprehension expressed is not tenable. In this view of the matter, in the case of any shares traded on the stock exchange without the transfer deed prescribed under section 108 of the Act duly executed both by the transferor and transferee, there is no legal transfer of shares for the purpose of giving rise to the relationship of the trustee and beneficiary as between the transferor and the unknown transferee.

CONSEQUENCES OF NON-DISCLOSURE OR FAILURE TO DECLARE:

Failure to make declaration under Sub-Section (1) (2) & (3) without reasonable excuse, is made punishable with fine, which may extend to one thousand rupess for every day during which the failure continues.

The other consequences is laid down under Sub-Section (6), which debars the beneficial owner and person claiming through him from enforcing any agreement, charge, promisory note etc.created in his favour by the ostensible owner. This sub-section is such that even where the ostensible owner defaults, the beneficial owner is deprived of his remedy against the ostensible owner for no fault of his own.

It may be stated that this Sub-Section makes the agreement etc. unenforceable but not invalid. This defect can be removed i.e. it can be made enforceable by making declaration even after the expiry of the prescribed time.

Here it may be mentioned that the Sacher Committee,[42] has recommended for the deletion of section 187-C. While making this recommendation it has observed that 'the purpose behind introducing section 187-C will be served better by requiring declaration to be filed with the public Trustee in respect of certain specified quantum of holding of shares, there is, on the other hand, no particular

advantage which has resulted from the operation so far of section 187-C, which has only led to considerable paper work both at the end of the company and at the end of the Registrar, besides making the law a little harsh on the general members of the public owing small or insignificant number of shares. We are also plainly not in favour of allowing benami transactions in any form. Even the Income-Tax Act, 1961, (Section 218 A) recognises only the ostensible owner and any suit against the person whose name the shares are held benami or any other person would not lie unless a notice has previously been given in a prescribed form to the Income-Tax Officer. We recommend the incorporation of a similar provision in the companies Act. In this connection... that the provision of section 12(3) of the Banking Regulation Act, 1949 which make a presentation of title in favour of the registered holder of shares, if introduced, in the Companies Act, itself, may have salutary effect in preventing benami transaction..."

So far as this recommendation is concerned, it may be stated that main object of section 187-C is disclosure of interest both by the ostensible owner and beneficial owner to the company, by making declaration under Sub-Section (1) & (2) of the Section, which ultimately amounts to disclosure to the public, and also prevention of benami transaction (more concern with the taxation laws than the

Companies Act) and not the settlement of dispute of title between the ostensible owner and benefifial owner. At present section 155 (3) empowers the High Court to decide any question relating to title.

Investigation of Beneficial Ownership of Shares : (Section 187-D) :

Section 187-D empowers the Central Government to appoint inspectors to investigage and report as to whether the provisions of section 187-C have been complied with, with regard to any share. The provisions of section 247 will be applied to such investigation.

2. REGISTER OF CHARGES

2-A. DISCLOSURE REGARDING CHARGES :

Companies Act does not contain any provision empowering companies registered under it to borrow. Whether a company has or has not the power to borrow will be determined by its Memorandum and Articles of Association and the nature of business carried on by it. For the purpose of borrowing joint stock companies have been classified into two categories viz. (1) trading companies and (ii) non-trading companies.

Trading companies have implied powers to borrow, even without any specific powers to do so in their M.A. & A.A.,

because borrowing can be regarded as properly incidental to the conducting of their business. Not only this, it also has an implied power to give security by creating charges etc. on its property for the loans raised.[43] In re Patent File Co.[44] it was held that a company has power to give security for the loans by mortgage or charge of all or any of its property, moveable or immoveable, present or future.

On the otherhand, a non-trading company have no implied powers to borrow. In such company the Memorandum must state whether or not the company shall be entitled to borrow.

Borrowing by the issue of debentures is the most popular mode of borrowing by companies. Generally company issues secured debentures. In the case of secured debentures, a charge or mortgage is created on all or some of the assets of the company. The charge may be either a fixed charge or a flotting charge.

It is necessary that those dealing with the company should be able to find out that its assets are subject to charge. In other words the interests of persons dealing with the company requires protection, particularly creditor. Hence, the companies, Act, 1956 contains provisions, accoroing to which particulars of charges have to be registered with

the Registrar of companies and company is also required to maintain a register of charges.

(I) REGISTER OF CHARGES :

Section 143 of the Act provides that every company must keep at its registered office a register of charges. Informations requires to be disclosed in the register are :

(a) a short discription of the property charged,

(b) the amount of the charge; and

(c) except in the case of securities to bearer, the names of the persons entitled to the charge.

The object of this section is to enable persons dealing with the company to know about the financial liabilities of the company and also to ascertain whether the property which is the subject matter of contract is free from any encumbrances or not. This is made possible by section 144, which conferes a right on the creditors and members to inspect copies of instrument creating charges and company's register of charges. The same right is also confer on the outsiders.

(II) DISCLOSURE TO THE REGISTRAR OF COMPANIES :

Section 125 which is analogus to Section 95 of the English Companies Act, 1948, enumerates certain charges (including mortgages) requires to be registered with the

Registrar of joint stock companies within 30 days of their creation in order to be valid against the creditors and the liquidators. Section 134 of the Act imposes duty on the company for filing with the Registrar for registration, the particulars of every charge created by the company and every issue of debentures of series and as per sections 138, 139 and 140 it is required from a company to intimate the Registrar of the payment or satisfaction in full of any charge registered with him within 30 days from the date of such payment or satisfaction.

The object of the above provisions is that 'anyone proposing to grant credit to the company or to invest in its securities, this is perhaps the most valuable safeguard for he can see to what extent the company's assets are already mortgaged.

So far as application of this section is concerned an important question arose in the case of K.Saradambal V.Jagannathan,[45] whether or not this section apply to charge created by operation of law. Giving the answer in negative, the High Court held that section 125 applies only to a charge created by a company and not to a charge arising by operation of law, such as vendor's lien for unpaid purchase money. The expression 'created' shows that only charges founded on a contract are intended to be covered.

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However, in an English case[46] it was held that "where a legal charge is created for balance of purchase price, the vendor's lien will be deemed to have been thereby anondoned, and if the charge is not registered, the vendor cannot fall back upon the lien" Here it may be mentioned that in England Section 95 provides for registeration of certain charges on the company's file at the company's registry.

(III) WHAT ARE THE MATTERS TO BE DISCLOSSED TO THE REGISTRAR OF COMPANIES ?

The object of section 125 and other related provisions is to disclose to the interested parties, financial soundness of the company, particularly inrespect of its liabilities and encumbrances on its property. In order to provide them with all the informations in respect of company's property the provision of the Act lays down the particulars required to be filed for the registration of charges.

(a) In Case of Series of debentures :[47]

Where a charge is created by virtue of a series of debentures issued by a company entitling the debenture-holders to a parti-passu distribution of the assets charged, the following particulars must be filed with the Registrar:

(i) The total amount secured by the whole series,

(ii) The date of the resolution authorising the issue and the date of the deed by which security is created or defined;

(iii) A general description of the property charged,

(iv) The names of the trustees for debenture-holders; if any; and

(v) a copy of the deed or if there is no such deed, a copy of the debenture.

Here it may be mentioned that because of the definition of 'debenture' under section 2(12) which includes 'debenture stock', an issue of debenture-stock securing by a deed will also come within the purview of this section.

Further, in the case of Re Fireproof Doors Ltd.[48] it was held that "registration under this section protects not only debentures of the series properly issued but also irregularly issued debentures, which though on account of certain technical defects are invalid as debentures, may be valid as agreements for the issue of debentures binding on the company.

(b) Particulars in case of Commission, Allowance or discount allowed on debentures :

According to section 129, a company is required to file with the registrar particulars of the amount or rate of per centage of the commission, allowance or discount paid or made on any debenture.

So far as this provision is concerned it may be submitted that this section recognises the legality of issuing debentures at discount or on a commission basis. No formalities like the one in case of issue of shares at discount, have to be gone through, the reason being that the debentures do not form part of the capital of the company. Interest payable on debentures may be paid out of capital.

Further a company can issue convertible debentures, but a question arise as to issue of convertible debentures at discount. Can company issue convertible debentures at discount? It may be submitted that convertible debentures cannot be issued at discount, entitling the holders to exchange them for shares of the par value, as this would be an indirect method of issuing shares at a discount. In the case of Mosley V. Koffyfontein Mines Ltd.[49] It was observed that "the issue of debentures at discount is lawful but is void and will be restrained if the issue is

coupled with an option to the debenture-holder to take fully paid shares of the company for the nominal amount of the debentures".

In order to provide upto date informations to the persons dealing with the company, section 130 imposes obligation on the Registrar for maintaining, for each company a register in the prescribed form for all charges registered with him. It also confers right of inspection of such register.

(IV) CERTIFICATE OF REGISTRATION- ITS IMPORTANCE :

On registration of the charges, the Registrar issues a certificate of registration of charges stating the amount secured.[50] Accepting the importance of such certificate as evidence, the section further provides that the certificate is a conclusive evidence that the requirements of the Act as to registration have been complied with. It is also a conclusive evidence that the Registrar has entered the particulars in the register and that the prescribed particulars have been presented to him.

In the case of National Provincial & Union Bank of England V. Chamley,[51] it was held that "the certificate of registration was conclusive evidence that the mortgaged chattles was duly incorporated in the registration. The fact of the case was : An instrument created a mortgage of a household factory including the chattles (moveable

plant used in) The application for registration of the mortgage of the lease-hold premises made to the Registrar did not mention the chattles. Atkin L.J. observed... "when once a certificate of registration of charge has been given by the Registrar inrespect to a particular specified document which in fact creates a mortgage or charge, it is conclusive that the mortgage or charge so created is properly registered eventhough the particulars put forward by the person applying for registration are incomplete and the entry in the register by the Registrar is defective".

In another case[52] it was held that "when the Registrar gives his certificates it is to be evidence in fact not only that he has entered the particulars in the register of charges but also that the steps preliminary thereto have been carried out, that is to say, that the prescribed particulars have been presented to him... the effect of the certificate is to put out of anybody's power to say that the particulars have not been presented to him.

In an Indian case[53] it was held that "where a charge is registered and a certificate of registration is granted, it is not open to the official Liquidator in winding up proceedings to question the validity of the registration of the charge and contend that it is not enforceable against the assets of the company.

(V) RIGHT OF INSPECTION :

Section 144 gives an opportunity to the creditors, members and any other person to know about the company's assets, as it confers a right of inspection of instruments creating charge and also the register to be maintained by the company under section 143. No doubt company may impose reasonable restrictions on this right.

2-B. CONSEQUENCES OF NON-REGISTRATION :

Failure to comply with the various registration requirements leads to liability to fines. But the most potent section is that non-registration destroys the validity of the charge to certain extent, unless the prescribed particulars and documents are delivered to the Registrar within the specified time, it will, so far any security on the company's assets is entered thereby be void against the creditors of the company and liquidators. The sufferer will be the chargee and not the company. It was held by the Madras High Court that "as against company itself, so long as the company does not go into liquidation, the mortgage or charge is good and may be enforced. It is void only against the Liquidators and Creditors."[54]

In an English case[55] it was held that the company itself cannot have a cause of action arising out of non-registration. And in another case[56] it was held that

"where a charge is void for non-registration no right of lien can be claimed on documents of titles, as they were only anciliary to the charge and were delivered pursuant to the charges".

Lastly it may be mentioned that the ommission to register does not prejudice any contract or obligation for repayment of money secured by the charge, and where the charge becomes void for want of registration, the money secured by it immediately becomes payable.

No Obligation on Company to Register Charges :

The interesting feature of all the provisions dealing with the registration and non-registration of charges is that there is no legal obligation on the company creating charges to register them. Section 125 only says that every charge created after the 1st April, 1914 shall be void as against the liquidator and creditors unless registered and there is no provision imposing any legal obligation on the company to have it registered. The company cannot be held to be in default within the meaning of section 142. Section 134 no doubt applies to charges requiring registration under this part but there is no provision anywhere in this part requiring, that is, making it obligatory on the part of the company to register a charge. As a result

the sufferer is chargee, not the company. Only statutory provision for protecting the interest of a third party is provided by sub-section (1) of section 134, which provides that registration may also be affected on the application of any interested person other than the company. Such person is entitled to recover from the company any fees properly paid by him for the registration.

Recommendations of Sacher's Committee Inrespect of Register of Charges :

The committee has recommended[57] that :

(i) The proviso to section 125 may be amended as to provide that the Registrar may allow on payment of additional fee, the particulars and instrument or copy of the charge. etc. to be filed within thirty days next following the expiry of the period of thirty days as provided in the section :

(a) if the company satisfies the Registrar that it has sufficient cause for not filing the particulars and instruments or copy within that period; and

(b) a declaration has been furnished by the company that no other charges has been created in the interval.

The filing should be subject to the payment by the company of a penalty of Rs. 500/- per day of delay as now provided in section 142 after the expiry of the period of sixty days.

(ii) The provisions of section 141 would apply only when there has been failure to register the charge within the period of sixty days allowed under section 125.

(iii) The Registrar should be empowered to refuse to register the charge where there are applications or conflict of interests among the creditors. In such cases, the companies might be allowed to apply to the Company Law Board under the new set up of administrative machinery.

(iv) By way of drafting, improvement it has suggested that the word 'requiring registration in Section 134(1) and 142 may be substituted by the words 'as provided for registration under the Act!

So far as these recommendations are concerned I would like to state that recommendation made for the late registration by making payment of fee is not satisfactory, as the exercise of the power by the Registrar is made conditional. The condition that the company must satisfy the Registrar that there was sufficient reason for not filing the particulars of charges etc., suggest that

additional fee which a company is required to pay is nothing but an application fee for late registration.

The other condition that the Registrar should be empowered to refuse registration in case of complications or conflict among the creditors, gives discretion power to the Registrar. Such discretion would likely to bred curruption or misuse of the power.

3. REGISTER OF CONTRACTS (SECTION 301) :

As per section 301 every company is required to keep one or more register containing particulars of all contracts entered into by the company in which any of the director is interested. The particulars which are required to be disclosed are :

(a) the date of the contract or arrangement,

(b) the names of the parties to the contract or arrangement,

(c) the principal terms and conditions of the contract or arrangement,

(d) in the case of a contract to which section 297 applies or in the case of a contract or arrangement to which sub-sections (2) of section 299 applies, the date on which it was placed before the board : and

(e) the names of the directors voting for and against the contract or arrangement and the names of those remaining neutral. In addition to these disclosure, they must also disclose, in relation to each director the names of the firms and bodies corporate of which notice has been given by him under Sub-Section (3) of section 299. These particulars are required to be entered in the register within the prescribed time as laid down under Sub-section (2) of the section.

It may be mentioned that this section has very wide scope. It imposes statutory obligation on the company to keep and maintained a register of all contracts in which any director of the company is interested except those exempted by Sub-Section (3-A) of the Section 301. Further in order to give full justice to the doctrine of disclosure the section also confers a right on the members of the company for the inspection of such register.

The importance of this section could be judged from the following observation of the Company Law Committee on whose recommendation it was adopted, "In order that the register may serve its full purpose, we suggest that the particulars to be entered in it should include the dates of the contracts, the names of the parties and the dates of

the board meeting togather with the names of the directors voting 'for' and 'against' the contract or arrangement and of those remaining neutral. We recommend that this register should be placed at the meeting of the board and should be signed by each director present at the meeting.. In view of the importance of the disclosure of director's interests in any contract or arrangement, we recommend that the penalty for any contravention of the provision of the section should be increased to Rs. 5.000. We also recommend that copies of the register or any extract there of should be available to members on payment of a prescribed fee".[58]

Sub-Section (5) - Implication Thereof :....

Sub-Section (5) provides that the registers shall be kept at the registered office of the company and it shall be open to inspection at such office etc.

The implication of this provision is that the Board's meeting must be held at the registered office of the company otherwise it would be difficult to comply with the provisions of Sub-Section (5).

The Company Law Board has issued following clarification in this connection :

> While it is conceded that there is nothing in the Companies Act requiring Board's meetings to be held only at the registered

office of a company, it has to be appreciated that compliance with the statutory requirement in Sub-section (2) of section 301 without involving a breach of Sub-section (5) of the said section of the Act or Vice-Versa will be practicable only if those meeting before which the register is required to be placed under sub-section (2) are held at the company's registered office".[59]

4. DIRECTORIAL REGISTER (Section 303) :

According to section 303 every company is required to keep at its registered office a register of its directors, managing director, manager and secretary. The matters requires to be disclosed in the register are :

(I) In the Case of an individual :

(a) his present name and surname in full

(b) any former name or surname

(c) his father's name and surname in full or where the individual is a married woman, the husband's name and surname in full.

(d) his usual residential address

(e) his nationality;

(f) his business, occupation, if any,

(g) if he holds office of director, managing director, manager or secretary in other body corporate, the

particulars of each office held by him; and

(i) the date of birth

(II) In the Case of a Body Corporate :

(a) its corporate name and registered or principal office,

(b) the full name, address, nationality, the father's name or where a director is a married woman, the husband's name of each of its directors; and

(c) if it holds the office of manager, or secretary in any other body corporate, the particulars of each such office.

(III) In the Case of a firm :

(a) the name of the firm,

(b) the full name, address, nationality, the father's name, or where a partner is a married woman, the husband's name of each such partners,

(c) the date on which each became a partner, and

(d) if he holds the office of the manager or secretary in any other body corporate, the particulars of each such office.

(IV) If any director or directors have been nominated by a body corporate :

(a) its corporate name,

(b) all the particulars referred to in clause (1) in respect of each director so nominated, and

(c) also all the particulars referred to in clause (2) in respect of the body corporate.

(V) If any director or directors have been nominated by a Firm :

(a) the name of the firm,

(b) all the particulars referred to in clause (1) in respect of each directors nominated, and

(c) also all the particulars referred in clause (3) in respect of the firm.

The explanation to sub-section (1) of section 301 provide that for the purpose of this sub-section any person in accordance with whose directons or instructions, the Board of directors of a company is accustomed to act is deemed to be a director of the company.

Presence of Clauses (b) & (c) in Sub-Section (1) of Section 303 - An Observation :

According to clause (b) of sub-section (1) of section 303 a company is required to enter particulars in the register of directors in respect of a body corporate which

is a director, manager, managing director or a secretary, and

According to clause (c) is required to enter particulars in respect of partnership firm which is a director, managing director, manager or secretary of a company.

Here, attention may be drawn to the provisions of sections 253, 2(26), 2(24) and 2(45) of the Companies Act, 1956.

Section 253 expressly provides that 'No body corporate, association or firm shall be appointed director of a company, and only an individual shall be so appointed. Therefore, according to this section only individual can be appointed director and not a body corporate or association or a firm. No doubt, there is no such provision in the English Act. Under that Act, a company or a body corporate is not prohibited from being appointed a director of another company. In India only exception to this requirement is deemed director, in other words, the requirement that only individual shall be appointed as directors does not extend to deemed directors coming within provisions of section 7, so for instance, a holding company will be deemed to be director for the purpose of section 7, as all or the majority of the directors of a subsidiary

company are accustomed to act according to its directions. Further any body corporate or individual or individuals who, even though holding less than majority voting power, in fact are in a position to control the whole or majority of the Board, will also come under the section.

It may be submitted that when as per the statutory provisions a body corporate or a firm cannot be appointed as director, the question of compliance with the Clause (b) and (c) of section 303 does not arise except in the case of deemed director under section 7 of the Act.

Similarly, as per section 2(26), only director, who must an individual, can be appointed as a managing director. Section 2 (26) defines managing director and according to it "managing director means a 'director", who by virtue of an agreement with the company or a resolution passed by the company in general meeting or by the board of directors or by virtue of its memorandum or Articles of Association is entrusted with substantial powers of management which would not otherwise be exercisable by him and includes a director occupaying the position of managing director by whatever name called". This section lays down a condition precedent to become a managing director and that condition is that he must a director, and according to section 253 only individual can be appointed as a

director. Hence, a body corporate or association or a firm cannot be appointed managing director of a company and as such question of compliance with clause (b) and (c) of sub-section (1) of section 303 does not arise.

Further as per section 2 (24) only individual can be appointed as a manager of a company. According to Section 2 (24) manager means "an individual who has the management of the whole or substantial control of the affairs of a company and includes a director, or any other person occupying position of a manager by whatever name called and whether under a contract of service or not. Here attention may be drawn to the provisions of section 384 which provides that 'no company shall after the commencement of this Act, appoint or employ or after the expiry of six months from such commencement, continue the appointment of employment of any firm, body corporate or association as its manager. Looking to the provisions of sections 2(24) and 384 it may be stated that clause (b) and (c) of sub--section (1) of Section 303 have become redundant in respect of manager.

Lastly as per section 2(45) only individual can be appointed as a secretary of a company. According to Section 2(45) secretary means "any individual possessing the prescribed qualification appointed to perform the

duties which may be performed by a secretary under this Act and any other ministerial or administrative duties. Accordingly a body corporate, association or a firm cannot be appointed as a secretary. So it may be stated that clauses (b) and (c) have also become redundant in the case of secretary.

A foreign company is not bound to comply with the provisions of section 303, as the term used in section 303 is 'Every Company'. The term company as defined under section 3(1) does not include foreign company and as such section 303 cannot be applied to a foreign company.

Change Among the Directors and Provisions of Section 303:

As per Sub-Section (2) changes which takes place in the particulars entered into register of directors as per Sub-Section (1) is also required to be notified to the Registrar within thirty days of the date of the change.

Re-Appointment of Director and Sub-Section (2) :

Where the same directors are re-appointed there is no change need be notified to the Registrar. The object of notification of a change in the directors under this Sub-section is to enable the Registrar and persons who inspect the file in the Registrar's Office to know whether the same or other directors are in office. According

to the Company Law Department re-appointment of directors retiring by rotation is not a change which needs to be notified but re-appointment of other directors is a change which should be notified.[60]

It may be submitted that looking to the object of Sub-Section (2) the view expressed by the Company Law Department requires reconsideration.

Right of inspection :

Sub-section (1) of Section 304 confers a right of inspection of register maintained under sub-section (1) of section 303 on the members of the company as well as other persons. The contravention of the provision is made punishable and the Court is empowered to compel immediate inspection of the register.

Duty of Directors Etc. To make Disclosure (Section 305) :

The provisions of section 305 may be considered supplement to the provisions of section 303. Under section 303 a company is bound to maintaine register of directors etc. and it will be extremely difficult for a company to maintain this register upto-date unless directors and other managerial personnel provides necessary particulars to the company. In order to provide latest information in respect of directors etc. to the members and other

persons, section 305 provides for disclosures.

According to section 305(1) every director, managing director, manager or secretary of any company, who is appointed to, or relinquishes, the office of director, managing director, manager or secretary of any body corporate, shall, within twenty days of his appointment to, or as the case may be, relinquishment of such office, disclose to the company the particulars relating to the office in other body corporate. As per Sub-section (2) this provision will also apply to the deemed director.

So far as these provisions are concerned it may be submitted that particulars requires to be disclosed are in respect of appointment to or relinquishment of office of directors, managing director, manager or secretary of any other body corporate. The term 'body corporate' is wider than the term 'company' and as such any person who is appointed to, or relinquished any office mentioned in section 305 in a foreign company is bound to comply with the provisions of section 305 of the Act.

It may be mentioned that in order to give justification to the doctrine of disclosure, section 306 imposes an obligation on the Registrar of companies for keeping a register containing all particulars received by his office under Sub-Section (2) of Section 303. Sub-Section (2) of

section 306 confers a right on any member of the public for inspection of the register kept by the Registrar on payment of the prescribed fee.

In case of a right of the Registrar to make entry in the register it was held by the Punjab High Court[61] that "where returns under section 303 (2) have been made by rival claiming parties, the Registrar should not make entries in his register of the particulars furnished by either party but await the decision of the Court on the conflicting claims.

In case of right of inspection and its consequences it was held by the Bombay High Court[62] that 'though outsiders are given a statutory right to inspect the register of directors, they are not affected with notice thereof.

Here it may be submitted that sometime investors subscribe for shares or debentures after ascertaining the particulars of managerial personnel disclosed in the registers and other documents of the company. In this respect provisions of section 303 to 306 serves very useful purpose. However, the punishment prescribed for contravention or non-compliance with these provisions is inadequate one, mere fine is not sufficient, it must be supplemented with the imprisonment for a specific period.

5. REGISTER OF DIRECTOR'S SHAREHOLDING (Section 307) :

Section 307 lays down very important provisions in relation to disclosure of director's shareholdings in the company. This section was incorporated on the recommendation of the Company Law Committee. While making recommendation it was observed[63] by the Committee that :

"In the course of our inquiry, we received some complaints about dealing in shares by directors of companies. By their very nature, it is difficult to get full facts about such complaints, but there can be little doubt the evil exists, albeit on the limited scope. The complaints received from the shareholders and the general public that, not infrequently, such dealings are detrimental to the interest of the company, are also not entirely unfounded. It will be recalled that both the Cohen Committee in England and the Millin Commission in South Africa dealt at considerable length on this problem. In paragraph 86, of its report the Cohen Committee observes : 'whenever directors buys or sell shares of the company of which they are directors, they must normally have more information, than the other party to the transaction... but the position is different when they act not on their own general knowledge but on a particular piece of information known to them and not at the time known to the general body of shareholders e.g. the

impending conclusion of a favourable contract or the intention of the Board to recommend and increase dividend. In such a case it is clearly improper for the director to act on his inside knowledge, and the risk of his doing so is increased by the practice of registering shares in the names of nominees... we do, however, consider that the law should be altered so as to discourage improper transactions of the kind we have indicated. Even if the legislature is not entirely successful in suppressing improper transactions, a high standard of conduct should be maintained and it should be generally realised that a speculative profit made as a result of special knowledge, not available to the general body of shareholders in a company is improperly made. Similar observations were made in paragrahps 141 and 142 of the Millin Commission report.

'At one stage of our inquiry we considered the desirability of a provision in our Act on the lines of subsection (3) of Section 69-A of the Canadian Companies Act, 1934 which provides that "no director of a public company should speculate for his personal account, directly or indirectly in the shares or other securities of the company of which he is a director and penalties for the contravention of this provision by a fine not exceeding £ 1000 or by 6 months imprisonment or by both fine and

imprisonment". In course of our discussion, however, we were impressed by the difficulty of defining the phrase 'speculative buying and selling of shares". We see no easy way of getting round this difficulty, and, therefor, prefer to rely on the device suggested in Section 196 of the English Companies Act, 1948. Under this section every company is required to maintain a register showing in respect of each directors, the number, description and amount of shares and debentures of the company or any other body corporate, being the company's subsidiary or holding company or a subsidiary of the company's holding company which are held by or in trust for him or of which he has a right to become the holder whether on payment or not. Whenever, there is a purchase or a sale of a shares or debentures by directors, this register should also show the date, price or other consideration for the transaction. This register is maintained at the company's registered office and is open to inspection by any member or debenture holder of the company in the manner referred to in sub-section (5) and at all times by any person acting on behalf of the Board of Trade. We recommend the incorporation of the similar provision of this section be enforced, it is necessary that an obligation should be imposed on the directors of a company and every person who is deemed to be a director to give notice to the company of all such matter relating

to himself as are required under the section, unless a director or person deemed to be a director is required by law to intimate the relevant facts to a company, it will not be possible for it to maintain the register of director's holding upto-date".

The above recommendations have been incorporated in section 307 of the Act. In addition to other provisions, Sub-Section (7) provides for the production of the register at the commencement of every annual general meeting for the inspection of any member having a right to attend the meeting.

However, no time has been prescribed for making entry in the register. In this connection it may be submitted that in the absence of time limit being prescribed for a director or other person notifying the company or the company entering in the register any transaction, fact or matter as required by the section, it cannot be said that there was any default if the register contained the relevent entries and is kept open for inspection fourteen days before the annual general meeting as required by sub-section (5) of this section.

Section 308 which deals with the duty of directors and persons deemed to be director to make disclosure of

shareholdings is consequential on section 307. It provides that every director of a company shall give notice to the company of such matters relating to himself as may be necessary for enabling the company to keep the register as per section 307. In this section also no time has been fixed for notifying the company about shareholdings or giving notice to the company. So far as this section is concerned, Sacher Committee has made certain recommendations in para 8-29 of the Report.[64]

(I) INSIDER TRADING

The object of section 307 of the Indian Companies Act, 1956 and section 195 of the English Companies Act, 1948 is to check on the practice of insider trading.

Insider trading means trading by the management or in other words trading by directors and other managerial personnel of a company in its own shares. To be specific it means dealing in shares by the managerial personnel. It is but natural that the directors, managing director and other top official of a company come to know of any significant development about the company much in advance, before the general public. By taking advantage of this information, they enter into deals and gain undue advantage at the cost of unwary public.

The usual practice adopted by these persons in office is that few brokers in each of the centre regulary meet certain industrialists and top executives of some companies to discuss the activity and price trends in shares of their companies. At such meeting, plans are made to buy or sell the shares of that particular company whenever certain developments are about to take place. Now it will not be difficult to understand, why the market price of certain shares suddenly shoots up a week or a fortnight before some companies comes out with bonus shares. Many times it happens that the price of a shares shoots up and after a fortnight or so, the company announces a bonus issue.

Many unwary investors than rush to buy shares of that particular company because of the announcement of the bonus issue. But to their dismay and surprise the price start coming down soon after they have made purchase at high levels. This happens as the circle close to the management who had bought the shares in advance on inside information (about the bonus issue) now offload their shares to book profits. Sucha a practice is not only unhealthy but also unethical and hence totally undesirable. Now wonder almost all the countries led by U.S.A. have imposed restrictions on such inside trading. In England by the 1967 Act, severe restrictions have been imposed on directors etc. to put an end to insider dealing.

In India, the existing Act does not contain any provision for restricting such practices. However, Sacher Committee had suggested that directors and senior official of the company having an access to price sensitive information, not available to the general public, should prior to actual purchases, or sales of shares in their company whether in their own names or their spouces and children, should notify the Board of Directors of the company of their intention to buy or sell shares and that full disclosure of their operation should be annexed to the published accounts of the company.

The committee had also recommended that there should be a blanket ban on purchase or sale of shares by those persons two months prior to the closing of accounting year of the company and two months thereafter as also two months prior to any right issue or bonus issue.

However, the report is gathering dust and no action has been taken on these recommendations. There is an urgent need to ensure that as much information about a company as possible should be given to the investors and marketmen.

The sensitivity of the annual working results of a company can be reduced considerably if the company brings out quaterly figures regularly. As far as the right and bonus issues are concerned, the companies should be asked to

inform the stock exchange about their intention at least a fortnight in advance. Unless certain urgent measures are taken to curb this unhealthy practice, it is bound to continue.

(II) STOCK EXCHANGES AND INSIDER TRADING :

Here attention may be drawn to second type of insider trading which has been practice by the management of stock exchanges on the basis of inside information available to them.

The management of stock exchange has access to several price sensitive informations. The governing Board of Stock Exchange has to take important decisions, which have a direct bearing on the price level. Some members of the Board can make a fast buck in the market on the strength of these decisions before the public comes to know about them. This is not just a presumption. Instances of such unethical practices are not rare.

Sometimes, important price-sensitive corporate reports, which a stock exchange receives, are made public after sometime. There have been allegations that sizeable business in particular company's shares takes place during the interval between the time, the corporate report is received by the stock exchange and the time it is made public.

Such malpractice is understandable when some of the Governing Board members themselves are speculators. In fact, it is in the wake of this realisation that the Union Finance Minister has decided to increase the representation of outside members on the Governing Boards of Stock Exchanges.

In Bombay, for example, the Governing Board, today consists of 24 members including 16 Stock Brokers, three public representatives, three government nominees, one representative of the Reserve Bank of India, and the Executive Chairman appointed by the Government. Thus the number of Stock Brokers is double the size of the outsiders.

Although all the stock broker representatives are not speculators, such a large representation is certainly dangerous. After all, it is human nature, how can you expect an active speculator to remain 'inactive' when price sensitive information is available to him much in advance of others.

Here it may be mentioned that the Governing Board of Indian Stock Exchanges where a majority of the members are stock brokers themselves. But now wind has started changing there and the number of public representative will be raised soon.

The U.S.A. has already taken pragmatic decision. The Board of New York Stock Exchange consists of 10 stock brokers, 10 out-siders and one executive chief.

But the system of Japan is all the more interesting. The Tokyo Stock Exhhange Board consists of four executive of the Stock market management council, four outsiders and four members of the stock exchange.

Needless to say, the Board of Indian Stock Exchange also required large representation of outsiders, that is those who know intracacies of stock market behaviour. Such a broadening of the governing boards can certainly help in reducing unethical practice of insider trading of the second type.

Position in England

Section 307 of the Companies Act, 1956 is cast on the lines of section 195 of the English Companies Act, 1948, which was incorporated on the recommendation of the Cohen Committee. The far more radical proposal of the Cohen Committee, that there should compulsory disclosure of those entitled beneficially to one per cent or more of the issued capital was rejected as impossible.

However, the matter was again taken up by the Jenkin Committee which recommended the more practical solution of

banning outright one type of transaction by directors and extending them to 10% shareholders. Their suggestions have now been enacted in Sections 25 and section 27 to 34 of the Companies Act, 1976.

Section 25 of the English Act makes it criminal offence to buy a 'put' or 'call' or 'put-and-call' option in any quoted shares or debentures of any company in the group (i.e. the company, subsidiary company, its holding company or any other subsidiary of the latter). By Section 30 this is extended to the spouse and infant child of a director unless they had no reason to know of the directorship. Thereby the most blatent type of speculation with the advantage of inside information is banned.

Section 27 to 34 provides for disclosure, Section 27 to 29 and 31 repealing and replacing section 195 of the 1948 Act, make effective provision for disclosure in relation to directors. Now they have to notify the company in writing within fourteen days of acquiring or disposing of any beneficial interest in shares or debentures of companies in the group. The notice must give considerable detail regarding the transaction concerned, including the price, In order to plug the loophole in section 195 of the 1948 Act, as per section 31 interest of a spouse or infant child of a director are treated as interests of the direcotor.

Section 22 (1) and (2) provides that company must maintain a register of director's interests and dealings and must enter therein information received within three days. Section 29(2) and (4) provides that where the company itself grants a director the right to subscribe for its shares or debentures it must enter details in the register of the rights and of their exercise. This register is to be kept open for inspection by members without charge and by others on payment of prescribed fee. The right to have copy of it is also conferred by the section.

Section 33 and 34 contains corresponding provisions regarding 10 per cent shareholder. The operation of these provisions is narrower than that applying to director, because of the concentration on take over of control, they are restricted to quoted companies, to holding of shares (not debentures), and more over to shares which carry unrestricted voting rights. Disclosure is required to anyone who is or become, beneficially interested in one-tenth or more in nominal value of each shares.

Gover observes[65] that it is not clear whether this means 10 per cent of each class of equity shares (as was apparently intended and as Jenkin Committee recommended) or merely 10 per cent on the total equity. If the latter is held to be the correct construction, the section is

gravely defective since one class may give voting control without being 10 per cent of the total equity. In any, case to make nominal value the test seems inconsistent with the apparent object since there ism not necessarily any relation between nominal value and number of votes.

But the information which has to be given is narrower. in particular the price paid or received on an acquisition or disposal of shares does not have to be disclosed.

As per section 34 (7) a separate register of these shareholdings and dealings has to be maintained, except in so far as it contains information regarding the holdings of companies incorporated or carrying on business abroad where a dispansation from disclosure in their accounts under section 3 or 4 of the Act has been granted by the Board of Trade. Board of Trade may grant exemption, if information is likely to be determintal to companies operating abroad.

In addition to above provisions section 32 provides an additional (in addition to provision of section 172 & 173 of the 1948 Act) power on the Board of Trade to appoint an inspector to investigate possible breaches by the directors of their duties under sections 25 or 27.

As a result of these provisions some of the abuses

flowing from clandestine dealing through nominees can be prevented.

Gower taking into consideration the unsatisfactory condition of English Act observes[66] that "we have still not gone nearly so far as legislation in the U.S.A." In U.S.A. directors and 10 per cent share holders are dealt with togather and dealing by both are treated as raising the single problem of insider trading. In contrast, in England, disclosure of holdings and dealings by directors has been regarded as necessary to prevent the abuse of inside information, where disclosure by other shareholders has been thought of as required mainly to protect directors against having their companies taken over without their knowledge. In particular there is nothing comparable with section 16 (b) of the Securities Exchange Act, whereby insider may have to account to their companies for short term profits made by dealings in their Company's securities. Nor as yet, have we anything comparable with rule 10b-5, made under that Act, whereby insiders (and perhaps even their 'tippees') may be liable to those with whom they have had dealings in the companies securities".

It may be stated that, compared to England and U.S.A., the position in India is far from satisfactory, particularly inrespect of insider dealings. The High Powered Committee

appointed under the Chairmanship of Justice Sacher, had, after taking into consideration unsatisfactory condition, made remommendation in Chapter VIII of the Report.[67]

6. REGISTER OF LOANS ETC. TO COMPANIES UNDER THE SAME MANAGEMENT (Section 370)

Under section 370 certain restrictions have been placed on lending of money by one company to another company. This section was amended in 1965 and new Sub-Sections 1-C to 1-D were added on the recommendations of the Vivian Bose Inquiry Commission. The object of these new Sub-Sections is to provide upto date record of loans etc. given to companies under the same management.

Sub-Section 1-C provides that every lending company shall keep a register showing :

(a) the names of all bodies corporate under the same management as the lending company and the name of every firm in which a partner is a body corporate under the same management as the lending company and,

(b) the following particulars in respect of every loan made, guarnatee given or security provided by the company to every other body corporate under the same management.

(i) the name of the body corporate to which the loan has been made before or after that body corporate came under the same management as the lending company,

(ii) the amount of loan,

(iii) the date on which the loan has been made,

(iv) the date on which the guarantee has been given or security has been provided.

As per sub-section 1-D particulars of every such loans, guarantee or security must be entered in the above register within three days of such transaction.

Sub-Section 1-E prescribes the punishment for non-compliance with the provisions of sub-sections 1-C and 1-D, and Sub-Section 1-F confers a right of inspection of register, on the members of the company. Outsiders are not entitled for such inspection. This section lays down restrictions on lending of money by way of loans etc, and not deposit. In the recent case of PONNWALT INDIA LTD & ORS. v. REGISTRAR OF COMPANIES, MAHARASHTRA & Ors.[68] where the facts of the case was 'a Public limited company deposited money with various independent companies. Registrar issued show cause notice under section 370 read with section 371(1) on the ground that these deposits were, in his view,

loans and the maximum limit of 30% as given in section 370 (1) was exceeded without obtaining prior approval of Central Government', it was held by the Bombay High Court that 'there is thin line of distinction between loan and deposit... mere presence of relationship of debator and creditor in both the cases not sufficient to make loan and deposit synonymous. In the case of deposit, depositor, is the prime mover while in the case of loan, borrower is the prime mover- that apart, Section 370 does not provide that a loan includes deposit for the purpose of this section- section 370 could not be given wider construction than warranted by actual words used therein... therefore, the word'Loan' in section 370 does not include deposit... limit as provided by Section 370 (1) (a) not, therefore, exceeded.

7. REGISTER OF INVESTMENT IN SHARES AND DEBENTURES OF COMPANIES IN THE SAME GROUP (Section 372) :

As per sub-section (6) of section 372, every investing company is required to keep a register of all investments made by it in shares of any other body corporate or bodies corporate, showing in respect of each investment:

(a) the name of body corporate in which the investment has been made,

(b) the date on which investment has been made,

(c) where the body corporate is in the same group as the investing company, the date on which the body corporate came in the same grou, and

(d) the names of all bodies corporate in the same group as the investing company.

Sub-Section (7) lays down the time limit within which the company is required to enter the above particulars in the register. It provides that particulars of every investment should be entered in the register within seven days of making the investment, and sub-section (8) lays down punishment for non-compliance with the provisions of sub-sections (6) & (7) of section 372. Sub-Section (9) confers right of inspection on the members of the company.

So far as the provisions of sections 370 (1-D to 1-E and 372 (6) to (8) are concerned it may be stated that their object is to enable members of the company to know the mode and manner of investments made by the company. A member of a company has every right to see that his money is invested in the proper way and for the object specified in the Memorandum, at the same time it also provide an opportunity to the members to know about the financial management of the company.

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References :

1. Maheshwari Khetan Sugar Mills V. Inshwari Khetan Sugar Mills (1983) 33 Comp. Cas. 1142.

2. London Hamburge & Continental Exchange Bank in Re, W and Henry's case (1867) 2 Ch. App. 431.

3. (1958) 28 Comp. Cas. 1135.

4. A.I.R. (1952) Pepsu 47

5. (1977) 47 Comp. Cas. 796, 797.

6. Jayshree Shantaram Venkundre V. Rajkamal Kalamandir (Private) Ltd. (1960) 30 Comp Cas. 141.

7. Public Trustee V. Rameshwar Tyagi (1973) 43 Com.Cas. 371.

8. (1978) 48 Comp. Cas. 438 (Guj.)

9. (1983) 54 Comp. Cas. 88 (ker).

10. (1982) 52 Comp Cas. 471 (Cal.).

11. Killick Nixon Ltd. V. Bank of India (1982) Tax. L.R. 2547 (D.B.) (Bom.)

12. Babulal V. Narainbs Sugar & General Mills Ltd. (1958) 20 Comp Cas. 155 (Punj.) U.P. Oil Mills V. Official Liquidator (1942) A.I.R. Mad. 470.

13. (1983) 54 Comp. Cas. 166 (Del.)

14. (1982) 52 Comp. Cas 503 (A.P.)

15. (1953) 23 Comp. Cas. 335

16. Re Sunders (T.H.) & Co. (1908) 1 Ch. 415

17. Letter No.F1/24/SE/80 dt. 5-9-80.

18. Re Vaglino & Anthractic Collieries Ltd. (1910) 79 L.J. Ch. 769.

19. Section 11 of the Indian Contracts Act, 1872.

20. (1942) A.I.R. Mad. 470

21. (1914) 39 Bom, 331

22. (1914) Section 30 of the Indian Partnership Act.

23. Mohoribibi V. Dharmodas Ghose (1903) 30 IA 114 : 30 Cas. 539.

24. Golcunda Industries Ltd. V. Registrar of Joint Stock Companies (1968) AIR, Delhi 170

25. Miss Nandita Jain V. Bennet Coleman & Co. Ltd.

26. 2nd Edition.

27. 12th Edition.

28. Ibid.

29. Circular No 312 (43) CL -111/3 Dt. 30-9-63.

30. (1982) 52 Comp. Cases 139 (Bom.)

31. Gaiman V. National Association of Mental Health (1971) Ch. 317.

32. Circular No. dated November 1, 1975.

33. Section 163 of the Act.

34. Guide on Companies Act, 10th Edn. p.438 By A Ramiya.

35. Circular No.8/81/75-CL-V dt. 7-6-85.

36. Circular No. 8/18/75-C.L. V. dated 31-3-75)

37. Guide to Companies Act, p.

38. (1954), 24 Comp. Cas. 1, 1953 S.C.J. 548.

39. (1985) 57 Comp. Cases p. 7 (Mad.)

40. (1975) Comp. Cas. 43 (S.C.)

41. Notification No.G.S.R. 53-E, Circular No. 5/75 dated 31-3-1975.

42. Para 17-29 of the Report.

43. General Auction Co. V. Smith (1891) 3 Ch.432.

44. (1870) L.R. 6 Ch. App. 83.

45. (1972) Comp. Cases 319 (Mad.)

46. Capital Finance Co. Ltd. V.Stokes (1968) 3 All E.R. 625 (C.A.)

47. Section 128 of the Act.

48. (1916) 2 Ch. 142.

49. (1904) 2 Ch. 108.

50. Section 130 of the Act.

51. (1924) 1 K.B. 431

34. Guide on Companies Act, 10th Edn. p.438 By A Ramiya.

35. Circular No.8/81/75-CL-V dt. 7-6-85.

36. Circular No. 8/18/75-C.L. V. dated 31-3-75)

37. Guide to Companies Act, p.

38. (1954), 24 Comp. Cas. 1, 1953 S.C.J. 548.

39. (1985) 57 Comp. Cases p. 7 (Mad.)

40. (1975) Comp. Cas. 43 (S.C.)

41. Notification No.G.S.R. 53-E, Circular No. 5/75 dated 31-3-1975.

42. Para 17-29 of the Report.

43. General Auction Co. V. Smith (1891) 3 Ch.432.

44. (1870) L.R. 6 Ch. App. 83.

45. (1972) Comp. Cases 319 (Mad.)

46. Capital Finance Co. Ltd. V.Stokes (1968) 3 AllE.R. 625 (C.A.)

47. Section 128 of the Act.

48. (1916) 2 Ch. 142.

49. (1904) 2 Ch. 108.

50. Section 130 of the Act.

51. (1924) 1 K.B. 431

52. Mechanisation (Eaglescliffe) Ltd. in Re (1964) 3 All E.R. 840.

53. Bank of Maharashtra Ltd. V. Official Liquidator, Mysore (1973) 43 Comp. Cases 505 (mys).

54. T.R. Thaiagarajan V. Official Liquidator (1959) 2 M.L.J.. 294.

55. Independent Automatic Sales Ltd. V.Khowles & Foster (1962) 3 ALL. E.R. 27 (Ch.D.)

56. In re Moulten Finance Ltd. 1968 Ch. 325

57. Para 17-27 of the Report.

58. Para 97 of Report.

59. 59 Communication dated 26th Nov. 1962.

60. Circular No. 8/30 (303)/79-CL-V dated 2-9-1980.

61. Jullunder District Registered Factory Owner(s Association V. Registrar of Companies (1961) 31 Com. Cases 673.

62. T.R.Pratt (Bombay) Ltd. V. E.D. Sasson & Co. Ltd, (1936) 6 Comp. Cas. 9 (Bom.).

63. Para 100 of the Report.

64. Appendix - IV

65. Principles of Modern Company Law 3rd Edn.

66. Principles of Modern Company Law 3rd Edn. p.391.

67. Appendix -

68. Appeal No. 1108 of 1984, Feb. 11, 1986 See also R.M. Ratan Gupta V. Director of Enforcement, Foreign Exchange Regulation Act AIR 1966 S.C. 495.

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