

## **Remuneration to Non -Executive Director and Independent Director- After 18<sup>th</sup> March 2020**

- Non- Executive and Independent Director brings governance, transparency, independent and fair view in the Board and they are much needed in a company having losses. However Section 197 of the Companies Act, 2013 (CA 13), provided that the company can remunerate to Non -Executive Directors (NED) and Independent Directors (ID) only by way of sitting fees or percentage linked to Net Profit calculated as per section 198 of the CA 13. And, in case of losses, the company could not remunerate NED or ID.
- However, as per Schedule V to the CA 13, in case of no profit or inadequate profit, the company can remunerate to its Managerial Personnel only.
- This inconsistency was highlighted by the Company Law Committee ( CLC) headed by than, Secretary to MCA Mr. Injeti Srinivas. CLC noted that NED including ID devote their valuable time and have experience to give critical advice to the company. Therefore, they should be appropriately compensated for the same even in case of inadequacy of profits or losses as is permissible for executive directors.
- CLC also discussed the crucial role played by ID of a company in terms of bringing objectivity into the functioning of the Board and improving its effectiveness. CLC also noted the need for companies to adopt remuneration policies that attract and retain talented and motivated directors. It was felt that inconsistency in payment of remuneration in case of inadequacy of profits or losses to executive directors vis-à-vis non-executive directors would dis-incentivise the latter. Therefore, CLC suggested to amend provisions of Section 149 and 197 before any amendment is made to Schedule V in this regard.
- Accordingly, the Companies Amendment Act, 2020 (CAA 2020) amended this Section 149 and 197 for payment of remuneration to NED and ID as per schedule V in case of inadequate or no profit.
- On 18<sup>th</sup> March 2021 two amendments were notified (1) As per CAA 2020 section 149 and 197 were made effective amending payment of remuneration to NED and ID and (2) Amended Part II of Schedule V under the heading REMUNERATION, to include not just Managerial person but other Directors also including NED and ID. Now NED and ID can be remunerated annually from Rs.12 lakhs ( in case of negative effective capital) to 24 lakhs plus 0.01% of the effective capital in excess of Rs.250 Crores.
- Recently on 1<sup>st</sup> March, 2021 SEBI has issued Consultation Paper on “Review of Regulatory Provisions related to ID” and proposed to remunerate ID with Employees Stock Options Plan with a long vesting period of 5 years in place pf profit linked commission.

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