

An Analysis on the “Law related to Related Party Transactions”

navneet k. arora & co.
COMPANY SECRETARIES

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Proprietor 's Profile at a Glance

Navneet K. Arora & Co., Company Secretaries

BASIC DETAILS

- ✂ Name of the Proprietor – **CS Navneet Arora**
- ✂ Year of Passing of ICSI Final Examination – **June 1990**
- ✂ Date of becoming Associate Member of ICSI (ACS - 8421) – **3rd March 1992**
- ✂ Date of becoming Fellow Member of ICSI (FCS - 3214) – **21st July 1997**
- ✂ Date of holding Certificate of Practice (CP - 3005) – **20th November 1998**
- ✂ Experience (No. of Years) – **25 Years (15 Years in Practice)**



EDUCATIONAL QUALIFICATION:

- ✂ Master of Commerce.
- ✂ Fellow Member of The Institute of Company Secretaries of India
- ✂ Post Graduate Diploma in Financial Management

PROFESSIONAL ASSOCIATION / RECOGNITION / MEMBERSHIP OF CONFEDERATION BODIES:

- ✂ Member - **All India Management Association New Delhi (AIMA).**
- ✂ Professional Member - **PHD Chamber of Commerce and Industries, New Delhi.**
- ✂ Appointed as **Peer Reviewer** by ICSI to conduct peer review of Practicing Member of ICSI.
- ✂ ICSI Certified participant of **National Workshop on Diligence Report for Banks.**
- ✂ **Convener South Delhi Study Group of NIRC of the ICSI -2011, 2012, 2013 & 2014.** Also Past Governing Body Member of Kanpur Chapter of NIRC of the ICSI & Past Member of various Professional Development Committee of NIRC of the ICSI.
- ✂ Regular Participant, Speaker of Seminars / Workshop on the Professional Development Program of various Professional Management Institutes including Institute of Company Secretaries of India (ICSI), Asia Pacific Institute of Management (AIM), National Foundation for Corporate Governance (NFCG) etc.

An overview of Related Party Transactions

- ❑ A business deal or arrangement between two parties who are joined by a special relationship prior to the deal. For example, a business transaction between a major shareholder and the corporation, such as a contract for the shareholder's company to perform renovations to the corporation's offices, would be deemed a related-party transaction.
- ❑ As per Accounting Standard 18- 'Related Party Disclosures' issued by the ICAI, Related party means "Parties are considered to be related if at any time during the reporting period one party has the ability to control the other party or exercise significant influence over the other party in making financial and/or operating decisions" and Related Party transaction means "a transfer of resources or obligations between related parties, regardless of whether or not a price is charged. The following are the related parties as per AS-18
 - i. Holding companies, subsidiaries and fellow subsidiaries
 - ii. Associates and joint ventures
 - iii. Individuals (incl. their relatives) – having voting power giving them control or significant influence
 - iv. Key management personnel including their relatives
 - v. Enterprises where controlling individual or key managerial personnel has significant influence

However, disclosure is mandatory for the following categories of companies:

- i. Companies which are listed or are in process of listing
- ii. Banks, financial institutions and insurance companies
- iii. Enterprises having turnover > Rs. 50 cr.
- iv. Enterprises having borrowings > Rs. 10 cr.
- v. Holding / subsidiary company of any of the above

Definition of Related Party under Companies Act 2013

- ❑ **Extract of the relevant provisions prescribed in Section 2(76) , 188 of the Companies Act, 2013 as under:-**
- As per Section 2(76) of Companies Act 2013, Related party with reference to the Company means —
 - i. a director or his relative
 - ii. a key managerial personnel or his relative;
 - iii. a firm, in which a director, manager or his relative is a partner;
 - iv. a private company in which a director or manager is a member or director;
 - v. a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
 - vi. any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
 - vii. any person on whose advice, directions or instructions a director or manager is accustomed to act provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
 - viii. any company which is—
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;
 - ix. such other person as may be prescribed;

Definition of Related Party as per Company Rules

- The Companies Act 2013 provides for the list of related party under Section 2(76) of the Companies Act, 2013. further under Section 2(76)(ix) provides that related party includes “such other person as may be prescribed”.
- The Companies (Meetings of Board and its Powers) Rules, 2014 provides that “Related party” means a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.
- For the purposes of sub-clause (ix) of clause (76) of section 2 of the Act, a director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.
- List of relatives in terms of clause (77) of section 2.- A person shall be deemed to be the relative of another, if he or she is related to another in the following manner, namely:-
 - (1) Father: Provided that the term “Father” includes step-father.
 - (2) Mother: Provided that the term “Mother” includes the step-mother.
 - (3) Son: Provided that the term “Son” includes the step-son.
 - (4) Son’s wife.
 - (5) Daughter.
 - (6) Daughter’s husband.
 - (7) Brother: Provided that the term “Brother” includes the step-brother;
 - (8) Sister: Provided that the term “Sister” includes the step-sister.

Related Party Transactions

- Section 188 of the Companies Act 2013 provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to—
 - (a) sale, purchase or supply of any goods or materials;
 - (b) selling or otherwise disposing of, or buying, property of any kind;
 - (c) leasing of property of any kind;
 - (d) availing or rendering of any services;
 - (e) appointment of any agent for purchase or sale of goods, materials, services or property;
 - (f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and
 - (g) underwriting the subscription of any securities or derivatives thereof, of the company

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution.

Related Party Transactions Cont...

- The Act further provides that no member of the company shall vote on such special resolution to approve any contract or arrangement which may be entered into by the company, if such member is a related party.
- Provided also that nothing in this sub-section shall apply to any transactions entered into by the company in its ordinary course of business other than transactions which are not on an arm's length basis.
- The expression "arm's length transaction" means a transaction between two related parties that is conducted as if they were unrelated, so that there is no conflict of interest.
- Every contract or arrangement entered into under sub-section (1) shall be referred to in the Board's report to the shareholders along with the justification for entering into such contract or arrangement.
- Where any contract or arrangement is entered into by a director or any other employee, without obtaining the consent of the Board or approval by a special resolution in the general meeting under sub-section (1) and if it is not ratified by the Board or, as the case may be, by the shareholders at a meeting within three months from the date on which such contract or arrangement was entered into, such contract or arrangement shall be voidable at the option of the Board and if the contract or arrangement is with a related party to any director, or is authorized by any other director, the directors concerned shall indemnify the company against any loss incurred by it.

Related Party Transactions Cont...

- Without prejudice to anything contained in sub-section (3), it shall be open to the company to proceed against a director or any other employee who had entered into such contract or arrangement in contravention of the provisions of this section for recovery of any loss sustained by it as a result of such contract or arrangement.
- Any director or any other employee of a company, who had entered into or authorized the contract or arrangement in violation of the provisions of this section shall—
 - (i) in case of listed company, be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees, or with both; and
 - (ii) in case of any other company, be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

Related Party Transactions as per Companies Rules

- A company shall enter into any contract or arrangement with a related party subject to the following conditions, namely:-
 - (1) The agenda of the Board meeting at which the resolution is proposed to be moved shall disclose-
 - (a) the name of the related party and nature of relationship;
 - (b) the nature, duration of the contract and particulars of the contract or arrangement;
 - (c) the material terms of the contract or arrangement including the value, if any;
 - (d) any advance paid or received for the contract or arrangement, if any;
 - (e) the manner of determining the pricing and other commercial terms, both included as part of contract and not considered as part of the contract;
 - (f) whether all factors relevant to the contract have been considered, if not, the details of factors not considered with the rationale for not considering those factors; and
 - (g) any other information relevant or important for the Board to take a decision on the proposed transaction.
 - (2) Where any director is interested in any contract or arrangement with a related party, such director shall not be present at the meeting during discussions on the subject matter of the resolution relating to such contract or arrangement-

Related Party Transactions as per Companies Rules Cont...

- (3) For the purposes of first proviso to sub-section (1) of section 188, except with the prior approval of the company by a special resolution-
- (i) a company having a paid-up share capital of ten crore rupees or more shall not enter into a contract or arrangement with any related party; or
 - (ii) a company shall not enter into a transaction or transactions, where the transaction or transactions to be entered into -
 - (a) as contracts or arrangements with respect to clauses (a) to (e) of sub-section (1) of section 188 with criteria, as mentioned below -
 - (i) sale, purchase or supply of any goods or materials directly or through appointment of agents exceeding twenty five percent. of the annual turnover as mentioned in clause (a) and clause (e) respectively of sub-section (1) of section 188;
 - (ii) selling or otherwise disposing of, or buying, property of any kind directly or through appointment of agents exceeding ten percent. of net worth as mentioned in clause (b) and clause (e) respectively of sub-section (1) of section 188;
 - (iii) leasing of property of any kind exceeding ten percent. of the net worth or exceeding ten percent. of turnover as mentioned in clause (c) of sub-section (1) of section 188;

Related Party Transactions as per Companies Rules Cont...

- (iv) availing or rendering of any services directly or through appointment of agents exceeding ten percent. of the net worth as mentioned in clause (d) and clause (e) of sub-section (1) of section 188;
 - (b) appointment to any office or place of profit in the company, its subsidiary company or associate company at a monthly remuneration exceeding two and half lakh rupees as mentioned in clause (f) of sub-section (1) of section 188; or
 - (c) remuneration for underwriting the subscription of any securities or derivatives thereof of the company exceeding one percent. of the net worth as mentioned in clause (g) of sub-section (1) of section 188.
- Every company shall maintain one or more registers in Form MBP 4, and shall enter therein the particulars of-
 - (a) company or companies or bodies corporate, firms or other association of individuals, in which any director has any concern or interest, as mentioned under sub-section (1) of section 184, provided that the particulars of the company or companies or bodies corporate in which a director himself together with any other director holds two percent. or less of the paid-up share capital would not be required to be entered in the register;
 - (b) contracts or arrangements with a body corporate or firm or other entity as mentioned under sub-section (2) of section 184, in which any director is, directly or indirectly, concerned or interested; and

Related Party Transactions as per Companies Rules Cont...

(c) contracts or arrangements with a related party with respect to transactions to which section 188 applies.

- The entries in the register shall be made at once, whenever there is a cause to make entry, in chronological order and shall be authenticated by the company secretary of the company or by any other person authorized by the Board for the purpose.
- The register shall be kept at the registered office of the company and the register shall be preserved permanently and shall be kept in the custody of the company secretary of the company or any other person authorised by the Board for the purpose.
- The company shall provide extracts from such register to a member of the company on his request, within seven days from the date on which such request is made upon the payment of such fee as may be specified in the articles of the company but not exceeding ten rupees per page.

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Thanking you

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