

CHAPTER: 5

CORPORATE MEETING

Meaning and Definition of Company Meeting:

The word “meeting” is not defined anywhere in the Companies Act. Ordinarily, a company may be defined as gathering, assembling or coming together of two or more persons (by previous notice or by mutual arrangement) for discussion and transaction of some lawful business.

A company meeting may be defined as a concurrence or coming together of at least a quorum of members in order to transact either ordinary or special business of the company.

Some important definitions of meeting are given below:

In the case of Sharp vs. Dawes (1971), the meeting is defined as “An assembly of people for a lawful purpose” or “the coming together of at least two persons for any lawful purpose.”

According to P.K. Ghosh “Any gathering, assembly or coming together of two or more persons for the transaction of some lawful business of common concern is called meeting.”

According to K. Kishore, “A concurrence or coming together of at least a quorum of members by previous notice or mutual agreement for transaction business for a common interest is meeting.”

From the above definitions of meeting, it can be concluded that meeting is the congregation of several persons in a particular place for the purpose of discussing some important matters and expressing their opinion on the questions raised.

Characteristics of a Company Meeting:

The characteristics of a company meeting are as follows:

1. Two or more persons (who are the members of the Company) must be present at the meeting.

2. The assembly of persons must be for discussion and transaction of some lawful business.
3. A previous notice would be given for convening a meeting.
4. The meeting must be held at a particular place, date and time.
5. The meeting must be held as per provisions/rules of Companies Act.

One-Man Meeting:

To Convene a meeting, two or more persons must be present. A meeting cannot be constituted by one person. However, there are certain circumstances where one person can constitute a valid They are as follows:-

1. Meeting Convened by Central Government:

Where the Central Government calls an annual general meeting under Sec. 167 of the Act, it may direct that one member of the company present in person or by proxy shall constitute the meeting.

2. Absence of Quorum in an Adjourned Meeting:

By quorum we mean the minimum number of the members who must be present at a meeting as required by the rules. In the absence of quorum the proceedings of the company cannot be started.

If the quorum does not complete within half an hour of the prescribed time, meeting will be adjourned to the same time, place and date in the next week. If at the adjourned meeting also the quorum does not complete, the members present shall be quorum and attending members (even if one member is present) may be allowed to come to a decision and pass resolutions. It means one member present in person shall constitute a valid meeting.

3. Meeting Convened by Company Law Board:

Where the Company Law Board calls a meeting under Sec. 186 of the Act (other than an annual general meeting), it may direct that one member present in person or proxy shall be deemed to constitute a valid meeting.

4. Class Meeting of Shareholders:

Where one person held all the shares of a particular class, that member alone was held to constitute a valid meeting of that class of shareholders,

5. Meeting of One-Man Committee of Board of Directors:

As per Rule 77 of 'Table A', the board of directors may delegate their works to a Committee which may have only one member. When the meeting of such Committee will be held, only one member will be present and he alone will constitute a valid meeting.

Kinds of Company Meetings:

The meetings of a company may be classified into the following categories:

1. Meetings of shareholders:

- I. Statutory meeting;
- II. Annual general meeting (AGM)
- III. Extra ordinary general meeting;
- IV. Class meetings.

2. Meetings of directors:

- 1. Meetings of board of directors;
- 2. Meetings of directors;
- 3. Meetings of creditors.**
- 4. Meetings of debenture-holders.**

1. Meetings of Shareholders:

The shareholders are the real owners of the company, but due to certain limitations they cannot take part in the management of the company. They

leave this to their representatives called the directors. For controlling the board of directors and their activities 'shareholders' 'meetings' are held from time to time. Meeting of shareholders can be classified as under.

I. Statutory Meeting:

Every public company having share capital must convene a general meeting of shareholders within a period of not less than one month and not more than six months after the date on which it is authorised to commence its business. This is the first meeting of the shareholders of the company and it is held once in the whole life of the company.

The following companies need not to hold statutory meeting:

- (i) Private company.
- (ii) Company limited by Guarantee having no share capital.
- (iii) Unlimited liability company.
- (iv) A public company which was registered as a private company earlier.
- (v) A company which has been deemed as a public company under Sec. 43 A.

Notice of the Meeting:

The directors are required to send a notice of the meeting to all the members of the company at least 21 days before the date of the meeting stating that it is the 'statutory meeting' of the company. If the notice convening this meeting does not name it as the "Statutory Meeting" it will not Amount to compliance with the provisions of this section.

Objects of Statutory Meeting:

The statutory meeting is held to inform the shareholders about matters relating to incorporation, allotment of share, the details of the contracts concluded by the company, etc. According to Stephenson, "Statutory Meeting is convened in order to aord the shareholders an opportunity for seeing what degree of success has attained the floatation of the company and in order that any special matters requiring their approval may be laid before them."

Statutory Report:

The directors are required to prepare and send a report called the 'Statutory Report' to every member of the company at least 21 days before the date of the meeting. If the report is sent later it shall be deemed to have been duly forwarded if it is so agreed to by a unanimous vote of the members entitled to attend and vote at the meeting [Sec. 165 (2)]. A copy of this report should be sent to the Registrar.

Certification of Report:

The statutory report must be certified as correct by not less than two directors; one of whom shall be the managing director, if any. The auditors of company then shall certify it as correct regarding the shares allotted, cash received in respect of such shares and the receipts and payment of the company. [Sec. 165(4)]

A certified copy of the statutory report shall be filed with the registrar for registration immediately after the same has been sent to the members of the company. [Sec. 165(5)]

Procedure at the Meeting:

At the commencement of the meeting the Board shall place a list showing the name, addresses and occupation of the members of the company and the number of the shares held by them. During the continuance of the meeting the list shall remain open for inspection by members.

The members present at the meeting may discuss any matter relating to the formation of the company or arising out of statutory report, whether previous notice has been given or not. The meeting cannot pass a resolution on any item or on a subject unless notice has been given according to the provisions of the Act.

Effect of Non-compliance:

(i) If default is made in complying with the provisions of Section 165, every director or other officer of the company who is in default will be liable to a fine which may extend to Rs. 500.

(ii) If the statutory meeting is not held or the statutory report is not filed as per the provisions of Companies Act, the company may be compulsorily wound up under the orders of court. [Sec. 43(6)]

The court may, however, give direction for the statutory report to be filed or a meeting to be held as the case may be and refuse to order the winding up of the company. [Sec. 443(3)]

II. Annual General Meeting (AGM):

It is a meeting of shareholders which is held once in a year. The object of holding this meeting is to review the progress and prospects of the company and elect its office-bearers for the coming year.

Holding of the Meeting:

The first annual general meeting of the company is held within 18 months of its incorporation. After holding such meeting it is not necessary to hold any other annual general meeting in the year of its incorporation and in the next year.

Subsequent annual general meeting must be held by the company each year within six months of the closing of the financial year. In the interval between any two annual general meetings must not be more than fifteen months. The registrar is empowered to extend the time upto a period to three months except in the case of first annual general meeting.

Notice:

The Board of Directors has to call Annual General Meeting giving 21 days notice to all the members entitled to attend the meeting. However, such a meeting may be called with shorter notice, if it is agreed to by all the members to vote in the meeting.

Certified copies of Profit and Loss Account and Balance Sheet, Directors' Report and Auditor's Report should also be forwarded to the members at least 21 days before the holding of the meeting of the company. Considering the importance of annual general meeting to shareholders it has been held that the directors must call the meeting even though the accounts are not ready or the company is not functioning.

Effect of Non-Compliance:

(i) If default is made in holding the annual general meeting in accordance with the above provisions, the Central Government may on the application of any member of the company, call or direct for the calling of the meeting and give such directions for this purpose as it thinks proper. The directions may include that one member of the company present in person or by proxy shall be deemed to constitute the meeting. (Sec. 167)

(ii) If default is made in holding a meeting of the company in accordance with the above provisions, the company and its every officer who is in default shall be punishable with a fine which may extend to five hundred and in case of continued defaults, with a further fine which may extend to Rs. 250 for every day during which such default continues,

(i) Routine Business:

(a) Adoption of Annual Accounts, Directors' Report and Auditors' Report.

(b) To declare the dividend.

(c) To elect the directors in place of those retiring by rotation.

(d) To appoint auditors and fix their remuneration.

(ii) Special Business:

(a) To increase Authorised Capital.

(b) To alter the Articles of Association, etc.

III. Extraordinary General Meeting:

Extraordinary meeting is a general meeting which is held between two Annual General Meetings. Extraordinary General Meeting is Called to discuss any particular matter of urgent importance to the company. This meeting is called for the consideration of any specific subject, decision of which cannot be postponed to the next Annual General Meeting.

This meeting may also be called to discuss the following:

- (i) Alteration of any clause of Memorandum of Association; or
- (ii) Changes in the Articles of Association; or
- (iii) Scheme of the reduction of share capital etc.

The Extraordinary General Meeting may be called by the Directors or may be convened by the Shareholders if the Board of Directors does not arrange for it despite their requisition to call it.

Directors may call the Extraordinary General Meeting in accordance with the procedure laid down in the Articles of Association of the company.

Shareholders holding at least one-tenth of the paid-up share capital of the company can make a requisition to the Board of Directors to convene such a meeting.

If due to any reason it is impracticable to hold extraordinary general meeting the Company Law Board may order to call such meeting either on its own initiative or on the application of any director or any member of the company who are entitled to vote at the meeting.

Section 186 of the Companies Act empowers the Company Law Board to call only extraordinary general meeting and not the annual general meeting of the company. If no such meeting is convened within 21 days of their requisition, shareholders may themselves convene the meeting within 3 months from the date of their requisition.

A notice of 21 days has to be given to members indicating the nature and particulars of the resolutions to be discussed. The special resolutions passed at Extraordinary General Meeting have to be filed with the Registrar within 15 days.

IV. Class Meetings:

When the meeting of a particular class of shareholders takes place such as preference shareholder meeting, it is known as class meeting. Such a meeting can be attended only by that class of shareholders. The articles define the procedure for calling such meeting. Such a meeting is called for

the alteration in the rights and privileges of the shareholders and for the purpose of conversion of one class of shares into another.

2. Meetings of Directors:

I. Meetings of Board of Directors:

At Least One Meeting in Every Three Months:

The directors of a company exercise most of their powers in a joint meeting called the meeting of the Board.

In the case of every company, a meeting of the Board of Directors must be held:

(i) At least once in every three months, and

(ii) At least four such meetings shall be held in every year. [Sec. 285]

In other words, no three months should pass without directors' meeting being held, and no year should expire without at least four directors' meetings having been held in it.

The object of this section is to ensure that the Board meetings are held at reasonably frequent intervals so that the directors may be in touch with the management of the affairs of the company.

However, the Central Government is empowered to relax the rule with regard to any class of companies (Section 285). The object of this provision is to save smaller companies having insufficient business to be transacted at Board meetings from unnecessary hardships and expenditure involved in holding them.

Notice of the Meeting:

Notice Of every meeting of the Board of Directors must be given in writing to every director in India and at his usual address in India to every other director who is outside India for the time being (Sec. 286). A director has no power to waive his right of notice. Notice must be given to a director, even if he has stated that he will be unable to attend the meeting.

There is no need to send notice, if the articles provide for meetings to be held at regular intervals' e.g., monthly, the time and place being fixed. Also, if all the directors should meet casually, and are willing to hold a meeting, the meeting can be held notwithstanding the absence of notice.

Unless the articles of the company provide a definite period of notice, a reasonable notice must be given of the Board meeting. What is a reasonable notice will depend on any particular case. If a proper notice is not given the proceedings are invalid unless all the directors are present at the meeting.

The notice should mention the place, time and date of the meeting. The day must be a working day and the time should be during business hours unless agreed otherwise by all the directors. It is not necessary to state in the notice the business to be transacted, unless the articles of the company or the Act so require.

Agenda:

The term 'agenda' means things to be done. In the present context it is a statement of the business to be transacted at a meeting. It also sets out the order in which the business is to be dealt with. Though the Companies Act does not make it obligatory on the secretary to send an agenda or to incorporate the same in the notice of Board Meeting, yet by convention it necessarily accompanies the notice calling the meeting.

When the agenda is enclosed with the notice each director gives due consideration to the proposed business and comes with necessary preparations for discussion in the meeting.

Quorum:

There must be a proper quorum for every meeting. The quorum for Board Meeting should be at least two directors or one-third of total strength of the Board of Directors, whichever is more subject to a minimum of two directors. While determining the total strength, the vacancies are not counted.

Again the directors who are interested in any of the resolutions to be passed at the Board Meeting shall not be counted for the purpose of quorum of that resolution. If at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of directors, then the remaining

directors who are not interested will be the quorum for that item, provided their number is not less than two [Sec. 283].

If the meeting of the Board could not be held for want of quorum then unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week and at the same time and place.

Where that day happens to be a public holiday then the meeting stands adjourned to the next succeeding day, at the same time and place. If a meeting could not be held for want of a quorum, it shall all right be counted towards the minimum number of meetings which must be held in every year under Sec. 285. [Sec. 288]

Board meetings are called for the following business:

- (i) To issue shares and debentures.
- (ii) To make calls on shares.
- (iii) To forfeit the share
- (iv) To transfer, the shares.
- (v) To fix the rate of dividend.
- (vi) To take loan in addition to debentures.
- (vii) To invest the wealth of the company.
- (viii) To think over the difficulties of the company.
- (ix) To determine the policies of the company.

II. Meetings of the Committees of Directors:

The Board of Directors may form certain committees and delegate some of its powers to them. These committees should consist of only directors. The delegation of powers to such committees is to be authorised by the Articles of Association and should be subject to the provisions of the Companies Act.

In a large company routine matters like Allotment, Transfer, Finance are handled by sub-committees of the Board of Directors. The meetings of such committees are held in the same way as those of Board Meetings.

3. Meetings of Creditors:

The meetings of creditors are called when the company proposes to make a scheme for arrangement with its creditors.

Section, 391 to 393 of the Companies Act not only give powers to the company to compromise with the creditors but also lay down the procedure of doing so.

4. Meetings of Debenture Holders:

Meetings of the debenture holders are held according to the conditions contained in the debenture trust deed.

These meetings are called from time to time where the interests of debenture holders are involved at the time of reconstruction, reorganisation, amalgamation or winding up of the company.

The rules and regulations entered in trust deed relate to the notice of the meeting, appointment of a Chairman of the meeting, passing the resolutions, quorum of the meeting and the writing and signing of minutes.

Proxy:

Any member, entitled to attend and vote in a meeting, can appoint another person to attend and vote on his behalf. The person appointed is called the Proxy. The appointment of a Proxy must be made by a written instruction signed by the appointer and deposited with the company, not more than 48 hours before the meeting.

A Proxy is not entitled to speak in the meeting and vote only in a poll unless the articles provide otherwise. A Proxy need not be a member of the company. A member of a private company cannot appoint more than one Proxy to attend on the same occasion, unless the articles otherwise provide.

A body corporate which is a member of a company can appoint a representative or proxy, by resolution of the Board. The President of India or

the Governor of a State, if he is a member of a company, may appoint any person to act as his representative in a meeting.

Method of Voting:

Resolutions are to be voted upon, in the first instance, by show of hands. The Chairman's declaration of the results of voting by show of hands is conclusive.

A poll is to be taken:

- (i) If the Chairman so directs;
- (ii) In all cases, if it is demanded by members holding at least 1/10th of the voting power or paid-up capital;
- (iii) In the case of public companies if it is demanded by at least 5 members present and entitled to vote; and
- (iv) In the case of private companies if it is demanded by any one member if not more than 7 members are present and by 2 members if more than 7 members are present.

A poll on a resolution for adjournment or for the appointment of a Chairman is to be taken immediately. In other cases it is to be taken when the Chairman decides, but it must be within 48 hours of the demand for poll.

A poll is to be taken in the manner decided by the Chairman. The usual method is to ask each member to record his decision on ballot papers provided for the purpose. The Chairman shall appoint two scrutinizers to scrutinize the ballot papers.