

INTERESTED DIRECTOR-WHETHER QUORUM

{Section 2(49), 174(3), 184(2); Rule 15 for Ch XII}

Sec 2(49): In this Act, unless the context otherwise requires , “Interested Director” means a director who is in any way, whether by himself or through any of his relatives or firm, body corporate or other association of individuals in which he or any of his relatives is a partner, director or a member, interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into by or on behalf of a company.

Sec 174(3): Where at any time the number of interested directors exceeds or is equal to two thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.

Explanation - For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.

Sec 184(2): Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

- (a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or
- (b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be,

shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting

Observations:

- (1) Opening words of Sec 2 are very relevant here. In view of this, the definition of Interested Director given in section 2 can be ignored for the purposes of Quorum, u/s 174 as the said section while prescribing dis-interested quorum states that meaning of “Interested Directors” should be taken within the meaning of section 184(2).
- (2) While describing the nature of Interest, Section 184(2) does not cover an Individual within the meaning of Interested Director in case the contract/agreement is with an individual.
- (3) Hence, even though the contract/agreement is with a director, he can still be counted for the purpose of quorum and he can also participate.

