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Right of members to Copies of Balance sheet, etc u/s 219 (right-of-members-to-copies-of-balance-sheet-etc-u-s-219-13790.asp)



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on 14 May 2012

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Introduction:

Section 219 of the Companies Act, 1956 gives an important right, to members, trustees of debenture holders, certain other persons although they are not members, to receive copies of balance sheet and other documents legally required to be annexed. The wordings in the section are verbose and in my view many may find it difficult to read and understand the true meaning and purport of the Section. It needs a very careful and analytical reading to

understand the intention of the legislature. Therefore an attempt is made to simplify the understanding of this particular section.

Analysis of Section 219:

This section is applicable to both Private and Public Limited companies whether having share capital or not and whether listed or not.

Section 219(1) provides that a copy of every balance-sheet, profit and loss account, the auditors' report and every other document required by law, to be annexed or attached to the balance-sheet, which is to be laid before a company in General meeting shall, be sent to every member of the company to every trustee or debenture holders, whether or not such member or debenture holder, is entitled to notice of general meetings and to all persons other than such members or trustees, being persons so entitled.

The above referred documents are to be sent at least 21 days before the date of the meeting at which the annual accounts will be adopted by the shareholders.

Meaning of “other document required by law”:

Legislature has deliberately used the words "**required by law**" to cover the requirements under other Acts also. For e.g., Section 212 of the Companies Act itself requires that a holding company has to annex the balance sheet and other documents of its subsidiary company with its Annual report. Similarly Section 217 requires that directors' report to be annexed to balance sheet section 217(2A) further requires that a statement showing the prescribed details about the employees are required to be attached to the directors' report. Listing agreement with stock exchanges requires listed companies to prepare and annex duly authenticated cash flow statement prepared as per AS-3 (Clause no.32) and Corporate governance report with certificates of CEO(Clause no.49) etc.,

Meaning of “persons other than such members or trustees”:

Readers may note that Section 219 mandates that copies of annual reports shall be sent to persons other than such members or trustees. Let us now find out who are these persons. These are Auditors of the company, Preference shareholders, (although not entitled to vote at General meetings) and persons who are vested with the rights of members being legal representatives or by court's orders.

Option to Listed companies:

Readers may refer to 219(1) (b) (iv) which implies that listed companies can either send full set of annual accounts together with documents required by law or it can opt for the following alternative to comply with the requirement.

1. It can send salient features of statement of accounts in Form no.23AB duly approved and authenticated by the Board of directors along with Auditors report and other documents legally required to be annexed. However it should make the Balance sheet, P& L a/c and other documents available for inspection at the registered office of the company during business hours at least 21 days before the meeting.

2. Full set of Annual reports in soft copy to those whose E-mail is registered and to others on making a demand.

The Institute of Chartered Accountants of India, suggested for audit of abridged annual accounts to lend credibility to such statements and a format has also been suggested to auditors to give a report thereon.

As a part of green initiative in corporate governance measure, Ministry of Corporate Affairs permitted furnishing of soft copies of Annual reports who have consented to receive through mails to save paper and reduce cost to the company.

Listing agreement requirements:

Readers may refer to amended Clause no.32 of listing agreement which permits sending of full annual reports to those share holders who have registered their E-mails. To all others hard copy of abridged annual report can be sent. If any shareholder demands for full set of annual report, it shall be provided. Further Listed companies are also required under Clause no.31 to send 6 copies of annual reports and notice with other documents to be annexed legally. Listed company also shares information as per Clause no. 41 by publication of un-audited /audited financial results and by corporate filing and dissemination system through website www.corp.filing.co.in (<http://www.corp.filing.co.in/>) besides company's own website as per clause no.52.

When copies of Balance sheet & other documents need not be sent?

Let us now focus on proviso to Section 219. Various Clauses in clause (b) look similar in a causal reading. Therefore to draw attention of the readers and to give emphasis, certain words are indicated in bold. As per the proviso, Annual report and other documents need not be sent in the following cases:-

1. In the case of a company not having a share capital to a member, or holder of debentures, of the company who is not entitled to have notices of general meetings of the company sent to him.(Readers may note the bold words for better understanding)
2. To a member, or holder of debentures, of the company, who is not entitled to have notices of general meetings of the company sent to him and of whose address the company is unaware. For e.g., legal heirs have not provided their address, it may not be possible to send the notice and other documents. (refer to Section 53(5))
3. To more than one of the joint-holders of any shares or debentures, none of whom is entitled to have such notices sent to him by virtue of a clause in the Articles of Association. Normally Articles of association provides that first named joint holder will be entitled to receive notice to the exclusion of other joint holders.{refer to section 53(4) also}
4. In the case of joint-holders of any shares or debentures some of whom are and some of whom are not entitled to have such notices sent to them, to those who are not so entitled. Not all joint will be entitled to the notices. The joint holders can split the holding in such way to receive notice or other documents by making such request. And serving on First named joint holder will meet the requirement of law. This can lead to that situation.{ refer to section 169 also}
5. Listed companies subject to compliance of conditions as mentioned above.

Whether notice along with aforesaid documents can be sent less than 21 days?

Section 171 provides that notice of general meetings is required to be sent at least 21 days before the date of the general meeting. However shorter notice less than 21 days notice is permissible, if it is so agreed by all the members entitled to vote at the meeting.

What is the mode of service of notice and other documents?

Section 53 of the Companies Act prescribes two modes for serving the documents, one to serve personally and the other by post at his registered address of the member. Where documents are sent by post, it shall be deemed to have been effected, in the case of notice of meetings, after expiry of 48 hours from the date of posting. Hence notice together with all documents required by law have to be posted at least 23 clear days (21+2days) before the meeting date to ensure proper service of documents.

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Who can demand to have copies of Annual reports?

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Any member or debenture holder of a company and any person from whom the company has accepted a sum of money by way of deposit can have the copies of such documents free of cost on demand.

Deposit need not necessarily be a deposit accepted u/s 58-A. It can be any deposit including inter corporate deposit. The demand has to be complied with only after the copies of annual reports are ready. Any such requests have to be complied within 7 days of requisition.

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Any member can inspect these documents being public documents on making payment of prescribed fee either at the office of Registrar of companies or through MCA portal.

Corporate

What is the penalty for violation?

Companies (Amendment) Act, 2000 has increased the penalty from Rs.500 to Rs.5000/-. Penalties are levied for non compliance of both sub (1) and (2).

If default is made in complying with sub-section (1) i.e. supply of balance sheet etc to member, trustee or debenture holders and other entitled persons, the company and every officer of the company who is in default, shall be punishable with a fine which may extend to Rs.5,000/-.

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Non supply of copy of balance sheet and other documents within 7 days of demand by persons entitled to demand as per mentioned under sub-section (2), the company and every officer of the company who is in default, shall be punishable with a fine which may extend to Rs.5,000/- if he had already made a demand for and been furnished with a copy of the Balance sheet and other documents.

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Complaints for non receipt of Balance sheet:



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Shareholder can lodge complaints with Ministry of corporate affairs/concerned Registrar of companies for non receipt of annual reports. Listed companies are required to nominate a compliance officer and designate a specific E mail ID for handling shareholder or investor grievances and this can be used for lodging complaints.

Supreme court in the case of HV Jairam Vs ICICI Ltd (2000)99 Com.cases 341(SC) held that the cause of action would arise only where the registered office is situated and complaint alleging offence for non delivery of notice, Annual reports can be filed only in courts where registered office of Company is situated and not where the complainant is residing. It is very interesting to note that members can also file a consumer case as shares and debentures are regarded as goods. Member/investor by proving deficiency of service by an intermediary or by the company can file a consumer complaint in Consumer Forum in the matters relating shares or debentures.

Shareholders of listed companies have another option to lodge a complaint with stock exchanges or SEBI in the prescribed format or online on SCORES portal of SEBI or by sending by post also. If Central government directs for supply on balance sheet on receipt of a complaint, the same must be complied with forthwith.

Concluding remark:

Receiving of Annual reports with notice of general meetings is an important right available to members as it gives valuable information about the performance of the company and business scenario. Members can assess the strengths of the company and take a decision to sell or buy shares or exercise their rights available as they deem fit. Complaints about non receipt are also indicative of company's attitude towards compliances and investors. Companies must respond to the requests for supply of balance sheets without fail to avoid fines and to project its good image.

G S Rao, Chief Manager (Legal), OCL India Limited

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