The law relating to resignation of directors-Some perspectives

The provisions relating to resignation by a director are contained in Section 168 of the Companies Act, 2013(hereinafter referred to as "The Act").There was no corresponding provision in the erstwhile 1956 Act. Section 283 of the said Act only set out the different circumstances leading to the vacation of office by a director which is covered under Section 167 in the present Act.

In this exposition, we shall articulate on the nuances of the law, as also discuss the dichotomy in the Act as between Section 168 and 165 on the issue as also set out the procedural steps to be considered where the company is saddled with such an eventuality.

Resignation defined

Expectedly the Act does not define the term "resignation". When an Act does not define a word used therein, the legislature must be taken to have used that expression in its ordinary , dictionary meaning*. (Union of India v Delhi Cloth &General Mills Ltd(AIR 1963 SC791).*

Black's Law Dictionary (7th Edition) defines the term at page 1211 as under:

The act or an instance of surrendering or relinquishing an office, right or claim; A formal notification of relinquishing an office or position".

Resignation is a voluntary form of termination, generally, of employment. What is its characteristic feature is that it connotes a voluntary act. Where it is obtained under duress or coercion it is analogous to removal, not an act emanating out of one's own volition.

In Latin, resignation has been defined as "*Resignatio est juris propril spontaneare fustatio"* which expression when translated into English means that it is spontaneous relinquishment of one's own right.

The Supreme Court had an occasion to explain the expression thus in *Moti Ram V Param Dev(AIR1993CS 1662):*

"Resignation is the spontaneous relinquishment of one's own right and in relation to an office, it connotes the giving up or relinquishing the office. It comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority."

Resignation must be in writing-Section 168(1)

Sub-section (1) postulates that a director may resign from his office by giving notice to the company.

It follows from the above that the resignation cannot be verbal nor can it be implied from the conduct of the person under the Act.

It is pertinent to note that there was no express requirement under the old law that the resignation shall be in writing .In *Latchford Premier Cinema Limited v Ennon and Paterson (1932)(2 Comp Cas 106),* it was noted that a director could resign his position verbally at the general meeting even though the articles of the company provide for it to be in writing.

Considering that the issue of a notice in writing by the director is a statutory compulsion, it follows that the service of such notice by the director shall comply with the requirements set out in Section 20.The notice shall be served on the company or an officer of the company by sending the same to the registered office by registered post or speed post or by courier service or by leaving the same at the registered office or by means of an electronic mode or any other mode as maybe prescribed under Rule 35 of the Companies (Incorporation)Rules, 2014.

Thus a letter in writing sent to the company or to the officer of the company which expression is covered under Section 2(59) served through the required mode set out above shall suffice. The notice can also be through an email as recognized under Section 20.

In *Vikram Singh v Ram Balabhji Kasat (AIR 1995)(MP 140),* it was held that where the letter of resignation is typewritten and bears the signature of the director, it shall be valid.

Notice must be issued to the company or to an Officer

For the notice of resignation, it is imperative that it should be sent to the competent authority. Issue of notice to the company implies that it has to be sent to the Board of directors. Alternatively, it can be sent to an "officer" of the company as defined under Section 2(59).

Where the resignation has been sent to a third party, it shall not have any validity as held in *Registrar of Companies v Orissa Paper Products Limited (1988)(63 Comp Cas 460)(Iri).*

When does the resignation take effect-Section 168(2)

Considering the fact that the act of resignation is a spontaneous and unilateral act, it follows that it takes effect immediately upon its receipt by the company unless the director has indicated in the notice that it shall take effect prospectively.

There is no mandatory requirement for the resignation to be accepted by the Board. In an old English case, it was held that the director can relinquish office any time he pleases and his resignation is effective upon its receipt by the company and is not dependent upon its acceptance.*(Glossop v Glossop)(1907)2 Ch 370).*

Acceptance of resignation becomes necessary if the Articles so provide

The requirement that the Board shall accept the resignation may be a stipulation contained in the Articles in which case the resignation would take effect only upon the Board passing a resolution accepting the resignation. A stipulation on the above lines in the Articles shall not make the Articles inconsistent with the provisions of the Act.

Resignation of director -no failure in his fiduciary obligations

Once the director dons the mantle of directorship, he is expected always to discharge his fiduciary obligations to the company. Given the fact that the decision to take up a directorship is purely a voluntary decision, resignation by a director is not a manifestation of his fiduciary powers. His right to resign remains unabated, even if his resignation has the consequence of having a disastrous impact on the operations of the company*.(Hunter Kane Ltd v Watkins(2003)(EWCH186(Ch.)*

Withdrawal of resignation

The Act provides that the resignation shall take effect once it is taken on record by the company. From this it follows that the director can withdraw the resignation until such time it is taken on record by the company.

Once the Board has taken cognizance of the resignation, the decision to withdraw is no longer unilateral and it can be effectuated only when the Board approves of the decision to withdraw his resignation and passes a resolution to this effect.

In *Smt.Renuka Dalta v Biological E Limited (65Taxmann.52)(AP)*, the Court held the view that while resignation can be unilateral, the withdrawal thereof is not so and till such time the Board resolves to accept his request for withdrawal, the cessation of office remains valid.

The Apex Court has held in *UOI v Gopal Chandra Mishra (AIR 1978)* that a director can withdraw his resignation till such time it takes effect i.e., until such time it is received by the company and taken note of.

Is it necessary for the resignation to be placed on record at a meeting of the Board

Section 168(2) contemplates that the resignation shall take effect on the date it is received by the company and taken on record unless the director has indicated that it shall have prospective application.

Section 168(1) calls upon the director demitting office to give notice to the company or any of its officers.

This being so, there is no need for the board to meet and take note of the resignation.

It would be in order if at the next meeting, the resignation is recorded by the Board with appropriate noting in the minutes.

Apparent dichotomy in the Act as between Section 165 and Section 168 as regards resignation

Section 165 sets out the limits on the number of directorships an individual can hold.

Section 165(3) which is a grandfathering clause provides that where a person was holding the position of director in more than the stipulated number of companies, he shall have to make a choice as regards the companies with which he shall continue to be associated and indicate his choice to the companies concerned as also to the Registrar about his choice of companies within one year from the date of commencement of the Act.

Section 165(4) states that any resignation made pursuant to clause (b) of sub-section (3) shall become effective immediately upon the dispatch of the same to the company concerned.

It is pertinent to note that whereas Section 168(1) provides that the resignation shall take effect upon the notice being received by the company and taken on record, Section 165(4) stipulates that the resignation shall be effective once it is dispatched to the company.

One fails to understand the differences between the above two Sections on the point as to when the resignation is effectuated. Admittedly, Section 165(4) comes into play when the resignation is triggered off by reason of the fact that the number of directorships held had exceeded the stipulated maximum.

Resignation whether prompted under Section 165(3)(b) or which is occasioned by a unilateral act of the director under Section 168(1), is at the end of the day one and the same. It is therefore intriguing that the Act should postulate differently under two provisions as to when the resignation becomes effective.

What if the resignation sent by the director under Section 165(4) is lost in transit and never reaches the company? In such a situation can it be concluded that the resignation has not taken place at all? It is therefore beyond our comprehension that the Act should conjure up two sets of methodologies as to when resignation is effective.

In our considered view, Section 168 is the specific provision which deals with resignation. Section 165 deals with the ceiling on the number of directorships primarily.

It is a settled principle of construction that where two provisions in the Act show divergence on the same issue, the general provision shall yield to the special provision.

The above principle has been acknowledged by the Supreme Court in *Venkateshwar Rao v Govt. of AP (AIR 1966 SC 828).*

In *Mangilal v State of Rajasthan (1997)(AlHC(1892)(Raj.)* it was observed that when a specific provision is made for a certain purpose, under the rules of interpretation, it excludes the general provision.

In our considered view Section 165(4) should be read harmoniously with Section 168 and in both situations, the resignation shall be effective only when it is received and taken on record by the company.

Reporting requirements on resignation as applicable for listed companies

The resignation of a director whether independent or otherwise is a material event under Regulation 30 of the SEBI(LODR) Regulations as it forms a part of Part A of Para A under Schedule III to the Regulations under Item 7 thereof. This clause speaks about intimation to be provided to the Exchanges when there is a ”change in directors”. Resignation by a director would indeed constitute a change in the directors.

Recently, Industry standards have been introduced by SEBI in consultation with the leading chambers of commerce, to ensure, inter alia, homogeneity and a standardized approach towards dissemination of material information by listed companies.

As per the standard, the resignation shall come into effect on the last date the concerned personnel is associated with the company.

The above requirement would obviously be in respect of executive directors and key managerial personnel upon whose resignation they may have to serve a notice period unless the management waives this requirement.

The intimation to the Exchanges as regards resignation of a director should be accompanied by a copy of the letter of resignation.

The Industry Standard provides the facility of allowing the company to redact from the letter information other than the detailed reasons for the resignation.

Apart from the above, the fact of resignation and the reasons therefor should also be reported in the Corporate Governance Section of the Board’s Report with a confirmation that the reasons as adduced by the company for the resignation are corroborated by the concerned director. The resignation should also be recorded in the Board’s Report under Section 134.

Is it necessary for the director to file his resignation in the required form to the Registrar of companies

As has been discussed above, the resignation of a director comes into effect from the date it is received by the company and taken on record. Filing of the required intimation to the Registrar is only an intimation to enable the Registrar to make appropriate changes in the records.

There was some trepidation in the minds of directors that they shall also have to file the required form with the Registrar for completion of the process of resignation.

This apprehension stemmed from the fact that the proviso under Section 168(1) originally provided that the director "shall also forward" a copy of the resignation to the Registrar. To allay any such apprehension, the words" director may also forward "have been introduced to substitute what was originally stated with effect from 7.5.2018 through the Companies (Amendment)Act, 2017.

It is common knowledge that the use of the expression "shall" prima facie leads to the conclusion that the provision shall carry mandatory force. Reference may be made to the Supreme Court's view on this in *Sainik Motors Limited v State of Rajasthan (AIR 1961)(1480).*

On the other hand, the use of the word "may" suggests that the provision shall have only persuasive force and that there can be discretion in its observance. Hence the provision is considered as a permissive provision whereas the word "shall" is indicative of a mandatory force making the application of the provision imperative*.(Padubidri Damodar Shenoy v Indian Airlines Ltd (2009)(AIR SCW 5761).*

It is pertinent to note that the above is not a universal rule and depending upon the object and purpose of the provision the use of "may" has been held to make the provision mandatory.

However, in the context of Section 168, the above change in the law makes it clear that there is no compulsory duty cast on the director to file the form pertaining to his resignation. Even if the company has failed to file the intimation, the resignation shall still be effective if the director can prove that he has resigned and that the same has been received by the company.

Conclusion

Although the resignation by a director is common place it is important to understand the ramifications it gives rise to. The company should ensure that the required compliances are ensured invariably in time and that the Stock Exchanges are also kept in the loop as stated above. Failure to ensure

compliances in this context will expose the company to penalties under Section 172.

Ramaswami Kalidas, FCS, MBA

Dated September 21, 2025

Mumbai