

# ANALYSIS OF SECTION 203 OF COMPANIES ACT, 2013

## APPOINTMENT OF KEY MANAGERIAL PERSONNEL

### **Which Companies need to have whole-time key managerial personnel?**

Section 203 states that every listed company & every other public company having a paid-up share capital (PUSC) of  $\geq$  Rs. 10 crore shall have whole-time key managerial personnel (KMP).

### **Who are KMPs?**

- (i) Managing Director
- (ii) Chief Executive Officer (CEO)
- (iii) Manager
- (iv) Whole-time director (WTD)
- (v) Company Secretary (CS)
- (vi) Chief Financial Officer

### **Appointment of KMP:**

If a company does not have manager, CEO or manager, it shall appoint WTD in their absence.

All KMPs shall be appointed by Board resolution containing terms & conditions therein.

The aforesaid section says that no individual shall be appointed/ re-appointed as chairperson as well as the MD or CEO simultaneously.

But if the company satisfies below appearing conditions, then it can do so-

1. Articles of the Company permit such appointment/ re-appointment
2. The Company has multiple businesses

### **Applicability of Section 203:**

This Section shall not apply to public companies

- a. Having PUSC of  $\geq$  100 crore & Turnover  $\geq$  1000 crore
- b. Engaged in multiple businesses
- c. Have appointed CEO for each such business

### **Can KMP hold office in more than one company?**

No KMP shall hold office in more than one company except in its subsidiary company. Conversely he can be a Director in another company with the approval of the Board.

Also a company may appoint an individual as its MD, if he is already a MD or Manager in not more than 1 company, provided that such appointment is done with Board resolution with the approval of directors present at the meeting and a notice to this effect was already circulated.

#### **Vacancy of KMP:**

If any vacancy is created, such shall be filled within 6 months from date of vacancy.

#### **Can an employee of one company become KMP of other company?**

As per Section 203, KMP are whole-time individuals deployed with the companies. However, a KMP, with the approval of Board, can be a director in another company. Any of the KMPs as mentioned above are employed with the company in the capacity of KMP. Indirectly they are employees of the companies as they are getting paid for their services, they provide as a KMP.

But a KMP being appointed as Director in another company, shall not be WTD or MD because a KMP cannot be appointed as KMP in other company except in its subsidiary company. However a MD can be appointed in another company if he is already a MD in not more than one company.

This implies that an employee working as KMP can be appointed in another company as Director with the approval of Board. But the section nowhere mentions whether an employee, who is not a KMP, can be appointed as KMP in another company or not. Accordingly, an employee not working as KMP in a company may be appointed as KMP in another company. Post his appointment as KMP, provisions of Section 203 shall follow.