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**RESOLUTION REQUIRING SPECIAL NOTICE AND BY POSTAL  
BALLOT**- Pallavi Chauhan<sup>1</sup>**ABSTRACT**

The paper explores the provisions of "Resolution Requiring Special Notice and By Postal Ballot" under the Companies Act, 2013. It introduces the requirement of special notice for certain resolutions and the significance of voting by postal ballot for companies with over 200 members. However, the implementation of these provisions has been plagued by challenges, including the minimum threshold of shareholder support, lack of transparency, low voter turnout, and inadequate postal ballot tracking. The hypothesis proposes that reviewing and improving the provisions will lead to increased shareholder participation in decision-making. It suggests removing the minimum threshold requirement to encourage minority shareholder involvement and emphasizes the importance of clear guidelines for special notice and postal ballot processes. The research objectives aim to assess the effectiveness of Special Resolution and Postal Ballot provisions, analyze the relevance of these methods during the COVID-19 pandemic, and examine their global impact under the Companies Act, 2013. The paper outlines matters exclusively transacted through postal ballots for larger companies and details the procedural steps for passing resolutions via postal ballot, including board meetings, notice dispatch, advertisement publication, postal ballot receipt, register maintenance, and results declaration. During the COVID-19 pandemic, difficulties in delivering notices and responses led to guidelines for conducting general meetings. The importance of postal ballots for foreign subsidiaries is discussed, as well as options for holding meetings with directors and shareholders located abroad. Challenges include the minimum threshold limiting minority shareholder participation, lack of transparency, last-

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minute special notices, low voter turnout for non-resident shareholders, and the potential for proxy voting and manipulation. In conclusion, the paper suggests for transparent and democratic decision-making, but improvements are required to enhance shareholder engagement and ensure a robust postal ballot system with confidentiality. Addressing these concerns will lead to a more efficient and effective decision-making process for companies in India.

## **INTRODUCTION**

The requirement for special notice in relation to a resolution is specified in Section 115 of the Companies Act 2013 and corresponds to Section 190 of the Companies Act, 1956. This section mandates that where a special notice is required for any resolution, members holding at least 1% of the total voting power or shares with a paid-up value of at least one lakh rupees must give notice of their intention to propose the resolution in the manner prescribed. Section 115, in conjunction with “Rule 23 of the Companies (Management and Administration) Rules, 2014”, governs resolutions that require special notice. The resolution which requires special notice may or may not be a special resolution. As a general rule, all matters that require special notice under the act are considered to be ordinary resolutions. Voting by postal ballot refers to the process of casting votes by mail or electronic means.<sup>2</sup> Companies with more than 200 members are required to transact specified business items exclusively through postal ballots, instead of conducting business at a general meeting. If the majority of shareholders give their assent to a resolution through postal ballot, it is considered to have been passed at a general meeting<sup>3</sup>.

## **MATTERS TO BE TRANSACT ONLY BY POSTAL BALLOT**

Section 110(1) and rule 22 (16)<sup>4</sup> of the Act outline the list of matters that companies with over 200 members determined by section 2 (55) are required to transact exclusively through postal ballots. These matters include changes to the company's objects clause or main objects, alterations to the AOA, changes in the registered office location, utilization of funds raised

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<sup>2</sup>Section 2(65), The Companies Act, 2013

<sup>3</sup>Section 110(2), The Companies Act, 2013

<sup>4</sup> Rule 22(16), The Companies (Management and Administration) Rules, 2014 and Secretarial Standard-2

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from the public, issuing shares with different voting or dividend rights, buy-back of shares, providing loans, guarantees, or security in excess of specified limits etc.<sup>5</sup>

### PROCEDURE FOR PASSING A RESOLUTION BY POSTAL BALLOT

Section 110(2) lays down the procedure which requires the following steps:

- 1. Board Meeting Convening:** A Board meeting with 7 days' notice, or shorter if necessary should be organized. Agendas to be passed include Postal Ballot business, approval of Postal Ballot notice, authorization for company secretary or director signature, appointment of an independent scrutinizer, and setting the cut-off date for voting rights.
- 2. Notice Dispatch:** Notices must be sent to all shareholders through registered post, speed post, electronic means, or courier services, within 30 days and must include a draft resolution, be placed on the company website after being sent to shareholders.
- 3. Advertisement Publication:** Advertisements must be published in both a vernacular language and English. The information about Postal Ballot business, including e-voting, dispatch and completion dates, voting dates, and information about obtaining a duplicate ballot form if necessary must be included.
- 4. Postal Ballot Receipt:** After shareholders have sent back their approval or dissent in writing, should be kept in the scrutinizer's custody until approved and signed by the Chairman. Any reply received after 30 days will be considered as if no reply was received.
- 5. Register Maintenance:** He must maintain a register to record shareholder's decision, including name, number of shares held, folio number, nominal value, differential voting rights, invalid Postal Ballots etc and submit a report within 7 days of the last receipt of Postal Ballot forms to the Chairman or an authorized person.
- 7. Results Declaration:** The results should be displayed for 3 days on the notice board of the company along with the scrutinizer's report on the company's website.

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<sup>5</sup> M. YASHASVI H.R. SAVIPRASAD, "Postal ballot for Companies - A Critical Examination of the Proposal", [2000] 26 SCL 30 (Mag.)

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- 8. Resolution Passing:** A resolution is deemed to be passed in the general meeting if it receives the required majority assent and cannot be rescinded except by a subsequent Postal Ballot resolution. The provisions related to Postal Ballot are mandatory and the company must comply with them to ensure the validity of the resolution passed<sup>6</sup>.

### **HOW PASSING OF RESOLUTION BY SPECIAL NOTICE AND BY POSTAL BALLOTS HELPED THE COMPANIES IN THE COVID-19 SCENARIO.**

The shareholders have pointed out the difficulties in delivering notices and responses by mail during the COVID-19 pandemic. To address these difficulties and provide clarity on the procedures for conducting general meetings (EGMs) during the pandemic, the following guidelines were issued. Companies are required to provide notices to members through registered e-mails with the company or the depository participant/depository. Companies that are required to provide e-voting facilities must also publish a public notice on the website of the company and stock exchange and inform members about the time and date of the EGM and the way in which they can cast their votes remotely. Companies that do not provide e-voting must prominently display a copy of the notice on their website and contact members to register their e-mail addresses or issue a public notice in a local newspaper. The chairman of the meeting must ensure that all feasible efforts have been made to enable members to participate and vote in the meeting. This is how e voting facility help in the pandemic.

#### **Requirement for voting by show of hands**

The “General Circular No. 14/2020 dated 8th April, 2020” substituted resolutions by show of hands. The new requirement is that the chairman must ensure the proper functioning of the e-voting system during the meeting on Video Conferencing or OAVM. A process for email address and sending notices must be provided by the eligible company to the shareholders who can only provide their assent or dissent through e-meeting with no requirement of general meeting.

### **POSTAL BALLOT AND ITS IMPORTANCE IN HOLDING MEETINGS FOR FOREIGN SUBSIDIARIES**

The concept of the world becoming a global village has made it increasingly common for listed companies to have shareholders located in different parts of the country or the world.

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<sup>6</sup>Section 110(4), The Companies Act 2013

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To address this issue, the Kumar Mangalam Birla Committee on Corporate Governance introduced the Postal Ballot, which allows shareholders to participate in decision-making processes without physically attending meetings. This was formalized through the insertion of section 192A in the Companies (Amendment) Act, 2000, which made it mandatory for certain resolutions to be passed by way of Postal Ballot. With the advancement of technology, holding board meetings with foreign directors or for companies with directors and shareholders located abroad has also become more common. In such cases, the company has various options for holding board or general meetings to ensure compliance with statutory requirements<sup>7</sup>.

The advent of technology has made it easier and more cost-effective for companies to hold general meetings. The Companies (Passing of Resolution by Postal Ballot) Rules, 2011 formalize the process of voting by electronic mode. The rules prescribe the mode of sending notices, which can be done by email, registered post or any other secured mode of posting. Electronic voting is considered to be more cost-effective and efficient, as it is easier for shareholders to participate and results can be declared faster. However in The Bombay High Court ruled in the case of *Wadala Commodities Limited vs Godrej Industries Limited*<sup>8</sup> that postal ballots and e-voting cannot replace the need for a general meeting of shareholders. The court stated that these methods are just additional options, and the provisions of the Companies Act and SEBI circular do not allow for a resolution to be passed solely through postal or electronic voting. The court concluded that voting by mail or email is inconsistent with the legislative intention and spirit of the SEBI circular and listing agreement.

### **CHALLENGES IN THE RESOLUTION BY SPECIAL NOTICE AND POSTAL BALLOT**

One of the major problems with resolution by special notice is the requirement of a minimum threshold of shareholders' support. As per the act, the resolution can be proposed only if it is supported by at least one-tenth of the total voting power of all shareholders eligible to vote. This requirement makes it difficult for minority shareholders to propose resolutions, leading to a concentration of power in the hands of the majority shareholders. Another issue with the resolution by special notice is the lack of transparency in the process. The act does not

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<sup>7</sup> Aditi Jhunjhunwala, "How do Foreign Subsidiaries hold meetings?", [2012] 20 taxmann.com 92

<sup>8</sup>[2014] 45 taxmann.com 245 (Bombay)

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provide clear guidelines on the manner in which the special notice is to be sent to the shareholders and the time frame within which it is to be sent. This has led to instances of special notices being sent to shareholders at the last minute, making it difficult for them to consider and vote on the resolution. One of the major problems with postal ballot is the low voter turnout. Postal ballots are often sent to shareholders who are not resident in India, making it difficult for them to participate in the voting process. Additionally, the lack of clear guidelines on the manner in which postal ballots are to be conducted has led to instances of proxy voting and manipulation of the voting process.

## CONCLUSION

The provisions related to resolutions requiring special notice and by postal ballot under the Companies Act, 2013 are aimed at providing a transparent and democratic process for passing certain types of resolutions. With the updates and modifications made by the Ministry to the legal provisions, conducting meetings has become more cost-effective, efficient, and convenient. The key objective is to achieve the goals of the meetings, whether they are carried out through postal ballots, video conferencing, or physical gatherings, thus embodying the essence of the law<sup>9</sup>. The lack of a robust system for tracking the postal ballots and ensuring their confidentiality has also been a concern. The act does not provide clear guidelines on the manner in which postal ballots are to be stored and counted, leading to instances of tampering and manipulation of the voting process.

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<sup>9</sup> SUBRATA KUMAR RAY, "PostalBallot in General Meetings : a Critical Assessment", [2001] 33 SCL 4 (MAG.)

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