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Interpretation Of Company Law SEC 152 (6)(d)

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20 January 2020

.....but as between persons who became directors on the same day , those who are to retire shall , in default of and subject to any agreement among themselves , be determined by lot.

Kapil Kumar Singh
Adv (Querist)

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My question is that " be determined by lot " applies to

" in default Of "

or " subject to any agreement among themselves "

or both .

My interpretation is this that " be determined by lot " applies to both i.e.

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-- in default of any agreement among themselves ,be determined by lot

--- subject to any agreement among themselves , be determined by lot

Because the word used in between " in default of " " subject to " is AND .

Most of the authors / teachers say that

-- "those who are to retire shall , in default of any agreement among themselves. be determined by lots "

---"those who are to retire shall , be determined as per the agreement among themselves '

which in my opinion is not correct

Please interpret the section and express your views on this interpretation

Thanks

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21 January 2020

Punctuation at proper places would have made your interpretation easy. Anyway, since you are asking the query quite sincerely, please allow me to ask you one question.....

What according to you is the difference between (1) "in default of"..... (2) "subject to"

Amol S Joglekar

(Expert)

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21 January 2020

' In default of ' in the absence of -- here it means in the absence of (in default of) any agreement among themselves .

" subject to " means " as per the agreement among themselves "

Kapil Kumar Singh

Adv (Querist)

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22 January 2020

So?

as between the persons who became directors on the same day, those who are to retire shall be determined by lot

.....(1) in the absence of (in default of) any agreement

.....(2) subject to any agreement (in the absence of any agreement)

AND

if the agreement is in existence, as per that agreement.

What is the confusion? You are saying the same thing as that of others.

Your views please

Amol S Joglekar

(Expert)

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22 January 2020

Subject to any agreement ' does not mean absence of an agreement .

in my opinion its bad drafting of law . because the use of word AND means

' be determined by lot' applies to both ' subject to ' and "in default of '

Kapil Kumar Singh

Adv (Querist)

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23 January 2020

subject to agreement MEANS if agreement exists.....go as per agreement

if agreement is does NOT exist..(i.e. in the absence of agreement).....

determine by lot

Amol S Joglekar

(Expert)

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