
THE CORPORATE LEADERSHIP: UNRAVELLING DIRECTOR'S ROLE IN EFFECTIVE CORPORATE MANAGEMENT

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ABSTRACT

Corporate Management, a cornerstone of modern business practices, relies heavily on the integrity and accountability of directors. This comprehensive discussion navigates through the maze of directorial responsibilities and legal liabilities, firmly grounded in Companies Act 2013. At its core, it emphasizes that directors must act not in their personal interests but in the best interests of the company, both present and future.

Navigating the intricate tapestry of corporate compliance, the analysis underscores the significance of adhering to statutory provisions and the company's articles of association. Any breach, whether intentional or inadvertent, can trigger legal consequences. It also explores the profound consequences of oppression and mismanagement in a corporate context, urging companies to practice fairness, equity, and transparency.

Directors' liability is meticulously probed, dissecting their obligations to the company and third parties alike. From the issuance of misleading prospectuses to the handling of application money, the potential repercussions are illuminated. The discussion widens the scope to unveil the specter of criminal liability, showing that directors inhabit a space where multiple dimensions intersect.

In a world where formalities often define the structure of corporate life, the significance of resignation procedures for directors comes to the forefront. This segment underscores that meticulous adherence to legal formalities plays a pivotal role in corporate governance.

The fundamental principle of directors' liability and their right to seek contributions from co-directors is brought into focus, reinforcing that corporate governance is a collective endeavour. Through the lens of these engaging scenarios, readers gain profound insights into the intricate terrain of corporate governance and the multifaceted legal complexities encountered by directors. Ultimately, this discussion serves as an indispensable

educational tool, illuminating the real-world implications of directorial actions and the evolving landscape of corporate responsibility.

Keywords: Corporate Governance, Corporate Management, Directorial Responsibilities, Legal Liabilities, Companies Act 2013, Fiduciary Duties, Mismanagement, Criminal Liability, Resignations, Directors' Accountability, Contribution.

INTRODUCTION

The Companies Act of 2013 is an important legislation that governs the operation and management of corporations in India. It repealed the Companies Act of 1956 and instituted several modifications to modernize corporate governance practices. The meaning and significance of directors inside an enterprise is a critical part of the Act. Directors play an important role in decision-making and are assigned for leading the organization toward its goals while adhering to legal and regulatory constraints, the definition of a director defines a director as a person appointed to the Board of Directors of a company¹. This definition covers both executive and non-executive directors who are members of the company's governing body, known as the Board of Directors.

If we try to analyze the sentence, “director is a person appointed to the board of a company”, it explains a director's fundamental duty and position within the corporate framework. This function includes performing fiduciary duties, engaging in collaborative decision-making, adhering to corporate governance standards, and protecting stakeholder interests. The activities and choices of the board of directors have a substantial impact on the company's performance, reputation, and long-term viability. As a result, their selection and active participation on the board are important to the company's success and responsible management.

APPOINTMENT OF DIRECTORS

The Companies Act does not stipulate any specific academic or professional prerequisites for the appointment of directors, nor does it mandate any share ownership requirements for individuals serving as directors. Consequently, unless the company's articles of association explicitly include such provisions, a director is not obligated to possess shareholding unless they choose to do so of their own volition. The appointment of a director is limited to

¹ “The Companies Act, 2013, s 2(34)”

individuals, thereby excluding entities such as body corporates, associations, or firms from assuming directorial positions within a company². It is essential to note that an individual seeking directorship must possess a Director Identification Number (DIN), or an alternate identification number³. The Companies (Amendment) Act of 2017 brought amendments to Section 153, empowering the central government to designate an identification number as a director identification number, a requisite under this legislation. Any individual aspiring to undertake directorship responsibilities within a company is obligated to apply for the allocation of a director identification number to the central government. This application must adhere to the specified format, procedural requirements, and associated fees, all as stipulated by the applicable regulations. It is pertinent to highlight that the central government retains the authority to establish an alternative identification number instead of the Director Identification Number (DIN)⁴. It is mandated that the central government, within one month after the reception of the application in accordance with Section 153, undertake the allocation of a director identification number to the applicant⁵. Also, an individual who has already been assigned a director identification number under the stipulations outlined in Section 154 is prohibited from initiating an application for, obtaining, or retaining an additional director identification number⁶.

The examination of director appointment can be categorized into the subsequent sections:

1. The selection of initial or first directors,
2. Designation through annual general meeting,
3. Nomination by the board of directors,
4. The appointment of a resident director, and
5. Selection of independent directors.

² “The Companies Act, 2013, s 149”

³ “As prescribed after Companies (Amendment) Act, 2017, Section 153”

⁴ “The Companies Act, 2013, s 152 (3)”

⁵ “The Companies Act, 2013, s 154”

⁶ “The Companies Act, 2013, s 155”

Initial or First Directors

Typically, the initial directors find their appointment specified by name within the articles or in a manner delineated therein. If the articles lack provisions for the appointment of first directors, the individuals subscribing to the memorandum are automatically regarded as the company's first directors until the formal appointment of directors takes place. In a one-person company, an individual holding membership assumes the role of its inaugural director until a director or directors are officially nominated by the member in alignment with the stipulations outlined within the respective section. The appointment of an individual as a director within a company necessitates the prior allocation of a Director Identification Number (DIN) by the provisions outlined in section 154(3).

Through Annual General Meeting

The appointment of each director necessitates endorsement through a general meeting, unless exceptions are specified in the legislation⁷. Unless the company's articles dictate the retirement of all directors during each general meeting, a minimum of two-thirds of the total directorial body within a public company must consist of individuals whose tenures are subject to rotation-based cessation and require an appointment through a general meeting of the company except where provided otherwise in the act⁸. In the event of such a public company, any remaining directors are mandated, in the absence of, and conformity with, any provisions outlined in the company's articles, to also be selected through a general meeting of the company.

The stipulated prerequisite as elucidated does not extend to⁹:

1. A government-owned enterprise wherein the entire paid-up share capital is under the ownership of the central government, state governments, or a combined ownership of the central and state governments.
2. A subsidiary company of the aforementioned government-owned entity, in which the complete paid-up share capital is held by the parent government company.

⁷ “The Companies Act, 2013, s 152 (2)”

⁸ “The Companies Act, 2013, s 152(6)”

⁹ “As per Ministry of Corporate Affairs Notification dated 5th June 2015, New Delhi, India” Available at: https://www.mca.gov.in/Ministry/pdf/Exemptions_to_private_companies_05062015.pdf

The Calcutta High Court held, in situations involving a private company, when the articles remain silent with regard to the directorial appointments or do not explicitly outline an alternative method for director appointments apart from a general meeting, the requisite procedure dictates that the directors must be appointed through a general meeting, facilitated by the shareholders¹⁰.

Nomination by Board of Directors

The authority vested in the board of directors to appoint directors can be exercised in the given three situations:

- 1) The appointment of an Additional Director – The company's articles might grant the board the capability to nominate an individual as an extra director at any juncture. Nevertheless, it should be emphasized that anyone who has not secured a directorship through a general meeting cannot be appointed in this manner. It is imperative to recognize that the appointment of additional directors by the board necessitates explicit empowerment granted by the articles; this clause applies uniformly across both public and private companies¹¹. The concept of an additional director is devised to enable companies to enlist the expertise of individuals suitable for board service, whose presence would be advantageous for the company's well-being. This provision facilitates their inclusion on the board until the upcoming Annual General Meeting (AGM). Additional directors possess equivalent privileges and prerogatives as their counterparts on the board. Through this manner, the board of directors can judiciously appoint skilled individuals to the board who might face challenges in securing a seat through elections.
- 2) Incase of Casual Vacancy – The amendment act of 2017, confers authority upon the board to address unforeseen vacancies in the context of all types of companies, including private entities¹². A "casual vacancy" denotes a void that emerges not through retirement or the culmination of a fixed term of appointment. Accordingly, if a director's position, filled through a general meeting, becomes vacant prior to the scheduled conclusion of their tenure, the resultant casual vacancy can be occupied by the board of

¹⁰ “Swapan Das Gupta v. Navin Chand Suchanti (1988) 3 Comp. LJ 76 (Cal.)”

¹¹ “Needle Industries India Ltd v. Needle Industries Newey India Holdings Ltd 1981 AIR SC 1298”

¹² “As amended by Companies (Amendment) Act, 2017, Section 161(4)”

directors during a convened board meeting, depending upon any regulations featured within the company's articles. It's crucial to acknowledge that as per the stipulations of section 161(4), if the person appointed to fulfill a casual vacancy gets approval at the immediate subsequent general meeting, their tenure in office extends not solely until the subsequent annual general meeting, but for the entirety of the duration that the original appointee would have served if they hadn't vacated their position prematurely. This signifies that if, for instance, Mr. A was appointed as a director and subsequently passed away a month later, Mr. B, who assumed Mr. A's role, would continue for the entire duration that Mr. A would have served if he had not passed away. However, it is noteworthy that although Mr. B remains in office for the entire unexpired term initially designated for Mr. A, upon the conclusion of that term, Mr. B becomes ineligible for reappointment as a director subject to rotational retirement.

- 3) Appointment of an Alternate Director – As per the company's articles or a resolution approved through a general meeting, the board of directors has the authority to designate an alternate director, who can act on behalf of a director during their absence from India for a period of at least three months. However, an individual concurrently serving as an alternate director for another director within the same company cannot be nominated. Moreover, an individual currently holding a directorial position within the company cannot assume the role of an alternate director for another director in that same company. An alternate director's tenure must not surpass the permissible duration of the director they are substituting, and they are obligated to relinquish their position upon the return of the director in whose stead they were appointed, upon their return to India.

Resident Directors

A novel inclusion in the Companies Act of 2013 is the inception of the resident director notion. The legislation mandates that each company is required to possess a minimum of one director who maintains a presence within India for a cumulative duration of not less than 182 days throughout the fiscal year¹³.

¹³ “The Companies Act, 2013, s 149(3)”

Independent Directors

Each listed public company is obligated to maintain a minimum of one-third of the total directorial roster as independent directors. Additionally, the central government retains the authority to specify the minimal count of independent directors for distinct categories of public companies¹⁴.

Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014, as framed by the central government¹⁵, elucidates that the subsequent categories of companies are mandated to feature at least two independent directors:

1. Public companies with a paid-up share capital amounting to 10 crore rupees or more.
2. Public companies boasting a turnover of 100 crore rupees or more.
3. Public companies that collectively possess outstanding loans, debentures, and deposits surpassing 50 crore rupees.

The possibility exists to designate an independent director from a repository comprising pertinent information such as names, addresses, and qualifications of individuals who are both eligible and inclined to assume the role of an independent director¹⁶. It is incumbent upon the company, via a resolution endorsed in a general meeting, to undertake meticulous scrutiny before finalizing the appointment of an independent director. The explanatory statement appended to the notice for the aforementioned general meeting must offer a rationale substantiating the selection of the prospective independent director. Moreover, this explanatory statement must include an assertion that, according to the board's assessment, the appointee meets the prerequisites delineated within this act for an independent director appointment.

The details associated with the appointment, reappointment, duration of service, resignation, dismissal, and separate meetings for independent directors, along with their assessment, are comprehensively outlined within Schedule 4 of the Companies Act 2013. An independent director assumes accountability solely for actions involving lapses or actions executed by a

¹⁴ “The Companies Act, 2013, s 149(4)”

¹⁵ “The Companies (Appointment and Qualification of Directors) Rules, 2014, Ministry of Corporate Affairs, New Delhi, India” Available at: https://www.mca.gov.in/Ministry/pdf/NCA_Rules_18092014.pdf

¹⁶ “The Companies Act, 2013, s 150”

company that transpired under circumstances where the director possessed awareness, which can be attributed through established board procedures, and which were endorsed with their consent or endorsement¹⁷. Alternatively, the director can also be held liable in cases where due diligence was not demonstrated. When the Trial Court issued a summons to the company and its directors, including the petitioner, for an offence under Section 138, it is essential to note that the petitioner held the position of an independent director within the company. Furthermore, there were no explicit allegations that delineated a distinct role attributable to the petitioner regarding the conduct of the accused company's business. Consequently, the petitioner could not be held accountable for the dishonouring of checks that were not signed by him¹⁸.

DISQUALIFICATIONS OF DIRECTORS¹⁹

An individual's eligibility for directorship in a company is contingent upon certain criteria. These criteria encompass the conditions wherein:

- a) The individual has been declared of unsound mind by a competent court, is classified as an undischarged insolvent, has petitioned for insolvency and awaits adjudication, or has been found guilty of an offence by a court and subsequently sentenced to a term of imprisonment lasting no less than six months. It is noteworthy that the aforementioned disqualification shall be operative for five years following the completion of the sentence. However, in instances where an individual has been convicted of an offence and the resultant imprisonment period spans seven years or more, they are precluded from seeking directorship in any corporate entity.
- b) A decree rendering him ineligible for assuming the role of a Director has been pronounced by a court or tribunal, and this directive remains currently effective. Furthermore, he has neglected to fulfil the obligation of settling any outstanding calls on his ownership of company shares, whether in sole capacity or through joint ownership, whereby a lapse of six months has ensued since the designated deadline for call payment.

¹⁷ "The Companies Act, 2013, s 149(12)"

¹⁸ "Prakash Chand v. State [2022] 145 taxmann.com 519 (Delhi)"

¹⁹ "The Companies Act, 2013, s 164(1)"

- c) In addition, his record includes a conviction for an offence related to transactions involving affiliated parties as outlined in section 188, within the preceding five-year timeframe. Alternatively, he has contravened section 152(3), denoting his failure to obtain a Director Identification Number (DIN). Moreover, his compliance with the provisions stipulated in section 165(1) remains deficient.
- d) Section 165(1) establishes a limitation on the extent of directorial positions, capping directorships at 10 for public companies and a cumulative total of 20 across all companies. Furthermore, Section 164(2) elaborates that an individual who either presently holds or has previously held a directorial role within a company is subject to specific disqualifications. These disqualifications encompass instances where a company has omitted the submission of financial statements or annual returns for a continuous span of three consecutive financial years.
- e) Additionally, disqualification arises when a company has defaulted in repaying accepted deposits or the corresponding interest or has failed to meet obligations concerning the redemption of debentures within the stipulated timeline, alongside non-payment of related interest or dividends that were declared. If such failures persist for a period exceeding one year, the individual in question is rendered ineligible for directorial appointments within the defaulting company. This disqualification extends to appointments within any other company as well, spanning five years from the commencement of the company's non-compliance. When the petitioner resigned from the company's Board of Directors but neglected to submit the required form to the Registrar of Companies, a director disqualification ensued²⁰.

POSITION OF DIRECTOR

According to Bowen, L.J: "Directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But each of these expressions is used not as exhaustive of their powers and responsibilities, but as indicating useful points of view from which they may for the moment and for the particular purpose be considered."²¹

²⁰ "P. Parameswaram v. Union of India [2020] 118 taxmann.com 113 (Delhi)"

²¹ "DR G.K. KAPOOR & DR SANJAY DHAMIJA, *COMPANY LAW A COMPREHNSIVE TEXT BOOK ON COMPANIES ACT 2013* 25th EDN 2023"

As Agents

According to Carins, L.J – “The company itself cannot act in its own person; it can only act through directors, and the case is as regards those directors, merely the ordinary case of principal and agent.”²² In a situation wherein the chief executive of the company, acting on behalf of the company's interests, signed a promissory note and procured a loan. Court said it is untenable to assert that this borrowing transpired within his individual capacity²³.

Directors, functioning in the capacity of agents, hold the ability to render the company accountable, extending even to instances of contempt of court²⁴. Nevertheless, directors assume individual responsibility under the subsequent conditions:

1. When they enter contractual arrangements under their own personal names.
2. In situations where the company's name is utilized inaccurately, such as the omission of the term "limited."
3. If the contract's signing lacks clarity regarding whether the signatory is the principal or the agent.
4. When they surpass their authorized scope, an example is the borrowing of funds beyond prescribed limits.

Acceptance of Unauthorized Acts – Actions conducted by directors that exceed their individual authority, yet remain within the purview of the company's powers, have the potential for validation through the company's resolution or through passive acceptance over time²⁵.

Directors act as agents of the company to the extent that they have been granted authorization to carry out specific actions on the company's behalf. However, they do not owe any fiduciary, contractual, or duty of care obligations to third parties engaging with the company. Consequently, except in situations where directors have voluntarily assumed personal liability,

²² “DR G.K. KAPOOR & DR SANJAY DHAMIJA, *COMPANY LAW A COMPREHNSIVE TEXT BOOK ON COMPANIES ACT 2013* 25th EDN 2023”

²³ “Kirlampudi Sugar Mills Ltd v. G Venkata Rao (2003) 42 SCL 798 (AP)”

²⁴ “Vineet Kumar Mathur v. Union of India (1996) 20 CLA 213 (SC)”

²⁵ “Bhajekar v. Shinkar (1934) 4 Comp. Cas. 434 (Bom.)”

such as through guarantees or indemnities, a company's director cannot be held accountable in a lawsuit seeking damages based on allegations of contractual breaches by the company²⁶.

As Trustees

A trustee is an individual in whom the legal ownership of assets is vested, and these assets are managed for the advantage of one or more other entities. Directors are considered analogous to trustees concerning a company's assets and the associated powers vested in them, as they oversee these assets and fulfil responsibilities with the primary aim of advancing the company's interests rather than their personal gains.

The Madras High Court ruled that the directors of a corporate entity assume the role of trustees in relation to the company. Pertaining to their authority over the utilization of company funds, any misappropriation of this authority could subject them to liability in their capacity as trustees. Importantly, this liability continues even after their demise, as legal action can be pursued against their legal successors²⁷.

Similarly, the fiduciary role that directors are mandated to uphold imposes upon them the obligation to operate on behalf of the company with the highest degree of integrity, meticulous care, proficiency, and conscientiousness. This duty requires them to act in the best interests of the company they are representing²⁸. Directors not only serve as agents but, to a certain degree and in some aspects, assume a role akin to trustees or possess trustee-like responsibilities²⁹.

As Managing Partners

The perspective held by proponents of this notion regards a company as akin to an expansive partnership, wherein a director assumes the pivotal role of overseeing its operations. In this construct, other shareholders assume a quasi-inactive partner role. Empowered by the provisions outlined in the company's memorandum and articles, directors possess extensive managerial authority, effectively functioning as the paramount governing body responsible for formulating overarching policies and making critical decisions.

²⁶ “Tristar Consultants v. Vcustomer Services India (P) Ltd. [2007] 78 CLA 363 (Delhi)”

²⁷ “Ramaswamy v. Brahmaya & Co. (1996) 1 Comp. LJ 107 (Mad.)”

²⁸ “Dale & Carrington Investment Pvt Ltd v. P.K. Prathapan (2004) 54 SCL 601 (SC)”

²⁹ “Globe Motors Ltd. v. Mehta Teja Singh [1984] 55 COMP CASE 445 (Delhi)”

REMOVAL OF DIRECTORS

The discourse regarding the dismissal of a director can be categorized into two primary domains: (1) Removal by Shareholders and (2) Removal through legal intervention by a Tribunal.

Removal by Shareholders

The act acknowledges the inherent authority vested in shareholders to revoke the appointment of a director chosen by them³⁰. In this context, there is no obligatory requirement to substantiate allegations of mismanagement, breach of trust, misconduct, or other transgressions on the part of the directors. If shareholders find the policies implemented by the directors objectionable, they retain the option to remove these directors through the enactment of an ordinary resolution, much like the process employed for their initial appointment through an ordinary resolution.

It further stipulates that a company may, via an ordinary resolution, provided that special notice by section 115 has been duly provided, and the resolution is adopted during a general meeting, effectuate the removal of a director before the conclusion of their designated term of service³¹. However, it is crucial to note that directors appointed by a tribunal and those appointed under the proportional representation system are exempt from this removal procedure.

It was established that the special notice for the removal of a director must include the specific grounds on which the proposed removal is based³². Upon receiving such special notice, the company is obligated to promptly transmit a copy of this notice to the director in question. Regardless of whether the director holds membership in the company, they are entitled to present their perspective on the resolution during the meeting. If the director submits a written representation and requests the company to communicate it to the members, the company must include the representation's substance in any notice of the resolution provided to the members. Additionally, the company should furnish a copy of the representation to every member receiving notice of the meeting, irrespective of whether this is done before or after the representation is received by the company.

³⁰ "The Companies Act, 2013, s 169"

³¹ "The Companies Act, 2013, s 169"

³² "Queen Kuries & Loans (P.) Ltd V. Sheena Jose (1993) 76 Comp. Cas. 821 (Ker)"

In situations where there is insufficient time or the company is at fault for not sending the representation as specified above, the concerned director can, in addition to having the right to be heard orally, insist that the representation be read out during the meeting. Importantly, the circulation of the representation of the directors targeted for removal is not mandatory, and the director in question may not necessarily have the right to have the representation read aloud during the general meeting. This exclusion is applicable if the tribunal determines, upon the company's or another party's complaint, that these provisions are being misused to disseminate unnecessary defamatory content.

The Delhi High Court ruled that the authority to remove a director, as stipulated within a company's articles, remains unaffected by the provisions delineated in section 284 (corresponding to section 169 under the Companies Act of 2013). In this particular case the company's articles granted co-promoters the right to revoke or withdraw their nominees from the board of directors, the co-promoters were deemed well within their prerogative to withdraw the plaintiff's nomination as a director of the co-promoters³³.

When the group of Directors, aimed to achieve their objectives, they deviated from the prescribed procedures outlined in either the Companies Act or the Articles of Association of the Company. They engaged in unfair treatment of minority shareholders, and manipulated the change in control and management of the Respondent Company through their financial influence, physical force, and questionable tactics, thus resulting in a breach of provisions contained in the Act³⁴.

Accordingly, where a director is removed under the aforementioned section, provided they were initially appointed either by the company during a general meeting or by the board, the resulting vacancy can be filled by the appointment of another director during the same meeting at which the removal occurs. However, a special notice regarding the intended appointment must be issued. A director appointed in this manner will serve in office until the original director's term would have concluded had they not been removed. If the company fails to fill the vacancy during a general meeting, the board of directors may treat it as akin to a casual

³³ “Ravi Prakash Singh v. Venus Sugar Ltd. (2008) 84 SCL 75”

³⁴ “Chawla and Choudhary Trading Co. (P.) Ltd. v. Gulshan Kumar Chawla [2023] 152 taxmann.com 410 (NCLAT- New Delhi)”

vacancy in alignment with the provisions of section 161. However, it's important to note that the board cannot reappoint the director who was removed.

Removal by Tribunal

When an application is submitted to the tribunal under section 241 concerning issues related to the operational conduct and mismanagement of a company's affairs, the Tribunal possesses the authority to decree the annulment or invalidation of any agreement that the company may have entered into with one of its directors. Additionally, the Tribunal may order the removal of any company director. In the event of such removal, the affected director is not entitled to seek compensation from the company for the loss of their position³⁵. Furthermore, this director is barred from assuming roles such as manager, managing director, or director within the same company without securing prior approval from the tribunal³⁶. This prohibition extends for a duration of five years from the date of the tribunal's ruling, which nullifies or invalidates their contract with the company.

When the directors of the company, who are the respondents in this case, claimed that the shares of a deceased director were transferred to his widow in an unlawful manner, disregarding the rights of other heirs, and that there was an unauthorized alteration in the position of appellant 2 from Managing Director to Chairman, several issues were raised. These included the absence of documentation to support the said share transmission and the failure to notify shareholders of a meeting to ratify appellant 2's appointment as Chairman. Considering these factors, the National Company Law Tribunal (NCLT) was deemed justified in instructing the company to include the names of all legal heirs of the deceased director and to remove appellant 2 from the position of Chairman³⁷.

It's important to note that the tribunal is precluded from granting permission under this provision unless the intent to seek permission has been formally communicated to the central government, affording the government a reasonable opportunity to present its viewpoint on the matter.

³⁵ "The Companies Act, 2013, s 243(1)(a)"

³⁶ "The Companies Act, 2013, s 243(1)(b)"

³⁷ "Vijaya Hospitality & Resorts Ltd. v. Sibi C.K"

RESIGNATION BY DIRECTOR

A director has the option to relinquish their position by submitting a written notice of resignation to the company³⁸. Upon receiving such notice, the board is obligated to acknowledge it, and the company must promptly inform the registrar in the manner and within the timeframe prescribed, while also documenting the resignation in the directors' report presented at the subsequent general meeting. The director may also furnish the registrar with a copy of the resignation, accompanied by an elaborate explanation for the decision, within 30 days of resigning, following the prescribed procedures.

It's noteworthy that the resignation of a director becomes effective either on the date when the company receives the notice or on a date specified by the director in the notice, whichever is later. Importantly, Section 168(2) tells that a director who has resigned remains accountable for any offences that occurred during their tenure, even after resignation.

In a situation where all the directors of a company tender their resignations or vacate their positions under the criteria outlined in section 167, the duty to appoint the necessary directors falls upon the promoter or, in the absence of a promoter, the Central government. These appointed directors will serve in their roles until the company appoints directors through a general meeting³⁹. Also, where a director has submitted their resignation, and the board of directors has not only accepted it but also acted upon it, that particular director cannot be held accountable for any obligations or liabilities accrued by the company after the date of the resignation's acceptance. This exemption from liability, however, is limited solely to any responsibilities stemming from the acquisition of shares in the company and no further liabilities shall be attributed to the resigned director⁴⁰.

For a resignation to be considered valid, it must be directed towards the company itself. Any letter of resignation addressed to a third party will hold no legal weight⁴¹. In cases where a director has entered into a contractual commitment to serve the company for a predetermined duration, they retain the option to resign, contingent upon the payment of damages, if

³⁸ "The Companies Act, 2013, s 168(1)"

³⁹ "The Companies Act, 2013, s 168(3)"

⁴⁰ "Saumil Dilip Mehta v State of Maharashtra (2002) 39 SCL 102 (Bom)"

⁴¹ "Registrar of Companies v Orissa Paper Products Ltd (1998) Comp. Cas. 460 (Ori.)"

applicable, which the company may have incurred due to the untimely termination of the service agreement.

When a director of a company submitted her resignation, which was subsequently presented to the Board of Directors and properly acknowledged by the Board, the mere failure of the company to submit Form DIR 12 or the resigned director to submit Form DIR 11 to the Registrar of Companies (ROC) does not render the resignation void⁴².

Once a director has formally tender his resignation, it cannot be withdrawn without the company's consent, which must be thoughtfully deliberated by the board of directors. However, in situations where the articles of the company stipulate that a director can resign only with the board's concurrence, the resignation will not be effective until such consent is granted, and during this interim period, the resignation can be withdrawn⁴³.

It's important to note that a managing director or a full-time director cannot resign solely by providing notice. In their case, the company must formally accept the resignation. This necessity arises from the fact that such a director, in addition to their role as an ordinary director, is engaged in the company's employment on a full-time or substantially full-time basis. Consequently, they must be relieved of all duties and responsibilities associated with their position. Any notice of resignation issued by a director, whether holding the position of a whole-time or ordinary director, applies to both of their roles⁴⁴.

The actions taken by a director shall remain legally valid, even if subsequent revelations render his appointment defective due to qualifications, or if his appointment lapses by provisions delineated within the Companies Act or the company's articles⁴⁵. Nevertheless, there are specific exceptions to this provision, which encompass:

- Cases where the appointment is illegal or was never made.
- Instances in which a director knowingly continues in office despite the expiration of their term.

⁴² “Tap World v. Kerala Chamber of Commerce & Industry [2022] 135 taxmann.com 298 (NCLT - Kochi)”

⁴³ “Glossop v Glossop (1907) 2 Ch. 370”

⁴⁴ “Mosely v Koffyfontein Mines Ltd (1911) 1 Ch. 73”

⁴⁵ “The Companies Act, 2013, s 176”

- Situations where a director was aware from the outset that their appointment was either invalid or terminated and yet they proceeded with actions.
- Actions that exceed the company's authorized powers (*ultra vires*).
- When a third party is aware of the irregularity, such a party is precluded from enforcing actions against the company.
- In cases where the appointment of a managing director, whole-time director, or manager lacks approval by the company in a general meeting, any actions undertaken by them before such approval shall not be deemed invalid⁴⁶.

DUTIES OF DIRECTORS

The responsibilities of directors can be categorized into two primary domains: (1) Statutory Obligations and (2) General Duties.

Statutory Obligations

Statutory duties encompass the specific duties and mandates prescribed by the Companies Act, with some of the pivotal ones being:

1. **To submit an allotment return⁴⁷** - A company must, within a 30-day timeframe, furnish the Registrar with a return, detailing specific particulars regarding the allotment. Failure to adhere to this requirement incurs penalties for both the company and the responsible officer. When a company initially submits an allotment request for shares with an incomplete list of allottees, but subsequently rectifies this by submitting the correct form, the Registrar's observation deems the delay as non-wilful. Consequently, the offence may be resolved through compounding upon payment of compounding fees⁴⁸.
2. **Obligations as outlined in Section 166** - Section 166 delineates the following duties:
Compliance with Company Articles: A director of a company is required, in

⁴⁶ “The Companies Act, 2013, s 196(5)”

⁴⁷ “The Companies Act, 2013, s 39(4)”

⁴⁸ “In Re Mrs Kiran Mazumdar Shaw (2017) 77 taxman.com 95 (NCLT – Bang)”

adherence to the provisions of this Act, to conduct themselves by the company's articles. When the directors of a company have redirected substantial sums from the company under the pretence of awarding remuneration to both themselves and their spouses, and this has occurred without the endorsement of the majority of shareholders, such actions are contrary to legal provisions and represent a violation of the company's Articles of Association⁴⁹.

Fiduciary Duty: Directors must act in utmost good faith, with the primary objective of advancing the company's objectives for the collective benefit of its members. Additionally, they should consider the well-being of the company, its employees, shareholders, the community, and environmental protection.

Diligence and Independent Judgment: Directors are expected to exercise their duties with diligence, reasonable care, skill, and independent judgment.

Avoidance of Conflicts: Directors should refrain from involvement in any situation where they may possess a direct or indirect interest that either conflicts with or has the potential to conflict with the company's interests.

Prohibition of Undue Gain: Directors must not pursue or attempt to secure undue gains or advantages, whether for themselves, their relatives, partners, or associates. Should a director be found guilty of obtaining such undue gain, they are liable to reimburse the company for an amount equivalent to the gain. When the directors of a company established separate entities with the deliberate aim of undermining the company's reputation and goodwill, rerouted the company's business towards these newly formed entities and neglected to provide compensation to the petitioner for the shares they purchased from him, such actions constituted acts of oppression and mismanagement⁵⁰.

Non-Assignable Office: The office of a company director cannot be assigned, and any such attempt at assignment is deemed void.

⁴⁹ “Sulochana Gupta v RBG Enterprises (P.) Ltd [2022] 135 taxmann.com 204 (NCLT - Kochi)”

⁵⁰ “S Radhakrishnan v. Hyderabad Pollution Controls Ltd [2017] 88 taxmann.com 200 (NCLT - Hyd.)”

In a specific case⁵¹ where an individual served as a director in an ongoing business but subsequently initiated an independent business in direct competition with their own company, the Delhi High Court determined that this action lacked bona fides as it was driven by financial motives and contravened the director's fiduciary duties as defined in Section 166.

3. **Disclosure of Interests⁵²** - A director who possesses an interest in a company transaction is obligated to reveal this interest to the board. This disclosure should occur during the initial board meeting convened after the director has become involved in said transaction. Failure to make such a disclosure results in penalties. Incase⁵³ directors provide a general notice of disclosure, but this notice is not discussed during board meetings due to the absence of such meetings, it constitutes non-compliance with Section 184. When the entire board of directors possesses awareness of the pertinent facts, a formal disclosure becomes unnecessary⁵⁴.
4. **With regards to funds received from the transfer of company property⁵⁵** - any money received by directors from the transferee in conjunction with the transfer of the company's property or undertaking must be communicated to the company's members and subsequently sanctioned during a general meeting of the company. In the absence of such approval, these funds are to be held by the directors in trust for the company. This compensation might take the form of recompense for relinquishing office or retirement considerations. However, it's worth noting that funds received by the managing director, whole-time director, or manager as compensation for office cessation or retirement do not fall under the aforementioned requirement.
5. **To disclose receipt of compensation from the transferee of shares⁵⁶**- If the termination of office arises due to the transfer of any or all of the company's shares, the directors are not entitled to receive any compensation from the transferee. Unless such compensation has been endorsed by the company in a general meeting before the

⁵¹ "Rajeev Saumitra v Neetu Singh (2016) 66 taxmann.com 18 (Delhi)"

⁵² "The Companies Act, 2013, s 184"

⁵³ "In RePersonal Performance Consultants India (P.) Ltd (2016) 75 taxmann.com 299 (NCLT -Bang)"

⁵⁴ "Venkatachalapati v Guntur Mills AIR 1929 Mad. 353"

⁵⁵ "The Companies Act, 2013, s 191"

⁵⁶ "The Companies Act, 2013, s 191"

transfer occurs, or if the proposal fails to gain approval, any funds received by the directors must be held in trust for the shareholders who have divested their shares.

6. **The obligation to attend board meetings**⁵⁷ - Numerous functions of the company are executed during meetings of the board of directors, convened periodically. While it may not be feasible for a director to be present at every meeting, if they are absent from all board meetings over a span of 12 months, regardless of whether a leave of absence has been sought, their position on the board automatically becomes vacant⁵⁸.
7. Directors bear the responsibility of **calling the annual general meeting**⁵⁹ and **any extraordinary general meetings**⁶⁰. They are also tasked with formulating and presenting, at the annual general meeting, a report that encompasses specific details, in conjunction with the financial statements, which may include consolidated financial statements, if applicable, and the auditor's report⁶¹. If, due to uncontrollable circumstances, the directors opt not to proceed with the meeting, it cannot be considered as having commenced solely because printed copies of the balance sheet and agenda had been distributed to shareholders before the directors made their announcement⁶². Nonetheless, the directors' failure to convene a general meeting and their failure to submit the balance sheet and profit and loss account to the Registrar within the stipulated timeframe cannot be characterized as a genuine or good-faith action⁶³.

General Duties

- 1) **Duty of Good Faith** – The general duties of directors encompass various aspects, and one fundamental duty is the obligation of good faith. This duty entails that directors must consistently act in the utmost interest of the company. The term "interest of the company" encompasses not only the welfare of the current stakeholders but also those who will become stakeholders in the future, all while presuming that the company will continue as an operational entity. Therefore, directors must refrain from making any secret gains or exploiting corporate opportunities for their benefit. It has been

⁵⁷ With reference to Section 167 (1) (b)

⁵⁸ "The Companies Act, 2013, s 167(1)(b)"

⁵⁹ "The Companies Act, 2013, s 96"

⁶⁰ "The Companies Act, 2013, s 100"

⁶¹ "The Companies Act, 2013, s 134"

⁶² "V Selvaraj v. Mylapore Hindu Permanent Fund Ltd [1968] 38 COMP CASE 153 (Madras)"

⁶³ "In re Prestolite of India Ltd [1990] 69 COMP CASE 556 (Punjab & Haryana)"

emphasized that individuals who assume full control of a company's operations must always keep in mind that they do not have the freedom to jeopardize the interests they are obligated to safeguard⁶⁴. Even when they appear to act on behalf of the company, they should not steer business transactions in a manner that primarily benefits their interests, as these opportunities rightfully belong to the company they represent.

Regarding a director selling their property to the company, any such transaction must be approached cautiously to avoid breaching the duty of good faith. If the circumstances surrounding the acquisition of the property suggest that, in equity, it rightfully belongs to the company, the director would be obligated to account for any profits gained from the sale of the property to the company. However, if the property unequivocally belongs to the director both in equity and in law, then there would be no breach of faith⁶⁵.

Furthermore, if a director obtains property as a result of their directorial position and in the course of their duties, any resale of such property would be considered as belonging to the company⁶⁶.

- 2) **Duty of Care** – Directors are under an obligation to exercise a certain level of care in fulfilling their designated responsibilities. However, this expectation does not require them to demonstrate an exceptional degree of care; rather, it necessitates the same degree of care that an ordinary, prudent individual would exercise when confronted with comparable circumstances. Some have articulated the perspective that if directors remain within the boundaries of their designated powers, exercise a reasonable level of care commensurate with their knowledge and experience, and act with genuine intentions toward the company's welfare, they fulfil both their legal and equitable duties to the company⁶⁷. The law goes on to state that a director may be held accountable for negligence, default, breach of duty, misfeasance, or breach of trust. However, if the director has acted honestly and reasonably, considering all the particulars of the situation, and if it is fair to excuse them, the court may absolve the director either wholly or partially from their liability, imposing appropriate conditions as it deems

⁶⁴ “Cook v Weeks (1916) AC 554”

⁶⁵ “Burland v Earle (1902) AC 83”

⁶⁶ “Regal (Hastings) Ltd v Gulliver (1942) 1 ALL ER 378 (HC)”

⁶⁷ “Lagunas Nitrate Co. v Lagunas Nitrate Syndicate (1899) 2 Ch. 392”

appropriate⁶⁸.

- 3) **Duty Not to Delegate Further** – Directors, acting as agents, are subject to the legal principle of "*delegatus non potest delegare*" which signifies that a delegate cannot further delegate their responsibilities. Consequently, a director is required to carry out their duties personally. However, there are circumstances under which a director is permitted to delegate their responsibilities:

Permissible Delegation: Delegation is allowed when either the Companies Act or the Articles of Association explicitly permit it.

Business Necessity: In recognition of the practical demands of business operations, certain functions may be delegated to other company officials when deemed necessary.

LIABILITIES OF DIRECTORS

The discussion on the responsibilities of directors can be categorized into the following sections:

Accountability towards Company

The director's liability to the company can originate from the following circumstances:

Violation of fiduciary duty: When a director acts with dishonesty and is against the company's best interests, they can be held responsible for breaching their fiduciary duty. Most directorial powers are held in trust and should therefore be exercised in the company's favor, rather than benefiting the directors or a specific group of members. For instance, if directors transfer unissued company shares to trustees to thwart a takeover bid and provide an interest-free loan from the company to facilitate this share purchase, it can be deemed an improper exercise of their fiduciary authority⁶⁹.

Ultra vires actions: Directors are expected to operate within the boundaries set by the Companies Act, the memorandum, and the articles of association. These documents define the scope of the company's activities and consequently the authority of the board of directors.

⁶⁸ "The Companies Act, 2013, s 463"

⁶⁹ "Hogg v Cramphorn Ltd (1967) Ch. 254"

Directors can be held personally accountable for actions that exceed these limits, going beyond what is permitted by the company or the directors. For example, if directors pay dividends or interest from the company's capital, they may be required to compensate the company for any resulting losses or damages.

Negligence: Directors fulfil their obligations to the company as long as they exercise their powers with reasonable skill, care, and prudence expected of prudent businesspeople. Failure to exercise this level of care and diligence may be considered negligence in the discharge of their duties, making them liable for any resulting losses or damages. However, errors in judgment typically do not qualify as negligence, and relief from such liability may be granted under Section 463 of the Act.

Malafide acts: Directors serve as trustees for the company's money and assets and also wield state powers. If they misuse their powers or engage in dishonest or malicious conduct while performing their duties, they can be held accountable for breaching trust. They may be required to reimburse the company for losses incurred due to such misconduct. Directors are also answerable to the company for any undisclosed profits they may have gained during their performance of company duties. In cases where a director misappropriates company funds or assets, breaches trust, or engages in wrongful conduct, the court can order them to repay the money, restore the property, or provide compensation⁷⁰.

Obligation towards Third Party

Under the Companies Act of 2013, directors can face liability to third parties in the following ways:

(i) Liability concerning Prospectus: Directors become personally liable if they fail to disclose required particulars according to Section 26 of the Act or if there are misstatements of facts in a prospectus. Section 35 stipulates that a director is obligated to compensate anyone who subscribes to shares or debentures based on the prospectus and incur losses or damages due to any untrue or misleading statement therein. However, a director may escape liability if they can demonstrate that the prospectus was issued without their consent or if they withdrew their consent before the prospectus was issued.

⁷⁰ “P.K. Nedungadi v Malayalee Bank Ltd. AIR 1971 SC 829”

(ii) Liability regarding Allotment: Directors may also face personal liability if they allot shares before the minimum subscription, as specified in the prospectus, is received, and the application money is not received within 30 days from the prospectus's issuance date or any other period as determined by the Securities and Exchange Board. The application funds should be refunded within the prescribed time and manner. Failure to comply leads to penalties for the company and its defaulting officer.

(iii) Fraudulent Business Conduct: Directors may be personally liable for the company's debts or obligations through a tribunal order under Section 339. The tribunal can issue such an order if directors are found guilty of fraudulent business conduct. Section 339(1) outlines that during the winding-up of a company, if it is evident that the company's business was conducted with the intent to defraud its creditors or other individuals, or for any fraudulent purpose, the tribunal can, upon the application of the official liquidator, company liquidator, or any creditor or contributory, declare that those individuals knowingly involved in such business conduct shall be personally responsible, without limitations of liability, for some or all of the company's debts or liabilities as directed by the tribunal.

Liability for Breach of Warranty: Directors are expected to operate within their authorized scope. Therefore, if they engage in transactions related to matters beyond the company's authority or the articles of association, they may be personally liable for any losses suffered by third parties.

Responsibility related to Breach of Statutory Rules

The Companies Act of 2013 imposes a range of statutory duties on directors through various sections of the Act. Failure to adhere to these duties results in penal consequences. The different statutory penalties directors may face due to non-compliance with the Companies Act's requirements are detailed in relevant sections. In a scenario where a company conducted a public offering of debentures without submitting the requisite offer document, leading to the initiation of criminal proceedings against the company and its directors, including the petitioner, for infringing the provisions of the Companies Act and SEBI (ICDR) Regulations, 2009, it should be noted that the petitioner became an Additional Director of the company after the issuance of the debentures. Subsequently, the petitioner resigned from the position. Consequently, the petitioner does not bear an ongoing responsibility to reimburse or refund

funds that were unlawfully procured from the public by the company⁷¹.

Accountability for Action of Co Directors

A director functions as the company's agent, except for matters addressed in the company's general meeting, and not as an agent of the other board members. Consequently, actions taken by the board cannot impose liability on a director who was not involved in or unaware of the board's actions. To incur liability, a director must either participate in the wrongful act or subsequently consent to it. Therefore, a director's absence from a board meeting does not make them liable for a fellow director's fraudulent actions, except in cases where they had knowledge of or were party to confirming that action⁷². When a director is held liable for a co-director's actions, they have the right to seek contributions from other directors or co-directors who were involved in the wrongful act, provided that they were the ones who benefited from it⁷³. However, if the director seeking contribution was the sole beneficiary of the wrongful act, they are not entitled to such contributions.

Criminal Accountability

In addition to civil liability under the Act or common law, directors of a company may also face criminal liability under both common law principles and the Companies Act, as well as other statutes.

ANALYTICAL CONCLUSION

On Director Liabilities and Corporate Management

The scenarios provided include a wide range of issues concerning director obligations, corporate management, and compliance with the legal and regulatory frameworks that govern corporate entities. They shed light on the complex web of duties that directors face in their roles within a firm, as well as the implications of their acts or inactions. This analytical conclusion tries to synthesise the findings from various situations and present a thorough view of directorial roles, obligations, and potential liabilities.

⁷¹ “Pranab Kumar Roy v. Securities & Exchange Boards of India [2023] 149 taxmann.com 12 (Calcutta)”

⁷² “Dovey v. Cory (1901) AC 477”

⁷³ “Ramskill v. Edwards (1885) 31 Ch. D 100”

On Fiduciary Duties of Directors

One constant aspect in these cases is the directors' fiduciary duty to the corporation. Directors are trustees as well as agents, and this dual duty requires a high level of care, devotion, and good faith. They are responsible for acting in the best interests of the company, its shareholders, and other stakeholders. Any violation of this obligation, such as behaving dishonestly or for personal advantage, can have serious ramifications, including personal liability. In the first set of cases, directors are held liable for acting dishonestly to the damage of the company. This emphasises the significance of directors' ethical behaviour and their commitment to preserving the company's interests. Directors must prevent conflicts of interest and refrain from taking advantage of business chances for personal gain.

On Observance of Statutory Duties

The second discussion of situations emphasises the importance of adhering to statutory duties and laws. The Companies Act of 2013 imposes many statutory duties on directors, and failure to comply with these obligations might result in substantial legal consequences. It is critical that directors get acquainted with these statutory duties and carry them out.

Noncompliance with statutory requirements may result in civil and criminal liability. These instances highlight the importance of directors taking their statutory duties seriously and ensuring that their activities are in accordance with legal standards.

Third-party Liabilities

The third set of situations examines directors' third-party liabilities. When their activities influence parties outside the corporation, directors are not immune from accountability. The examples emphasise that directors may be held personally accountable if their actions cause third-party suffering or damage. These liabilities include issues such as prospectus misrepresentation or improper share conveyance.

Directors cannot simply hide behind the corporate veil in such instances. They may be held personally liable for their activities or decisions that have a negative impact on third parties. These instances highlight the importance of directors exercising prudence and due diligence in order to prevent inflicting harm on external stakeholders.

Transparency and Corporate Governance

A recurring theme in this discussion is effective company governance. The core elements of excellent corporate governance include transparency, accountability, and adherence to legal and ethical norms. The cases in which directors act without formal authorization, fail to hold general meetings, or engage in questionable practices emphasise the significance of adhering to governance rules.

Directors play an important role in establishing a company's governance system. These instances highlight the need for directors to lead by example, ensuring that the firm abides by its articles of association, the Companies Act, and any applicable regulations. This not only reduces potential legal problems but also contributes to the company's overall trust and reputation.

Implications and Conclusion

Finally, the discussion demonstrated the multiple nature of directors' positions and the complexities of their obligations. Directors are more than just symbolic figures; they are charged with the company's care and must act in its best interests. Their fiduciary duties, statutory requirements, and third-party liabilities are all linked components of their role.

In practice, these possibilities have significant ramifications for directors and corporate governance:

Education and Training: Directors must maintain their legal and ethical responsibilities through ongoing education and training. This can help prevent unintentional violations of statutory duties.

Companies should develop a culture of transparency and responsibility, with directors leading by example. This includes accurate paperwork, reporting on compliance, and adhering to governance standards.

Conflict Resolution: Companies should have conflict resolution systems in place, especially when differences emerge among directors or between directors and shareholders. Problems can be avoided by resolving them as soon as possible.

Legal assistance: When confronted with difficult challenges or uncertainty connected to their obligations, directors should obtain legal assistance. Professional assistance can assist them in effectively navigating legal complexities.

Shareholder Engagement: In order to resolve problems and retain trust, directors should engage with shareholders and communicate effectively. Shareholders are essential in holding directors responsible.

These instances serve as a useful reminder that the director's influence should not be underestimated. Directors must use their powers and duties wisely, with a firm commitment to the company's success and compliance with legal and regulatory requirements. Understanding the potential legal consequences of directorial actions is critical for all company executives, as it emphasises the need to make sound decisions. Furthermore, it serves as a reminder that corporate governance is a set of principles that support the integrity and viability of modern business operations, not just a formality.

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