

LEGAL POSITION OF DIRECTOR UNDER COMPANIES ACT, 2013

Sachin Grewal

Student

Maharshi Dayanand University, Rohtak

Email: Sachingrewal98@gmail.com

Abstract: The supreme executive authority controlling the management and affairs of a company vests in the team of directors of the company, collectively known as its Board of Directors. At the core of corporate governance, practice is the Board of Directors which oversees how the management serves and protects the long-term interests of all the stakeholders of the Company. Directors are regarded as being the Key Managerial Persons of a company, with special importance to the listed companies. They can hold multiple high and responsible positions in the companies, such as the Managing Director, Manager, Whole Time Director, or an Independent Director. The institution of the board of directors was based on the premise that a group of trustworthy and respectable people should look after the interests of a large number of shareholders who are not directly involved in the management of the company.

Keywords: Director, Companies Act, 2013, Board of Directors, Managing Director

1.0 Introduction

In a company shareholder are the owner as they contribute capital to run the business. But the directors are the actual person who are responsible for running the company for the very purpose it was created for. Only certain decision which are of core importance are taken by shareholders whereas directors are responsible for the entire day to day administration of the company.

2.0 Company Director

A company director is a professional person who knows how to run and manage a company. As per Section 2(34) of the Companies Act 2013, a director is an individual assigned to an organization's noteworthy board of an organization. Considerably, no artificial person or entity is allowed to be a director. Instead, a person can only play the role of a company's director.

Directors are commonly considered as the mind and will of their respective companies. It is because they are highly knowledgeable of how to control the overall functioning and behaviour of the company. Every director needs to work in various capacities so that the company can function effectively.

According to the Companies Act 2013, the company directors must perform various duties and responsibilities. The provisions of this Companies Act clearly define the powers, roles and conduct of the director in an organisation. Section 149 of the Companies Act has also discussed some legal requirements. They are mentioned below:

1. Public company: For a public company, it is mandatory to have at least 3 and a maximum of 15 directors.
2. Private company: In a private company, there should be at least 2 and a maximum of 15 directors.
3. One-person company: There should be a minimum of 1 director in the one-person company.
4. Out of the directors appointed for a firm, at least a single woman director or 1 director should have resided in India for 182 days.
5. According to the proviso of Section 49(1) belonging to the Companies act, there is a chance of increasing the directors' numbers if you want to. However, a special resolution needs to be passed in some instances.
6. The maximum limit of 15 directors does not apply to government companies.
7. Also, the limit of 15 directors does not apply to non-profit companies that are not licensed. Also, these companies should be coming under the Companies Act's Section 8.

As notified by the Companies Act 2013, the Board of Directors plays a significant role in the company. Also, they have been referred to as the company's primary agent. They are also the rightful trustees of the assets held by the organisation. This notifies that the directors have a huge role to play in the growth as well as the welfare of the company.

3.0 Board of Directors

A company, though a legal entity in the eyes of law, is an artificial person, existing only in contemplation of law. It has no physical existence. It has neither soul nor body of its own. As such, it cannot act in its own person. It can do so only through some human agency. The persons who are in charge of the management of the affairs of a company are termed as directors. They are collectively known as Board of Directors or the Board.

The new Companies Act, 2013 makes a laudable contribution towards stipulation and elucidation of the duties and responsibilities of the directors of a company. The provisions by Companies Act, 2013 regarding the duties and responsibilities of the directors, including the independent directors, not only provide greater certainty to the directors regarding their conducts and responsibilities, and thus, ensuring better and impeccable corporate management and governance; but also enable and empower the beneficiaries, regulators, and the courts, to judge, regulate, and control the activities and obligations of the directors more objectively and effectively. The Companies Act, 2013 does not contain an exhaustive definition of the term “director”. As per Section 2(34) of Companies Act, 2013 Director means a director appointed to the Board of a Company.

4.0 Legal Position of Directors

It is really difficult to explain as to what is the exact legal position of directors in a company. There are certain explanations given by the judges for defining directors, sometimes as agents, sometimes as trustees, and sometimes as managing partners. They are the persons who are duly appointed by the company for the purpose of directing and managing the company’s affairs. All the expressions to which directors are referred, like agents, trustees, etc., are not exhaustive of their powers and responsibilities. It was observed in the case of *Ram Chand & Sons Sugar Mills Pvt. Ltd. v. Kanhayalal Bhargava (1966)*, that it is really difficult to exactly explain the legal position of directors in a company. Judges have summarised it as a multi-dimensional position which is held in the capacities of an agent, trustee, or manager, even though these terms don’t hold the same meaning in a true legal sense.

4.1 Directors as an Agent

As discussed, a company cannot act by itself in its own capacity. It would always need someone to act on its behalf. A company can only act through directors, and this hence makes it a principal and agent relationship. This relationship gives the directors the power to act and make decisions on behalf of the company. Any contract or transaction made on behalf of the company makes the company liable and not the directors. No liability occurs upon the directors, they only sign and make contracts on the company’s behalf.

In the case of *Ferguson v. Wilson (1904)*, it was established that the directors are the agents of the company. This was established in the eyes of the law that a company cannot work as an artificial person in its own capacity that’s why it needs an agent to operate. In the case of *Ray Cylinders & Containers v. Hindustan General Industries Limited (1998)*, it was noticed that directors are the agents of the company but not of the members of the company. This means that the directors are the agents of the company and not its individual members, except in the case where the relationship between the two arises out of special facts. A company is a different legal entity apart from its members, i.e., shareholders.

In the case of *Kirlampudi Sugar Mills Ltd. v. G. Venkata Rao [2003]*, it was noticed that if the CEO of the company executes a promissory note and borrows money from outside for the company’s use, it cannot be said that he has borrowed money for himself. Even if the company fails to pay the amount promised, there shall incur no liability on the one who borrowed money as an agent of the company. However, in the case of *H.P. State Electricity Board v. Shivalik Casting (P.) Ltd. [2003]*, it was established that if a director gives surety in his own capacity/personal capacity and not for and/or on behalf of the company, then the company cannot be sued for the amount of surety. There were some circumstances that were pointed out in the case of *Vineet Kumar Mathur v. Union of India [1996]* in which the directors incurred liability on themselves-

1. In cases where directors contract in their own names rather than the company.
2. In cases where directors omit or use the company’s name incorrectly.
3. In cases where directors sign the contracts or agreements in such a manner that it is not evident whether it is the company (principal) or the director (agent) who is signing and who shall be liable for future circumstances.
4. In cases where directors exceed the allowed limit and borrow in excess of funds.

There are ways in which unauthorised actions can be ratified. In *Bhajekar v. Shinkar [1933]*, it was mentioned that if a transaction made by the director exceeds the power given to him but falls within the ambit of the power held by the company, then it can be ratified by passing a resolution of the company. However, if the company has been struck off by the registrar and dissolved, then it cannot ratify its actions. This is because a non-existent entity cannot initiate action in the first place.

4.2 Director as a Trustee

In a company, a director is regarded as a trustee as well. A director is known as a trustee because he administers the assets and works toward the interests of the company. A trustee is someone who can be entrusted with the company's assets and performs towards achieving the company's goals rather than for their personal advantage. Besides these, a trustee is given powers like allotment of shares, making calls, accepting or rejecting transfers, etc., which are known as powers in trust. In the case of *Dale & Carrington Investment (P.) Ltd. v. P.K. Prathapan [2004]*, it was noticed that the directors have to act within their fiduciary capacity, which means that they have a duty to act on behalf of the company with the utmost care, skill, good faith, and due diligence, most importantly towards the interests of the company that they are representing.

As observed by the Madras High Court in the landmark case of *V.S. Ramaswami Iyer v. Brahmayya and Co. (1966)*, the directors can be rendered liable as trustees with reference to their power to apply funds of the company. A director may misuse these in many ways. Due to this, if legal action is taken against a director with reference to the mentioned offence, then the cause of action will survive even after the death of the director against his legal representative. In both the cases of *Percival v. Wright (1902)* and *Peskin v. Anderson (2001)*, it was held that the directors of a company owe their duty to the company as a whole, and are not trustees for individual shareholders or owe them a fiduciary duty merely by virtue of their offices. They may purchase their shares without disclosing pending negotiations for the sale of the company's undertaking.

4.3 Director as a Managing Partner

The directors of a company represent the shareholders' will and wants. They tend to act on behalf of the shareholders and their goals. Due to this, they enjoy vast powers and can perform many functions that are proprietary in nature. Due to the provisions mentioned in the MOA and AOA of the companies, the board of directors acts as the supreme policy and decision-making authority.

4.4 Director as an Employee/Officer

Shareholders elect directors in a general meeting held by the company. Once the director is elected, he then enjoys the rights and powers that are given to him as per the Act. These powers and rights cannot be taken away by the shareholders and they cannot interfere in the decision-making of the directors as such. Since directors possess such powers and rights, they cannot be termed employees of the company. This is because employees have limited authority vested in them and always work under the directions of the employer and cannot interfere in the employer's decision-making.

In the case of *Lee Behrens & Co., Re [1932]*, it was seen that it is the shareholders who elect their representatives who shall engage in directing the affairs of the company on their behalf. This means that they are acting in the capacity of an agent in this scenario. It can also be seen that they are not the employees or servants of the company. However, in the case of *R.R. Kothandaraman v. CIT (1957)*, was held by the Madras High Court that since there is nothing mentioned in the law, no one can prevent the director from accepting his position as an employee under a special contract made with the company.

Directors are also treated as an officer in a company for certain matters. They can be held liable for penalties for failure to comply with the law. To summarize the legal position of directors in a company, Jessel M.R can be quoted from *Forest of Dean Coal Mining Co., Re [1878]*, "Directors have sometimes been called as trustees or commercial trustees, and sometimes they have been called managing partners; it does not matter much what you call them so long as you understand what their real position is, which is that they are really commercial men managing a trading concern for the benefit of themselves and of all the shareholders in it. They stand in a fiduciary position towards the company in respect of their powers and capital under their control."

5.0 Conclusion

A Director is an agent of the Company for the conduct of the business of the company. Directors of a company have fiduciary relationship with the company as well as the shareholders when he acts as an agent or officers of a company. The director as the Companies Act indicates, holds an extremely important position in the administration

and management of a Company. It must be noted that the director actually works in different capacities at different times to ensure that the company is run in a legal and an efficient manner. The Act places immense responsibility on the shoulders of the directors. Directors are bound to use their fair and reasonable diligence while discharging their duties and they shall act honestly, and with such care as may be reasonably expected from, having regard to their knowledge and experience. The Company's Act has also sought to introduce an element of objectivity in the office of a director, for this purpose the act also introduced the office of independent directors. However, the office of independent director has not been as successful in bringing efficient and honest corporate governance as it was expected. The Satyam scam is the biggest example! Therefore, it can only be concluded that the Companies Act should be suitably be amended to introduce such in built checks and balances that the office of a director does not become an absolute, which practically is the case.

6.0 Reference

- i. The Companies Act, 1956.
- ii. Kuriakos v. PVK Group Industries, (2002) 111 Comp Cas 826 Ker (2001) 103 Comp Case 161 Del (2006) 131 Comp Cas 798
- iii. Kant Ramaswamy Iyer v. Brahmayya & Co, [1966] 1 Comp LJ 107
- iv. Smith v. Anderson, (1880) 15 Ch D 247 at p 275 [1902] 2 Ch 421, cited with approval of Madras HC in Ramaswamy Iyer v. Brahmayya & Co, [1966] 1 Comp LJ 107 [2000] BCLC (1914) 30 TLR 444
- v. Briess v. Woolley, 1954 AC 333
- vi. Gopal Khaitan v. State, AIR 1969 Cal 132, 138