

OFFICE OF DIRECTORS : PENAL PROVISIONS ATTACHED TO IT

Few days back there was an article in the Economic Times on flak which the independent directors are facing as companies default on payments. There it was emphasized that post 'Mallaya episode' few public sector banks which are feeling that few of their corporate borrowers may follow the foot prints of Mr. Mallaya, has threatened to name and shame independent directors of companies which have defaulted on their payments. If the position of independent directors (who are well protected under the Companies Act, 2013) are so risky then how much risk is attached to the offices of executive directors of the companies? After reading that i got curious to specifically examine the provisions of the Companies Act 2013 which has ushered in a new era of corporate governance, by increasing the roles and responsibilities of the board of directors, protecting shareholders' interests, bringing in a disclosure based regime and built in deterrence through self-regulation.

Without a pinch of doubt, i can give a statement that the act has introduced several measures, which have the dual effect i.e. on the one hand it enhanced the scope of duties of directors of the company and on the other hand made them liable for all acts of company. The approach of the law makers is to impose stiffer penalties in case of criminal offence to constitute a strong deterrent on director's conduct that falls short of the desired standards or there is any instance of breaches of their duties.

Therefore, the obvious question arises about what all makes a director liable under the companies act, 2013? To understand this lets see the list given below which covers the various liabilities under different sections of the said act :

1. **Section 53: Prohibition on the issuance of Shares at discount**
 - For company- fine- not less than Rs 1 lakh and may extend to Rs. 5 lakhs.
 - For officer in default- maximum imprisonment of 6 months or fine – not less than Rs. 1 Lakh and may extend to Rs. 5 lakhs or with both.
2. **Section 57: Punishment for personation of shareholder**
 - Such person in default- minimum imprisonment of 1 year to maximum 3 years and / or fine – not less than Rs. 1 lakh and may extend to Rs. 5 Lakhs.
3. **Section 58 (6) : Refusal of registration and appeal against refusal**
 - Such person in default- minimum 1 year to maximum 3 years and imprisonment or fine – not less than Rs. 1 lakh and may extend to Rs. 5 Lakhs.
4. **Section 59 (5) : Rectification of register of members**
 - For company – fine – not less than Rs. 1 Lakh and may extend to Rs. 5 Lakhs.
 - For officer in default – maximum imprisonment of 1 year or fine – not less than Rs. 1 Lakh and may extend to Rs. 3 Lakhs or with both.

5. **Section 68(11) : Power Of Company To Purchase Its Own Securities**
 - For company- fine- not less than Rs.1 Lakh and may extend to 3 lakhs.
 - For officer in default- maximum imprisonment of 6 months or fine – not less than Rs.1 Lakh and may extend to Rs.3 Lakhs or with both.
6. **Section 71(11) : Debentures**
 - For officer in default- maximum imprisonment of 3 years or fine- not less than Rs. 2 lakh and may extend to Rs. 3 lakhs or with both.
7. **Under section92(5) : Annual Return**
 - For company- not less than Rs. 50,000 and may extend to Rs. 5 Lakhs
 - For officer in default- Maximum imprisonment of 6 months or fine – not less than Rs. 50,000 and may extend to 5 Lakhs or with both.
8. **Section118 (2) : Minutes of proceedings of general meeting, meeting of the board of directors and other meetings and resolutions passed by postal ballot**
 - Any person guilty of tampering with the minutes- maximum imprisonment for 2 years and fine- not less than Rs.25,000 but which may extend to Rs.1 Lakh.
9. **Section 128(6): Books of account, etc., to be kept by company**
 - For officer in default- maximum imprisonment of 1 year or fine – not less than Rs. 50,000 and may extend to Rs. 5 Lakhs or with both.
10. **Under section 129(7)- Financial statement**
 - For officer in default- maximum imprisonment of 1 year or fine – not less than Rs. 50,000 and may extend to Rs. 5 Lakhs or with both.
11. **Section 134: Financial statement, board's report, etc.**
 - For company – not less than Rs. 50,000 and may extend to Rs. 25 Lakhs.
 - For officer in default – maximum imprisonment of 3 years or fine – not less than Rs. 50,000 and may extend to Rs. 5 lakhs or with both.
12. **Section 137 (3) : Copy of financial statement to be filed with registrar**
 - For company – fine – not less than Rs. 1,000 for each day in default but not more than 10 Lakhs.
 - For officer in default – maximum imprisonment of 6 months or fine – not more than Rs. 1 Lakh and may extend to Rs. 5 Lakhs or with both.
13. **Section 167 : Vacation of office of director**
 - Director- maximum imprisonment for 1 year or fine – not be less than Rs. 1 Lakh and may extend to Rs. 5 Lakhs or with both.

14. Section 182 (4) : Prohibitions and restrictions regarding political contributions

- For company – fine – 5 times of the amount of contribution in contravention
- For officer in default – maximum imprisonment of 6 months and fine- 5 times the amount of contribution in contravention.

15. Section 184 (4) : Disclosure of interest by the director

- Such person in default – Minimum 1 year imprisonment or fine – not less than Rs. 50,000 and may extend to Rs.1 Lakh or both.

16. Section 185 (2) : Loan to directors, etc.

- For company – not less than Rs. 50,000 and may extend to Rs. 25 Lakhs.
- For officer in default – maximum imprisonment of 6 months or fine – not less than Rs. 5 Lakhs and may extend to Rs. 25 Lakhs or with both.

17. Section 186(13) : Loan and investment by company

- For company – not less than Rs. 25,000 and may extend to Rs. 5 Lakhs.
- For officer in default – maximum imprisonment of 2 years or fine – not less than Rs. 25,000 and may extend to Rs. 1 Lakh or with both.

18. Section 187 (4) : Investments of company to be held in its own name

- For company – fine – not less than Rs.25, 000 and may extend to Rs.25 Lakhs.
- For officer in default – maximum imprisonment of 6 months or fine – not less than Rs. 25,000 and may extend to Rs. 1 Lakh or with both.

19. Section 188 (5) : Related party transactions

- In case of unlisted company, offence is punishable with fine, which shall not be less than Rs. 25,000 and may extend to Rs. 5 Lakhs.

20. Chapter IV : Registration of charges

- For company – fine – not less than Rs.1 Lakh and may extend to Rs. 10 Lakhs.
- For officer in default – maximum imprisonment of 6 months or fine – not less than Rs. 25,000 and may extend to Rs. 1 Lakh or with both.

21. Section 447 : Punishment for fraud

- Any person who is found guilty of fraud – maximum imprisonment of 6 months may extend to 10 years.
- Such person can also be liable to fine, which may extend to 3 times the amount involved.

Now for sure every Director has to take his / her position very seriously. Holding the position of director now just not mean BOSS but a Boss who is responsible and accountable for so many things and the moment he will not take this seriously that moment may be his / her first step towards penal consequences.

GOOD LUCK DIRECTORS

FCS SAPNA KHANDELWAL

[M.COM](#), CS, LL.B.