

## Directors Liabilities And Responsibilities

written by Raghav Gaiind | June 20, 2020



The extent of Liabilities and Duties of Director as per Companies Act 2013  
It is a very usual and common thing to have knowledge of the corporate laws but to have complete knowledge and to be able to analyze its chronological aspects, one needs to focus and be conscious of the regular amendments or judgments that are prevailing in the law. The erstwhile Companies Act, 1956 ("Old Act") did not provide any liabilities of the directors of the company. However, such liabilities were determined based upon the provisions under Section 291 of the Old Act that dealt with the powers of the director of the company.

The new company law i.e. Companies Act, 2013 (Act) specifies that the company in itself is required to act both as principal and the agent and that the board of directors is to act on its behalf. The Act further makes sure to enlighten its analyst about how and where a master is eligible to handle and take care of the company.

Besides this, it has also cleared how an agent is supposed to be bound and confined to his activities and what all constitutional borders the company or the organization needs to stick to, failing which makes it unrecognizable in legal nature. Under the provisions of the Act, the company itself and its directors or the board of directors are primary agents of the company to transact its operation. When we talk about a company and its director, they are always considered as 'Separate Legal Entity'.

As per Section 2(94) of the Act, "whole-time director" includes a director who is appointed for the whole time, i.e., he is the director of the company on a full-time basis and is also entitled to receive remuneration. According to Section 166 of the Act, the following are the duties of the director:

1. The director of the company shall abide by the articles of the company;
2. The director of the company shall always work in the best interest of the members, shareholders, employees, and community of the company. He shall strive for achieving the goals and objectives of the company;
3. The director shall be diligent and thrive in achieving optimal care and skill in the working of the company;
4. The director shall not involve himself in any conflicting situation;
5. The director shall not attempt to achieve any undue gain or advantage towards himself or his family, or relatives. In case the director is found guilty he shall be liable to pay the penalty equivalent to the gain;

6. The director of the company shall not assign his office to any person and in case he assigns, such assignment shall be considered void; and
7. In case of any contravention, the director shall be punishable with a fine equivalent to INR 1 lakh which may extend up to INR 5 lakhs.

#### Restrictions on the power of the board

When we talk about the restrictions imposed on the powers of directors, the Act explains it very clearly. Section 180 of the Act imposes certain restrictions on the powers of the Board of Directors. Such powers can be exercised by the board only with the consent of the shareholders in a general meeting by passing a special resolution. These powers are:

- Sell, lease or otherwise dispose of the whole, or substantially the whole, of one or more undertakings of the company.
- Invest, otherwise than in trust securities, the amount of compensation received by it as a result of any merger or amalgamation.
- Borrowing money exceeding the aggregate of the paid-up capital of the company, its free reserves, and securities premium. Here 'Borrowings' doesn't include temporary loans.

According to a circular passed by the Ministry of Corporate Affairs, it was clarified that the resolution passed under Section 293 of the Companies Act, 1956 prior to the Companies Act 2013 with reference to borrowings and/or creation of security on assets of the company will be regarded as sufficient compliance of the requirements of Section 180 of the Act for a period of one year from the date of notification of Section 180 of the Act[1].

The Supreme Court of India gave a landmark judgment in the case of *Sunil Bharti Mittal v. Central Bureau of Investigation and others*[2]. This was a PIL where the license of the spectrum was challenged to be illegally granted after the misconduct of the employees. The CBI investigation was done and it was ruled out that in case any default is organized by the employee of the company, in such a scenario, the director of the company shall not be liable to be considered as an officer in default.

Further, in the case of *Sayanti Sen v. Securities and Exchange Board of India* [3], one of the directors did not attend any meeting and was a silent member. The said director was held liable by the court on the fact that she was a director and she has to comply with and perform roles in the day-to-day affairs of the company. The SEBI appellate tribunal observed that the liability depends upon the role played by the individual in the company and not on the designation held by such individual in the company. The liability shall also depend upon the charge taken at the time of the occurrence of the event.

Thereafter, in the case of *Shiv Kumar Jatia v. State of NCT of Delhi* [4], the managing director was acquitted of a few criminal charges where the victim died falling from the hotel. He was blamed for not making sure that the entry of any customer on the terrace is restricted after dark. The Apex Court held that though he is the director and needs to ensure safety by conducting meetings with the employees and all other concerned officials, his intention was not proven and hence the charges under section 304-A were quashed.

It was observed by the court that in the absence of specific allegations against the managing director, the court found it appropriate to quash the proceedings against the managing director. The decision in the case of *Sunil Bharti Mittal* was restated.

## Conclusion

To conclude, the extent of liability and duties of the director could be construed that the continuous operation of the corporate system in the country is one of the sources recognized by the government for the economic development of the country. Being a director of a company is a responsibility, so one needs legal awareness of the past cases and scenarios to make sure he exercises his duties without complications. It can further be held that mere suspicion because of the designation of the individual cannot be treated as valid grounds in a court of law. The involvement of such individuals in the event and powers should be examined before determining the liabilities of the director.

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- [1] [https://www.mca.gov.in/Ministry/pdf/gencircular\\_042014.pdf](https://www.mca.gov.in/Ministry/pdf/gencircular_042014.pdf)
  - [2] <https://indiankanoon.org/doc/159121041/>
  - [3] Appeal No. 163 Of 2018, Order Dated August 9, 2019
  - [4] AIR 2019 SC 4463

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