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ROLES AND OBLIGATIONS OF KEY MANAGERIAL PERSONNEL (KMP) AND DIRECTORS IN CORPORATE GOVERNANCE: A STUDY OF INDIAN SCENARIO

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ABSTRACT

The new economic policy introduced by India in 1991 post the huge financial crisis has brought an opportunity as well as indispensable requirements to open the economy for global market competition. Economic globalisation and privatisation have led to the entry of Big corporate players and foreign institutional investors into the Indian market. With such globalisation and privatisation, the risk of corporate fraud, mismanagement as well as window dressing of financial accounts and records were also raised and various incidents like the Satyam Company Scam and fraud committed by Vijay Malia, Neerav Modi as well as ex-CEO of ICICI Bank. Ms Chandan Kochar was recorded in the recent past.

All these incidents were insisted by the government regulators as well as the judiciary to bring some major changes and reforms in corporate law over time. These incidents of corporate fraud and manipulation are generally. The outcomes of the decisions taken by the Board as well as Senior management including the KMP like MD, manager CEO and CFO.

Previous research studies disclosed the situation of Ground Zero implementation of corporate law in India and also suggested some preventive measures to effectively deal with wilful infringement or default. In this research study through the scrutinization and analysis of various data collected through primary and secondary sources, the researcher has made effort to review the various corporate laws including SEBI regulations as well as some other major statutes related to Environment, Foreign Exchange, Industries and Labour to find out the statutory obligations of the Board and Senior Management of a corporate entity. Researchers of this study also suggested some reforms or majors to efficiently deal with internal compliance issues such as the promotion and effective implementation of whistle-blower policy and provisions for ombudsmen. In reference to various recent incidents of huge corporate fraud and financial scams, as discussed in this research study, it is observed by the author that the corporate laws in India are more or less adequate but their practical implementation is not full proof and up to the level of accuracy in dealing with Big Corporate tycoons and Business Persons. This study also finds that various efforts were made by Indian Legislature to reform corporate laws in alignment with the present scenario but more actions and vigilance is required from Legislatures as well as Enforcement Agencies.

CHAPTER 1

INTRODUCTION

1.1 Meaning

Company

A company which is formed and incorporated under the companies act 2013 is a separate legal personality created by law and managed by human beings. The juristic personality of companies consists of three conditions:

a. there must be a corpus of human beings gathered for some specific purpose,
b. there must be some organs for performing the functions of a corporate entity, and,
c. the corporate body must be attributed will by the legal function be attributed will by legal fiction.

The organs which are responsible for performing the functions of any body corporate mainly includes Directors, KMP, MD or Manager.

Director

As per section 2 (34) of the companies act, 2013 "Director" means a director appointed to the board of the company.

In other terms, a director is a person appointed by a shareholder who is responsible to achieve the objectives of the company and to manage the day-to-day business and affairs of the company.

Key Managerial Personnel

As per section 2(51) of the companies act, 2013[1], key managerial personnel include:

The chief executive officer or managing director or manager;

company secretary;

Whole-time director;

[1] The companies act, 2013, section 2(51)

-Chief financial officer; and

Such other officer as may be prescribed.

Also, section 203 of the Companies Act, 2013 along with company rules[2] provides that every listed company and every unlisted public company which have paid-up share capital of Rupees 10 crores or more shall appoint a KMP on a full-time basis.

1.2. Literature Review –

A. CS Rajnish Kumar, Company law, Fourth Edition, CS Gateway, New Delhi: The review of this literature has assisted my study in understanding the basic concepts such as who can be a director, who can be a Key Managerial Personnel what are the basic qualifications for these organs under companies act 2013.

B. Dr N.V. Paranjape, Company Law, Eighth Edition, 2017, Central Law Agency, Allahabad: The researcher has found the main contents relevant to the research problems of this research study from the provisions as legislated by lawmakers in the Companies Act, 2013, with the assistance made through the review of the literature including the appointment of Company Secretary, M.D, CEO as KMP as well as duties, disqualifications and Remuneration of KMP.

C. Dr N.V. Paranjape, Studies in Jurisprudence and Legal Theory, Eighth Edition, 2016, Central Law Agency Allahabad: Through the review of this literature my research study emphasises upon understanding the jurisprudential aspects of a corporate personality through the ideas of various eminent jurists.

D. Taxmann's Labour Laws, 2020, taxman Publications (P.) Ltd.: Through the review of this literature my research study emphasises upon understanding the statutory obligations of Key Managerial Personnel and Directors under various labour and Industrial statutes such as under Factories Act,1948, The Industrial Relation Code, 2020, The Industrial Dispute Act, 1947 and some other major statutes.

E. Avtar Singh, Company Law, Sixteenth Edition, 2015, EBC, Lucknow: The review of this literature helps my study in understanding the judicial approach of various Courts and Tribunals in India towards the statutory obligations of Directors and KMP, through various decided leading cases.

[2] Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, Rule 8.

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Apart from this it also assisted in understanding the major rules imposed by various regulators such as, MCA and SEBI.

1.3 Statement of Problems –

What are the roles and obligations of directors and KMP under the newly enacted companies act, of 2013?

What are the Statutory liabilities of directors and KMPs under other legislations?

How the directors and KMPs are prima facie responsible for all statutory compliances and due diligence in public companies, listed as well as unlisted?

1.4 Objectives of The Study –

While studying company law I got to know about the concept of directors and KMP and their responsibilities as well as roles towards the functioning and management of a company, particularly a public corporate entity. I became more interested in this concept when I got aware of the fact that these organs of a company are responsible and legally liable in the various other domains of law related to companies such as SEBI's Listing Agreement, Public Liability Insurance Act, 1991[3], the Environment (Protection) Act, 1986 and other Environmental laws as well as under the various Labour and Industrial laws. During the literature review of various authors, some light was thrown by these authors on the questions of research which were in my mind so I decided to perform further research on the same issue to identify the various roles and obligations of these organs.

1.5 Research Methodology –

In these research studies I used the Doctrinal research method to analyse my research topic i.e., "ROLES AND OBLIGATIONS OF DIRECTORS AND KEY MANAGERIAL PERSONNELS IN CORPORATE GOVERNANCE: A STUDY OF IN DIAN SCENARIO". This is a library-based analytical research study in which primary data are collected throw the norms and regulations issued by regulatory bodies like SEBI and the MCA and throw various legislated materials, whereas the secondary data are collected from textbooks, articles, law journals and bare acts.

[3] The Public Liability Insurance Act, 1991

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1.6 Hypothesis-

- Directors and KMP are the prime responsible authorities for the successful and smooth functioning of companies.
- With the great opportunities and great responsibilities comes, this principle is equally applicable in the case of directors and KMP.
- Companies Act 2013 and Various SEBI Regulations such as SEBI listing Regulations 2015, and SEBI listing Agreement has enhanced the liabilities of KMP.
- Other statutes like environmental law as well as industrial and Labour codes have enhanced the civil as well as criminal liabilities of Directors and KMP in India.
- Many times, the involvement of the KMP or Directors in some misconduct or mismanagement activities may collapse the entire organisational structure of even a most successful entity.
- KMP and directors are the "Related Party" of a corporate entity.[4]

1.7 Research Design -

The present research work emphasises the study of the roles and obligations of directors and KMP. It also scrutinizes the extent of their liabilities in the functioning and compliance procedure of a company. The whole research study has been categorised into six chapters, a summary of which is given as follows:

Chapter 1- Introduction- This chapter provides an introduction to my research study, it highlights the objects of research, research problems, the method involves in research, the hypothesis on which the conduct of my research is based as well as the extensive literature review and an introduction with the concept corporate personality, Director and KMP.

Chapter 2- Roles and Obligations of KMP and Directors: An Analysis of Companies Act, 2013- This chapter is focusing on the analysis of various provisions of the Companies Act, 2013 as well as different rules crafted thereunder, related to roles and obligations of KMP and various Directors including requirements of appointment of KMP under section 203 as well as the concept of the related party and requirement of disclosures of "Related Party Transactions" and other major relevant provisions.

[4] The Companies Act, 2013, section 2 (76)

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Chapter 3- Obligations of Directors and KMP Under Sebi Rules and Regulations- In this chapter, my research study emphasises various guidelines_and regulations laid down by the SEBI which provide obligations of directors as well as KMP related to various compliances, reporting and disclosures, such as SEBI Listing Agreement, 2004 (clause49- corporate governance), and SEBI (procedure for board meetings) Regulations, 2001.

Chapter 4- Obligations of Directors and KMP Under Other Statutes- In this chapter, my research study focuses on the obligations of Directors and KMP in some other major statutes such as under environment related laws, FEMA Act, Taxation law as well as obligations under some major Industrial and Labour Codes.

Chapter 5- Judicial Approach Towards Obligations of Directors and KMP of A Company-_In this chapter, my research study is emphasising the understanding of the judicial approach of the NCLT as well as Supreme Court of India towards the obligations, roles, and appointment of KMP and directors, in the light of various decided cases.

Chapter 6- Conclusion and Suggestion-_This chapter summarizes and concluded the research problems involved in my research study. It also discusses the major consequences of extensive liabilities of directors and KMP over the functioning and management of companies. This study also suggested how the balance between the powers and obligations of these organs can be efficiently managed by a company so that the best potentials can be derived towards organizational growth.

1.8 Concept of Corporate Personality

Legal Personality-

The term 'person' originated from the Latin term 'Persona' which means a character adopted by an author or an actor initially till the 6th century this word was used to refer to various characters played by a man during his life, but later, it was interpreted as a living being who is capable of having some rights and obligations. The law basically has two forms of persons, namely, natural persons and artificial persons created by law. Many authors in the past believed that the term 'personality' belongs to only human beings because only human beings have the capability to carry some rights and obligations, but the judicial authorities have interpreted it from time to time and provided a wider scope to the concept of personality,

such as, in the year 1925 Privy council held that India idols, gods, angels are covered as legal persons.[5] In most famous case of *Salmon* v. *Salmon*,[6]the House of Lords held that corporations are also covered under the definition of 'personality'.

Various author defines the term 'person' in their ways, for instance, Salmond defines 'persons' as "any being to whom the law regards as capable of rights or duties. Any being that is so capable, is a person whether a human being or not and nothing that is not so capable is a person even though he is a man."[7] Also according to G.W. Paton legal personality is a medium through which some such units are created in which rights can be vested.[8] According to Kelson, a legal person is a fiction, because it is not more than rights and duties.[9] English law, however, recognises only a few kinds of legal persons which include corporations, institutions, such as trade unions and societies and associations, and the estate or funds.[10] Under Indian law banks, railways, universities, colleges, churches, temples, hospitals etc. are also conferred legal personality. [11]Under the Indian constitution, the Union and States are also recognised as legal personalities.[12]

Corporate Personality-

It is a statutory personality created by law. The aggregation of individuals who gathered to form a corporation are called members of such a corporation. The juristic personality of corporations presupposes the existence of three conditions.[13] These are given as follows:

i) there must be a group or body of human beings associated with a certain purpose,

ii) there must be organs through which the corporation functions, and

iii) the corporation is attributed will (Animus) by legal fiction.

The term 'company' is a corpus of two Latin Terms, that is "Com" and "Panis" in which the term 'com' literally denotes to, 'together' and 'Panis' generally means "feed". Therefore, the term 'Company'

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[5] *Pramatha Nath Mallick* v. *Pradyumna Kumar Mallick, 1925 LR 52*
[6] *Salmon* v. *salmon (1987) AC 22*
[7] Fitzgerald P.J: Salmond on Jurisprudence (12th ed) p 299.
[8] https://www.rajras.in/law-basics-concept-of-legal-personality/
[9] ibid
[10] Paranjape, N.V: Studies in Jurisprudence and legal theory (8th ed 2016) p 504
[11] ibid
[12] Constitution of India 1950, Article 300
[13] [13] Paranjape, N.V: Studies in Jurisprudence and legal theory (8th ed 2016) p 504

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was initially pronounced to refer to a group or association of persons who gathered to take their feed or livelihood together

According to Lord Justice Lindley – "A company is an association of many persons who contribute money or monies worth to a common stock and employed in some trade or business and who share the profit and loss arising therefrom. The common stock so contributed is denoted in money and is the capital of the company. The persons who contribute to it or to whom it pertains are members. The proportion of capital to which each member is entitled is his share. The shares are always transferable although the right to transfer is often more or less restricted."[14] Also, as stated by Prof. Haney – "A company is an artificial person created by law, having separate entity, with a perpetual succession and common seal."[15]

The nature of a corporation may be of two types, (a) corporation aggregate, which means a gathering of members to create a corporation such as a private company or public company, and (b) corporation sole, which means a single person or member which having some statutory rights and obligations, such as one person company, President of India, and, Governor of states are the examples of the corporation sole.

1.9 Concept of Directors and key Managerial Personnel

Concept of Director- Director performs a very vital role in managing the routine affairs and business of the company. They are appointed by the members or the shareholders to achieve the goals of the company as mentioned in the MOA of the company. As given under section 2(34)[16] "Director" means a director appointed to the board of a company. As per section 149(1) (a) and (b) every company shall have a board of directors constating of individuals as directors and shall have:

i) At least 3 directors in the case of a public company, two directors in the case of a private company, and one director in the case of a one-person company, and

ii) a maximum of fifteen directors which a company may extend only by passing of a special resolution by members.[17]

[14] https://taxguru.in/company-law/definition-company-features.html
[15] ibid
[16] The Companies Act, 2013 (Act 18 of 2013), S.2 (34)
[17] The Companies Act, 2013 (Act 18 of 2013), S.149(1)

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Also, proviso to section 149 (1) and rule 3 of Companies (Appointment and Qualifications of Directors) Rules, 2014, provides provisions regarding the appointment of women directors which specify that every listed company and every other public company having paid-up share capital of a hundred crore or more or turnover of three hundred crore rupees or more must appoint at least one women director in its board.[18]

Sub-section (4) of section 149, also provides that every listed public company shall have at least one-third of the total number of directors as independent directors and the Central Government may prescribe the minimum number of independent directors in case of any class or class of a public company.[19]

Additionally, Section 151 of the Companies Act of 2013, and Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules of 2014 consist of provisions regarding "small shareholder directors." Section 151 allows a listed business to have 1 director chosen by smaller shareholders. According to section 151, explanation, a "small shareholder" is defined as a shareholder who owns shares with a nominal worth of not more than 20,000 Indian rupees or any further amount as may be specified. Rule 7 of the above-mentioned rule provides terms and conditions for the appointment of small shareholder directors. As per this rule, a listed company may Suo moto or upon the notice of not less than 1000 or 1/10 of the total number of small shareholders, whichever is lower, have a small shareholder's director elected by the small shareholder. for appointment, the small shareholders may at least fourteen days before the date of an annual general meeting must send a signed notice proposing the name of the person to be appointed as director. A small shareholder director shall not hold the office of a small shareholder's director in more than two companies.[20]

Section 161 of the act provides provisions concerning the appointment of additional director, alternate director and nominee director. As per section 161 (1), the board can appoint additional directors provided that they are authorised by the article of association of the company. The additional director shall hold the office only up to the date of the next annual general meeting or the last date on which the annual general meeting should have been held, whichever is earlier. Also, as per section 161 (2), the board of directors may appoint any alternate director provided they are authorised by an article of the company or by a resolution passed in a general meeting for the appointment of an alternate director. Such an alternate

[18] https://cleartax.in/s/woman-director-and-independent-director-company-law-regime

[19] The Companies act, 2013 (Act 18 of 2013), s.149 (4)

[20] Kumar, Rajnish: Company Law (4th ed 2015) p 13.4

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director holds the office in the place of a director who is absent from India for a period of not less than three months. Proviso to section 161 (2), provides that no person shall be appointed as an alternate director for an independent director unless he is qualified to be appointed as an independent director. Section 161 (3) provides provisions regarding nominee directors, as per this clause the board of directors may appoint any person as a director nominated by any institution or under any agreement or by the Central or State Government through the virtue of its shareholding in a government company.[21]

Concept of key Managerial Personnel -

As per the provisions of Section 203(1) of the Companies Act, 2013[1] and as per Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules of 2014, every company is required to appoint key managerial personnel who have:

Any listed companies, or Any public limited company which have paid-up capital of INR 10 Crores (Rupees Ten Crore) or above. Those companies are required to appoint a full-time managerial person as Managing director of the company or Chief Executive Officer or full-time director; Chief Financial Officer (CFO); and Company Secretary. Further, every company, as mentioned above, shall appoint a full-time company secretary as per Further, as per Rule 8 A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules of 2014. KMP is to be appointed by the board of directors who are responsible for running day to day activities of the company. These officers are selected as per their areas of expertise, depending on the vision of the company. These officers may or may not be directors of the company, but they have to work as per the directors given by the board of directors.[22]

Also, Section 2 (51) of the companies act, 2013,[23] defines key managerial personnel. As per this clause about a company, key managerial personnel, means:

a) the chief executive officer or the managing director or the manager;

b) the Company Secretary;

c) the whole-time director;

[21] Kumar, Rajnish: Company Law (4th ed 2015) p 13.7

[22] https://corpbiz.io/learning/appointment-of-key-managerial-personnel/

[23] The Companies Act, 2013, (Act 18 of 2013) s. 2 (51)

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d) the chief financial officer;

e) such other whole-time employee who is not more than one level below the position of director and designated as key managerial personnel by the board; and

f) such other officer as may be prescribed.

Also, rule 8 and rule 8A of companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 provide that every listed company and every unlisted public company which having paid up share capital of 10 crores or more shall appoint whole-time key managerial personnel and every other company which is not covered under rule 8 and which having paid up share capital of rupees 5 crores or more shall appoint a whole time company secretary other than the managerial personnel as given under rule 8.[24]

Section 2 (94) defines 'whole-time director' as a director in the whole-time employment of the company. Also, section 2 (18) provides that "Chief Executive Officer" means an officer of the company, who has been designated as such by it. Further section 2 (19) defines "Chief Financial Officer" as a person appointed as the Chief Financial Officer of the company.[25]

As given in Section 2 (24) company secretary or secretary means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act;[26]

Further, as per section 2 (53) "Manager" means an individual who, subject to the superintendence, control and direction of the board of directors, has the management of the whole, or substantially the whole, of the affairs of a company, and includes a director or any other person occupying the position of a manager, by whatever name called, whether under a contract of service or not. "Managing Director" is defined under section 2 (54) which provides that, Managing Director (MD) means a director who, under the articles of a company or an agreement with the company or a resolution passed in its general meeting, or by its Board of Directors, is entrusted with substantial powers of management of the affairs of the company and includes a director occupying the position of managing director, by whatever name called.[27]

[24] Kumar, Rajnish : Company Law(4th ed. 2015) p 16.1
[25] The Companies Act, 2013, (Act 18 of 2013) s. 2 (18),(19)
[26] [26] Kumar, Rajnish: Company Law (4th ed 2015) p. 16.2
[27] Paranjape, N.V. Company Law (8th edition 2017) p 334

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CHAPTER 2

ROLES AND OBLIGATIONS OF KMP AND DIRECTORS: AN ANALYSIS OF COMPANIES ACT, 2013

2.1 Introduction

company is an artificial personality created or sanctioned by law. "it has neither a mind nor a body of its own."[28] A company always function or acts through its board of directors and management. The Board of Directors is primarily responsible for every decision taken and every policy adopted by a company the position that the directors occupy in a corporate enterprise is not easy to explain. [29] the directors have many statutory duties as well as fiduciary obligations towards the company. Viscount Haldane L.C. observed that "A corporation is an abstraction. It has no mind of its own any more than it has a body of its own; its active and directive will consistently be sought in the person of somebody who for some purposes may be called an agent, but who is the directing mind and will of the corporation, the very ego and centre of the personality of the corporation."[30] In the case of, Hendon v. Adelman,[31] the directors of the company were held personally liable for a cheque signed by them in the name of the company stating the name as "L.R. Agencies Ltd." Whereas the real name of the company was "L&R Agencies Ltd."

It is to be noted that only a person can be appointed as director of a company. The reason behind this rule is observed by the supreme court in the oriental metal pressing Works case,[32] where the supreme court analysed that the office of a director is to some extent an office of trust, therefore there should be somebody who can be held responsible for the failure to carry the trust and it might be difficult to fix that responsibility if the director were a company or association or a firm and hence the companies act prohibits the appointment of a body corporate or association or a firm as a director.

Also, the Key Managerial Personnel (KMP) are those skilled and qualified professionals who are responsible for the management as well as various regulatory compliances and due diligence of the

[28] Lennard's Carrying Co v. *Asiatic Petroleum Co. 1915 AC 705 p.* 713

[29] *Ram Chand & Sons Sugar Mills* v. *Kanhayalal AIR 1966 SC 1899*

[30] Supra, note 25

[31] (1973) New LJ 637.

[32] *Oriental metal pressing works (p.) Ltd*. V *Bhaskar Kashinath Thakre AIR 1961 SC 573*

company. A company may either have a managing director or a whole-time director or a manager.[33] They are the whole-time employee and executive management of the company.

2.2 Definitions

Before discussing the roles and obligations of these organs we should first look into some important definitions under the companies act, 2013 which are as follows-

A. "officer"[34] includes any director or manager or key managerial personnel or any person following whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act.

B. "Officer who is in default"[35] for any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely:

   i. whole-time director;

   ii. key managerial personnel;

   iii. where there is no key managerial personnel, such director or directors as specified by the Board on this behalf and who has or has given his or their consent in writing to the Board to such specification, or all the directors if no director is so specified;

   iv. any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

   v. any person by whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to professional capacity;

   vi. every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

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[33] Companies Act 2013, section 196

[34] The Companies Act, 2013 section 2 (59)

[35] The Companies Act, 2013, section 2 (60)

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vii. in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer.

C. "related party"[36] concerning a company, means—

i. a director or his relative;
ii. key managerial personnel or his relative;
iii. a firm, in which a director, manager or his relative is a partner;
iv. a private company in which a director or manager or his relative is a member or director;
v. a public company in which a director or manager is a director and holds along with his relatives, more than two per cent of its paid-up share capital;
vi. anybody corporate whose Board of Directors, managing director or manager is accustomed to actbyh the advice, directions or instructions of a director or manager;
vii. any person on whose advice, directions or instructions a director or manager is accustomed to act:
viii. provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
ix. anybody corporate which is-

(A) a holding, subsidiary or an associate company of such company;

(B) a subsidiary of a holding company to which it is also a subsidiary; or

(C) an investing company or the venture of the company;

xi such other person as may be prescribed;

Directors usually perform roles for the company in multiple dimensions, for instance, sometimes directors act as an agent and at other times as a trustee of the same corporations, also, they have multiple obligations too. The roles and obligations associated with directors and KMP could be understood through the analysis of various provisions of the companies act, 2013 which we are going to discuss below.

[36] The Companies Act, 2013 section 2 (76)

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The success of a company more or less depends upon the competency and intelligence of its Board of Directors, however, there is no minimum academic or professional qualification required to be appointed as a director in a company, In Re City Equitable Fire Insurance Co.,[37] it was observed by the court that "a director of a life insurance company does not guarantee that he has the skill of an actuary or a physician."

As we discussed earlier according to section 149 (1) every company shall consist of a board of directors in which there shall be a minimum of 3 directors in the case of a public company, 2 directors in the case of a private company and 1 director in case of a one-person company, also except one person company, there shall be maximum limit of 15 directors which a company may appoint without passing of a special resolution by shareholders in general meeting. Apart from this every listed company and every other public company which has paid-up share capital of 100 crores or more or turnover of 300 crores or more shall appoint a Women Director.[38]

There is no special procedure for appointing a Woman Director; instead, the procedure is the same as for other directors, but the company shall**:**[39]

A. Ensure that the prospective individual to be appointed as a Woman Director meets the requirements of Section 149(6) and Rule 5 (Companies (appointment and qualification of Directors) Rules, 2014.
B. Ensure that the prospective Woman Director is not disqualified under Sections 164 and 165 of the Companies Act 2013.
C. Ascertain that the individual sought to be appointed as a Woman Director has provided the company with her DIN as well as a statement in Form DIR-8 declaring that she is not disqualified to serve as a director under the requirements of this Act (Sec 152(4) and Rule 14 of (Companies (appointment and qualification of Directors) Rules, 2014.
D. Obtain approval to function as Director in Form DIR-2 before appointing an individual as a Woman Director.
E. In writing, send a notice of the board meeting and the agenda, or a shorter notice if there is an urgent matter, to each of the company's directors.

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[37] (1925) Ch 407 (428)

[38] Rule 3 of Companies (Appointment and Qualifications of Directors) Rules 2014

[39] https://taxguru.in/company-law/appointment-woman-director.html#:~:text=There%20is%20no%20special%20procedure,of%20Directors)%20Rules%2C%202014 (accessed as on 3rd march, 2023)

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F. Hold a board meeting to determine if a quorum is present as required by Section 174, and then pass the following resolution:
   i. Resolution for the appointment of a Woman Director subject to shareholder approval at the company's general meeting.
   ii. To authorise the company secretary or director to sign and fill out the appropriate e-Form, as well as to perform any other actions, deeds, or things necessary to give effect to the resolution.
   iii. To set the date, time, and location for the company's general meeting.
   iv. To approve the draft meeting notice, as well as the explanatory statement appended to the notice, as required by Section 102 of the act.
   v. To approve the company's Director or Company Secretary to sign and issue the general meeting notice.

G. Hold a general meeting on the scheduled day and approve an ordinary resolution appointing a Woman Director.

H. Within 30 days of her appointment, file e-Form DIR-12, which contains the details of the Director's appointment.

Further, section 149 (4) and clause (8), (9), (10), and (11) provides as follows:[40]

i. in the case of a listed company at least 1/3rd of the total number of directors shall be appointed as independent directors and the central government has the power to prescribe a minimum number of independent directors. By the virtue of clause (4) Central Government incorporated the rule that each public company which have a turnover of above rupees 100 crores, or, paid up share capital of above rupees 10 crore, or, total outstanding borrowings, loans, debentures or deposit of rupees 50 crores or above, shall appoint at least 2 independent directors in its board.[41]
ii. the company and independent directors appointed by the company shall follow the provisions given in schedule four of this act.
iii. independent directors shall not be entitled to any stock option and may receive only managerial remuneration as provided under section 197 (5), reimbursement of any expenses incurred by the such

[40] The Companies Act 2013, section 149 (4), (8), (9), (10), and (11).
[41] Rule 4 (1) of companies (Appointment and Qualifications of Directors) Rules, 2014

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director for attending the board meeting or any other meetings of the company and, commission on the profit as approved by the shareholders of the company.

iv. an independent director shall hold the office for the period of five consecutive years but shall be eligible for re-appointment if, a special resolution is passed by members, and, such re-appointment is disclosed by the company in the board's report.

v. any independent directors shall not hold the office for more than two consecutive terms, but such independent directors shall be eligible for re-appointment after the expiry of the cooling period of three consecutive years.

Further section 152, which provides provision regarding the appointment of first and subsequent directors provides in clause (1) read with clause (2) that, there shall be the first director to be appointed by members of the company at the general meeting, and there shall be provision regarding it in the article of association of the company. Where no provision is made in the article of the company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are dually appointed.[42] Also where the company is registered as one person company and no director is dully appointed the individual member of such a one-person company shall be deemed as the first director of that company, until and unless any director is dully appointed by that company in a general meeting by the authorization of its article of association. Section 152 further provides some important provisions regarding appointment which are as follows:

i. each director shall be appointed in the general meeting held by the company,
ii. every director shall have DIN Number allotted as per section 154 of this act,
iii. every proposed director shall provide details of his DIN Number and shall also furnish a declaratory statement that he is not disqualified under section 164 or any other provision of this act to be appointed ad director,
iv. every person who is appointed by the company as director shall be furnished form no. DIR-2 (consent to act as a director) along with DIR-12 (particulars of appointment of directors) to the registrar of the company within 30 days from the date of his or her appointment, and only after providing these forms it will be considered that he or she has given consent to hold office as director.

[42] The companies act, 2013 section 152 (1)

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Also, section 164 provides the basic disqualifications and ineligibility of a person to be appointed as director of any company. Clause (1) of section 164 provides that, a person shall not be eligible for appointment as a director of a company, if:[43]

a. he is of unsound mind and stands so declared by a competent court;
b. he is an undischarged insolvent;
c. he has applied to be adjudicated as insolvent and his application is pending;
d. he has been convicted by a court of any offence, whether involving moral turpitude or

Otherwise, and sentenced in respect thereof to imprisonment for not less than six months and a period of five years has not elapsed from the date of expiry of the sentence:

Provided that if a person has been convicted of any offence and sentenced in respect thereof to

Imprisonment for a period of seven years or more, he shall not be eligible to be appointed as a director in any company;

(*e*) an order disqualifying him for appointment as a director has been passed by a court or the tribunal and the order are in force;

(*f*) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others, and six months have elapsed from the last day fixed for the payment of the call;

(*g*) he has been convicted of the offence dealing with related party transactions under section 188 at any time during the last preceding five years; or

(*h*) he has not complied with sub-section (*3*) of section 152.

(*2*) No person who is or has been a director of a company which—

(*a*) has not filed financial statements or annual returns for any continuous period of three financial years; or

[43] The companies act, 2013, Section 164 (1), (2)

(*b*) has failed to repay the deposits accepted by it or pay interest thereon or redeem any debentures on the due date or pay the interest due thereon or pay any dividend declared and such failure to pay or redeem continues for one year or more,

(c). shall be eligible to be re-appointed as a director of that company or appointed in another company for a period of five years from the date on which the said company fails to do so.

Chapter XIII of the companies act, 2013 from section 196 to section 205 provides detailed provisions regather regarding the appointment and remuneration of whole-time director managing director or manager. Clause (1) to clause (3) of section 196 provides the compliances which a company shall follow during the appointment of managerial personnel, clause (1) and (2) collectively provides that, a company may appoint a managing director or manager but it cannot appoint both of two at the same time, also, such managing director or manager as well as the whole time director shall not be appointed for a period over 5 years and could be re appoint after the expiry of this term only when there is a cooling period of one year.

Section 196 (3) provides the basic disqualification for a person to be appointed as key managerial personnel, which is as follows:

a) a person who is below 21 years of his age shall not be appointed as key managerial personnel, and, a person who is above 70 years of his age shall be appointed only by passing a special resolution by the members or in the absence of such resolution, by the casting of the majority of votes in favour of the motion and approval of the central government.

b) a person who is ever declared by the court as insolvent or a person who is an undischarged insolvent shall not be appointed as managerial personnel.

c) a person who makes or who is ever made any composition to pay a lessened amount to his creditors or who has any time suspended any payment which is required to be made to his creditor shall not be appointed as key managerial personnel.

Also, clause (4) of section 196 specifies that subject to the provisions as mentioned in section 197 and provisions as given in schedule V of this act, the appointment made and remuneration payable to any managerial personnel by a company, as well as the terms and conditions regarding it, shall be:

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i) approved by the directors at the board meeting by passing of board resolution, and

ii) approved by members of the company by the passing of an ordinary resolution at the immediate subsequent general meeting of the company, and

iii) approved by the central government in case if such an appointment is made in deviation from the provisions mentioned under part I of schedule V of this act.

Here, it is important to discuss that a company shall file to the registrar within 60 days from the date of appointment of managerial personnel, a return of such appointment in Form No. MR-1. Also, for seeking the approval of the central government as given in clause (4), an application shall be filed by the company in e- Form No. MR-2.

Provisions Regarding the remuneration of key managerial personnel mainly provides by Section 197 read with Section 198 and Schedule V part II of this act. Section 197 provides a ceiling limit of remuneration up to 11 per cent of the total net profit of the company and such net profit shall be calculated by provisions of section 198 and such limit can be exceeded only with the passing of a special resolution by members along with the approval of the central government. On the other hand, the remuneration of managerial personnel in case of companies having no profit or insufficient profit shall be dealt in accordance with laid down in Schedule V of this act.

As we discussed earlier, section 203 of the Companies Act, 2013 deals with the appointment of managerial personnel. In precise, the provisions of this section provide the following conditions:

I. a listed company and each unlisted public company which have a paid-up share capital of 10 crores or above shall appoint a managing director or manager or chief executive officers and in the absence of all these, a whole-time director as well as a chief financial officer and a company secretary as managerial personnel. The first proviso to section 203 provides that unless it is authorised by the article of association of that entity or unless that company is involved in multiple diversified businesses where for each business one or more than one chief executive officer is appointed by such company, a same individual shall not be appointed by the company as chairperson as well as the managing director or chief executive officer of that company.

II. appointment of managerial personnel shall be through the passing of a board resolution by the board

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of directors at the board meeting and every whole-time managerial personnel who is appointed by the company shall not hold the office of managerial personnel in any other company except the subsidiary of the same company. But, the second proviso to clause (3) provides that, with the consent of the board of directors by passing of board resolution and after serving a specific notice to each director of that company available in India, managerial personnel of one company may be appointed as managing director in another company.

III. if any vacancies arise in the office of managerial personnel, then they shall be filled up by the board of directors of that company within six months.

IV. in case of contravention of a provision in section 203, the company shall be liable to a fine of a minimum of 1 lakh rupees which may be extended up to the value of rupees 5 lakhs, as well as, each director and managerial personnel who is liable for such default shall be punishable with the fine of up to rupees fifty thousand for the first time, but, if the default continues then this fine may be extended to 1000 rupees per day till the default continue

2.3 Obligations of Directors and KMP-

As we know, under section 2 (60) "officer in default" includes directors as well as all the whole-time key managerial personnel. Under the provisions of the new companies act which was introduced in the year 2013 the obligations of directors and managerial personnel were enhanced as compared to the Act of 1956. If we look into the provisions of the new act of 2013, we can identify various obligations of these organs. we are discussing here some major obligations or liabilities of directors and managerial personnel of the companies.

Section 34 and section 35 of the companies act, 2013 prescribe criminal liability and civil liability of directors for misstatement in the prospectus. If any untrue or misleading statement is mentioned in the prospectus or any omission to disclose material information is made then the directors or any other persons who are responsible for the issue of such prospectus shall have criminal liability under section 34 and civil liability under section 35. For criminal liability, he shall be punishable under section 447 (punishment for fraud) with imprisonment of a minimum of six months and a maximum of ten years along with a fine which shall be a minimum of the amount involved in fraud and a maximum up to three times of amount involved in fraud, if the value of fraud is minimum ten lakhs or 1 per cent of the total turnover of the company, whichever is lower. On the other hand, if the value of fraud is below ten lakh rupees or 1 per cent of total

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turnover and does not involve any public interest then the punishment shall be imprisonment of up to five years or a fine of up to ten lakhs or both. Also, as per section 35, the person responsible for misstatement shall compensate to every person the value of loss or damage suffered by them.

Further, section 53 puts a restriction on the company that no company shall issue shares at discount except sweat equity shares or issue at discount to its creditors in case of conversion of debt into shares. Clause (3) of section 53 provides that. If a company contravenes the above provisions, then:

a) the such company shall be punishable with a fine of a minimum of 1lakh rupees which may extend up to the value of the maximum of 5 lakh rupees, and

b) and each officer in default shall be liable for imprisonment up to 6 months or a fine of a minimum of 1 lakh which may extend up to 5 lacks or both.

Before 1966 there were prohibitions available under the companies act 1956 regarding the acceptance of deposits from the public but with time it was seen that companies are making default in repayment of deposits or payment of interest on such deposits. Later, in the year 1974 through amendment section 58-A was inserted in the companies act, of 1956 to put some restrictions upon the acceptance of deposits. Under the new companies act of 2013 same provisions putting some restrictions and conditions on the acceptance of deposits were incorporated in section 73. Chapter V, section 73 to section 76-A deals with acceptance deposits by companies. Section 75 puts obligations upon the officers in default who are responsible for fraud in invitation, acceptance or repayment of deposit or interest thereon. As per section 75 where a company fails to repay the deposit or interest thereon within the time prescribed under section 74 (1) or any extended time allowed by a tribunal under section 74 (2) then each officer of the company who is responsible for the acceptance of such deposit shall be liable with criminal liability under section 447 and also shall be personally responsible to return or compensate any losses or damages that may have been incurred by depositors.[44]

Also, section 76A[45] provides punishment for contravention of section 73 or section 76. As per this section, Where a company accepts or invites or allows or causes any other person to accept or invite on its behalf any deposit in contravention of the manner or the conditions prescribed under section 73 or section

[44] The Companies Act, 2013, section 75(1)

[45] The Companies Act, 2013, section 76A

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76 or rules made thereunder or if a company fails to repay the deposit or part thereof or any interest due thereon within the time specified under section 73 or section 76 or rules made thereunder or such further time as may be allowed by the Tribunal under section 73:-

(a) the company shall, in addition to the payment of the amount of deposit or part thereof and the interest due, be punishable with a fine which shall not be less than one crore rupees or twice the amount of deposit accepted by the company, whichever is lower but which may extend to ten crore rupees; and

(b) every officer of the company who is in default shall be punishable with imprisonment which may extend to seven years and with a fine which shall not be less than twenty-five lakh rupees but which may extend to two crore rupees:

Provided that if it is proved that the officer of the company who is in default, has contravened such provisions knowingly or wilfully to deceive the company or its shareholders or depositors or creditors or tax authorities, he shall be liable for action under section 447.

Section 178 (1) and (2) 178 (2)[46] of the companies act require that the board of every listed company and unlisted public company which having paid up share capital of 10 crores or above, or turnover of 100 crores or above, or outstanding loans or borrowing or debentures or deposit over 50 crores or more shall constitute a nomination and remuneration committee which shall consist 3 or more non-executive director out of which at least ½ shall be independent director along with a non-executive director as chairman which shall be responsible for decision over persons qualified to be appointed as directors or to become part of senior management as well as to recommend the removal, appointment, remuneration, incentives as well as norms for effective review of the performance of the board of directors including independent director and various committees constituted by company. Sub-section (5) also requires that the board of any company which has above 1000 shareholders or deposit holders or debentures holders and any other securities holders in any financial year, shall also constitute a stakeholder Relationship Committee.

Further, section 188 of the companies act, 2013 provides provisions for related party transactions between the "related party" as defined under section 2 (76) and the company. Sub-section (1) of section 188[47] imposes a restriction that, Except with the consent of the Board of Directors given by a resolution at a

[46] The Companies Act, 2013, section 178

[47] The companies Act, 2013, Section 188(1)

meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party concerning—

(a) sale, purchase or supply of any goods or materials;

(b) selling or otherwise disposing of, or buying, property of any kind;

(c) leasing of property of any kind;

(d) availing or rendering of any services;

(e) appointment of any agent for the purchase or sale of goods, materials, services or property;

(f) such related party's appointment to any office or place of profit in the company, its subsidiary company or associate company; and

(g) underwriting the subscription of any securities or derivatives thereof, of the company.

Proviso to sub-section (1) of section 188 read with Rule 15(3) of Companies (Meeting of Board and its Powers) Rules, 2014 provides that, no company:

(1) which has paid up share capital of 10 crores or above, or

(2) which has transactions regarding:

a) sale, purchase or supply of any goods or materials directly or through agents over 25 per cent of annual turnover, or

b) selling or otherwise disposing of, or buying, property of any kind directly or through an age over of 10 per cent of total net worth of the company or

c) leasing of property of any kind over 10 per cent of total net-worth or annual turnover, or

d) availing or rendering of any services directly or through an agent in excess of 10 per cent of total net worth or

(3) which has appointed related parties or their relative to the office of profit in the company or its subsidiary or associate company in overly remuneration of 2 lakhs 50 thousand, or

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(4) remuneration to an underwriter for underwriting the securities, over 1 per cent of the total net worth of the company:

Shall not be made any transaction with a related party without the approval of members through special resolution at the general meeting in addition to passing of board resolution at a board meeting.[48]

[48] Companies (Meeting of Board and its Powers) Rules, 2014, RULE 15(3), available at https://taxguru.in/company-law/companies-act-2013-companies-meetings-board-powers-rules-2014.html (accessed as on 12th march,2023)

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CHAPTER 3

OBLIGATIONS OF DIRECTORS AND KEY MANAGERIAL PERSONNEL UNDER SEBI REGULATIONS.

3.1 Introduction

The Securities and Exchange Board of India (SEBI) is the prime regulatory body to regulate the securities and capital market in India. in April 1988 this body was established a as non-statutory body vide a resolution passed by the government of India. later, in the year 1992, the Indian parliament passed the Securities and Exchange Board of India Act, 1992. Under this act, SEBI is constituted as a statutory body. the prime motive of this regulator is to protect and promote the interest of investors in the securities market, to regulate the market as well as to promote the development of securities and capital markets in India. Ms Madhabi Puri Buch, who earlier held the office of whole-time member in SEBI as well as the office of CEO and MD at ICICI Securities Ltd. The Securities and Exchange Board of India (SEBI), similar to the Securities and Exchange Commission in the United States, is India's primary securities market regulator. SEBI has broad regulatory, investigation, and enforcement capabilities, as well as the capacity to levy fines against violators. Some criticise SEBI for its lack of transparency and direct public accountability for an entity with such vast powers.[49] This regulatory authority operates as a watchdog for all capital market participants, and its principal goal is to create an atmosphere for financial industry lovers that makes the securities market more efficient and smoother.[50]SEBI time to time issues various regulations requiring detailed compliances and disclosures such as SEBI (Listing Obligations and Disclosure Requirements)Regulations, 2015, SEBI(Issue of Capital and Disclosure Requirements) Regulations 2018, SEBI (Insider Trading) Regulations, 1992 and many more. In this chapter, we are going to discuss about obligations of directors and key managerial personnel under these regulations.

[49] https://unacademy.com/content/bank-exam/study-material/general-awareness/power-of-sebi/#:~:text=Powers%20of%20SEBI&text=SEBI%20has%20the%20authority%20to,if%20necessary%2C%20under%20Section%2010 (accessed as on 12th march 2023)

[50] ibid

3.2 Sebi (Listing Obligations and Disclosure Requirements) Regulations, 2015

Every listed company in India is required to comply with these regulations in addition to the provisions of the companies act, 2013 and various company rules. about the eligibility of independent directors as well as the appointment, reappointment and resignation of independent directors' regulations 16, 17, 25(2A),36 and regulation 30 of this listing regulations shall be complied by every listed company.

Regulation 16(b) provides that an "independent director" means a non-executive director, other than a nominee director of the listed entity[51]:

i. who, in the opinion of the board of directors, is a person of integrity and possesses relevant expertise and experience;
ii. who is or was not a promoter of the listed entity or its holding, subsidiary or associate company;
iii. who is not related to promoters or directors in the listed entity, its holding, subsidiary or associate company;
iv. who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity, it's holding, subsidiary or associate company, or their promoters, or directors, during the three immediately preceding financial years or the current financial year;
v. none of whose relatives has or had pecuniary relationship or transaction with the listed entity, it's holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the three immediately preceding financial years or the current financial year;
vi. who, neither himself nor whose relative(s) —
    A. Holds or has held the position of key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary, associate company or any company belonging to the promoter group in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;
    B. Is or has been an employee or proprietor or a partner, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed, of —

[51] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 16 available at https://www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf

1. a firm of auditors or company secretaries in practice or cost auditors of the listed entity or its holding, subsidiary or associate company; or
2. any legal or consulting firm that has or had any transaction with the listed entity, it's holding, subsidiary or associate company amounting to ten per cent or more of the gross turnover of such firm;

C. holds together with his relatives two per cent or more of the total voting power of the listed entity; or

D. is a chief executive or director, by whatever name called, of any non-profit organisation that receives twenty-five per cent or more of its receipts or corpus from the listed entity, any of its promoters, directors or its holding, subsidiary or associate company or that holds two per cent or more of the total voting power of the listed entity;

E. is a material supplier, service provider or customer or a lessor or lessee of the listed entity; who is not less than 21 years of age.

Further, Regulation 17 provides a composition of the board of directors of a listed company and certain obligations of such constituted board. Regulation 17(1) states that the board of directors of a listed company shall consist of:

i. combination of executive and non-executive directors along with at least one women director in which at least 50 per cent of total directors in the board shall be non-executive directors;

ii. if the chairperson of the board is a non-executive director, then 1/3rd of the total directors shall be an independent director and if the chairperson is other than a non-executive director then the board shall consist of at least 50 per cent of directors as independent directors. Also, if the chairperson is a non-executive director but he or she is a promotor of any listed company or related to the promotor of any listed company or holds the position of director or one level below the director in the management of any company, then the board shall consist of at least 50 percent of total directors as independent directors.

Regulation 17(2) to 17(10) provides various obligations of the board of directors of a listed company which are as follows:

a) The board shall meet at least 4 times a year and the time gap between two meetings shall not exceed

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120 days. (2)

b) The board shall review time to time compliance report prepared by the listed company. (Clause 3)

c) The board shall insure proper plans for the appointment of directors and senior management have been prepared by the company. (Clause 4)

d) The board shall provide a code of conduct for the senior management as well as the directors including the duties of independent directors. (Clause 5)

e) The board shall recommend a fee or compensation which is required to be paid to independent directors and non-executive directors subject to be approved by members at the general meeting. (Clause 6a)

f) The independent directors shall not be eligible to receive any stock option. (Clause 6d)

g) The CEO and CFO shall provide a compliance certificate to the board by part B of schedule II of this regulation. (Clause 8)

h) The board shall be accountable for drafting, implementing and tracking a risk management plan. (Clause 9b)

i) The board shall evaluate the performance of independent directors and during this evaluation, such independent directors who are subject to be evaluate shall not be on the board as a part of such evaluation process (clause 10)

Also, every listed company shall comply with the provisions of the Audit Committee as given in Regulation 18 in addition to the provisions of the audit committee as given under section 177 of the companies act, 2013. Regulation 18 provides the following requirements[52]:

a. every listed company shall constitute an audit committee which shall consist of a minimum of 3 directors out of which at least 2/3rd directors shall be independent directors. Also, at least one member of the audit committee shall have accounting or finance expertise.

b. the chairperson of this audit committee shall be any independent director who shall be present at an annual general meeting to respond to the queries of shareholders.

c. the meeting of the audit committee shall be held at least 4 times a year and the time gap between two meetings shall not exceed 120 days. The quorum for this meeting shall be either two members or

[52] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 18, available at https://www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf

1/3rd of the total members, whichever is greater, and it shall include at least two independent directors.

d. part C of Schedule II of this listing regulations provides the roles of the audit committee and the information to be reviewed by the audit committee.

It is important to note that, any person can hold the office of the independent director only in up to 7 listed companies but if such a person is holding the office of a whole-time director in any listed company, then he can become an independent director in a maximum of 3 listed companies. This condition is laid down by regulation 25(1). Also, regulation 30 which requires the disclosures by the listed entity provides that every listed company shall disclose the material information or events to its board (clause 1). what are the material events or information is specified by this regulation in part A of Schedule III. It is also the obligation of the board to authorise one or more key managerial personnel to identify and the material information and the details of such personnel shall be informed to the stock exchange and shall also be published on the company's website. Clause 6 of Regulation 30 obliged the listed company that it shall disclose all the material information within 24 hours of its occurrence or awareness about it.

Regulation 19 which obliged the board to constitute a Nomination and Remuneration Committee requires that the committee shall consist of at least three directors in which all the directors shall be in the position of non-executive directors and out of the total members of the committee at least 50 percent members shall be independent directors. Also, the chairman of the committee shall be an independent director. It is important to note that the chairman of the company can be appointed as a member of this committee, irrespective of whether he is an executive director or non-executive director.

Clause (1) of Regulation 26 restricts the maximum limit of chairpersonship of a director in up to 5 committees or membership in a maximum of up to 10 committees. also, every director shall disclose to his company the information about memberships or chairmanship in the committees of other listed companies and any change in his position in such committees. Clause (6) of Regulation 26 also restricts that any employee including the managerial personnel or director or promoter shall not enter into any agreement with any stakeholder or any third party regarding compensation or profit sharing related to securities of such company unless they obtain the prior approval by the board through the passing of board resolution as well as the approval of shareholders by passing of an ordinary resolution at a general meeting.

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Regulation 98 and 99 imposes a penalty for the contravention of the above regulations. Regulations 98 provides that[53]:

1. The listed entity or any other person thereof who contravenes any of the provisions of these regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the Board:
   A. imposition of fines;
   B. suspension of trading;
   C. freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.
   D. any other action as may be specified by the Board from time to time
2. The manner of revocation of actions specified in clauses (b) and (c) of sub-regulation (1), shall be as specified in circulars or guidelines issued by the Board.

Also, if the listed entity fails to pay any fine imposed on it within such period as specified from time to time, by the recognised stock exchange(s), after a notice in writing has been served on it, the stock exchange may initiate action[54]

3.3 Sebi (Prohibition of Insider Trading) Regulation, 2015

Insider Trading essentially denotes dealing in a company's securities based on confidential information relating to the company which is not published or not known to the public (known as unpublished price-sensitive information), used to make profits or avoid loss. It is fairly a breach of fiduciary duties of officers of a company or connected persons as defined under the Securities Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, towards the shareholders.[55] Post to the various recommendations made by the Rajinder Sachar Committee of 1977 which was a 7 members high-level committee constituted to review the Corporate Law in India, recommendations of the Patel Committee composed in 1986 recommended some important amendments in the securities contract(Regulation

[53] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 98, available at https://www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf

[54] SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, Regulation 99, available at https://www.sebi.gov.in/sebi_data/attachdocs/1441284401427.pdf

[55] https://www.legalserviceindia.com/article/l199-Insider-Trading.html (accessed as on 12th march 2023)

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Act)1956 in re aboutr trading as well as the recommendations of Abid Hussain Committee formed in the year 1989 to include an act of insider trading both as civil and criminal offence insisted the Indian parliament to enact a full fledge body known as Securities and Exchange Board of India under the SEBI Act, 1992 to regulate the securities and capital market in India and to prohibit the acts of insider trading. As a result, SEBI (Insider Trading) Regulations, 1992 was framed by SEBI to adopt some prominent restrictive measures over the acts of unfair dealing and insider trading. A hot and crucial debate over the issue of unfair securities dealing and insider trading was initiated when a former president of the Bombay Stock Exchange in 1992 stated that "There is no other kind of trading in India, but the insider variety", and Mr Arthur Levitt, the then Securities Exchange Commission ("SEC") Chairman in 1998, given a statement that "Insider trading has utterly no place in any fair-minded law-abiding economy".[56] Regulation of 1992 which was amended in 2002 and 2008 witnessed various drawbacks and escapes due to which in the year 2015 SEBI introduced fresh regulations named SEBI (Prohibition of Insider Trading) Regulations, 2015which was lastly amended in the year 2019 followed by recommendations suggested by Viswanathan committee in the year 2018.

The term "insider" is defined under regulation 2(1)(g) of SEBI (Prohibition of Insider Trading) Regulations, 2015 as any person who is connected or who is in possession of unpublished price-sensitive information (UPSI).[57] Who is a "connected person" is specified by regulation 2 (1)(d) as:[58]

i. any person who is or has during the six months before the concerned act been associated with a company, directly or indirectly, in any capacity including because of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

ii. Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

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[56] *Insider Trading Regulations – A Primer*, Report by Nishith Desai Associates, available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/Insider_Trading_Regulations_-_A_Primer.pdf, (accessed as on 12th march 2023)

[57] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(1)(g)

[58] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(1)(d)

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(a) an immediate relative of connected persons specified in clause (i); or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Actor an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) (f)a member of the board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution, as defined in section 2 (72) of the Companies Act2013; or

(h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i) a banker of the company; or

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent of the holding or interest;

also, the regulation of 2015 defines what are the “unpublished price sensitive information” of a corporate entity. As per regulation 2(1)(n):[59] "unpublished price sensitive formation" means any information, relating to the company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

i. financial results;
ii. dividends;
iii. change in capital structure;
iv. mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
v. changes in key managerial personnel.

[59] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 2(1)(n)

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Here it is important to note that, a "compliance officer" as defined under regulation 2(1)(c) also includes a whole-time company secretary. Regulation 4[60] requires that any insider or any other person who is in communication, access or procurement of UPSI under regulation 3 shall not be allowed to trade in securities of a listed or proposed to be listed entity during the possession of such UPSI related with that entity, also if a person is "connected person" then the burden to prove that he or she did not possess any UPSI shall lie upon such "connected person" but in other cases, the burden of proof lies upon. Further, the SEBI has the authority to set standards and compliance requirements regarding it. Sub-regulation (1) and (2) of the regulation (3)[61]restrict that no insider shall communicate or provide or allow access to any other person regarding UPSI of a corporate entity or it is listed or proposed to be listed securities. Also, it restricts persons other than insiders to procure or possess or communicate with insiders any UPSI regarding the affairs of a corporate entity or it's listed or proposed to be listed securities.

If we talk preciously about the disclosure obligations of the board of directors and key managerial personnel of a listed entity under SEBI (Prohibition of Insider Trading) Regulations 2015 then we have to look into the provisions of regulation 7 where initial as well as continuous disclosures requirements regarding these organs were mentioned. Sub-regulation (1) of regulation (7) requires initial discourse while sub-regulation (2) requires continuous disclosures. Initial disclosure under regulation 7(1)(b) requires:[62]

Every person on appointment as key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter. Also, the requirements of continuous disclosures under regulation 7(2)[63] put obligations on the one hand upon the promoter or member of the promoter group or designated person or director of the company and also on the other hand upon the company itself. Regulation 7(2)(a) requires every promoter, member of the promoter group, designated person and director of a listed company to make disclosures with the company, within 2 trading days regarding any transaction or series of transactions related with the acquisition or disposal of securities of value more than 10 lakhs rupees within any calendar quarter. Regulation 7(2)(b) requires that every company that received any disclosures under

[60] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 4(1), 4(2), and 4(3)
[61] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 3.
[62] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 7(1)(b)
[63] SEBI (Prohibition of Insider Trading) Regulations, 2015, Regulation 7(2)

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regulation 7(2)(a) or become aware of any information on its motion, shall disclose it to the stock exchange where the securities of that company are listed, within 2 trading days. Also, regulation 7(3) empowers a listed company that, to ensure compliance of regulation 7 such company may require any connected person or class of connected persons to disclose their holding of securities and their trading in the securities of such company. It is important to note that as we discussed above, directors and key managerial personnel are also covered under "connected persons".

In India, the other related provisions other than the Insider Trading Regulations which govern insider trading are Section 195 of the Companies Act, 2013, read with Section 12A and 15G of the SEBI Act, 1992. Section 195 of the Companies Act, 2013 provides that no person, which includes any director or key managerial personnel of a company, shall enter into insider trading. This section also defines the terms 'insider trading' and ' unpublished Price-Sensitive Information'. Section 12A(d) of the SEBI Act, 1992 provides that, no person shall engage in insider trading, either directly or indirectly. Further, Section 15G of the SEBI Act,1992 imposes a penalty for insider trading which is not less than ten lakh rupees but which may extend to twenty-five crore rupees or 3 times the amount of profits which are made out of insider trading, whichever is higher.[64]

3.4 Clause 49 of Sebi Listing Agreement, 2004

It is a most prominent compliance requirement laid down by SEBI for every listed company in respect of corporate governance. Clause 49 (VI) and (VII) of this listing agreement provide provisions regarding reports on corporate governance and persons who are competent to issue such compliance reports. Sub-clause (VI) requires:

I. that the Annual Reports of every listed company shall contain a separate section dealing with corporate governance in which extensive compliance report of the company regarding corporate governance shall be disclosed and it shall also disclose any non-compliance made by such company of mandatory requirements under clause 49 of the listing agreement and reasons behind it.
II. that every listed company shall submit within 15 days from the date of winding up of every quarter, file a compliance report signed by the compliance officer or CEO of the company with every stock exchange in which the securities of the company are listed sub-clause (VII) (1) also requires that,

[64] https://blog.ipleaders.in/insider-trading-regulations/ (accessed on 12th march 2023)

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every listed company shall obtain a compliance certificate on corporate governance from an independent auditor or a practising company secretary and shall attach such certificate along with the board report which is required to be sent to the shareholders annual as well as with the Annual Report which is required to be filed annually with the stock exchanges in which the securities of the company is listed. Now, if we look into the compliance and disclosure requirement under clause 49 then we can assess that the sub-clause (I) and sub-clause (II) of clause 49 of a listing agreement, 2004 which deals with a composition of the Board of Directors and Audit Committee is similar to regulation 17 and 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which we have discussed earlier in this chapter. Sub-clause (IV) of clause 49 provides various disclosures which every listed company should disclose in their corporate governance report or compliance report, these disclosures are given as follows:[65]

(A) Basis of related party transactions

i. A statement in summary form of transactions with related parties in the ordinary course of business shall be placed periodically before the audit committee.
ii. Details of material individual transactions with related parties which are not in the normal course of business shall be placed before the audit committee.
iii. Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same.

(B) Disclosure of Accounting Treatment

Where in the preparation of financial statements, a treatment different from that prescribed in an Accounting Standard has been followed, the fact shall be disclosed in the financial statements, together with the management's explanation as to why it believes such alternative treatment is more representative of the true and fair view of the underlying business transaction in the Corporate Governance Report.

(C) Board Disclosures – Risk management

[65] Clause 49 (IV) of Listing Agreement, 2004 available at https://www.sebi.gov.in/legal/circulars/oct-2004/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_13153.html (accessed on 14th march 2023)

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The company shall lay down procedures to inform Board members about the risk assessment and minimization procedures. These procedures shall be periodically reviewed to ensure that executive management controls risk through means of a properly defined framework.

(D) Proceeds from public issues, rights issues, preferential issues etc.

When money is raised through an issue (public issues, rights issues, preferential issues etc.), it shall disclose to the Audit Committee, the uses/applications of funds by major category (capital expenditure, sales and marketing, working capital, etc), quarterly as a part of their quarterly declaration of financial results. Further, on an annual basis, the company shall prepare a statement of funds utilized for purposes other than those stated in the offer document/prospectus/notice and place it before the audit committee. Such disclosure shall be made only till such time that the full money raised through the issue has been fully spent. This statement shall be certified by the statutory auditors of the company. The audit committee shall make appropriate recommendations to the Board to take up steps in this matter.

(E) Remuneration of Director

i) all pecuniary relations or transactions of a company with its non-executive director shall be disclosed in Annual Report.

ii) all elements of remunerations to directors shall be disclosed in Annual Report including salary, bonuses, perquisites, pensions, stock options, gratitude, provident fund, fixed components as well as performance-linked benefits.

iii) the criteria adopted by the company regarding payment to non-executive directors shall be disclosed by the company in Annual Report or published on the company's website to which reference is given in the Annual Report.

iv) the number of shares and convertible instruments held by the non-executive director shall be disclosed by the company in Annual Report.

v) every person who is proposed to be appointed as non-executive director shall disclose his shareholding before his appointment in the notice of General Meeting served to the shareholders for such appointments.

(F) Management Discussion and Analysis Report

i) the board report of a listed company which should form part of the Annual Report shall contain a management discussion and analysis report which is based on discussion and analysis over:

a. Industry structure and developments.

b. Opportunities and Threats.

c. Segment–wise or product-wise performance.

d. Outlook

e. Risks and concerns.

f. Internal control systems and their adequacy.

g. Discussion on financial performance concerning operational performance.

Also, sub-clause (V) of clause 49[66] requires that the Chief Executive Officer or the Chief Finance Officer or any person who is the head of the finance segment shall issue a certificate to the board that they have reviewed the financial statement and cash flow statement of the company it is not including any misleading or false statement or omission to disclose any material facts. They shall also certify that they have reviewed all the transactions entered into by the company during the year and the company has not entered into any fraudulent or illegal transaction. Further, they also have to own obligations regarding establishment maintenance and essential changes to the internal control systems of the company and its proper disclosure to the external auditors as well as to the audit committee of the company.

[66] [66] Clause 49 (V) of Listing Agreement, 2004 available at https://www.sebi.gov.in/legal/circulars/oct-2004/corporate-governance-in-listed-companies-clause-49-of-the-listing-agreement_13153.html (accessed on 14th march 2023)

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CHAPTER 4

OBLIGATIONS OF DIRECTORS AND KMP UNDER OTHER STATUTES

4.1 Introduction

A company is a statutory artificial person which has obligations towards the ecology as well as towards the social and economic interests of their employees or workers. It is not only confined to compliance with corporate laws and regulations but it always bears obligations towards other factors also such as environmental compliances, fair trade, fair wages, the social interest of workers as well as corporate social responsibility. In this chapter, we are going to discuss about obligations of directors and key managerial personnel under various Environment-related laws as well as under industrial and labour-related codes in India.

4.2 Obligations Under Environment Laws

If we discussed about the obligations of a company and its officers in default including the directors and key managerial personnel under the environmental statutes then firstly, The Environment (Protection) Act, 1986 comes into the picture. this statute states in section 16 about the obligations of a company and its officers in default in case of violation of any provision of this environment protection act of 1986. Section 5 of this act authorized the central government to issue written directions to any person, officer or authority and they are obliged to comply with such directions. Explanation to section 5[67] clarifies that these "directions" includes the power to issue directions for the closure, cessation or regulation of any industry, operation, or process as well as the power to issue direction for stoppage or regulation of the supply of electricity or water or any other necessary services. Stoppage of Operations of companies is also included within the virtue of the power to issue directions. Any person who is aggrieved by the direction of the central government issued under the provisions of section 5 may appeal to the National Green Tribunal.[68]

[67] The Environment (Protection) Act, 1986, section 5

[68] The Environment (Protection) Act, 1986, section 5A

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In *A.P. Pollution Control Board* v *Prof. M.V. Nayudu*[69] supreme court directed that where the total prohibition against the establishment of industries in an area is enforced, the state government cannot grant exemption to a specified industry located within or attempt to locate itself within such area. Also, no state can direct the State Pollution Control Board to prescribe conditions for the grant of no objection certificate. In the case of, Bihar State Pollution Control Board v Hira Anand stone works[70] Patna High Court observed that if the central government has issued certain directions and notified certain industries as hazardous and stone crushers are not included in such directions. Then also the water pollution Control Board and Air Pollution Control Board can exercise their powers conferred by the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981.

Section 16 of this act provides provisions for offences by companies. Clause (1) of section 16 specifies that if any offence is committed by a corporate entity under this code, then the company as well as every officer who is incharge and responsible towards the conduct of the business of the company at that time of the commission of an offence shall be presumed to be guilty of the offence. If any officer who is become guilty of the offence proves that he performed all necessary due diligence to prevent such an offence, but the offence was committed without his knowledge then he can not be punished for such an offence. Sub-section-2 of Section 16 further provides that if it is proved that the offence has been committed with the assent or convenience or due to the negligence of any director, manager, secretary, or any other officer then they shall be presumed to be guilty of such offence and punished accordingly. In the case of Municipal Corporation of India V Dev Raj,[71] it was held by Delhi high court that it is a well-settled principle of law that vicarious criminal liability on a person or a body cannot be imposed unless all the conditions for the fixing or fastening of such liability are proved.

The Air (Prevention and Control of Pollution) Act, 1981 also imposes obligations on the company and its officers like directors and KMP to protect the air environment by maintaining compliance with the provisions of the statute. Section 2 (a) and 2 (b)[72] of this act define “air pollutant” as any solid liquid or gaseous substance including noise present in the atmosphere in such a concentration which may be or tend to be injurious to the human being or other living creatures or plants or property or environment, and “air

[69] (2001) 2 SCC 62
[70] AIR 2005 Pat 62
[71] 1985 FAJ 156 Del DB
[72] The Air (Prevention and Control of Pollution) Act, 1981 section 2 (a), section 2 (b)

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pollution" as the presence of any air pollutant in the atmosphere. Further, section 2 (m)[73]also defines who may be covered in the definition of "occupier." As per this section, any person who has control over the affairs of the factories or other premises including any person who has possession of any substance or thing is an "occupier" of a factory or other premises.

In *M.C. Mehta* v *Union of India*[74] which is popularly known as the oleum gas leakage case the supreme court held that there would have been no improvement in the design, structure and quality of the machinery and equipment in the caustic chlorine plant nor would any proper and adequate safety devices and instruments have been installed nor would there have been any pressure on the management to observe safety standards and procedures. In this case, the supreme court directed the management of the caustic chlorine plant to resume production only after complying with specific constringent conditions. Provisions regarding offences by companies as given under section 40 are identical to section 16 of The Environment (Protection) Act, 1986 and section 47 of The Water (Prevention and Control of Pollution) Act, 1974. In all these three provisions it is given that every company and its officer in default who are responsible towards the conduct of the business shall be liable for such offences and punished accordingly. Also. If the act has been committed with the assent or due to the negligence of any director, the secretory, or manager then they shall be presumed to be guilty of such offence.

Also, section 58 of The Wildlife (Protection) Act, 1972 provides regarding offences by company. It is the duty of every company to comply with the provisions of the Wildlife Protection Act, 1972 and if any provision is violated by a company, then the company, as well as its officer in default who are is in direct charge of the conduct of affairs of the company, shall become guilty for the offence.

Section 51[75] of this act prescribes penalties for any person who has contravened any provision of this act except chapter VA and section 38 or any rule or order made there under or commits a breach of any of the conditions of any license or permit granted under this act. If any person performed the such act, then he shall be guilty of an offence and punishable with imprisonment up to three years or a fine of up to 25 thousand or both. And in case of a second or subsequent offence then the imprisonment shall be a minimum of three years which may increase up to seven years and a fine of not less than 25 thousand rupees.

[73] The Air (Prevention and Control of Pollution) Act, 1981 section 2 (m)

[74] AIR 1987 SC 965

[75] The Wildlife (Protection) Act, 1972, section 51

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The Public Liability Insurance Act, of 1991 is another act in which provisions regarding the actions of the companies are covered. Section 2 (g) of this act recites that "owner" means a person who owns or controls handling any hazardous substance at the time of the accident and includes:

i. in the case of the firm, any of its partners;
ii. in the case of an association, any of its members; and
iii. in the case of a company, any of its directors, managers, secretaries or other officers who are directly in charge of, and are responsible to, the company for the conduct of the business of the company.

Section 3 of this act imposes liability upon the owner based on the principle of no fault. This section provides that where any death or injury caused to the general public who are not the workman of such company, or any damage caused to the property due to such accident then the owner of such company shall become liable to provide relief or compensation against such death injury or damages. Section 4 requires every company dealing in hazardous substances shall before starting operation or handling of such hazardous substances take one or more insurance policies regarding public liability as given in section 3. A public liability insurance policy taken out or renewed by an owner shall be a minimum of value not less than the paid-up capital of that entity and a maximum of up to fifty crores.[76] If an application is filed by an aggrieved person under section 6 for claiming relief then the collector having the power to inquire into such claims and to award the justifiable amount of relief and when the award is made under this section the owner shall within such period, deposit such amount in such manner as the collector may direct.[77]

Section 15[78] imposes a penalty for non-compliance with the direction issued under Section 9 or an order made under Section 11 regarding the call for information and regarding search and seizure. If any owner fails to comply with this direction, then he shall be punished with imprisonment of up to three months or a fine of up to 10 thousand or both. It is here important to remember that companies and their officers are covered under the definition of owner in this act. Offences committed by a company under this act make liable to the company and its officers in default for such commission of the offence.[79]

[76] The Public Liability Insurance Act, 1991 Section 4 (2A)
[77] The Public Liability Insurance Act, 1991 Section 7
[78] The Public Liability Insurance Act, 1991 Section 15
[79] The Public Liability Insurance Act, 1991 Section 16

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The Negotiable Instrument Act, of 1881 ("NI Act") makes the director of a company liable to be punished by imprisonment and fine if the company's cheques are dishonoured by the bank on account of insufficiency of funds etc, and it can be proved that the offence was committed with the consent or connivance of or is attributable to, any neglect on the part of the said director. The NI Act provides for the criminal liability of responsible directors and the penalty may consist of imprisonment up to 2 years or a fine that is twice the amount of the cheque dishonoured or both.[80]

4.3 Obligations Under the Industrial and Labour Codes

Section 28 read with section 29 of the Payment of Bonus Act,1965, declares that any offence involving contravention of a provision of this act or any rule made there under or any non-compliance of direction or requisition made under this act committed by a company shall be punishable with imprisonment up to 6 months or with fine up to rupees 1 thousand or with both.[81] The definition of "employer" as given under section 2 (e) includes a company or a body corporate so the company must comply with the obligation of the Employee's compensation act, 1923. Section 3[82] creates an obligation over the employer that if personal injury is caused to an employee by accident arising out of or in the course of employment then the employer shall be liable to pay compensation.

Section 2 (e) of the Employee's provident fund act, 1952 defines "employer" as a factory the owner or occupier including his agent and legal representative as well as the manager of the factory and any other establishment including the company the person or the authority which has ultimate control over the affairs of the company and if such affairs or conduct are allotted to a manager, managing director or managing agent then such manager, managing director or managing agent shall be treated as the employer.[83]

Section 6 of the Employee's provident fund act, 1952 requires the employer to contribute to the employee's provident fund at the rate of 10 per cent of basic wages, dearness allowance and retaining allowance (if any) payable to the employee's[84] section 12 restricts the employers to which the scheme of employees provident fund or insurance scheme is applicable that no employer shall mere due to the reason of his liability to pay compensation to the fund or insurance fund or insurance scheme reduce the wages of

[80] https://blog.ipleaders.in/study-liabilities-directors-officers-key-professionals-associated-company/
[81] Payment of Bonus Act, 1986 section 28, 29
[82] employees compensation act, 1923 section 3
[83] Employees provident fund act, 1952 section 2 (e)
[84] Employees provident fund act, 1952 section 6

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any employee to whom such scheme or fund is applicable, whether directly or indirectly or the employees who are entitled to the old age pension, gratuity, provident fund or life insurance.[85] If any company commits any offences under this act or the scheme, or under the pension scheme or insurance scheme then the company and its event's officer in default who was in charge of the conduct of the business of the company as well as the company shall be guilty of such offence[86] and shall be punishable by penalties given in section 14 including the imprisonment and fine.

4.4 Obligations Under Foreign Exchange Management Act, 1999

A company is also bound by the provisions of the Foreign Exchange Management Act, 1999 (FEMA) It is evident that a director's liability under FEMA depends on a variety of factors. While the burden of proof to establish that a director is involved in the management of a company first lies with the complainant i.e., the ED, it then shifts onto the accused to prove that contravention took place without his knowledge, or he exercised due diligence to prevent the same.[87] Section 13 (1) of FEMA, 1999 provides punishment regarding contravention of any provisions of the FEMA Act. it recites that any person who violates any provision of the FEMA act or any rule, regulation, notification or order issued under this act or violates any conditions regarding authorisation issued by the central bank conditions by the central bank shall after the proper adjudication or inquiry, be punishable to a penalty which shall be, in a case where the amount is quantifiable up to thrice the value involved in contravention or where the amount is not quantifiable up to the value of rupees 2 lakhs, also in the cases of continuation of offence, the offender shall be punished with a fine of rupees 5 thousand per day till the contravention continues.[88]

Further, section 42 of the FEMA Act, 1999 defines vicarious liability and the personal obligations of the directors and key managerial personnel in case of any offence committed or any contravention made by the companies. Sub-section 1 of Section 42 imposes vicarious liability over the directors and key managerial personnel where, whereas sub-section 2 of Section 42 provides their obligations. As per section 42 (1) where any company contravenes any provision of this act, or rules, regulations or any direction issued by the virtue of a power of this act then the company as well as every officer in default who is in charge of the conduct of affairs of the companies shall be liable for such contravention. Due diligence and non-awareness about the

[85] Employees provident fund act, 1952 section 12
[86] Employees provident fund act, 1952 section 14, 14A
[87] https://bwlegalworld.businessworld.in/article/Directors-Liability-Under-Foreign-Exchange-Management-Act-An-Analysis/25-02-2023-466912
[88] Foreign Exchange Management Act, 1999 section 13 (1)

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actions may be an exception in the favour of officers of the company. Subsequently, sub-section 2 of section 42 furnishes the personnel obligation on officers in default. It provides that where it is proved that the violation of provisions of this act is done with the consent or convenience of or due to the negligence of any director, manager, secretary, or other officers, then such officers shall be personally guilty for such actions.

In *Shashank Vyankatesh Manohar* v *Union of India and Ors*,[89] the Bombay High Court observed that a managing director is presumed under the law to be in charge of the company and responsible towards the conduct of business or affairs of the company and hence, the prior condition of specific averments may not apply in his case. However, he can claim the defence available under the proviso of section 42 sub-section 1. In the case of *Shailendra Swarup* v *Directorate of Enforcement*[90] supreme court of India decided that the statutory obligations or liability of a director depends upon the role exercised by the such director in the affairs of the company and not on his designation or status. In the Parag Dalmia case[91] court observed that the initial and primary onus of proof lies on the complainant to prove that the concerned director is responsible, and he is in charge of the performance of affairs or business of the company. Only when the complainant initially proved his part then the onus of proof shift upon the directors or other officers to prove that they are not guilty of the offence by the virtue of proviso to section 42 (1).

Regarding the continuance of violations under the provisions of the act the apex court in the case of *Suborno Bose* v *Directorate of Enforcement*[92] while deciding the obligations of a managing director in case of continuance of violations held that as the contravention in the present case under section 10(6) of Foreign Exchange Management Act, 1999 was of continuing or recurring nature and it occurred with the knowledge and assent of the managing director. As he fails to adopt any corrective steps even after the knowledge about the conduct or actions, therefore, he can not claim defence of proviso to section 42(1). This interpretation of the apex court in the above case declaring the director or managing directors liable if they joined after the commission of the act of offence but even after the due knowledge of the continuation of such offence, he has not taken any corrective measures.

[89] 2013 SCC online Bom 987

[90] (2020) 16 SCC 561

[91] Parag Dalmia v Special Director of Enforcement, Enforcement Directorate, 2012 130 DRJ 519

[92] (2020) 14 SCC 241

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4.5 Obligations Under the Income Tax Act, 1961

Under the Income Tax Act, of 1961 the directors or key managerial personnel may become liable as an assesse on the behalf of the company. Section 2(7) of this act defines “assesse” as any person by whom any tax or any other sum of money is payable under the Income Tax Act, 1961 including a deemed assesse, assesse in default and every person whose income or fringe benefit or sustainability of loss is liable for assessment under this act or any person to who refund made under this act.[93] Section 115JB of this act provides some special provisions regarding the payment of tax by certain companies. Sub-section 1 of section 115JB is a non-abstain clause which specifies that, if the company is an assesse and it has in any previous year relevant to the assessment year starting on or after the first April 2012 total income of less than 18.5 per cent of its book profit then in such cases the book profit shall be deemed to be the total income and the assesse would become liable to pay income tax on such deemed total income with the rate to 18.5 per cent.[94] Here the word “book profit” means the net profit of that entity. Also, sub-section 1A of section 115JAA conferred the right on the assesse to claim the tax credit on payment of income tax if such assesse has made payment as per the provision of section 115JB (1).

Moving forward, another Section which is most prominent in respect of companies and its officers is given by section 179 of the Income Tax Act, 1961. It defines the liability of directors of a private company to pay the tax dues in case of liquidation of such a company. Sub-section 1 of section 179[95] provides that irrespective of any provision mentioned under the Companies Act, 2013 any private company or any other company which was earlier a private company from whom any tax is due in respect of any previous year relevant to the assessment year which cannot be recovered, then in such situations any person who was the director of a such private company shall be jointly as well as severally obliged to pay such dues except the situation where he proves that such non-recovery is not a result of his negligence or breach of duty regarding the conduct of the business of the company. But an exception to this rule is available for the directors of a company, which was converted from a private company to a public company under sub-section 2 of section 179 which mentions that nothing contained in section 179 sub-section 1 shall apply to the directors of such companies which converted from private to a public company.[96]

[93] THE INCOME TAX ACT, 1961, section 2(7)
[94] THE INCOME TAX ACT, 1961, section 115JB (1)
[95] THE INCOME TAX ACT, 1961, section 179, sub-section 1
[96] THE INCOME TAX ACT, 1961, section 179, sub-section 2

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In the case of *Smt. Pratibha Garg* v *CIT*[97] Allahabad High Court held that where no attempt was made to recover the tax due from the debtors of and shares held by the company, making the directors liable under section 179 is not a valid action. In, Ram Prakash Singeshwar Rungta v ITO[98] it was held by the Gujrat High Court that it is the equal obligation of revenue authority to prima facie establish a believe or satisfaction that the non-recovery is not due to the reason of gross negligence, misfeasance, or the breach of duty by the directors. In another famous case of *Suresh Narain Bhatnagar* v *ITO*[99] Gujarat High Court observed that merely because an individual is a technical director, that would not mean that the liability of such director cannot be enforced under the provision of section 179.

[97] (2014) 264 CTR 520 (All.)
[98](2015) 370 ITR 641 (Guj.)
[99] (2014) 367 ITR 254 (Guj.)

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CHAPTER 5

JUDICIAL APPROACH TOWARDS OBLIGATIONS OF DIRECTORS AND KMP OF A COMPANY

5.1 Introduction

Indian Judiciary as well as National Company Law Tribunal which is a quasi-judicial body plays a very vital role in mediation as well as settlement of various corporate disputes. At various events, the judiciary pronounced various landmark judgements and established well-settled principles in the field of corporate law. In the case of *Rajahmundry Electric Supply Company Ltd* v, *A Nageswara Rao and ors*[100] supreme court of India established the principle that as long as a company is acting under the powers provided through the article of association of the company, the court will not interfere with the internal affairs of the company. It is an example of how the judiciary restrains itself from any involvement into the internal affairs of a company. In this chapter, the author is discussing about judicial approach through various landmark judgements pronounced by Indian courts in respect of various obligations of the board of directors and key managerial personnel.

5.2 Landmark Decisions and Observations of Courts and Tribunals

In the case of *Cricket Club of India* v *Madhav Apte*[101] court held that any provision contained in an article, memorandum, agreement, or resolution of a company which is repugnant to any provision of the companies act, 2013, whether expressly or impliedly would be void ab initio and illegal as the provision of companies' act would override the articles of association of a company.

Directors and key managerial personnel are the eyes of the company and are primarily responsible for all types of statutory compliances. Their obligations were vastly described by the judiciary in various cases. In the case of *Pramatha Nath Sanyal* v *Kali Kumar Dutt*[102] where a company published an advertisement in a daily newspaper mentioning that "some shares are still available for sale according to the terms of the prospectus of the company which can be obtained on application" Calcutta high court observed

[100] 1955 SCR (2) 1066

[101] (1975) 45 Comp. case 574

[102] AIR 1924 Cal. 714

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that as this advertisement giving an invitation to the public to buy shares of the company, it may be considered as a "prospectus" and the directors would become liable to punishment for not complying the provisions of section 27 clause 9 of the Companies Act. In the case of *Indian States Bank Ltd*. V *Sardar Singh*,[103] it was held that the management of the companies should be inappropriately capable hands so that the provisions of the Companies Act 2013 regulates through strict compliance, the appointment and functioning of directors. In, *Bank of Poona Ltd*. V *Narayan Das*[104] it was observed by the Bombay high court that the concept of good faith requires that all the potential and skills of the directors must be directed towards the benefit and welfare of the company. In 1973, it was held by the court that a director could be held liable for renunciation or abdication of duties if any negligence by him facilitated the commission of fraud due to which loss was caused to the company.[105]

It is also observed by the Apex Court of India that the office of a director is somehow similar to the office of trust, and hence someone should be there who can be held liable for the failure to carry out the duties of a trust. as it is complex to decide the obligations of directors where the directors were a company or firm and that's why companies act specifies that the director shall be an individual[106] in *Guinness PLC* v *Saunders*[107] it was held by the court that director in question is bound to hand over the benefits, if any, that he might have secured under the transaction, also he cannot be asked for sett off for any claim he may have against the company. In the case of *Ram Chand and sons sugar mills pvt ltd* v *Kanhayalal Bhargava*,[108] it was observed by the supreme court that it is very complex to exactly set out or elaborate the statutory position acquired by a director in any company, it is a multi-dimension in which director acts as an agent as well as a trustee or manager at the same time.

While discussing the power of the CEO to borrow money outside the object and purpose of the company through the execution of a promissory note, the supreme court in the case of *Kirlampudi sugar mills Ltd* v *Venkata Rao*[109] held that such borrowing cannot be treated as personal borrowing by the CEO and also, he cannot be held liable as an agent even if the company fails to repay such borrowing. Later, the

[103] AIR 1934 All. 855
[104] AIR 1961 Bom. 252, 253
[105] *Official Liquidator* v *P.A Tendolkar (1973) 43 Com. Cases 382*
[106] Oriental mental pressing works private Ltd. v Bhaskar Kashi Nath Thakre
[107] (1990) 1 All. ER 652 HL
[108] AIR 1966 S C 1899
[109] 2003 42 SCL 798 AP

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Himachal Pradesh high court in the case *of H.P. State Electricity Board* v *Shivalik Casting Private Ltd.*[110] Pronounced that if a director gives surety in his capacity and not for and on the behalf of the company, then the company cannot be held responsible to pay such amount of surety. In the case of *Vineet Kumar Mathur* v *Union of India and others*[111] supreme court elaborated on some circumstances in which the directors can be held personally liable:

A. where the directors executed the contract with his name,
B. where the director mentioned an incorrect name of the company or omits to mention the name of the company,
C. where the director borrowed beyond the limit conferred upon him through the article of association of the company,
D. where the director ambiguously signed the contracts or agreement, and it is difficult to identify whether he signed in his capacity or on behalf of the company.

However, it is important to note that, the Bombay high court in the Bhajekar case[112] established the principle that where any director exceeded the powers conferred upon him but not exceeded the powers held by the company, then in such cases members of a company may rectify the action of such director by passing of a resolution at the general meeting of the company. Earlier it was the principle that directors are not the employees or servants of the company and they are acting as a representative elected by members or shareholders of the company but in 1957 it was observed and declared by the madras high court that since there is no provision of law which provides the specific position of a director; therefore, a director shall not be prevented from accepting the position of the employee in any contract made with the company.[113]

regarding the appointment of the director, although the powers are vested with shareholders, the supreme court declares that where the power to appoint additional directors is delegated to the board of directors of the company by the virtue of the article of association, then the board of directors having the power to appoint additional directors by the passing of board resolution at a board meeting without any approval by the shareholder[114] in *Rampur Distillery and Chemical Company Ltd.* v *Company Law*

[110] 2004 50 SCL 212 H.P.
[111] 1996 SCALE 1 504
[112] (1934) 36 BOMLR 483
[113] *K.R. Kothandaraman* v *CIT*, (1966) 2 MLJ 473
[114] *Needle Industries (India) Ltd* v *Needle Industries Newey (India) Holding Ltd.,* AIR 1981 SC 1298

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Board[115]supreme court retries that the court shall not interfere in the decision of union government regarding the approval or disapproval of the appointment of managing director or whole-time director or manager under section 203 of Companies Act, 2013 unless and until the decision of the central government is substantially appears to be arbitrary or based on the unreasonable ground.

In *Walchandnagar Industries* v *Ramachandra*[116] Justice Chagla while discussing the relationship between a company and its director analysed that the relationship between a director and a company is identical to the agent and principal relationship and hence the directors are under an obligation to ensure that their interest does not conflict with company's interests. Afterwards in the year 1998, Delhi High Court interpreted that, in the cases where directors are personally interested in any contract or deal which is detrimental to the interest or welfare of the company, then such contracts or deals shall not be binding on the company and such director shall be treated as personally liable[117] About oppression and mismanagement within a company supreme court of India as well as the company law board/ tribunal has decided various landmark judgements in which they express the view of the court towards the obligation of the board.

In *J.K Paliwal* v *Paliwal steels Ltd. And others*[118] company law boards about an application made to the tribunal for relief against oppression or mismanagement under section 241 of the Companies Act, 2013 settled the principle that the position of a director is similar to the trustee and so that, in a fiduciary capacity, they should perform their functions and obligations in the most loyal manner and the best interest of the company. Further in the case of *Girdhar Gopal Dalmia and Ors* v *Bateli Tea Company Ltd. & Ors*.[119] It was observed that as soon as the company law board or tribunal derives the satisfaction that the director or managerial personnel of a company including managers are involved in any kind of oppression or mismanagement activity which is against the interest of the company then the company law board shall direct to such company to wound up on any circumstances or ground which is just and equitable as given under section 271 of Companies Act, 2013.

Later, in the case of *MSDC Radharamman* v *M.S. Chandrashekhar Raja and another's*[120] it was observed by the supreme court that winding up of a company on just and equitable grounds mentioned in

[115] AIR 1970 SC 1789
[116] AIR 1953 Bom 285
[117] *M/s. Raj Cylinders and Container*s v *Hindustan general industries Ltd,* AIR 1998 Del. 418
[118] (2007) 5 Comp. LJ 279
[119] (2007) 1 Comp. LJ 450
[120] AIR 2008 SC 1738

section 271 also includes as justified ground any order of winding up due to the oppressive and detrimental actions of the company or its directors towards the members of the company. In the leading case of *Hanuman Prasad Bagri and Ors*. v *Bagress Cereals Pvt. Ltd*.[121]

The director was unlawfully expelled from the management of the company and thereafter he filed a petition under section 241 of the Companies Act, 2013 demanding the winding up of the company on just and equitable grounds under section 271 of the act as the company has committed oppressive action against him. In this case, the apex court decided that as much as there is proper remedy or relief in the form of a company suit available to the petitioner against unlawful expulsion from the directorship, such petitioner is not entitled due to his termination, to demand for winding up of a company by the tribunal on just and reasonable ground specified under section 271. In 1866 it was decided by the Bombay high court that shareholder can without making the company a party to the suit maintained a legal action against the director to insist them to restore the funds of the company that have been used by him in various transactions without any authorization of powers in this regard, by the company.[122] directors who made any unauthorised use of money of the company shall be personally liable to bear the losses sustained by such company. Here the sale of the property has been made by the directors to the shareholders at half of the value of such property. It is an ultra-virus act, and it also makes the recipient of such property liable as a trustee to the company.[123]

Section 447 of the companies act provides punishment against any action of fraud whereas, section 448 provides punishment for false evidence. Section 447[124] provides that if any person who is found to be guilty of fraud for the value minimum of 10 lakhs or 1 per cent of the total turnover of the company, whichever is lower, shall be punishable with imprisonment for a term which shall be a minimum of six months but extendable up to 10 years as well as fine which shall be minimum of the value equivalent to the amount of fraud but extendable up to three times of the amount of fraud. Proviso to section 447 further elaborate that if the issue of fraud involves public interest, then the minimum period for imprisonment shall be at least 3 years which may extendable up to 10 years. Provision second to section 447 specifies that if the

[121] AIR 2001 SC 1416
[122] *Jehangir R Modi* v *Shamji Ladha*, (1867) 4 Bom. HCR 185
[123] *Aveling Barford Ltd*. v *Perion Ltd.* 1989 BCLC 626 (CHD)
[124] The Companies Act, 2013 section 447

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amount of fraud is below 10 lakhs or 1 per cent of the turnover of the company then the punishment shall be for any period up to 5 years or a fine of any amount up to 20 lakhs or with both[125].

The idea of deceit is a necessary ingredient of fraud, but it does not exhaust it. The expression 'defraud' involves two elements, namely, deceit and injury to the person deceived. Injury is something other than the economic loss that is deprivation of property, whether movable or immovable or of money and it will include any harm caused to any person in body, mind, reputation or such others. A benefit or advantage to the deceiver will almost cause a loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.[126] Section 447 of the companies act, 2013 requires that proof regarding the commission of fraud shall be beyond a reasonable doubt. Here, the word "beyond reasonable doubt" is mean or way between excessive caution and excessive indifference to a doubt.[127]

Section 212 of the companies act, 2013 grants power to the serious fraud investigation office to conduct an inquiry into the affairs of the company. Clause 6 of Section 212[128] prescribes that offence of fraud under Section 447 shall be a cognizable offence and no one who is an accused of such offence shall be released on bail or his own until and unless the public prosecutor has the opportunity to oppose and, on his opposition, the court thinks that there is reasonable ground to believe that:

a) the accused is not guilty of the offence, and

b) the accused is not likely to commit any offence while on bail.

These two conditions given under section 212 clause 6 are known as twin conditions. In the case of serious fraud investigation office v Nitin Johari, the supreme court cancelled the bail granted by Delhi high court and observed that economic offences belong to a separate class of offence which is necessary to be dealt with a different approach while granting the bail in such case.

In the case of *S.M.S. Pharmaceuticals Ltd* v *Neeta Bhalla* [129]apex court of India observed that the obligations are created due to being in charge of the business and responsible for the conduct of affairs of

[125] The Companies Act, 2013 proviso to section 447
[126] *Vimla* v *State*
[127] *Latesh* v *State of Maharashtra* (2018) 3 SCC 66
[128] The Companies Act, 2013 section 212 (6)
[129] (2005) 8 SCC 89

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the company only when such person at the time of the commission of that offence was in charge of or holding any office or designation. Also, a person who at the time of the offence is not occupying any office or status but through their conduct it is clear that they are in charge of the business of the company and liable towards the affairs of the company at the time of commission may be held liable for such offence. In the case of Shailendra Swarup v Enforcement Directorate[130] supreme court pronounced that liability depends on the role one plays in the affairs of a company and not on designation and status. *Sunil Bharti Mittal* v *CBI*[131] is a landmark judgement of the apex court of India where the court had to clarify that to lift the corporate veil of a company the principle of Alter Ego can only be imposed to make a company answerable for the conduct of a person or group of persons who primarily acquired control and charge over the conduct of the day-to-day business of a company. In the same case, it was also observed that directors can be made liable for the wrongful acts of the company only if it can be established through proper evidence that such a person is actively involved in the commission of an act or offence with or without any criminal intent. Subsequently in the year 2019 in the leading case of *Shiv Kumar Jatia* v *State of NCT of Delhi*[132] supreme court upholds its views expressed in the Sunil Bharti Mittal case and further observed that to make a director or managing director or manager or chairman vicariously liable together with the company, two conditions must be analysed:

(a) it is proved that such a person is involved and playing a crucial and active role in the affairs of the company with some criminal intent, and

(b) the criminal intent which was claimed to be present must have a direct connection with the accused person.

Section 138 of the Negotiable Instrument Act, of 1881 defines criminal liability in the case of dishonour of cheques. Also, section 141 of this act further elaborates vicarious criminal liability of officers in default. In the case of N.K Wahi v Shekhar Singh supreme court retreats that for initiating any prosecution against the director of a company under section 141, there must be a specific allegation in the complaint, mentioning the part played by the director concerned in the transaction. also, there should be a clear and undoubtful allegation and description about how the directors are responsible towards the conduct of affairs

130 2020 221 Comp. Cas. 758 (SC)

131 AIR 2015 SC 923

132 AIR 2019 SC 4463

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of the company. In *DCM Financial Services Ltd.* v *J.N. Sareen*[133] Apex court held that section 141 of the Negotiable Instrument Act provides for a constructive liability on directors on behalf of the company, thereby creating a legal fiction. The director needed to be given separate notice, so they have an opportunity to rectify the mistake before being subjected to any vicarious liability.[134] In the case of *Sabitha Ramamurthy* v *R.B.S. Channabasavaradhya* it was held by the apex court that while deciding the vicarious liability of a director for the conduct of the company, it is essential to actively comply with all the essential requirements as given under the provision of section 141 of negotiable instrument act,1881.

In respect of the obligation of KMP, chairman and directors *Rabindranath Bajpe* v *Mangalore special economic zone Ltd. and Ors.*[135] Is a landmark judgement where the apex court held that the chairman, director and other key managerial personnel of a company cannot be automatically held liable for any offence committed by a company until and unless accusations and allegations raised against them are regarding their role.

Afterwards in the leading case of *GHCL Employees Stick Option Trust* v *India Infoline Ltd.*[136] supreme court dismissed the appeal and retreated that the learned magistrate has to ensure and record his satisfaction about the prima facie suit which is registered against the accused who is a director or company secretary or managing director or manager of a company, as well as their active role and capacity in such company. It is an essential condition for initiating any criminal suit against these persons. If there is no specific accusation regarding the individual roles which these persons had played in the affairs of the company then they should not be personally liable for any criminal offence.

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[133] (2008) 8 SCC 1
[134] *Krishna Texport and capital markets Ltd*. v A. Agrawal, (2015) 8 SCC 28
[135] Criminal Appeal No. 1047-1058/2021, judgment dated as of 27th September 2021
[136] (2013) 4 SCC 505

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CHAPTER 6

CONCLUSION AND SUGGESTIONS

6.1 Conclusion

Every company is a result of the legal formation of any artificial person. As the company is artificial persons always operate and act through and are merged with natural persons. Directors and key managerial personnel are those natural persons who act as the eyes and the mind of any company. All the decisions of the company, as well as action taken by a company, is belongs to these natural persons. The promoter of a corporate personality is primarily responsible for its formation, but a corporate personality is a distinct legal entity and is distinguished from its promoter. Post incorporation, during the entire life of a corporate personality as well as during the liquidation process, the board of directors and senior management of a corporate entity are the main organs responsible towards the decision-making and management of the conduct of affairs of a company. No doubt director and key managerial personnel holds the most prominent rights and authorities within a company. but here the rights come with major obligations. Companies Act, 2013 and various company rules in case of a private and unlisted company, and, in the case of a listed public entity, the rules and regulations laid down by the SEBI as a regulatory body under the SEBI Act, 1992 in addition to companies Act, 2013 and companies' rules.

Supreme court has already verdict that a company is not covered under the meaning of citizen of India and it can not claim to have basic fundamental rights as like a citizen.[137] It is important to note that, the concept of a corporation is distinct from the concept of a company. Corporation sole means legal personality conferred upon a person. Whereas, the company means an incorporated association of two or more persons. The designation of the President and Governor is also considered as corporate sole. Corporate sectors nowadays become a more prominent component of economic growth and development of the economy. The corporate sector plays various significant roles, in employment generation and as an economic support provider to the Indian economy. With the introduction of a new economic policy, in 1991 India opened up its market for global trade and investment the world. With the removal of trade barriers and entry of multi-national companies as competitors in the Indian market, it becomes very essential to regulate the corporate

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sector in a very diligent and effective manner to achieve maximum compliance and transparency in the affairs of the company.

In the year 1992, the Securities and Exchange Board of India was established to regulate the affairs of listed public companies as well as to supervise and regulate the operations of recognized stock exchanges established under the securities contract (Regulation) Act, of 1956. Later on, the recommendations of the Kumar Mangalam Bira Committee in 2000, clause 49 was inserted into the SEBI listing agreement, as of 31st December 2005. This clause is the most important in the listing agreement out of the other 53 clauses. As these clauses provided detailed regulations and compliance for requirements of listed public entities, also, in the year 2002, Naresh Chandra Committee was constituted by the Ministry of Finance, and in the year 2003Narayan Murthy Committee was constituted by the regulator of securities and capital market. SEBI to analyse and recommend the measures to adopt for ensuring good corporate governance. Later on, with the introduction of the Companies Act, of 2013, the principal corporate law of India was majorly reformed. After the introduction of the new Companies Act, of 2013, SEBI has also introduced and amended its rules and regulations regarding listed public entities. for instance, SEBI has issued "SEBI (Issue of Capital and Disclosure Requirement) Regulations 2018, SEBI (Listing of Capital and Disclosure Requirement) Regulations 2015", new SEBI (Prohibition of Insider Trading) Regulations 2015, and many other regulations were introduced as well as amended to align with the newly enacted Companies Act, 2013, and to ensure good corporate governance.

To implement these statutes, rules and regulations effectively, various serious obligations were imposed and enhanced upon the board of directors and key managerial personnel. The obligation of key managerial personnel and directors. Were extended and extended under the new Companies Act of 2013, as well as under the various regulations of the SEBI. Non-performance of these obligation attack both civil as well as criminal liability. For instance, section 34 of the Companies ACT, 2013 prescribes criminal liability in case of misleading statements in a prospectus, whereas section 35 prescribes civil liability in case of misleading or wrong statements in a prospectus in the form of compensation to loss bearer by other parties. Also, section 447 of this act, provides criminal liability as well as civil liability to compensate in case of any fraud committed by the company or on the behalf of the company.

Apart from these two most prominent definitions under the new companies act, one which is given under section 2 (60) as "officers in default" and the other which is given under section 2 (76) as "Related

Party" are crafted to bestow the maximum obligations upon the board and senior management of the company. Both these two definitions were including, directors and key managerial personnel like managing director or manager, whole-time director, company secretary as well as chief executive officer and chief financial officers of the company. Various other statutes like the Negotiable Instrument Act, of 1881, the Public Liability Insurance Act, of `1991, the Workman Compensation Act, of 1923, and various Environment-related laws. The punishment prescribes mostly creates accountability and liability upon the persons who are in control or responsible towards the day-to-day conduct of affairs of a corporate entity, in addition to the liability upon the company itself. It is a very eminent fact that the top senior management and board of directors are the persons who control and administrate the day-to-day affairs of any corporate entity. Further same new obligations were also imposed on the directors of the company which includes Corporate Social Responsibility under section 135 and Schedule VII of the Companies Act, 2013 as well as provisions regarding Director Identification Number under section 153 to 159, women director under the second proviso to section 149 (1) (a) and small shareholder director under section 151 of Companies Act, 2013.

The concept of women director and small shareholder director was introduced to ensure participation and representation of interest of women and small shareholders in the board room. They should be involved in effective and prominent decision-making by the company. On the one hand, it helps the company to set up accountability and to enhance transparency into the internal affairs of the company and on the other hand it helps in ensuring Good Corporate Governance. In the case of listed public entities, the role of independent directors was also enhanced. Clause 49 of the SEBI Listing Agreement as well as sections 149 and 150 of the Companies Act 2013, impose an obligation upon the company to appoint an independent director to the board. The expose of the Harshad Lal Mehta scam in 1992 for values more than rupees 100 billion and the Satyam Computers Scam in 2009 for an estimated value of Rs 12320 crores or above within a year just after receiving the prestigious Golden Peacock Award for best corporate governance in India. Has shaken the investors, regulators, government as well as judicial institutions in India. the Satyam scam was more of an eye-opener for the government as well as other stakeholders. Because of this scam not only the internal personnel but also the external professionals like Independent Directors and External Auditors of finance records and misrepresentation of loans, advances, deposits, and investments accepted by the company between the years 2003-2008.

All the records were colourable as true and fair. After this scam, SEBI has also taken various steps to make stringent provisions regarding compliance and corporate governance. But here, the issues arise in front of all of us. That, whether the regulations and statutes for the governance of corporate bodies in India including the Companies Act of 2013 are adequate and full proof to ensure the non-recurrence of corporate financial frauds of such a huge value. As we have witnessed some more huge corporate frauds even after the implementation of all new and reformed statutes and regulations in India. for instance, however, the Ministry of corporate affairs and SEBI have taken various important initiatives but it's a harsh reality that, the corporate governance framework in India is not sufficed to prevent and overcome serious corporate fraud attempts by big corporate. Players the arrest of big corporate tycoons like Chanda Kochar, and Rana Kapoor, as well as absconding of the business players like Neerav Modi and Lalit Modi, has proved that various loopholes are still prevailing in the corporate and financial laws which are need to curve out. In another incident, we have already seen how Cyrus Mistry who was the director of Tata Sons Limited from 2006 onwards, has alleged that the substantial shares of the company are held by the members of the Tata Family as Board of Trustee. And the majority of the decisions of the company are largely influenced and controlled by the nominee directors, nominated by the board of trustee. He also alleged that even the independent Director of Tata Sons Limited, Mr Nusli Wadia was kicked out of the company due to the raise of support in favour of Cyrus Mistry in the issue of chairmanship.

Also in the year 2020, Deepak Kochar was arrested by Enforcement Directorate (ED) on the accusation and charges of money laundering. post to the criminal case registered by the Federal Investigating Agency CBI. In this case, it was alleged that, the loan which is generated by ICICI Bank under the regime of CEO and MD Chandra Kochar, to the Videocon company for the value of Rupees 300 crores, out of that total value of the loan. Approximately Rupees 64 crores were transferred inappropriately by the Videocon company to another corporate entity named Nupower Renewables Pvt Ltd. in September 2009 which is owned and controlled by the husband of Chandra Kochar, Mr, Deepak Kochar. Later, Chandra Kochar was also booked for misappropriation and non-compliances.

6.2. Suggestions

Based on the above-discussed facts and figures, the author of this research paper wants to suggest the following measures:

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i. strict implementation of the Prevention of Money Laundering Act, is also equally prominent with strict implementation of corporate laws.
ii. Board should emphasise upon creation and execution of the best strategic planning and management for the organisation also, it should review the organisational conduct and performance promptly.
iii. the regulatory bodies should focus on the establishment of strong whistle-blower and ombudsman mechanisms within the organisation, so that veil could be effectively lifted against any kind of internal mismanagement and gross negligence inside the company.
iv. the board and key managerial personnel shall consist of competent and skilled persons who can effectively manage the affairs of the company and who are efficient to craft and execute the risk management policy of the company.

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