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NAAC ACCREDITED 'A' GRADE



Topic: Position Of Director

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Position of the Directors

Company is an artificial person created by a process of law. A company cannot act by itself and for that reason it has to depend upon human being who is called member or shareholder of the company. Commonly, a Company is managed by its elected members are known as Director of the company. Directors are the persons duly appointed by the company to control and manage the affairs of the company. It is difficult to define the exact legal position of the directors of a company. In various judgments, directors of a company have been defined as agents, trustees or managing partners. Now we are going to discuss the different positions of director as per various verdicts:

Directors may be treated as an agent:

Company is a creation of law which have no physical as well as mental ability to perform the job in a right manner. It cannot act, just like us. It can act only through some human agency. Directors are those representative human agency through whom company acts and does the business properly. To make the reference we can consider some case laws. In **Ferguson v. Wilson(1866)**, the court clearly mentioned that directors are act as an agent of the company. It was held that, the company is not natural person; it can act only through directors As agents, directors must conduct business with reasonable care skill and diligence possessed by them. abiding by the company's Memorandum of Association and Articles of Association. Whatever they do, ultimately binds the company. They enter into contract and wherever, they put their signatures, they do so only on behalf of the company. But we know that directors agents are not same. Generally agents are being appointed by the principal but the directors are appointed by the shareholders. Again agents will get commission as monetary return of their work but the directors are not getting such kind of commission against their work. Thus, the directors are not the agents in the true sense.

Director may be treated as a Trustee:

A trustee is a person or firm that holds and administers property or assets for the benefit of a third party. In certain respects, the directors can be worked as the trustees of the company. They are the custodians of the money and properties of the company. They stand in a fiduciary capacity to protect the company's interest. The power to make call, to forfeit shares, to issue further capital, the general powers of management and the power to accept or refuse a transfer of shares, are all powers in trust .which have to be applied in good faith for the interest of the company as a whole. They must exercise their powers honestly in the interest of the company and all the shareholders, and not their own sectional interest. Directors are the trustees of the company, not of any individual shareholder. This principal was laid down in the case of Percival V. Wright(1902). Directors are not trustees in the true sense because the ownership of the property held in trust by them does not vest in them as in case of an ordinary trust. Further, unlike a trustee, they, enter into contracts in the name of the company.

Director may be treated as a Managing Partner:

Directors represent the shareholders to conduct business of the company on their behalf. They enjoy huge power of management of the company and execute many functions which are in the nature of proprietary, for example, allotment of shares, raising of loans, investment of funds of the company. This gives impression of directors being partners and the shareholders appointing them as dormant partners. But the fact is that most of the times directors themselves are the significant shareholders in the company strengthens the argument that directors are the managing partners of the company.

But this may be true only partially as unlike partners, directors cannot bind other shareholders by their dealing and dissimilar to partners. The directors are elected and are subject to retirement also. But why then, a director has no authority or right to bind other directors and shareholders like partners in a firm. This shows that they are not managing partners or proprietors in full sense.

Director may be treated as Officers:

Under sec. 2(59) of the Companies Act, they are liable to certain penalties if the provisions of the Companies Act are not complied with. Moreover whether or not a director is in the employment of the company, he shall be treated as an officer of the company.

Director may be treated as a employees:

Although directors are agents of the company, they are not employees or servants of the company. Hence they cannot claim their remuneration as a preferential creditor in the event of winding up of a company under sec. 327 of the Companies Act, 2013. But where any director, besides being a director, is also in the service or employment of the company, such as secretary, manager, accountant or otherwise, he will be treated as an employee. As such he will be entitled to the remuneration and other benefits admissible to his as an employee in addition to his rights as a director to sitting fee, etc.

To sum up, we can say that the directors are neither agents nor trustees or managing partners in the strict sense of the term. They combine in themselves all these positions. They stand in a fiduciary position towards the company in respect of their powers and capital under their control.

The provisions regarding to vacation of office of director are contained in section 167 of the Companies Act, 2013, which are as follows:

As per section 167(1), the office of a director shall become vacant in case -

- (a) he incurs any of the disqualifications specified in section 164;
- (b) he absents himself from all the meetings of the Board of Directors held during a period of twelve months with or without seeking leave of absence of the Board;
- (c) he acts in contravention of the provisions of section 184 relating to entering into contracts or arrangements in which he is directly or indirectly interested;
- (d) he fails to disclose his interest in any contract or arrangement in which he is directly or indirectly interested, in contravention of the provisions of section 184;
- (e) he becomes disqualified by an order of a court or the Tribunal;
- (f) he is 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:

Provided that the office shall be vacated by the director even if he has filed an appeal against the order of such court;

- (g) he is removed in pursuance of the provisions of this Act;
- (h) he, having been appointed a director by virtue of his holding any office or other employment in the holding, subsidiary or associate company, ceases to hold such office or other employment in that company.

As per Section 167(2), if a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.

As per Section 167(3), where all the directors of a company vacate their offices under any of the disqualifications specified in sub-section (1), the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in the general meeting.

As per Section 167(4), a private company may, by its articles, provide any other ground for the vacation of the office of a director in addition to those specified in sub-section (1).