

SEMESTER-II

LM-108-CORPORATE MANAGEMENT AND GOVERNANCE

CREDIT-4

TOPIC-5: DIRECTORS

By Dr. Syed Mohammad Yawar, Assistant Professor, Department of Law, Aliah University, Kolkata

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Introduction

- A Director is any person, occupying the position of Director, by whatever name called.¹
- Section 2(34) of the Companies Act 2013(hereinafter referred to as Act) says “director” means a director appointed to the Board of a company.
- Section 2(10) provide, ‘Board of Directors’ or ‘Board’, in relation to a company, means the collective body of the directors of the company. This collective body is responsible for governance of company.
- The directors are agents of company. They are trustees of company and they are also officer of company. They are professional men hired by the company to direct its affairs yet they are not servant of company.² (*Moriarty v. Regent’s Garage and Engg. Co.*, [1921] 1 KB 423)
- As we know company is a legal person. Company act through its officers. Directors are those agents and officers through whom company functions.
- Chapter 11 of the Companies Act 2013 deals with appointment and qualifications of directors. This chapter has 24 Sections dealing with various aspects of roles and responsibilities of Directors of a Company.

COMPANY TO HAVE BOARD OF DIRECTORS

- Section 149 provides that every company shall have a Board of Directors consisting of individuals as directors. Only individuals are declared qualified to become directors.
- **Minimum number: Three 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;

¹ Section 2(13) of the Companies Act 1956

² E-Pathshala module on Corporate law, available at: <https://epgp.inflibnet.ac.in/Home/ViewSubject?catid=20>

- **Maximum Number: fifteen directors:** Provided that a company may appoint more than fifteen directors after passing a special resolution: Provided further that such class or classes of companies as may be prescribed, shall have at least one woman director.
- **One year** time period is provided to a company for compliance of above said requirement from commencement of the Act.
- It is compulsory for every company that at least one of its directors should have stayed in India for a total period of not less than **182 days** in the previous calendar year.
- Every listed public company shall have at least **one-third of the total number of directors as independent directors**³ and the Central Government may **prescribe** the minimum number of independent directors in case of any class or classes of public companies. (any fraction contained in such one-third number shall be rounded off as one). **One year** time period is provided to a company for compliance of above said requirement from commencement of the Act.

INDEPENDENT DIRECTORS OF A COMPANY

- Section 149(6) provides that an **independent director** in relation to a company, means a director other than a managing director or a whole-time director or a nominee director⁴,—
 1. who, in the opinion of the Board, is a person of **integrity** and possesses relevant **expertise and experience**;
 2. who is or was **not a promoter** and who is **not related to promoters or directors** of the company or its holding, subsidiary or associate company;

³ Section 2(47) provides, independent director means an independent director referred to in sub-section (6) of section 149;

⁴ Explanation to Section 149(7) provides that ‘nominee director’ means a director nominated by any financial institution in pursuance of the provisions of any law for the time being in force, or of any agreement, or appointed by any Government, or any other person to represent its interests.

3. who has or had **no pecuniary relationship** with the company, its holding, subsidiary or associate company, or their promoters, or directors, during the **two immediately preceding financial years** or during the **current** financial year;
4. **none of whose relatives has or had pecuniary relationship** or transaction with the company, its 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, whichever is lower, during the **two immediately preceding financial years** or during the current financial year;
5. who, neither himself nor any of his relatives—
 - a. (i) holds or has held the position of a **key managerial personnel** or is or has been employee of the company or its holding, subsidiary or associate company in any of the **three financial years** immediately preceding the financial year in which he is proposed to be appointed;
 - b. (ii) 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—
 - a firm of **auditors** or **company secretaries** in practice or **cost auditors** of the company or its holding, subsidiary or associate company; or any **legal or a consulting firm** that has or had any transaction with the company, its 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 company; 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 from the company**, 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 company; or
6. who possesses such other qualifications as may be **prescribed**.

- Every independent director shall :
 1. at the first meeting of the Board in which he participates as a director and
 2. thereafter at the first meeting of the Board in every financial year or
 3. whenever there is any change in the circumstances which may affect his status as an independent director,

give a declaration that he meets the criteria of independence as provided in Section 149(6).

- The company and independent directors have to follow the Code for Independent Directors provided in Schedule IV of the Act. The Code is a guide to professional conduct for independent directors.
- Subject to the provisions of sections 197 and 198, an independent director shall **not** be entitled to any **stock option** and may receive **remuneration** by way of **fee** provided under sub-section (5) of section 197, reimbursement of

expenses for participation in the Board and other meetings and profit related commission as may be approved by the members.

- An independent director shall hold office for a term up to **five consecutive years** on the Board of a company, but shall be **eligible for reappointment** on passing of a special resolution by the company and disclosure of such appointment in the Board's report.
- No independent director shall hold office for **more than two consecutive terms**, but such independent director shall be eligible for appointment after the expiration of **three years** of ceasing to become an independent director: Provided that an independent director shall not, during the said period of three years, be appointed in or be associated with the company in **any other capacity**, either directly or indirectly.
- An independent director; or a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with
 1. **his knowledge**, attributable through Board processes, and
 2. with his **consent** or **connivance** or where he had not acted diligently.
- The provisions of sub-sections (6) and (7) of section 152 in respect of retirement of directors by rotation shall not be applicable to appointment of independent directors.

Manner of selection of independent directors and maintenance of databank of independent directors (Section 150):

- An independent director may be selected from a **data bank** containing names, addresses and qualifications of persons who are eligible and willing to act as independent directors, maintained by any body, institute or association, as may be notified by the Central Government, having expertise in creation and maintenance of such data bank and put on their

website for the use by the company making the appointment of such directors:

- Provided that responsibility of exercising due diligence before selecting a person from the data bank referred to above, as an independent director shall lie with the **company making such appointment**.
- The appointment of independent director shall be approved by the company in **general meeting** as provided in sub-section (2) of section 152 and the **explanatory statement** annexed to the notice of the general meeting called to consider the said appointment shall indicate the **justification** for choosing the appointee for appointment as independent director.
- The data bank shall create and maintain data of persons willing to act as independent director in accordance with such rules as may be prescribed.
- The Central Government may prescribe the manner and procedure of selection of independent directors who fulfil the qualifications and requirements specified under section 149.

APPOINTMENT OF DIRECTORS (SECTION 152)

- Where no provision is made in the articles of a 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 duly appointed and in case of a One Person Company an individual being member shall be deemed to be its first director until the director or directors are duly appointed by the member in accordance with the provisions of section 152.
- Every director shall be appointed by the company in **general meeting**.
- No person shall be appointed as a director of a company unless he has been allotted the **Director Identification Number** under section 154.

- Every person proposed to be appointed as a director by the company in general meeting or otherwise, shall **furnish his Director Identification Number and a declaration** that he is not disqualified to become a director under this Act.
- A person appointed as a director shall not act as a director unless he gives his **consent** to hold the office as director and such consent has been **filed with the Registrar** within **thirty days** of his appointment in such manner as may be prescribed.
- In the case of appointment of an independent director in the general meeting, an **explanatory statement** for such appointment, annexed to the notice for the general meeting, shall include a statement that in the opinion of the Board, he fulfils the conditions specified in this Act for such an appointment.

Retirement of Directors [Section 152(6) & (7)]:

- The articles can provide for the retirement of all directors at every annual general meeting.
- Otherwise, not less than **two-thirds** directors of a public company shall—
 - (i) be persons whose period of office is liable to determine by **rotation**; and
 - (ii) be appointed by the company in **general meeting**.
- The remaining directors in the case of any such company shall, in default of, and subject to any regulations in the articles of the company, also be appointed by the company in **general meeting**.
- At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed

and at every subsequent annual general meeting, **one-third** of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, **shall retire from office**.

- The directors to retire by rotation at every annual general meeting shall be those who have been **longest in office** since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot.
- At the annual general meeting at which a director retires as aforesaid, the company may fill up the vacancy by appointing the retiring director or some other person thereto.
- Total number of directors shall **not include** independent directors, whether appointed under this Act or any other law for the time being in force, on the Board of a company.
- If the vacancy of the retiring director is not so filled-up and the meeting has not expressly resolved not to fill the vacancy, the meeting shall stand adjourned till the **same day in the next week**, at the same time and place, or if that day is a national holiday, till the next succeeding day which is not a holiday, at the same time and place.
- If at the adjourned meeting also, the vacancy of the retiring director is not filled up and that meeting also has not expressly resolved not to fill the vacancy, the retiring director shall be **deemed to have been re-appointed** at the adjourned meeting, unless—
 - a. at that meeting or at the previous meeting a resolution for the re-appointment of such director has been put to the meeting and **lost**;

- b. the retiring director has, by a notice in writing addressed to the company or its Board of directors, expressed his **unwillingness** to be so re-appointed;
- c. he is **not qualified** or is disqualified for appointment;
- d. a **resolution**, whether special or ordinary, is required for his appointment or re-appointment by virtue of any provisions of this Act; or
- e. **section 162** is applicable to the case. (retiring director means a director retiring by rotation)

DIRECTOR IDENTIFICATION NUMBER (DIN)

- Every individual intending to be appointed as director of a company shall make an application for allotment of Director Identification Number to the Central Government (Sec.153).
- The Central Government shall, within **one month** from the receipt of the application allot a Director Identification Number. (Sec.154)
- One individual can only obtain or possess one DIN. (Sec.155)
- Every existing director shall, within **one month** of the receipt of DIN intimate his DIN to the company or all companies wherein he is a director. (Sec.156)
- Every company shall, within **fifteen days** of the receipt of intimation under section 156, furnish the DIN of all its directors to the Registrar. Failing which the company shall be punishable with fine which shall not be less than **twenty-five thousand rupees** but which may extend to **one lakh rupees** and every officer of the company who is in default shall be

punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

DISQUALIFICATIONS FOR APPOINTMENT OF DIRECTOR (SECTION 164)

- A person shall not be eligible for appointment as a director of a company, if —
 - 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 an 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 Tribunal and the order is 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** (requirement of DIN).

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

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

- A private company may by its articles **provide for any disqualifications** for appointment as a director in addition: Provided that the disqualifications referred to in clauses (d), (e) and (g) of section 164(1) shall not take effect— (i) for **thirty days** from the date of conviction or order of disqualification; (ii) where an appeal or petition is preferred within **thirty days** as aforesaid against the conviction resulting in sentence or order, until expiry of **seven days** from the date on which such appeal or petition is disposed off; or (iii) where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is **disposed off**.

NUMBER OF DIRECTORSHIPS (SECTION 165)

- A person cannot hold office as a director (including any alternate directorship), in more than **twenty companies** at the same time:

- In case of public companies maximum number in which a person can be appointed as a director shall not exceed **ten**.
- The members of a company may, by **special resolution**, specify any lesser number of companies in which a director of the company may act as directors.
- Any person holding office as director in companies more than the limits, immediately before the commencement of this Act shall, within a period of **one year** (a) **choose** not more than the specified limit of those companies, as companies in which he wishes to continue to hold the office of director; (b) **resign** his office as director in the other remaining companies; and (c) **intimate** the choice made by him under clause (a), to each of the companies in which he was holding the office of director before such commencement and to the Registrar having jurisdiction in respect of each such company.
- Any resignation made in pursuance of clause (b) above shall become effective **immediately** on the despatch thereof to the company concerned.
- No such person shall act as director in more than the specified number of companies after despatching the resignation or after the expiry of **one year** from the commencement of the Act, whichever is earlier.
- If a person accepts an appointment as a director in contravention of subsection (1), he shall be punishable with fine which shall not be less than **five thousand rupees** but which may extend to **twenty five thousand rupees for every day** after the first during which the contravention continues.

DUTIES OF DIRECTOR (SECTION 166)

It is duty of Director of a company to:

1. **Act according to articles:** Subject to the provisions of the Act, a director of a company shall act in accordance with the articles of the company.
 2. **Good faith:** A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.
 3. **Due care:** A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
 4. **Avoid conflict of interests:** A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
 5. **Avoid undue advantage:** A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
 6. **Avoid Assignment:** A director of a company shall not assign his office and any assignment so made shall be void.
- If a director of the company contravenes the provisions of this section such director shall be punishable with fine which shall not be less than **one lakh rupees but which may extend to five lakh rupees.**

VACATION OF OFFICE OF DIRECTOR (SECTION 167)

- The office of a director shall become vacant in case—

- (a) he is disqualified under 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 the 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.

- 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.

- 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.
- A private company may, by its articles, provide **any other ground** for the vacation of the office of a director in addition.

RESIGNATION OF DIRECTOR (SECTION 168)

- A director may resign from his office by giving a **notice** in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall **intimate the Registrar** in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the **report of directors** laid in the immediately following **general meeting** by the company:
- A director shall also forward a copy of his resignation along with **detailed reasons** for the resignation to the **Registrar** within **thirty days** of resignation in such manner as may be prescribed.
- The resignation of a director shall take effect from the date on which the **notice is received** by the company or the date, if any, specified by the director in the notice, whichever is later:
- The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
- Where all the directors of a company resign from their offices, or vacate their offices under section 167, 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 general meeting.

REMOVAL OF DIRECTORS (SECTION 169)

- A company may, by **ordinary resolution**, remove a director, not being a director appointed by the Tribunal under section 242, before the expiry of the period of his office after giving him a **reasonable opportunity of being heard**: Provided that nothing contained in this sub-section shall apply where the company has availed itself of the option given to it under section 163 to appoint not less than two-thirds of the total number of directors according to the principle of proportional representation.
- A **special notice** shall be required of any resolution, to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.
- On receipt of notice of a resolution to remove a director under this section, the company shall forthwith **send a copy** thereof to the director concerned, and the director, whether or not he is a member of the company, shall be entitled to **be heard** on the resolution at the meeting.
- Where notice has been given of a resolution to remove a director under this section and the director concerned makes with respect thereto representation in writing to the company and requests its notification to members of the company, the company shall, if the time permits it to do so,— (a) in any notice of the resolution given to members of the company, state the fact of the **representation** having been made; and (b) send a copy of the representation to **every member** of the company to whom notice of the meeting is sent (whether before or after receipt of the representation by the company), and if a copy of the representation is not sent as aforesaid due to insufficient time or for the company's default, the

director may without prejudice to his right to be heard orally require that the representation shall be read out at the meeting: Provided that copy of the representation need not be sent out and the representation need not be read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this sub-section are being abused to secure needless publicity for defamatory matter; and the Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

- A vacancy created by the removal of a director under this section may, if he had been appointed by the company in general meeting or by the Board, be filled by the appointment of another director in his place **at the meeting at which he is removed**, provided special notice of the intended appointment has been given.
- A director so appointed shall hold office **till the date up to which his predecessor would have held office** if he had not been removed.
- If the vacancy is not filled it may be filled as a **casual vacancy** in accordance with the provisions of this Act: Provided that the director **who was removed from office shall not be re-appointed** as a director by the Board of Directors.
- Nothing in this section shall be taken— (a) as depriving a person removed under this section of any **compensation or damages** payable to him in respect of the termination of his appointment as director as per the terms of contract or terms of his appointment as director, or of any other appointment terminating with that as director; or (b) as derogating from any power to remove a director under other provisions of this Act.

PUNISHMENT (SECTION 172)

- If a company contravenes any of the provisions of Chapter 11 and for which no specific punishment is provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than **fifty thousand rupees** but which may extend to **five lakh rupees**.

RELEVANT CASE LAW

1. *Ram Chand And Sons Sugar Mills vs Kanhaya Lal Bhargava* AIR 1966 SC 1899

It cannot be disputed that a company and the directors of the company are different legal personalities. The company derives its powers from the memorandum of association. Some of the powers are delegated to the directors. For certain purposes they are said to be trustees and for some others to be the agents or managers of the company. It is not necessary in this case to define the exact relationship of a director qua the company. The acts of the directors within the powers conferred on them may be binding on the company. But their acts outside the said powers will not bind the company.

2. *Imperial Hydropathic Hotel Co, Blackpool v Hampson* (1883) 23Ch D 1

The articles of association of the Imperial Hydropathic Hotel Co (now The Imperial Hotel Blackpool) stated that the directors should hold office for three years and retire by rotation. At a general meeting, the shareholders passed a resolution to remove two directors who were not yet due to retire, and elected two others instead. The company claimed the directors had been validly removed. The Court of Appeal held that the company's articles could not be disregarded through a shareholder resolution. Where a company's articles limit the general meeting's power, the articles must be formally

amended first, and may not simply be ignored, even with a majority large enough to change the articles. Lord Jessel MR gave the first judgment.⁵

3. *Moriarty v Regent's Garage & Engineering Co Ltd* [1921] 2 K.B. 766

The director whose remuneration was fixed "at the rate of pound 150 per annum" ceased to be a director on settlement of disputes between himself and the company the director agreeing to accept payment of all money due to him upon his debentures and the debentures being paid off in the middle of the year. The director sued the company to recover a proportionate part of the pound 150 as his fees for the broken period. The Deputy County Court Judge gave judgment for the company, holding that the director was not entitled to remuneration for a broken part of a year. The Divisional Court versed the decision of the Deputy County Court judge and there was a further appeal. It was held by the Court of Appeal that neither under the Agreement or under the articles was the director entitled to the he claimed. The question of the applicability of the Apportionment Act was sought to be raised before the appeal Court but was not allowed to be raised in appeal as it had not been done in the County Court. arriving at this decision Lord Sterndale M.R. stated the position as follows at page 774:--

"it seems to me that upon the construction of the agreement it must fail. It is a payment per annum, a payment for a year, And unless he serves for the year the cannot get the payment."⁶

4. *Ferguson v. Wilson*, (1866) LR 2 Ch. 77

"What is the position of directors of a public company ? They are merely agents of a company. The company itself cannot act in its own person, for it has no

⁵ Alchetron free Encyclopaedia, available at: <https://alchetron.com/Imperial-Hydropathic-Hotel-Co-v-Hampson>

⁶ As quoted in *E. D. Sassoon and Company Ltd. and others vs. Commissioner of. Income-Tax, Bombay City*, 1954 AIR 470

person; it can only act through directors, and the case is, as regards those directors, merely the ordinary case of principals and agent. Wherever an agent is liable those directors would be liable : Where the liability would attach to the principal, and the principal only, the liability is the liability of the company."⁷

5. *V.S. Ramaswamy Iyer and Anr. vs Brahmayya & Co., Official Liquidators, Hanuman Bank Ltd.* [1966] 36 Comp. Cas. 270 (Mad.)

Para 80. Passages to similar effect are found in Buckley on the Companies Acts, thirteenth edition. At page 864 it stated :

"The directors of a company fill a double character. They are (i) agents of the company, and (ii) trustees for the shareholders of the powers committed, to them."

Para 104. Kay L.J. observed at page 638: Sir George Jessel in the case of *In re Forest of Dean Coal Mining Company*, said this: "Directors are called trustees. They are no doubt trustees of assets which have come into their hands, or which are under their control, but they are not trustees of a debt due to the company.' So that, when they get assets of the company under their control, or into their hands, and deal with them in a way which is beyond the powers of the company, they are liable as for a breach of trust."

6. *In re Exchange Banking Company or Flitcroft's case* (1882) LR 21 Ch D 519

The directors of a limited company for several years presented to the general meetings of shareholders reports and balance-sheets in which various debts known by the directors to be bad were entered as assets, so that an apparent profit was shown though in fact there was none. The shareholders, relying on

⁷ As quoted in *Santanu Ray vs Union Of India* 1988 (18) ECC 51, 1988 (19) ECR 257 Delhi Para5.

these documents, passed resolutions declaring dividends, which the directors accordingly paid. An order having been made to wind up the company, the liquidator applied under Section 165 of the Companies Act, 1862, for an order on the directors to replace the amount of dividends thus paid out of capital. Referring to the position of directors, Bacon V. C. observed :

"One must have regard to the position of directors of a joint stock company. It is said they are not trustees. Answering that objection in general, I should say they are trustees and nothing else. They have interests of their own, but they are trustees of the money which may be collected by subscriptions, and of all the property that may be acquired ; they have the direction and management of that property, and at the same time they have incurred direct obligation to the persons who have so entrusted them with their money."⁸

7. *Raghunath Swarup Mathur vs Dr. Raghuraj Bahadur Mathur* AIR 1967 All 145

It is true that a single resolution moved to elect two or more directors of the company clearly amounts to contravention of the provisions of Section 263(1) of the Act and such a contravention would have been punishable under Section 629A of the Act, but for the existence of Sub-section (2) of Section 263. This sub-section lays down the consequence of moving such a faulty resolution, viz. it renders void every resolution moved in contravention of Sub-section (1) of Section 263, with the result that the resolution itself becomes non est and non-existent, in the eye of law.

8. *Mother Care (India) Ltd. vs Prof. Ramaswamy P. Aiyar* ILR 2004 KAR 1081

⁸ As Quoted in *V.S. Ramaswamy Iyer and Anr. vs Brahmayya & Co., Official Liquidators, Hanuman Bank Ltd.* [1966] 36 Comp. Cas. 270 (Mad.) Para 91

Para 12: Under the provisions of the Companies Act as aforesaid a Director is appointed by the company in the general meeting. In other words it is by way of election. It is for a particular period. If a director after being so appointed absents himself from three consecutive meetings of the Board of Directors, or from all meetings of the Board for a continuous period of three months, whichever is longer, without obtaining leave of absence from the board, the office of a director shall become vacant in terms of Section 283(g) of the Act. Therefore, it is clear a Director ceases to be a director of a company by the happening of the aforesaid event. There is no question of anybody declaring that director has, ceased to be a director or anybody recognizing such a vacancy by any overt act.