

Corporate & other related laws

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Inside this edition

Consequences of holding directorships in excess of the prescribed limit as per the provisions of the Companies Act 2013

ROC levies a penalty on director for his appointment without having a Director Identification Number (DIN) - A Case Study

Heavy Penalties Imposed on Company, MD & CS for Concealing CSR Expenditure Omission

Statutory Auditors Penalized for Failure to Address Non-Adherence to Accounting Standards in Audit Reports

& more...

Consequences of holding directorships in excess of the prescribed limit as per the provisions of the Companies Act 2013

The Ministry of Corporate Affairs nowadays, is more concerned about compliance with the corporate governance norms and the required compliances that are to be complied by the companies.

In this connection, very recently, the Registrar of Companies, Chennai of Tamil Nadu passed an order levying penalties against a director who was found in violation of section 165 of the Companies Act 2013 which pertains to limiting the number of directorships an individual could hold concurrently. The provisions relating to limiting the number of directorships had been brought by the regulators in order to prevent overextension of directors' responsibilities and safeguard against potential conflicts of interest.

Framework of the Companies Act on this subject

The provisions of section 165 of the Companies Act 2013, state the permissible number of directorships an individual could hold concurrently. The relevant section restricts the number of directorships to 20 companies in all, with a further limitation on the number of directorships in public companies. The legal framework also provides penal provisions for the violation of this section under its sub-section 6 of section 165 of the Act and as provided in this section the penalty would occur on each day of non-compliance continues.

Facts about the case:

As per the records available at the Ministry of Corporate Affairs portal, during the year 2016, the Registrar of Companies / Adjudicating Officer observed and noticed that the director named Mr B Kannan was holding directorship of companies incorporated under the Companies Act, in excess of the limits prescribed under the provisions of section 165 of the Companies Act 2013. The Registrar of Companies, Chennai upon his investigation, having found that Mr. B. Kannan was holding directorships in excess of the statutory limits specified under section 165 of the Companies Act 2013, issued a show cause notice to him, followed by subsequent legal proceedings. However, Mr Kennan's contravention persisted despite the issuance of show cause notice and legal proceedings.

After that, the Registrar of Companies filed a complaint before the Court of Additional Chief Metropolitan Magistrate Economic Offences, Egmore at Chennai. Mr. B Kannan had filed a petition before the Hon'ble High Court of Madras, praying the Hon'ble High Court of Madras, to quash the complaint filed. In the meantime, the penal provisions of section 165 of the Companies Act 2013 have been amended and substituted with a penalty provision as per the Companies (Amendment) Act, 2019.

The Additional Chief Metropolitan Magistrate Economic Offence No. 1 at Egmore, Chennai under the Hon'ble High Court of Madras, passed an order stating that the complaint was being transferred to the adjudicating authority appointed under the Companies Act to adjudicate the contravention committed by the petitioner in terms of section 454 read with section 165(6) of the Companies Act 2013.

In this case, the concerned director admitted the violation and expressed willingness to accept the prescribed penalty and this acknowledgment paved the way for the Registrar of Companies / Adjudicating Officer to assess the quantum of penalty warranted. Based on the documentary evidence presented by the director himself and his own admission of having committed the violation, the Adjudicating Officer concluded that the director had indeed breached the provisions of section 165 of the Companies Act 2013. A penalty of Rs. 2,00,000 was imposed, in line with the provisions of sub-section (6) of section 165 of the Companies Act 2013. This penalty reflects the cumulative duration of the violation and serves as a deterrent against future infractions.

From the above case one could conclude that the order against the concerned director underscores the commitment of the Ministry of Corporate Affairs in upholding regulatory standards and enforcing corporate governance norms. By penalizing violations of section 165 of the Companies Act 2013, the regulatory authorities seek to instil accountability among directors and promote transparency in corporate practices. This case serves as a reminder to corporate entities and directors alike of the importance of adhering to statutory provisions and fostering a culture of compliance within the corporate ecosystem.

ROC levies a penalty on director for his appointment without having a Director Identification Number (DIN) - A Case Study

The case involves an individual appointed as a director in M/s Octacle Integration Private Limited without having a Director Identification Number (DIN), a prerequisite under the Companies Act 2013. The individual obtained his DIN much later, after 631 days. The Registrar of

Companies imposed a penalty of Rs. 3.65 lakh for non-compliance. Relevant provisions of the Companies Act 2013 stipulate that no person can be appointed as a director without a DIN, and contravention may lead to penalties outlined in Section 159.

The company, Octacle Integration Private Limited, was inspected by the Registrar of Companies, Kolkata, revealing discrepancies in the director's details. Despite receiving a show cause notice, the company failed to provide adequate explanations. The concerned director admitted to the inadvertent use of another individual's DIN during his appointment. However, he obtained his DIN later.

The Registrar of Companies found the director in violation of Section 152(3) of the Companies Act 2013 and proceeded with adjudication. Despite several opportunities, the director failed to appear for the hearing, resulting in an ex-parte conclusion. Consequently, a penalty of Rs. 3.65 lakh was imposed on the director.



Heavy Penalties Imposed on Company, MD & CS for Concealing CSR Expenditure Omission

Corporate Social Responsibility (CSR) has become a legal mandate in India since April 1, 2014, with the enactment of Section 135 of the Companies Act 2013, making India the first country to do so globally. This section requires companies meeting certain financial criteria to spend 2% of their average net profit over the past three years on CSR activities. Failure to comply with this provision requires companies to provide reasons for non-compliance in their board reports.

The relevant sections of the Companies Act 2013 include Section 135, which outlines the CSR requirements, and Section 134, which mandates reporting on CSR activities in the board report. Non-compliance with these sections can lead to penalties under Section 134(8), including fines and imprisonment for company officers.

A case involving M/s Ceratizit India Private Limited illustrates the consequences of non-compliance. The company failed to disclose reasons for not spending the CSR amount in its board reports for the financial years 2017-18 and 2018-19, despite subsequently spending the amount in the following year. The Registrar of Companies initiated adjudication proceedings against the company and its officers for violating Sections 134(3)(o) and 135 of the Companies Act 2013.

During the hearing, the company argued that there were no penal provisions for not spending the CSR amount, but the Registrar of Companies concluded that failure to disclose the reasons for non-compliance constituted an offence. Consequently, penalties were imposed on the company, its managing director, and company secretary.

The penalties totaled Rs. 8,00,000, with instructions to be paid within 90 days. Failure to comply would result in further penal action. The case underscores the importance of strict compliance with the Companies Act 2013 and serves as a reminder for companies to ensure adherence to CSR obligations to avoid legal consequences.

Statutory Auditors Penalized for Failure to Address Non-Adherence to Accounting Standards in Audit Reports

This case involves the penalization of statutory auditors for their failure to comment on certain non-adherence of accounting standards and disclosure requirements by a company in its financial statements. The auditors were penalized under Section 143 of the Companies Act 2013 for not reporting violations related to related party transactions, classification of long-term borrowings, and trade payable classifications as required by Schedule III of the Companies Act.

The company in question, M/s. Brick & Mortar Realty Private Limited, failed to disclose necessary details regarding related parties, such as names, nature of relationships, and control information, as required by Accounting Standard 18 (AS-18). Additionally, they did not properly classify their long-term borrowings or trade payables according to the specified requirements of Schedule III.

Despite these violations, the statutory auditors appointed for the company, M/s S.S.N. Khetan Associates, did not comment on these matters in their audit report, which is mandated by Section 143 of the Companies Act. The Registrar of Companies, upon inspection, identified these violations and issued a show cause notice to the auditors, giving them an opportunity to respond.

The auditor submitted a reply defending their actions, stating that they had complied with accounting standards and reported appropriately in their audit report. However, upon further review, the Registrar of Companies found the auditors liable for penalties under Section 450 of the Companies Act.

The Registrar of Companies imposed a penalty of Rs 90,000 on the auditors for their failures spanning the financial years 2017-18 to 2019-20. Despite submissions from the auditors' authorized representative during a personal hearing, the Registrar upheld the penalty.

The auditors were directed to pay the penalty within ninety days of the order and were given the option to appeal the decision within sixty days. Failure to pay the penalty within the specified period would result in further consequences as per Section 454 of the Companies Act.

SEBI decides to repeal circulars related to private placement of securities

SEBI has decided to repeal certain circulars that provided relaxation in cases involving the allotment of securities through a private placement route. Under the Companies Act, 1956, the issuance of securities to 49 people was considered a private placement and the limit was increased to up to 200 under the Companies Act, 2013. In respect of cases under the Companies Act, 1956, involving the issuance of securities to more than 49 persons but up to 200 persons in a financial year, SEBI had said that companies may avoid penal action, subject to certain conditions. The conditions were that the entities had to "provide the investors with an option to surrender the securities and receive the refund amount at a price not less than the amount of subscription money paid along with 15

per cent interest p.a. thereon or such higher return as promised to the investors", as per the circular issued on March 13, 2024. Citing that considerable time has elapsed since the repeal of the Companies Act, 1956, SEBI said it has now decided to repeal the circular in this regard. They "shall stand rescinded with effect from 6 months from the date of issue of this circular, without prejudice to the operation of anything done or any action taken under the said circulars," it added.



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