

**AUTOMATIC VACATION OF OFFICE OF DIRECTOR UNDER  
SECTION 167 OF COMPANIES ACT, 2013: CRITICAL ANALYSIS**

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1: In this Article, an attempt has been made by the author to explain and amply the scope and applicability of the provision under section 164(1)(d) of Companies Act, 2013 read with Section 167 of the said Act against conviction of a Director under any act say, Factories Act for committing a default which causes a punishment of one year imprisonment and fine.

2: For better understanding, let us presume that Director of A ltd. has been found guilty under the provisions of Factories Act and stand convicted for simple imprisonment for a period of one year and fine of Rs. 1 Lakh each.

3: The Question therefore arises as to whether the sentence of imprisonment for a period of one year for an offence under Factories Act results into an offence of "Moral turpitude or otherwise" within the purview of Section 167 (1)(f) of the Companies Act, 2013 thus leading to automatic vacation of office of Director of a company.

4: For proper appreciation of the whole case, it is necessary to refer to the provisions of the Companies Act, 1956/2013 and Factories Act. The relevant provisions of the Companies Act, 2013 are reproduced below:-

**SECTION 164- DISQUALIFICATION FOR  
APPOINTMENT OF DIRECTOR**

(1) A person shall not be eligible for appointment as a director of a company, if —

(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;

*PROVISO TO SUB SECTION 3 OF SECTION 164*

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (1) of section 164 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.

5: The provision of Section 164 of the Companies Act, 2013 would be relevant and pertinent only where a question has arisen as to the appointment of a Director in a company and not about where a question has to be answered as to whether a Director of a company has been automatically ceased to be a Director of a company in terms of Section 167 of the Companies Act, 2013.

6: Hence, in order to find out the answer as to whether the Director, who has been convicted of an offence under Factories Act for an

imprisonment of one year, shall automatically ceased to be a Director of a company in terms of Section 167. We are required to analyze the provisions of Section 167 of the Companies Act, 2013 and hence, the same are reproduced below:-

**167. Vacation of office of director.**—

(1) The office of a director shall become vacant in case—

(a): he incurs any of the disqualifications specified in section 164;

(b):.....

(c):.....

(d):.....

(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):.....

(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.

7: The Clause (f) of sub-section (1) of Section 167 results into automatic vacation of office by the Director upon conviction by a court for any offence involving moral turpitude or otherwise resulting into a sentence carrying imprisonment for not less than six months.

8: The import of the expression “**otherwise**” in this Clause needs to be understood. In Rule 2(1)(k) of the Companies (Appointment and Qualification) Rules, 2014, it has been clarified that for the purposes of Clause (d) of sub-section (1) of Section 164 and Clause (f) of sub-section (1) of Section 167 of Companies Act, 2013 “otherwise” means any offence in respect of which he has been convicted by a court under the Act or the 1956 Act.

9: From the above, it follows that under this Clause, apart from conviction for moral turpitude offences committed under this Act or under the predecessor Act resulting into imprisonment for term less than six months will lead to vacation of office. It has also to be borne in mind that this clause will operate even when an appeal has been filed by the person before the appellate court against the final judgment and order.

10: In my view, the provisions of Section 167 (1)(f) of the Companies Act, 2013 shall trigger only when a person has been convicted of offence involving moral turpitude or any offence under the Companies Act, 2013. The word moral turpitude has not been defined under the Companies Act, 2013 but has been defined in various judgments – some such judgments are cited hereinbelow to find out the applicability to the facts and circumstances of the present case.

11: The words “**Moral Turpitude**” means [Per Black's Law Dictionary (8th Edn., 2004)]:

Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude such as fraud or breach of trust. Also termed moral depravity.

Moral turpitude means, in general, shameful wickedness- so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.

12. The Hon'ble Supreme Court in the case of Pawan Kumar v. State of Haryana and Anr. MANU/SC/0887/1996: AIR 1996 SC 3300, has observed as under:

`Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity.

13. The aforesaid judgment in Pawan Kumar (supra) has been considered by the Supreme Court again in another case titled as Allahabad Bank and Anr. v. Deepak Kumar Bhola MANU/SC/1126/1997 : (1997) 4 SCC 1; and placed reliance on Baleshwar Singh v. District Magistrate and Collector AIR 1959 All. 71, wherein it has been held as under:

The expression `moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good

morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man.

14: The Supreme Court once gain in the case of Sushil Kumar Singhal vs. The Regional Manager, Punjab National Bank (10.08.2010 - SC) : MANU/SC/0578/2010 has observed as under:-

24. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities.

15: In view of the careful analysis and perusal of these judgments, it is abundantly and manifestly clear that punishment of imprisonment of one year under the Factories Act, no doubt, is not at all an offence involving moral turpitude. Hence, it cannot be said that the Director has been convicted of offence involving moral turpitude.

16: Now, another interesting question arise as to whether punishment of imprisonment of one year under any other law, would attract the

provisions of Section 167(1)(f) of the Companies Act, 2013 so as to lead automatic vacation of office of a Director of a company. Another aspect that needs to be discussed is whether imprisonment of a person under any other provision of law, would trigger the applicability of Section 167(1)(f) of Companies Act, 2013. For that purpose, we need to find out the words in Section 167 (1)(f) of the Companies Act, 2013. The words appearing are “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:

17: A question then arise as to whether conviction of a person for imprisonment of more six months under any other law shall attract the applicability of Section 167(1)(f) of the Companies Act, 2013? . In my view, it certainly cannot encompass within its scope and sweep the punishment meted out to a Director under any other provisions of law except where it involves moral turpitude. Without any doubt, prosecution of a Director under the Factories Act, cannot, by any stretch of imagination, be said to be offence involving moral turpitude.

18: I have seen various other provisions of Companies Act, 2013 and wherever the legislature intended to bring within its sweep the applicability of provisions of other laws, it has been said so specifically. Some such examples are given below:-

(A): **Section 59- Rectification of register of members**

Under this section, it has stated under sub section 4 that Where the transfer of securities is in contravention of any of the provisions of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992) **or this Act or any other law for the time being in force**, the Tribunal may, on an application made by the

depository, company, depository participant, the holder of the securities or the Securities and Exchange Board, direct any company or a depository to set right the contravention and rectify its register or records concerned.

**(B) Under Section 140. Removal, resignation of auditor and giving of special notice.**

under this section, under sub section (5) Without prejudice to any action **under the provisions of this Act or any other law for the time being in force**, the Tribunal either suo motu or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors:

**(C): Section 147 Punishment for contravention**

under sub section (5) Where, in case of audit of a company being conducted by an audit firm, it is proved that the partner or partners of the audit firm has or have acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to or by, the company or its directors or officers, the liability, **whether civil or criminal as provided in this Act or in any other law for the time being in force**, for such act shall be of the partner or partners concerned of the audit firm and of the firm jointly and severally.

19: If the legislature intended that a Director shall automatically vacate the office of a Director in case he has been convicted of offence under any other enactment, the legislature would have used the words “ he is convicted by a court of any offence either under the Companies Act or any other law for the time being in force”. Since the words “ or any other law for the time being in force” is missing and obviously missing consciously and hence it leads to a inescapable conclusion that the conviction of a Director under any other law (other than the Companies Act, 2013) shall not attract the provisions of Section 167(1)(f) of Companies Act, 2013 and obviously, therefore, there shall not be vacation of a Director even if he is convicted of imprisonment of more than six months for an offence under any other provisions of law.

20: Furthermore, it has to be kept in mind that in a matter like this, the strict interpretation is required to be followed. The Hon’ble Supreme Court in the case of **National Small Industries Corpn. [National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal, MANU/SC/0112/2010** has observed as under:-

13: Section 141 is a penal provision creating vicarious liability, and which, as per settled law, must be strictly construed. It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the company for the conduct of the business of the company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability.

14. A company may have a number of Directors and to make any or all the Directors as accused in a complaint merely on the basis of a statement that they are in charge of and responsible for the conduct of the business of the company without anything more is not a sufficient or adequate fulfillment of the requirements under Section 141."

21: The Hon'ble Supreme Court in the case of **P.J. Agro Tech Limited and Ors. vs. Water Base Limited MANU/SC/0526/2010** has observed as under:-

An action in respect of a criminal or a quasi-criminal provision has to be strictly construed in keeping with the provisions alleged to have been violated. The proceedings in such matters are in personam and cannot be used to foist an offence on some other person, who under the statute was not liable for the commission of such offence.

22: The Hon'ble Supreme Court has held in the case of **Kanai Lal Sur v. Paramnidhi Sadhukhan MANU/SC/0097/1957 : AIR 1957 SC 907** has held as under:-

"It must always be borne in mind that the first and primary rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. If the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such hypothetical construction is more consistent with the alleged object and policy of the Act.

The words used in the material provisions of the statute must be interpreted in their plain grammatical meaning and it is only when such words are capable of two constructions that the question of giving effect to the policy or object of the Act can legitimately arise. When the material words are capable of two constructions, one of which is likely to defeat or impair the policy of the Act whilst the other construction is likely to assist the achievement of the said policy, then the courts would prefer to adopt the latter construction.

23: In **State of W.B., v. Union of India** reported in **MANU/SC/0086/1962 : AIR 1963 SC 1241**, the Hon'ble Apex Court held that in considering the expression used by the Legislature, the Court should have regard to the aim, object and scope of the statute to be read in its entirety.

24: The Apex Court in the case of **Nelson Motis v. Union of India** **MANU/SC/0387/1992 : AIR 1992 SC 1981** has observed as under:-

It is a well settled law of interpretation that "when the words of the statute are clear, plain or unambiguous, ie., they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequences.

25: The Hon'ble Supreme Court in the case of **C.I.T., Madras v. T. Sundram Iyengar (P) Ltd.**, reported in **MANU/SC/0267/1975 : 1976 (1) SCC 77** has held that, if the language of the statute is clear and unambiguous and if two interpretations are not reasonably possible, it would be wrong to discard the plain meaning of the words used, in order to meet a possible injustice.

26: It may kindly be seen that Section 167(1)(f) of the Companies Act, 2013 though does not say so specifically that prosecution should be

confined only to the Companies Act, 1956/2013 but the provisions of Rule 2(1)(k) of the Companies (Appointment & Qualification of Directors) Rule, 2014, cannot be lost sight of as the term “or otherwise” in Section 167(1)(f) means the provisions of the 2013 Act or the 1956 Act. The question then arises as to whether when law is silent, can the rule supplement the law. We can find answer in the following judgments of the Hon’ble Supreme Court.

27: The Hon’ble Supreme Court in the case of **Bangalore Development Authority v. Aircraft Employees' Cooperative Society Ltd. MANU/SC/0053/2012 : [2012] 3 SCC 442**, has observed that it is not possible for the Legislature to enact laws with minute details to deal with increasing complexities of governance in a political democracy and that the Legislature can lay down broad policy principles and guidelines and leave the details to be worked out by the executive and the agents/instrumentalities of the State and that the delegation of the powers upon such authorities to implement the legislative policy cannot be castigated as excessive delegation of the legislative power.

28: Further, another judgment of the Hon’ble Supreme Court in the case of **State of Tamil Nadu v. Hind Stone MANU/SC/0394/1981 : AIR 1981 SC 711** is for the proposition that a statutory rule, while ever subordinate to the parent statute is otherwise to be treated as part of the statute and as effective.

29: Another judgment in the case of **Swadeshi Cotton Mills Co. Ltd. v. State Industrial Tribunal MANU/SC/0064/1961 : AIR 1961 SC 1381**, is once again for the proposition that the Legislature has to perform its essential legislative function of determining and choosing the legislative policy and of formally enacting that policy into a binding rule of conduct, and further that it is open to the Legislature to formulate that policy as broadly and with as little or as much details as it thought

proper, and once a policy is laid down and the standard established by statute, there is no question of delegation of legislative power and all that remains is the making of subordinate rules within the prescribed limits which may be left to selected instrumentalities.

30: Hence, no foul can be found in the Rule 2 (1)(k) of Companies (Appointment and Qualification of Directors) Rules, 2014 and by virtue of the above judgments rendered by the Hon'ble Supreme Court in the relevant context, it could safely be held and concluded that Rule as aforesaid, shall be treated as a part of statute and equally binding as a law.

**Conclusion:**

31: In view of the admitted position that the Director of the company has not been prosecuted under the Companies Act, 1956/2013 but has been convicted under the Factories Act, hence the applicability of Section 167(1)(f) is completely ruled out and consequently, the Director shall not be held to be ceased to be Director of the Company by virtue of Section 167(1) of the Companies Act, 2013.

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