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FACULTY OF JURIDICAL SCIENCES

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SUBJECT: COMPANY LAW
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NAME OF FACULTY: Ms. Anjali Dixit
Assistant Professor

FACULTY OF JURIDICAL SCIENCES



LECTURE-30

APPOINTMENT AND QUALIFICATIONS OF DIRECTORS WITH DUTIES OF DIRECTORS

(continued)

Disqualifications for appointment of director -
Section 164

(1) 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. 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 got the DIN.

An additional disqualification is provided in sub section (2) of Section 164 relating to consequences of non filing of financial statements or annual returns. Any person who is or has been director of any company which has not filed any financial statements and Annual Return for 3 continuous financial year or has defaulted in payment of debentures/deposit/dividend etc, shall also not be eligible for appointment as director of any public company and for reappointment in the same company for a period of five years from the date on which the said company fails to do so.

Rule 14 prescribed that every director who disqualified u/s 164 (2), shall inform to the company concerned in Form DIR-8 (Intimation by Director) before he is appointed or re-appointed. Whenever a

company fails to file the financial statements/annual returns/fails to repay any deposit, interest, dividend/fails to redeem its debentures as specified u/s 164 (2), the company shall immediately file Form DIR-9 (Report by the company to Registrar), to the Registrar furnishing therein the names and addresses of all the directors of the company during the relevant financial years. But when a company fails to file the Form DIR-9 within a period of 30 days of the failure it would attract the disqualification u/s 164(2), officers of the company as specified u/s 2(60) shall be the officers in default. Upon receipt of the Form DIR-9 the Registrar shall immediately register the document and place it in the document file for public inspection. Any application for removal of disqualification of directors shall be made in Form DIR-10.

(3) A private company may by its articles provide for any disqualifications for appointment as a director in addition to aforesaid mentioned

Provided that the disqualifications referred to in clauses (d), (e) and (g) of sub-section (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. 12.

DUTIES OF DIRECTORS-

Section 166 For the first time, duties of directors have been defined in the Act. A director of a company shall — Act in accordance with the articles of the company. 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.

— Exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.

— 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.

— 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.

— 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 Rs. 1,00,000 but which may extend to Rs.

5,00,000.

(To be continued)

MCQs

1. Section 166 For the first time, duties of directors have been defined in the Act.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

2. Rule 14 prescribed that every director who disqualified u/s 164 (2), shall inform to the company concerned in Form DIR-6 (Intimation by Director) before he is appointed or re-appointed.

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

3. A private company may by its articles provide for any disqualifications for appointment as a director in addition

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

**4. Disqualifications for appointment of director
has given in Section 164**

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

**5. A person shall not be eligible for appointment
as a director of a company, if he is of sound
mind and stands so declared by a competent
court.**

- i. True
- ii. False
- iii. Can not say
- iv. None of the above

