

Duties of Directors for Effective Management of a Company

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Abstract- *A living person has a mind which can have knowledge or intention and he has hands to carry out his intention. A corporation has none of these; it must act through living persons. The directors of the company, thus, serve as the required channel to accomplish the decision-making and action-taking task of the corporation. Dwelling upon the necessity of the agents for carrying out its task, the role of the directors of a company becomes of paramount essence as discussed in the paper. The paper also discusses the role of directors as trustee of a company. Under the Companies Act directors are accountable to for their acts done on behalf of the company. Besides the statutory duties, which the directors have to perform to ensure strict compliance with the various provisions of the Act they also have certain duties which arise out of their fiduciary relationship with the company as discussed by the paper. The paper also analyses various restrictions imposed on the exercise of power by the directors of a company.*

Key Words: *Directors, Board of Directors, Company Management, duties, liabilities, Companies Act, Corporation, Business, Management.*

INTRODUCTION

Bowen Ij. Has made efforts to define the position of the director in following words¹: “directors are described sometimes as agents, sometimes as trustees and sometimes as managing partners. But each of these expressions is used not as exhaustive of their

powers and responsibilities, but as indicating useful points of view from which they may for the moment and for the particular purpose be considered.” Corporate law being an economic law has to be dynamic and it has been so in India as is evident from the frequent amendments that are being brought in the corporate laws periodically. The legal provisions have been interpreted and supplement by judicial pronouncements which fill up the gaps in the legislations. Therefore, when we consider the roles and responsibilities of directors we have not only to refer to legal position as per enactments but also consider the judicial pronouncements.

It is the judiciary which has over a period of time defined the relationship. As early as in 1866, that is about a century and half back, in

¹ In Imperial Hydropathic Hotel Co. v. Hampson, (1882) 23 Ch D 1 49 LT 150.

Ferguson vs. Wilson², the Chancery Division held that a company though a legal entity, cannot act by itself. It can act only through its directors and as such the relation of a director with the company is that of principal and agent and therefore general principles of law of agency would govern the relationship between the company and the directors. The relationship was further defined in Forest of Dean Coal Mining company case³ by Chancery Division in 1878 that directors, having been entrusted with the affairs of the company, are trustees of the company and therefore they are in a fiduciary relationship with the company. These judicial pronouncements have been universally accepted and applied all over and now the position of director's vis-à-vis the company is that they are not only agents but also trustees. This relationship would mean that the directors should always act in the interest of the principal that is the company and in discharge of their fiduciary responsibilities, they cannot benefit at the cost of the company.

It was observed by Lord Russell in the case of Regal (Hastings) Ltd. v. Gulliver and Ors.⁴:

“Directors of a limited company are the creatures of a statute and occupy a position peculiar to themselves. In some respects they resemble trustees, in others they do not. In some respects they resemble agents, in others they do not. In some respects they resemble managing partners in others they do not.”

These words clearly highlight the position of the Board of Directors in a company.

When a company is formed, the first directors of the company will be named and any subsequent directors are to be appointed pursuant to the

² As taken from <http://www.ficci.com/media-room/speeches-presentations/2003/aug/aug28-ceo-subramania.html>

³ Ibid

⁴ [1942] 1 All E.R. 379

provisions of the Articles of Association, which is effectively the document governing the internal running of the company. If the Articles of Association do not provide any specific mechanism for the appointing of a director the members in general meeting may appoint one.

The basic function of the directors is to manage the affairs and activities of the company and in order to do so, they must have certain powers. It is common in legal parlance to say that wherever powers go, obligations must surely follow. It is now time to consider some of these.

POWERS VESTED IN THE BOARD OF DIRECTORS

The powers of the directors are normally those delegated to them by the company. In practical terms the directors of a company can do anything that the company can do. It should be borne in mind that neither the directors nor the company can do anything which is ultra vires, by this is meant beyond the powers of the company. The powers of the company are defined in the Memorandum of Association and contained in what is known as the Objects Clause. In addition, a company obviously cannot do anything which is illegal and the same limitation is placed upon company directors. Once the directors are acting in good faith and doing their best for the company, the company in general meeting does not have power to set aside the day-to-day actions of the directors, provided it can be established that the actions of the directors were within the powers of the directors.

The Board of directors of a company is entitled to exercise all such powers, and to do all such acts and things, as the company is authorized to exercise and do. However, wherever the law requires authorization by the members in a general meeting, the directors can do such act only on receiving such authorization. The shareholders may exercise some control upon

certain powers by passing resolutions in general meetings but such resolutions must be consistent with the Act, Memorandum and Articles and they cannot resolve to do anything against the constitution of the company.

Principles of Modern Law by Gower summed up the legal position regarding director and shareholders as following:

“Both the directors and the members in general meetings are primary organs of the company between whom the company powers are divided. The general meeting retains ultimate control but only through its powers to amend the Articles so as to take away for the future, certain powers from the directors and to remove the directors and to substitute others more to its taste. Until it takes one or other of these steps, the directors can, if they are so advised, disregard the wishes and instruction of members in all matters not specifically reserved either by the Act or by the Articles to a general meeting. The whole idea that the general meeting alone is the company’s primary organ and the directors merely the company’s agents or servants at all times subservient to the general meetings, seems no longer to be the law as it is certainly not the fact”

It was stated by Greer LJ in the case of John Shaw & Sons Ltd. v. Peter Shaw & John Shaw⁵ that:

“A company is an entity distinct from its shareholders and directors. Some of its powers may, according to Articles, be exercised by directors, certain other powers may be reserved for the shareholders in general meeting. If powers of management are vested in the directors, they and they alone can exercise such powers. The only way in

which the general body of the shareholders can control the exercise of the powers vested by the Articles in the directors is by altering these articles. They cannot themselves usurp the powers which by the articles is vested in the directors any more than the directors can usurp the powers the powers vested by the Articles in the general body of the shareholders.”

The Board of directors of a company shall exercise certain powers on behalf of the company only by means of resolutions passed at meetings of the Board:

1. The power to make calls on shareholders in respect of money unpaid on their shares
2. The power to issue debentures
3. The power to borrow moneys otherwise than on debentures
4. The power to invest the funds of the company
5. The power to make loans

THE DIRECTOR AS TRUSTEE

Directors were primarily treated as the agents of the company. Subsequently, they have been recognized as trustees and later on were treated as servants of the company. It is not correct to state that they belong to one particular category as stated above. They act sometimes as the agent of the company, sometime they stand in the relationship of a trustee and sometimes they also act as servants of the company i.e. if they hold a salaries position in the company.

It was beautifully stated by Lindley J. in Re Lands Allotment Company case⁶ “although directors are not properly speaking trustees, yet they have always been considered and treated as trustees of money which comes through their hand, or which is actually under their control,

⁵ [1935] All E.R. 456 CA

⁶ [1957] All ER 63 (CA)

and ever since joint stock companies were invented, directors have been held liable to make good the monies which they have misapplied upon the same footing as if they were trustees.” The directors therefore, should have to exercise the powers in relation to the management of the company in a bona fide way and not to seek any undue personal advantage from any of their actions, and if by such undue advantage they reap any benefit, they are liable to account for the same to the company. It has been held that where the directors make calls to the shareholders about the share money, at the same time not paying themselves on their own shares, this amounts to breach of trust on part of the directors.

The Companies Act, 1956 underlines the position of the directors as trustees by requiring them to make certain disclosures before any contract is entered into by the company or with the company, in which they are directly or indirectly interested or concerned. But a director does not stand in a fiduciary relationship with individual shareholders.

THE DIRECTOR AS AGENT

The directors are normally the agents of the company. The normal principles applicable to principal and agent apply here also. They are responsible personally for any contract entered into with outsiders if they exceed their authority as agents. It is no doubt, open to the company to ratify such acts in excess of their authority as agents. But in order to enable the company to ratify such acts or contracts, the act performed or the contract entered into should be within the powers of the company itself, i.e. the contract entered into should be intra vires to the company itself and not be ultra vires. In the latter case, the company cannot ratify such contracts and the directors as agents might be held responsible for breach of warranty to the third parties in respect of such contracts.

The Companies Act also has numerous provisions under which the Director can be made liable, civilly and criminally, in respect of the discretion exercised by them. For instance, issue of Prospectus for any misstatement in the prospectus, the directors can be held responsible under both civil and criminal Law. The misstatement includes non-disclosure of material facts which would have the effect of influencing a unwary investor.⁷

The question whether a managing director, inasmuch as he is both a ‘director’ and ‘employee’ should in his capacity of employee be considered a ‘servant’ or agent of the company is unimportant for purposes of the Companies Act, though it may be relevant for determining whether his remuneration is salary or business income for purposes of the income-tax Act.⁸

The Companies Act has vested the Directors with a number of powers which are followed by duties and such duties are nothing but the restrictions on the powers of the Board of Directors. In Principles of Modern Company

⁷ M B Rao, *Legal Position of Director*, (1965) 2 Comp LJ 49

⁸ For a discussion of his position as ‘servant or ‘agent’ see *Rant Prasad v. CIT* (1972) 42 Com Cases 544 : AIR 1973 SC 637; *CIT v. M.S.P. Rajes*, (1993) 77 Com Cases 402 (Kar). Also *Hindustan Vacuum Glass Ltd. v. Union of India*, 1981 Tax LR 2438 (Del); *Southern Foundries (1926) Ltd. v. Shirlaw*, (1940) 10 Com Cases 255 : (1940) 2 All ER 445 (HL); *Union India Sugar Mills Co. Ltd., Re*, (1933) 3 Com Cases 424 : AIR 1933 All 607, managing director regarded an agent and therefore his knowledge as the knowledge of the company; *CIT v. B.P. Dalmia* (1994) 3 Comp LJ 268 (Cal) where also the managing director was viewed as a servant and his remuneration taxable as salary. *CIT v. M.S.P. Rajes*, (1993) 77 Com Cases 402 (Kant)

Law⁹, 6th Edition, 1997, Gower has summarized the legal position as (quote) “In applying the general equitable principles to company directors, four separate rules have emerged. They are (1) that directors must act in good faith in what they believe to be the in the best interest of the company (2) they must not exercise powers conferred upon them for purposes different from those for which they are conferred. (3) that they must not fetter their discretion as to how they shall act and finally that without the informed consent of the company, they must not place themselves in a position in which their personal interests or duty to other persons are liable to conflict with the duties to the company”.

THE GENERAL POWERS VESTED IN THE BOARD OF DIRECTORS

Section 291 declares that “subject to the provisions of the Act, the board of directors of a company shall be entitled to exercise all such powers and to do all such acts and things as the company is authorized to exercise and do”. The effect of this section is that subject to the restrictions contained in the Act, and in the memorandum and articles of the company, the powers of directors are coextensive with those of the company itself. Once elected and in control, the directors have almost total power over the operations of the company, until they are removed. The share market crash highlighted the problem inherent in director’s autonomy over all company affairs. There is no restriction on the appointment of directors. There are, however, two important limitations upon their powers. Firstly, the board is not competent to do what the Act, memorandum and articles require to be done by the shareholders in general meeting and, secondly, in the exercise of their powers the directors are subject to the provisions of the Act,

⁹ Davies L. Paul, *Gower’s Principles of Modern Company Law*, (London: Sweet and Maxwell, 6th ed, 2000)

memorandum and articles and other regulations not inconsistent therewith, made by the company in general meeting.

THE DUTY TO ACT IN GOOD FAITH

Every director has a duty to act in good faith in the interests of the company. Even though the company itself is an artificial legal personality, the duty is still owed to the company, not to the shareholders or creditors of the company, though some duties to creditors and shareholders are in fact imposed by statute.

THE DUTY TO AVOID CONFLICT OF INTEREST

At all times directors have a duty to avoid conflicts of interest and by this is meant effectively that a director must not do anything for and on behalf of the company where his motivation and loyalties would be divided in that his own self interest, of someone connected to him, may be given equal stature to that of the company. In the event of such actions taking place, the director has a duty to account to the company for any profits or gains he may have made as a result of this, and in consequence thereof, the companies have certain rights against the director for acting in circumstances of such conflict of interest.

THE DUTY TO WORK WITH SKILL AND DILIGENCE

It is a generally accepted principle that the position or status of director is not a professional position. However, a director in exercising his duties is expected to exercise skill and diligence. What is often problematic is to determine the level of skill or diligence which is to be required. It is generally accepted and has been stated in a number of cases in English Courts, that a director is expected to exercise reasonable skill and diligence to a level which could reasonably be expected from a person of the

director's individual knowledge and experience. This is not to say however that errors of judgment would not occur, but provided that the errors of judgment are reasonable, the director will not necessarily be answerable therefore. It is also acknowledged that the directors are not generally 24 hours servants of the company and that they may devote some of their energy and time to other pursuits and interests, and this is not per se to be taken as a failure to exercise reasonable skill and diligence.

THE DUTY TO ACCOUNT

A director of a company is under a duty to account for all benefits that he receives by virtue of his position as a director. Any contract that a director enters into where the company of which he is director is the other party to that contract, is voidable, i.e. can be set aside at the election of the company in general meeting. In addition of course, the contract can be ratified. Any contract which is proposed between the director and the company must, pursuant to statute, be preceded by a disclosure of the director's interests to the board of directors.

THE DUTY TO NOTIFY

Directors are also under a duty to notify the company in writing of their interests in company shares or debentures, and dealings in the company shares or debentures. This also includes interests of spouses and minor children in the same shares and debentures. Failure to notify the company is a criminal offence.

THE DIRECTOR'S LIABILITIES

A director can always be sued at common law under the tort of negligence, i.e. the failure to take reasonable care or a breach of a duty of care to the company in circumstances where he has acted negligently. In general terms, the director as an agent of the company is entitled to an indemnity against claims being made against the

company, which said acts may in fact have been carried out by the company director.

RESTRICTIONS ON THE POWERS OF DIRECTORS: DUTIES

The Companies Act has vested the Board of Directors with ample powers to exercise their discretion and work for a better future of the company. But it is rule of nature that wherever there is power it is accompanied by restrictions on it, as no body can be supreme in this world. Even the Constitution of India provides that with each right or a power there exist a corresponding duty attached to it. Hence here is an attempt to enumerate those statutory restrictions on the powers as well as those restrictions which flow from the duties assigned to the Directors.

CERTAIN POWERS ONLY TO BE EXERCISED WITH PRIOR CONSENT OF THE GENERAL MEETING

Section 293 imposes important restrictions on the powers of the board of directors of a public company or any subsidiary of a public company. Following powers can be exercised by the board only with the consent of the company in general meeting:

1. Sell, lease or otherwise dispose of the whole, or substantially the whole, of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking
2. Remit, or give time for the repayment of, any debt due by a director except in the case of renewal or continuance of an advance made by a banking company to its director in the ordinary course of business
3. Invest, otherwise than in trust securities, the amount of compensation received by the company in respect of the compulsory acquisition of any such

- undertaking or of any premises or properties used for any such undertaking
4. Borrow moneys, where the money to be borrowed, together with the moneys already borrowed by the company (apart from temporary loans obtained from the company's bankers in the ordinary course of business), will exceed the aggregate of the paid-up capital of the company and its free reserves.
 5. Contribute to charitable and other funds not directly relating to the business of the company or to the welfare of its employees, any amounts the aggregate of which will, in any financial year, exceed Rs. Fifty thousand rupees or five per cent of its average net profits. during the three immediately preceding financial years, whichever is greater.

POWERS EXERCISED BY RESOLUTION IN THE BOARD MEETING

The Act also makes a careful effort to lay down the manner in which certain powers of the company are to be exercised. Section 292 provides that following powers of the company can be exercised only by means of resolutions passed at meetings of the board. The power :

1. To make calls,
2. To issue debentures,
3. To borrow money,
4. To invest the funds of the company, and
5. To make loans.

AUDIT COMMITTEE

Under Section 292-A a public company with share capital of not less than five crores of rupees is required to constitute a committee of the Board of directors to be known as the Audit Committee. Its membership is not to be of less than three directors and such number of other directors as the Board may determine. Two-thirds of them must be directors other than the managing or whole time directors. The

committee has to act in accordance with the terms of reference to be specified by the Board in writing. The members of the committee have to elect a chairman from amongst themselves.

The auditors, the internal auditors, if any, and the director-in-charge of finance shall attend and participate in meetings of the Audit Committee but shall not have the right to vote. The committee should have discussions with auditors periodically about internal control systems, the scope of audit including the observations of the auditors and review half yearly and annual financial statements before they are submitted to the Board and also ensure compliance of the internal control systems.

The Audit Committee would enjoy authority to investigate into any matter relating to the terms specified in the section or referred to it by the Board. The committee shall have for this purpose full access to information contained in the records of the company. It may also take external professional advice, if necessary. The recommendations of the committee on any matter relating to financial management, including the audit report shall be binding on the Board. If the Board does not accept the recommendations of the committee, it shall record its reasons for the same and communicate them to the shareholders.

DISCLOSURE OF INTEREST BY THE DIRECTOR

Every director of a company who is in any way concerned or interested in a contract or arrangement entered into or to be entered into by the company must disclose the nature of his concern or interest at the first meeting in which the matter was taken into consideration. In case he became interested after the board had considered the matter, he must bring it to the notice of the board at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement.

Such notice must be renewed at the end of each financial year in which it is given, but may be renewed for further periods of one financial year at a time.

The above provisions do not apply to any contract or arrangement entered into or to be entered into between two companies where any of the directors of the one company or two or more of them together holds or hold not more than two per cent of the paid-up share capital in the other company.

Also, a director who is interested in any matter cannot participate or vote in connection with that matter. He will also not be considered for determining quorum for the meeting.

ANALYSIS OF INDIAN CASES

TEA BROKERS (P) LTD. AND ORS. V. HEMENDRA PROSAD BAROOAH¹⁰

FACTS

This was a case of a minority shareholder who on becoming managing director of the company, issued further share capital in his favour in order to gain control of management of the company. Baroah and his friends and relations were majority shareholders of the respondent company having 67% of the total issued capital of the company. Baroah personally held 300 equity shares out of 1155 shares issued by the company. He was at all material times a director of the company. His case was that he was wrongfully and illegally ousted from the management of the company. One Khaund, who initially started as an employee of the company had 110 shares in the company and belonged to the minority group. Khaund was appointed as the managing director of the company. Baroah's grievance was that Khaund took advantage of his position as managing director and acted in a manner detrimental and prejudicial to the interests of the company and in

a manner conducive to his own interest. Khaund had hatched a plan with other directors, to convert petitioner Baroah into a minority and to obtain full and exclusive control and management of the affairs of the company. A petition was filed under Sections 397 and 398 of the Companies Act, 1956.

ISSUE

Whether the acts of the respondent would attract the relief available under S. 397 of the Companies Act?

JUDGMENT

Allotment of 100 equity shares by the company to Khaund at a meeting of the Board of Directors said to have been held on 14 January, 1971 was held to be illegal. The Board of Directors of the company was superseded and a special officer was appointed to carry on management of the company with the advice of Baroah, Khaund and a representative of labour union. It is well settled that the directors may exercise their powers bona fide and in the interest of the company. If the directors exercise their powers of allotment of shares bona fide and in the interest of the company, the said exercise of powers must be held to be proper and valid and the said exercise of powers may not be questioned and will not be invalidated merely because they have any subsidiary additional motive, even though this be to promote their advantage. An exercise of power by the directors in the matter of allotment of shares if made mala fide and in their own interest and not in the interest of the company will be invalid even though the allotment may result incidentally in some benefit to the company.

Further it was held that if a member who holds the majority of shares in a company is reduced to the position of minority shareholder in the company by an act of the company or by its Board of Directors mala fide, the said act must ordinarily be considered to be an act of

¹⁰ (1985) Comp LJ 463

oppression to the said member. The member who holds the majority of shares in the company is entitled by virtue of his majority to control, manage and run the affairs of the company. This is a benefit or advantage which the member enjoys and is entitled to enjoy in accordance with the provisions of company law in the matter of administration of the affairs of the company by electing his own men to the Board of Directors of the company.

RABINDRA CHAMRIA & ORS V. REGISTRAR OF COMPANIES, WEST BENGAL¹¹

FACTS

Eastern Manufacturing Company Ltd. is the owner of a jute mill in West Bengal. The appellants were appointed Directors between 10-4-1981 and 15-6-1984. There was a lock out in the Jute Mill On 2-6-1982. By a notification dated 26-10-1983, Government of West Bengal declared the said jute mill as a relief undertaking under the provisions of West Bengal Relief Undertakings (Special Provisions) Act, 1972. However, on 24-11-1983, the lock out was lifted. Thereafter the mill resumed its manufacturing operation between 16-1-1984 and 8.4.1984. There was a strike in the Jute Industry throughout West Bengal. Between 7-3-1985 and 3-8-1985 there was a lock out due to labour unrest. As a result of all these the company defaulted in the payment of the provident fund dues. On 28-1-1986, a petition was moved on behalf of the appellants under Section 633 of the Companies Act, 1956 for being relieved of liability for delayed as well as nonpayment of the provident fund dues and other ancillary dues. On 21-8-1986 a consent order was passed by the learned single Judge allowing the outstanding provident fund dues to be paid in monthly installments of Rupees 50,000/-commencing from April, 1986, until the entire liability is paid

off. Since this course was accepted by the provident fund authorities it was not considered necessary to serve summons on the Registrar of Companies because what was sought to be recovered were the dues under the Provident Fund Act. It was further ordered concerning Prayer-B that an injunction shall issue restraining the respondents from initiating any criminal proceedings against the appellants or any of them for nonpayment or delayed payment of the provident fund.

ISSUE

Whether the present case would fall under Section 633 of the Companies Act, 1956?

JUDGMENT

It was held that the liability on the non-payment of the employees provident fund dues by the officer of the company, would be governed only by Section 14A (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. While referring to 'any proceeding' under sub-section (2) of Section 633 the Parliament intended to restrict it only to the proceeding arising out of negligence, default, breach of trust, misfeasance or breach of duty in respect of the duties prescribed under the provisions of the Companies Act. Further examining the sub-section with reference to the context and the placement of the subsection the only conclusion that is possible is the proceedings for which relief under this sub-section could be claimed or the proceedings against the officer of a company for breach of the provisions of the Companies Act. Sub-section (2) cannot apply to proceedings instituted against the officer of the company to enforce the liability arising out of violation of provisions of other statutes. Reference could also be made to sub-section (3) where notice is required to be given to the Registrar of Companies. This is an indication that the powers under sub-section (2) must be restricted in respect of proceedings arising out of the violation of the Companies Act.

¹¹ AIR 1998 SC 392

NEEDLE INDUSTRIES (INDIA) LTD. AND ORS. V. NEEDLE INDUSTRIES NEWAY (INDIA) HOLDING LTD. AND ORS¹²

FACTS

The Board of Directors of the company had resolved to issue 16000 equity shares of Rs. 100/- each to be offered as rights shares to the existing shareholders in proportion to the shares held by them. The offer was to be made by a notice specifying the number of shares to which each shareholder was entitled to. The notice further said, in case the offer was not accepted within 16 days from the date on which it was made, it was to be deemed to have been declined by the concerned shareholder. The Holding Company held 18990 shares and it was entitled to 9495 rights shares. The Holding Company could not avail its right to exercise the option for purchase of rights shares offered to it. As a result the whole of the Rights Issue consisting of 16000 shares was allotted to the Indian shareholders. The Holding Company filed a petition under Sections 397 and 398 of the Companies Act, 1956 in the High Court. The Single Judge held in favour of the Holding Company that it had suffered a loss in view of the fact that the market value of the rights share was Rs. 190/- whereas the shares were allotted at par i.e. at Rs. 100/-. The grievance of the Holding Company was that on account of postal delays it failed to receive the notice containing the offer of rights shares in time, and therefore, it could not exercise its option to buy the share. On appeal the Division Bench held that the affairs of Needle Industries India Ltd. were being conducted in a manner oppressive to the Holding Company. The Division Bench ordered winding up of the company. A further appeal to the Court was allowed mainly on the ground that there was no oppression. a direction was issued that the Indian shareholders pay an amount equivalent to that by which they unjustifiably

enriched, namely Rs. 90 x 9495 which comes to Rs. 8,54,550/- to the Holding Company.

ISSUE

Whether the Board of Directors can issue such additional share capital?

JUDGMENT

A direction was issued that the Indian shareholders pay an amount equivalent to that by which they unjustifiably enriched, namely Rs. 8,54,550/- to the Holding Company. The power to issue shares is given primarily to enable capital to be raised when it is required for the purposes of the company but it can be used for other purposes also as, for example, to create a sufficient number of shareholders to enable the company to exercise statutory powers, or to enable it to comply with legal requirements as in the instant case. Hence if the shares are issued in the larger interest of the company, the decision cannot be struck down on the ground that it has incidentally benefited the Directors in their capacity as shareholders. So if the Directors succeed, also or incidentally, in maintaining their control over the company or in newly acquiring it, it does not amount to an abuse of their fiduciary power. What is objectionable is the use of such power simply or solely for the benefit of Directors or merely for an extraneous purpose like maintenance or acquisition decontrol over the affairs of the company. Where the Directors seek, by entering into an agreement to issue new shares, to prevent a majority shareholder from exercising control of the company, they will not be held to have failed in their fiduciary duty to the company if they act in good faith in what they believe, on reasonable grounds, to be the interests of the company. But if the power to issue shares is exercised from an improper motive, the issue is liable to be set aside and it is immaterial that the issue is made in a bona fide belief that it is in the interest of the company.

¹² (1981) 3 SCC 333

SUGGESTIONS AND CONCLUSIONS

It is not an easy task to explain the position of the directors in a corporation. They are the professional hired by the company to carry out its affairs. They are not the servants of the company, rather officers of the company.

The Board of Directors in India have been vested with diversified powers and have been given ample amount of freedom in conducting the affairs of the company in the best interest of the company. Also to ensure that these powers vested are not used for any other purpose but solely for the benefits of the company certain restrictions have been placed on the same. These restrictions act as check on the functioning of the Board of Directors.

The director has various roles to play in the company like at times he acts as a trustee of the company i.e. where he is entrusted with the investments made in the company, at other times he acts as an agent of the company i.e. when he enters into contracts on behalf of the company and at times he also acts as a servant of the company i.e. when he is employed by the company as a professional for a certain salary. In all such roles he has to act with due diligence and care and in the best interests of the company. In order to prevent him from deviating from these roles these restrictions are placed on his powers.

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