

Price ₹ 300/- per copy

R.N.I. No. MAHENG/2012/47041 - Total Pages: 168



A Monthly Journal of  
**THE CHAMBER OF  
TAX CONSULTANTS**

# THE CHAMBER'S JOURNAL

Your Monthly Companion  
on Tax & Allied Subjects

Vol. XIII | No. 4 | January 2025

## Directors - Role, Responsibilities & Risks



Log on to The Chamber's website for Online payment  
for programmes [www.ctconline.org](http://www.ctconline.org)

# Contents

Vol. XIII | No. 4 | January 2025



<b>From the Editor's Desk</b> — <i>Anish Thacker</i> .....	<b>5</b>
<b>From the President</b> — <i>Vijay Bhatt</i> .....	<b>7</b>
<b>Special Story — Directors - Role, Responsibilities, Risks</b> An Overview of the Concept of Directors — <i>Shridhar Kulkarni</i> .....	<b>9</b>
Navigating Directorship: Legal Duties and Responsibilities — <i>Rajen Gada</i> .....	<b>24</b>
Director's Liabilities: Navigating Accountability and Corporate Governance Challenges — <i>Manendra Singh &amp; Ambareen Khatri</i> .....	<b>40</b>
Independent and Non-Executive Directors - Evolving role and liabilities under Indian law — <i>Pranay Bagdi &amp; Divya Shrivastava</i> .....	<b>50</b>
Role & Responsibilities of Audit Committee and its Chairman — <i>Nilesh Vikamsey &amp; Has Mukh Dedhia</i> ...	<b>62</b>
Director's liability under the Income Tax Act, 1961 — <i>Rohit Garg</i> .....	<b>71</b>
Personal Liability of Directors under Customs and GST Laws — <i>Asish Philip Abraham &amp; Srinidhi Ganesan</i> .....	<b>78</b>
Location of Board of Directors Meetings and their relevance for determining tax residency and Place of Effective Management — <i>Pranay Bhatia</i> .....	<b>87</b>

Contemporary Challenges Faced by Directors — <i>Aniruddha Basu</i> .....	<b>96</b>
--	-----------

## Direct Taxes - Important Judgements

Supreme Court — <i>Keshav Bhujle</i> .....	<b>105</b>
High Court — <i>Jitendra Singh, Radha Halbe &amp; Harsh Shah</i> .....	<b>114</b>
Tribunal — <i>Nikhil Mutha, Viraj Mehta &amp; Kinjal Bhuta</i> .....	<b>117</b>

## International Taxation - Important Judgements

Case Law Update — <i>Dr. Sunil Moti Lala</i> .....	<b>126</b>
---	------------

## Indirect Taxes - Important Judgements

GST — <i>Naresh Sheth &amp; Jinesh Shah</i> .....	<b>133</b>
Service Tax — <i>Rajiv Luthia &amp; Keval Shah</i> .....	<b>138</b>

## Corporate Laws - Important Judgements

Case Law Update — <i>Makarand Joshi</i> .....	<b>146</b>
---	------------

## Other Laws

FEMA Updates & Analysis — <i>Hardik Mehta &amp; Tanvi Vora</i> .....	<b>156</b>
Best of The Rest — <i>Rahul Hakani &amp; Niyati Mankad</i> .....	<b>161</b>

## The Chamber News

— <i>Mehul Sheth &amp; Neha Gada</i> .....	<b>164</b>
--	------------

Scan QR code to share feedback



# Director's Liabilities: Navigating Accountability and Corporate Governance Challenges\*



Manendra Singh  
Advocate



Ambareen Khatri  
Advocate

## Overview

*With questions being raised whether or not to be a director in a company, the article examines the evolving landscape of director liabilities in Indian corporate governance, highlighting the increasing scrutiny faced by both executive and non-executive directors. With over 2.6 million companies in India, the growing responsibilities of directors, particularly independent directors, demand attention. Highlighting key legal precedents and regulatory developments, the article examines statutory obligations under the Companies Act, SEBI regulations, and other corporate laws, shedding light on directors' roles in governance, compliance, and accountability.*

*It notes a significant contrast in regulatory approaches: while the SEBI order in **LEEL Electricals Limited** imposed substantial penalties on independent directors, the Supreme Court's decision in **Suseela Padmavathy Amma vs. Bharti Airtel Limited** provided protection by establishing that mere directorship doesn't automatically translate to liability.*

*The article also covers director obligations under other statutes, including FEMA, cybersecurity laws, and labour regulations. It emphasizes that while independent and non-executive directors generally have limited liability (only for acts done with their knowledge or consent), recent cases show increasing accountability on them for governance failures.*

*The authors conclude that directors must maintain active oversight and robust compliance mechanisms while suggesting that regulatory frameworks may need to evolve to balance effective oversight with protection from undue penalization.*

In India, the liability of directors is a crucial aspect of corporate governance, shaped by both statutory provisions and judicial interpretations. Recently, a noticeable trend has emerged: individuals who are invited to serve as directors of Indian companies are increasingly concerned about their potential liabilities. This concern intensifies when the individual is nominated as an independent director or a nominee director

for a private equity fund or investor. Much of this apprehension can be attributed to the actions of regulatory authorities and courts, as directors can be drawn into legal proceedings, and the process of clearing their name can take years. This has created a sense of discouragement within the corporate sector. Clearly, the government faces a critical challenge in ensuring the continued growth of India's corporate landscape. According to

publicly available data, as of March 2024, India is home to 2,663,016 companies, highlighting the need for a targeted approach from the government.

The recent Securities and Exchange Board of India (**SEBI**) order in the case of LEEL Electricals Limited<sup>1</sup> brings to the forefront a critical and evolving issue: the expanding scope of directors' liability, with a particular emphasis on independent directors (**IDs**). Historically viewed as passive overseers, IDs are now facing increasing scrutiny from regulators for lapses in corporate governance. In this case, SEBI imposed a penalty of INR 10 lakh each on two IDs for failing to meet their statutory obligations as Audit Committee (**AC**) members and for not safeguarding shareholder interests amidst financial misconduct. Furthermore, significant penalties ranging from INR 2 crore to INR 5 crore were imposed on other whole-time directors (**WTDs**) and key company officers for their role in governance failures. This development sends a clear regulatory signal: liability now extends beyond executive directors, placing independent directors squarely in the spotlight for governance shortcomings.

On the other hand, the Supreme Court's (**SC**) through a recent decision in *Suseela Padmavathy Amma vs. M/S Bharti Airtel Limited*<sup>2</sup> serves as a pivotal reference in determining director liability under the Negotiable Instruments Act, 1881 (**NI Act**). SC affirmed that **mere directorship does not automatically translate to liability**, emphasizing the need for clear and factual evidence that directly links directors to the operational aspects of a company's wrongful acts. This judgment provides much-needed protection to directors who are not actively

involved in the day-to-day management of the company.

The above contrast highlights the evolving legal landscape surrounding directors' liability, necessitating a careful analysis of their roles and responsibilities under the Indian corporate laws. In this articles, authors take a closer look at director liability in India and the recent legal trends and corporate impacts vis-à-vis certain key corporate laws.

### **A. Companies Act, 2013 (“CA2013”)**

The evolution of directors' duties and liabilities in India reflects the nation's journey toward enhanced corporate governance. Corporate scandals like Satyam and Sahara have deeply influenced Indian corporate governance, leading to stronger emphasis on directors' fiduciary duties. CA2013 marked a watershed moment in corporate governance, introducing comprehensive provisions that govern director responsibilities and accountability. CA2013 outlines the duties and liabilities of directors, emphasizing their roles as fiduciaries and statutory overseers of corporate governance. Directors, whether executive, non-executive, or independent, are expected to discharge their responsibilities with due diligence, accountability, and care. Under CA2013, failure to meet statutory obligations or breaches in duties can expose directors to both civil and criminal liabilities.

### ***Duties of Directors***

Under Section 166 of CA2013, all directors, be executive or non-executive, are required to operate within clear parameters: adhering to company articles, acting in good faith, exercising due care and independent judgment, avoiding conflicts of interest, preventing undue

1. SEBI Final Order in the matter of LEEL Electricals Ltd. dated April 18, 2024.

2. SC order under Special Leave Petition (Criminal) No.12390-12391 of 2022 dated March 15, 2024.

personal gain, and maintaining their office without assignment.

- **Duties of IDs** - In addition to the above, core fiduciary duties that bind all directors, independent directors (being a director other than a managing director (**MD**) or a WTD or a nominee director), must also adhere to the code of conduct and ethical guidelines as outlined in Schedule IV of the CA2013. This code extends to safeguarding minority shareholder interests, balancing the diverse needs of various stakeholders, and serving as neutral arbitrators when conflicts arise among different corporate constituencies. These specific duties reflect their position as objective overseers meant to strengthen corporate governance mechanisms and ensure equitable business practices.
- **Officer who is in default** – In addition to above, an “officer who is in default”<sup>3</sup> under CA2013 includes key individuals responsible for company management and compliance, specifically whole-time directors, key managerial personnel, and other specified individuals who either actively participate in or knowingly permit defaults. The scope extends to those acting under the board of director's (**Board**) authority and individuals whose directions the Board typically follows, creating a comprehensive net of responsibility for corporate governance. The liability framework imposes penalties including fines and potential imprisonment on these officers for corporate violations.

### **Liabilities of Directors**

- **Civil liabilities:** Civil liabilities primarily involve monetary fines imposed on

directors for various non-compliance issues. These penalties are generally administrative in nature and do not involve imprisonment. Key civil penalties include:

- i) *General non-compliance:* For contravening the provisions of Section 166 of CA2013, such director shall be punishable with fine which shall not be less than ₹ 1 lakh but which may extend to ₹ 5 lakh.
- ii) *Financial reporting violations:* Under Section 134 of CA2013, if financial statements are improperly disclosed, the company faces a fine of ₹ 3 lakhs, while each officer in default (provided below) may incur a fine of ₹ 50,000.
- iii) *Failure to appoint key managerial personnel (KMP):* Under Section 203 of CA2013, the company and its directors can be fined a minimum of ₹ 1 lakh, with maximum penalties reaching up to ₹ 5 lakhs.
- iv) *Breach of managerial remuneration limits:* Section 197 of CA2013 imposes fines on directors ranging from ₹ 1 lakh to ₹ 5 lakhs for breaching remuneration limits.
- v) *Ultra vires acts:* SC has in **Lakshmanaswami Mudaliar and Ors. vs LIC** provided for the personal liability of directors for passing resolution which were ultra vires of the company—“*Appellants 2 and 4 were at the material time Directors of the Company and they took part in the meeting held under*

---

3. Section 2(59) of CA2013.

*the Chairmanship of the fourth appellant in which the resolution, which we have held ultra vires, was passed. As office bearers of the Company who were responsible for passing the resolution ultra vires the Company, they will be personally liable to make good the amount belonging to the Company which was unlawfully disbursed in pursuance of the resolution.*"

These civil penalties aim to enforce compliance and maintain the integrity of corporate governance without resorting to criminal prosecution.

- **Criminal Penalties:** Criminal liabilities are more severe and can lead to imprisonment alongside substantial fines. Directors can be held criminally liable under various provisions of CA2013 as well as the Bharatiya Nyaya Sanhita, 2023 (BNS)<sup>4</sup>. Key aspects include:
  - i) *Fraud (Section 447 of CA2013):* CA2013 provides an inclusive definition of fraud which includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss. Directors found guilty of fraud

can face imprisonment for a term ranging from 6 months to 10 years, along with fines that may extend to three times the amount involved in the fraud. In cases involving public interest, the minimum imprisonment term is 3 years.

In P.A. Tendolkar case<sup>5</sup>, SC aimed to establish an objective standard for duty of care, and also considered subjective elements in determining director liability. These subjective factors included the director's time commitment to the company and their management experience. This case established that directors cannot escape liability for fraud if they are closely associated with the management of the company and aware of the fraudulent activities.

- ii) *Mismanagement (Section 241 of CA2013):* Directors can be penalized for mismanagement, which may result in their removal from office and other penalties deemed appropriate by the court.
- iii) *Criminal Breach of Trust (Section 316(1) of BNS<sup>6</sup>):* If directors misappropriate company assets, they can face imprisonment and fines.
- iv) *Cheating (Section 318(1) of BNS<sup>7</sup>):* Engaging in deceitful practices can lead to similar penalties as those under fraud, including imprisonment and fines.

4. Replaced the Indian Penal Code, 1860 ("IPC") w.e.f. July 1, 2024.

5. *Official Liquidator, Supreme Bank Ltd. vs. P.A. Tendolkar (Dead) by Lrs. and Ors. [AIR 1973 SC 1104]*

6. Previously, Section 405 of IPC.

7. Previously, Section 415 of IPC.

v) *Forgery (Section 361(1) of BNS*<sup>8</sup>): Forging documents for financial gain can result in significant legal repercussions.

- **Exemption of liabilities for IDs and non-executive directors–**

Under Section 149(12) of CA2013, a non-obstante provision provides for limited liability for IDs and non-executive directors (not being a promoter or a KMP). They can only be held liable, in respect of such acts of omission or commission by a company which had occurred with their knowledge, attributable through Board processes, and with their consent or connivance or where they had not acted diligently.

Further, the Ministry of Corporate Affairs (MCA) vide its circular dated March 2, 2020<sup>9</sup>, provided additional clarity stating that these directors/personnels cannot be involved in criminal or civil proceedings unless the above Section 149(12) criteria are met. In essence, these directors/personnels' liability is strictly limited to matters they knowingly participated in or negligently overlooked, rather than extending to all company actions or routine compliance matters.

- **Important judicial precedents on liabilities of directors -**

i) *Criminal intent* – Under ***Sunil Bharti Mittal vs. CBI***<sup>10</sup> (2G Spectrum Case), SC held that

directors can be prosecuted for offences committed by the company only if there is sufficient evidence of their active role coupled with criminal intent, or if a specific law provides for their vicarious liability. Since no specific charges were made against the MD, SC dismissed the case against him.

ii) *Whether liability can be attached for acting on representation of managerial personnel* - On this question, the Allahabad High Court has in ***LIC vs. Hari Das Mundhra and Ors.***<sup>11</sup>, held inter alia stating that directors must exercise reasonable care based on their experience and circumstances, with allowance for calculated risks and reliance on trusted colleagues. They aren't liable for errors in judgment or another director's misconduct (unless complicit or negligently passive), and their decisions should be evaluated from the perspective of a reasonable businessperson in the moment, not with hindsight.

iii) *Role of director determining liability* – Under ***Lalankumar Singh and Ors. vs. State of Maharashtra***<sup>12</sup>, SC distinguished between 'in charge of' (a factual test requiring overall control of day-to-day business) and 'responsible to' (a legal test), noting that both tests must be satisfied for vicarious criminal liability,

---

8. Previously, Section 463 of IPC.

9. MCA General Circular 1/2020 dated March 2, 2020.

10. 2015 INSC 18

11. [1966] 36 Comp Cas 371 (All)

12. 2022 (240) AIC 141

while acknowledging that certain directors like IDs or non-executive directors might not be in charge of company's business. Furthermore, in ***Pooja Ravinder Devidasani vs. State of Maharashtra and Ors.***<sup>13</sup>, SC held that a non-executive director is no doubt a custodian of the governance of the company but simply because a person is a director of a company, he does not become liable for all the actions of the company.

- iv) *Cheque dishonour under Section 141<sup>14</sup> of Negotiable Instruments Act, 1881(NI Act)* – On the offence by the company and vicarious liability of the director, SC held that for vicarious liability under Section 141, mere statements about being "in-charge" are insufficient - specific averments must show how the accused was responsible for the company's business conduct. MDs and cheque-signing officers may be automatically liable, for other directors/officers, the complainant must explicitly prove their direct involvement, consent, or negligence in the offense, as there is no presumption of knowledge or deemed liability.

The delineation of roles, particularly for IDs and non-executive directors,

ensures they are held liable only for acts directly attributable to their knowledge or negligence. We now examine what other liabilities do directors of listed companies have to face, focusing on their governance mechanisms and the obligations imposed on directors to uphold investor protection and market integrity.

## B. SEBI Act, 1992 (“SEBI Act”) and Rules and Regulations

Under Section 27 of SEBI Act, 1992, when a company contravenes SEBI Act or any rules or regulation thereunder, every person in charge of and responsible for the company's business conduct at the time of contravention is deemed guilty alongside the company, unless they prove the violation occurred without their knowledge or despite their due diligence. SEBI has in ***Rahul H. Shah and Ors. vs. SEBI***, held that based on the SC's interpretation and Section 27 of the SEBI Act, there is no vicarious liability for directors who are not involved in the day-to-day affairs of a company under Section 11B<sup>15</sup> of SEBI Act read with Regulation 11 of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (**SEBI PFUTP**)<sup>16</sup>. This principle aligns with similar provisions across various acts like the NI Act, where directors uninvolved in daily operations cannot be held liable for company offenses.

13. 2015 (1) CLJ (SC) 109

14. Section 141 outlines offences by companies under Section 138 of the NI Act. It states that every person responsible for the company's conduct of business, including the company itself, is liable for offences unless they prove lack of knowledge or due diligence to prevent it. Additionally, directors, managers, or officers are deemed guilty if the offence occurs due to their consent, connivance, or neglect.

15. Section 11B of SEBI Act gives the SEBI the power to issue directions and levy penalties to protect investors and regulate the securities market.

16. Regulation 11 of SEBI PFUTP gives broad powers to SEBI to issue various directions in the interest of investors and securities markets, including suspending trading, restraining market access, etc.



### **SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI LODR”)**

Under Regulation 4 of SEBI LODR, directors of listed entities have comprehensive responsibilities spanning disclosure obligations (including material interests in transactions), key governance functions (such as guiding corporate strategy, risk management, succession planning, and financial oversight), and broader duties to stakeholders amongst other responsibilities. Furthermore Regulation 98 of SEBI LODR provides that for contravention of SEBI LODR, a listed entity or any person may face multiple penalties including fines, trading suspension, freezing of promoter holdings, and other actions as specified by SEBI, in addition to consequences under securities laws.

**Exemption of liabilities for IDs** - Further, a clause similar to Section 149(12) of CA2013 has been provided under Regulation 25(2A)(5) of the LODR which provides that an ID shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

However, SEBI has in some cases have even penalised the IDs who are not involved in day-today affairs of the Company. In the Adjudication Order of **Bombay Dyeing and Manufacturing Company Limited**<sup>17</sup>, penalised IDs (being part of AC) alongside executive directors and officials for failing to fulfil their fiduciary duties. Despite their non-executive role, the IDs were held equally accountable

for not adequately overseeing and preventing these improper accounting practices that artificially inflated the company's sales and profits. Further, even in the matter of LEEL Electricals, as provided above, the ID being a part of AC was held liable and asked to fulfil their duties being part of the committee.

**Liabilities of IDs and MDs for fraud** - The Securities Appellate Tribunal (SAT) has in an interesting matter of **Gurmeet Singh vs. SEBI**<sup>18</sup> provided that the only person liable was the MD since he was involved in the day-to-day affairs of the company and let go off the ID who was not involved in the day-to-day affairs. SAT also held that merely being signatories to a resolution is not sufficient to allege fraud. Hence, the directors who had signed the resolution were exonerated. Further, under **Prafull Anubhai Shah vs. SEBI**<sup>19</sup>, SAT held that the mere presence of the WTD in the board meeting does not make him liable for the alleged fraud that had been committed by the company.

The liability of directors under the SEBI Act, and related regulations largely depends on their role and involvement in the company's day-to-day affairs. While directors actively responsible for the company's operations may be held liable for violations, independent directors and non-executive directors are generally exempt unless the contravention occurred with their knowledge, consent, or lack of due diligence. However, SEBI has, in some cases, penalized independent directors for failing to fulfil their fiduciary duties, emphasizing the need for active oversight and adherence to governance standards.

17. Adjudication order in the matter of Bombay Dyeing and Manufacturing Company Limited.

18. *Gurmeet Singh vs. SEBI*, Appeal No. 406 of 2020 decided on September 14, 2021.

19. *Prafull Anubhai Shah vs. SEBI*, Appeal No. 389 of 2021 decided on June 28, 2021.

### C. **Insolvency and Bankruptcy Code, 2016 (“IBC”)**

The increase in non-performing assets and credit repayment issues in the country highlighted the need for directors to exercise greater diligence, prudence, and awareness in decision-making. Against this backdrop, IBC introduced specific duties for directors to fulfil toward creditors of financially distressed companies. Under the IBC, directors face significant liabilities during corporate insolvency, particularly during the "twilight zone" - the period when the director “*knew or ought to have known that there was no reasonable prospect of avoiding the commencement of corporate insolvency resolution*”. Section 66(2) of IBC imposes a specific duty on directors to exercise due diligence and minimize potential losses to creditors when they knew or should have known that there was no reasonable prospect of avoiding insolvency. Failure to meet this obligation can make directors personally liable to contribute to the company's assets.

#### ***Shift of duties from shareholders to creditors***

- When a company enters financial distress, directors' responsibilities shift significantly. They must demonstrate heightened diligence and prudence in managing the company's affairs, with a primary focus on safeguarding creditors' interests. Their key obligation becomes preserving company assets to ensure creditors can recover their dues, rather than prioritizing shareholder interests. This fundamental change in duties reflects the increased risk to creditors when a company faces potential insolvency.

Section 69 of the IBC prescribes criminal penalties for directors who engage in

fraudulent conduct, including imprisonment up to 5 years and/or fines up to ₹ 1 crore. Activities that can trigger liability include fraudulent trading, concealment of property, undervalued transactions prejudicial to creditors' interests, and falsification of company books.

***SC on liability of directors during moratorium period*** – In the landmark case of ***Ansal Crown Heights Flat Buyers Association***<sup>20</sup>, SC recently clarified that the moratorium imposed under Section 14 of IBC does not restrict the execution of a decree against the directors or officers of a company undergoing corporate insolvency resolution process.

### D. **Liabilities under Other Statutes**

- **Under Foreign Exchange Management Act, 1999 (“FEMA”):**

Under FEMA, director liability primarily stems from Section 42 of FEMA, which creates two distinct liability frameworks: Section 42(1) imposes deemed liability on persons controlling company operations regardless of direct involvement, while Section 42(2) extends liability to officers who enabled violations through consent, connivance, or neglect. The courts have time and again established that mere directorship is insufficient for liability - there must be a demonstrable nexus between the director and the contravention (as seen from above).

In an important judgement under FEMA - ***Suborno Bose vs. Enforcement Directorate***<sup>21</sup>, SC established that FEMA

---

20. Civil Appeal(s).4480-4481/2023.

21. AIR 2020 SC 4288

violations under Section 10(6)<sup>22</sup> are continuing offenses - directors who join after the initial violation remain liable if they fail to rectify known contraventions during their tenure. SC rejected the appellant's argument that he wasn't liable since he became MD after the violation, holding that his awareness of and failure to address the ongoing contravention made him liable under Section 42.

- **Under cyber-security and data privacy related laws**

Directors play a crucial oversight role in cybersecurity governance by ensuring management implements effective risk management processes. While directors benefit from business judgment rule protection, their key responsibility is to actively oversee cybersecurity risk management to fulfil their fiduciary duties. These responsibilities are primarily governed by the Information Technology Act, 2000 (**IT Act**) and the soon to be enforced the Digital Personal Data Protection Act, 2023 (**DPDPA**). Under DPDPA, directors of companies may be classified as “*significant data fiduciaries*” or “*data fiduciaries*” having additional responsibilities. DPDPA specifies monetary penalties for breaches of its provisions. For instance, failing to take reasonable security safeguards can result in penalties of up to ₹ 250 crores. These penalties are imposed on the entity, which could indirectly affect directors if they are found to

have neglected their duties in ensuring compliance. On the other hand, Section 43A of the IT Act holds companies liable for damages if they fail to implement reasonable security practices and procedures, leading to wrongful loss or damage. Directors may face consequences if the company is found negligent in this regard.

- **Under relevant labour laws**

Under current Indian labour laws like the Industrial Disputes Act, 1947<sup>23</sup>, directors of a company are presumed liable for any labour law violations committed by the company. The burden of proof lies on the directors to demonstrate that they had no knowledge of or did not consent to the non-compliance. This creates a stringent liability framework where directors must proactively prove their innocence to avoid being held responsible for company violations.

The soon to be enforced new labour codes in India - The Code on Wages (2019), the Code on Social Security (2020), the Occupational Safety, Health and Working Conditions Code (2020), and the Industrial Relations Code (2020) (**NLC**) appear to shift this burden of proof onto the prosecuting labour authorities. While directors can still be held liable, the authorities must first prove that the violation occurred with the director's consent, connivance, or due to their neglect. However, some

22. Section 10(6) of FEMA makes it an offense if a person acquires foreign exchange for a declared purpose but either doesn't use it for that purpose, fails to surrender it within the specified period, or uses it for any non-permissible purpose under FEMA.

23. Section 32 of the Industrial Disputes Act, 1947.

ambiguity exists due to the two-part structure of the relevant NLC provisions - one part maintains general liability for persons-in-charge unless they prove lack of knowledge, while a separate overriding provision specifically addresses director liability based on proof of their involvement. The practical implementation and interpretation of these provisions will become clearer once the NLC takes effect.

### Way forward

The expanding scope of liability under various statutes, from CA2013 and SEBI Act to the upcoming data protection and labour laws, creates a formidable web of responsibilities that directors must navigate carefully. The stakes are extraordinarily high, with penalties ranging from substantial fines to imprisonment, and personal liability for corporate misconduct. This evolving landscape demands that directors maintain active

oversight; exercise heightened due diligence and stay vigilant about their statutory obligations across all applicable regulatory frameworks – or face severe consequences that could impact both their professional standing and personal freedom.

The way forward lies in enhancing director awareness and understanding of their responsibilities, ensuring robust compliance mechanisms within companies, and fostering a culture of proactive governance. Regulatory frameworks may also need to evolve, offering clearer guidelines on the scope of director liabilities while balancing the need for oversight with the protection of directors from undue penalization. Ultimately, strengthening corporate governance will not only protect directors from liability but will also contribute to the long-term growth and credibility of Indian businesses.



### ADDENDUM

***The Supreme Court has recently delivered a ruling which is relevant for the topic. Hence a suitable addendum is included for readers' reference.***

Under a recent criminal appeal, ***Sanjay Dutt & Ors. v. State of Haryana & Anr. (judgment dated January 2, 2025)***, the Supreme Court (SC) clarified that directors cannot be held vicariously liable for corporate offenses unless explicitly mandated by law. It quashed a complaint under the Punjab Land Preservation Act, 1900, against directors accused of environmental violations, stating that mere directorship is insufficient to establish personal culpability. SC emphasized that criminal liability requires specific allegations demonstrating active involvement or authorization of the offense. In absence of such evidence, directors cannot be prosecuted for acts committed by their companies. SC noted, “While a company may be held liable for the wrongful acts of its employees, the liability of its directors is not automatic.”

This judgment underscores the need for liability to be grounded in clear statutory provisions and supported by substantive evidence, providing crucial clarity on director responsibilities and shielding them from undue prosecution for actions by the company.