THE COMPANIES ACT, 2013

DUTIES OF, AND INDEMNITY TO, DIRECTORS

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The COMPANIES ACT 2013 – DUTIES OF, AND INDEMNITY TO, DIRECTORS

1. **BRIEF BACKGROUND**

The Indian government is replacing almost six decades old company law governing the companies in India, i.e., the Companies Act, 1956 (“CA1956”) by new law, viz., the Companies Act, 2013 (“CA2013”). This article has made an attempt to analyse and compare the duties of the directors of Indian Companies to comply with the Indian laws and indemnity to them by companies under the CA1956 and the CA2013.

2. **DUTIES OF DIRECTORS UNDER CA1956 & CA2013**

2.1 The CA1956 did not have codified law relating to duties of directors but in all cases the directors of Indian companies were subject to common law duties. Thus, a director had fiduciary duty towards the company.

2.2 More importantly, s.291 of the CA1956 required the board of directors to comply with all applicable laws while they exercise any power on behalf of the company.

2.3 CA2013 has codified the duties of the directors and, now, the directors of Indian companies no more have any fiduciary duties against the company. Further, the directors of Indian companies, as per CA2013, are not even required to comply with all applicable laws while they exercise any power on behalf of the company as required under the CA1956.

3. **INDEMNIFICATION BY COMPANIES TO DIRECTOR UNDER THE CA1956 & CA2013**

3.1 S.201 of the CA1956 restricted a company to indemnify its directors and officers. According to s.201 of the CA1956 a company could have indemnified its directors of any liability incurred by him in defending civil or criminal proceedings *only if* he was acquitted or discharged. Except as aforesaid, s.201 of the CA1956 rendered void all the provisions in the company's constitution or in any agreement indemnifying a director against any liability that would attach to him in respect of any breach of duty or trust or negligence. It is noted that if
premium of D&O policy to protect the directors was paid by a company, then also indemnity to directors was covered by s.201 of the CA1956.

3.2 The CA2013 has no restriction corresponding to s.201 of the CA1956. More importantly, the CA2013 is the first law in the world which even does not restrict a company from indemnifying a director against any liability that would otherwise attach to him in connection with any negligence, default, breach of duty or breach of trust in relation to, or against, the company like what is incorporated in s.232 of The United Kingdom’s Companies Act, 2006.

4. CONCLUDING REMARKS

The CA2013 though discussed for more than five years as part of reform agenda of the Indian Government but it turns out to be a hurried and defective legislation which is neither investor friendly nor simplifies the laws for the businesses and apparently creating chaos and confusion.

A number of measures to protect the investors’ interest have been incorporated in the CA2013 however they are yet to be tested but the Indian government has offered more to the directors and companies by diluting the existing legal provisions with respect to their duties and indemnity by the companies.

Earlier the Indian legal community applauded the CA2013 without critically examining it and, after its implementation, they not only facing practical problems under the CA2013 but now it is also checking the legislative intent of the Indian Parliament for each provision.

Undoubtedly, the hurried implementation of the CA2013 causing more mistakes and recently the Bombay High Court ruled that some of the provisions are not effective as they are not yet notified by the Indian Government in the official gazette!