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ABSTRACT:

"In the early ***Companies Act, 1956 (hereinafter referred to as CA-1956)****, this was quite vague. Especially in Section 166 and Schedule IV of* ***Companies Act, 2013 (hereinafter referred to as CA-2013),*** *describe the responsibilities of the general manager and independent directors. The duties of a director are not alone mentioned in Section 166 of the Companies Act, it has been mentioned in many other places also. This provision tells the responsibilities to get more efficient and impeccable corporate management and governance. The authors here say that, in terms of the duties and responsibilities of directors, the new "India Companies Act 2013" is undoubtedly a very innovative and landmark piece of legislation. In this mature directorship legislation, two categories of directors have been properly considered, namely, directors who have a financial relationship with the company and independent directors. It is obvious from the above illustration that CA-2013 sincerely seeks to pass effective legislation to regulate Indian company management and good corporate governance, making it fully accountable, transparent, and benefiting all stakeholders and related professionals to the greatest extent. Director of Indian company".*

Keywords: Corporate Governance, Duties, Directors, Responsibility.

I. INTRODUCTION:

Section 166 of the Companies Act, 2013, actually follows the pluralist approach. It is by placing all interest that is, whether a shareholder or other stakeholders with not creating any hierarchy. It consists of a breach of Fiduciary and common law duties by the directors. It actually talks about Fiduciary duties, Duty to act in good faith, Duty not to make secret profit, Duty of Disclosure, Duty to avoid conflict of interest, Common Law duties, Duties of care and Skill etc. The Act requires a comprehensive way to deal with decision making at the Board level. Codification of directors' obligations powers directors into being more responsible and comprehensible towards the administration of an organization, thus improving straightforwardness and corporate administration principles.

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II. DUTIES OF DIRECTORS UNDER THE NEW INDIAN COMPANIES ACT 2013- SECTION 166 CLASSIFICATION:

The duties and responsibilities of directors under the Indian Companies Act in 2013 can be roughly divided into the following two categories:

i. Encourage and promote the duties and responsibilities of directors to make the best efforts to invest in ***good faith.***

ii. Effective and prudent company management, resolve various business-related issues in an elegant and rapid manner, including those raised through "red flags", and make fully mature and wise decisions ***to avoid unnecessary risks*** to the company.

iii. ***Fiduciary duty*** *to* guarantee that the organization's directors consistently put the interests of the organization and its investors over their very own interests. Fiduciary duties, on the other hand, need the directors to place the interests of the organization before their own benefits. The guidelines that prohibit dispute and self-managing with respect to directors are vital to this arrangement of obligations.

iv. ***Duty of care, skill and diligence & independent:*** Duty of care, skill and diligence & independent: The duty of care, skill and diligence demand that directors should commit the fundamental time and mindfulness in regards to endeavours of the association, track issues that may arise through "warnings" and make decisions that don't lead the association to unnecessary perils. The case law ***Hedley Byrne & Co Ltd vs. Heller & Partners Ltd***[1]***,*** comes under this perspective. A detailed explanation has given below.

II.I SECTION 166 OF THE "INDIAN COMPANIES ACT" (2013):

Responsibilities of Directors According to Section 166 of the "Indian Companies Act" (2013), company directors shall assume the following responsibilities:

i. **S.166(1):** In a company, a director should follow the procedure mentioned in the articles of association

[1] [1964] AC 465, [1963] 2 All ER 575, [1963] 3 WLR 101, [1963] UKHL 4.

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ii. **S.166(2):** The trust should be maintained by the director so that the company will be promoted with good benefits to the employers and also the shareholders

iii. **S.166(3):** Companies' director should see that his work is completed with reasonable care.

iv. **S.166(4):** Companies' director should not take part in the places where the fight arises against the Companies interest.

v. **S.166(5):** Companies' director should not show his interest in gaining illegal means of profits by favouring his kins. If it is done so whatever the amount he is gaining should be paid back to the company.

vi. **S.166(6):** Companies' director should not give his position to any other member if at all it is such transfer will not be considered.

vii. **S.166(7):** Companies' director should not go against the company rules.

III. IMPLICATIONS OF THE CODIFICATION OF DIRECTOR'S DUTIES:

III.I Use of Discretion:

The decisions made by the directors have to be well-founded and must be based on a factual investigation of all the relevant facts.

III.II Full Disclosure:

Full disclosure pertaining to the relevant facts are to be submitted to the directors based on which they will arrive at a decision.

III.III Impact on Nominee Directors:

based on the relation between the nominee director his/her shareholders, there will be a significant impact of section 166(2). A nominee director may find difficulty in exercising his/her required duties under section 166, considering his/her requirement to carry out independent judgements to carry out decisions based on certain matters. It might be difficult for the nominee director to function under the influence of the shareholder and this may not be consistent with the interests of the company.

IV. NON-ADHERENCE TO SECTION 166 OF THE ACT:

In situations where a breach of the duties carried out by the director causes the management or company affairs to be detrimental to the interests of the company and its shareholders, it is required to have a clear discretion on the duties of the directors, so that the shareholders can initiate a class action suit for the damages caused to the company and its directors.

V. CERTAIN CASES:

V.I Hedley Byrne & Co Ltd vs. Heller & Partners Ltd[2],

Applying to commercial negligence the principle of "assumption of responsibility". A man cannot be said voluntarily to be undertaking a responsibility if, at the very moment when he is said to be accepting it, he declares that in fact, he is not. The duty of care, skill and diligence expect directors to dedicate the essential time and thoughtfulness regarding undertakings of the organization, track issues that may emerge through "warnings" and settle on choices that don't lead the organization to superfluous dangers.

V.II Foster Bryant Surveying Ltd vs. Bryant[3],

It was held that a director has a fiduciary, must function with loyalty and in good faith with the company he/she works for and should avoid conflict arising between duty and self-interests.

V.III Rajeev Kapur and Others vs. Grentex Wools (P.) Ltd. and Others[4],

The Bombay High Court stated that a breach in fiduciary duty is realised once the director

[2] *supra* note 1.
[3] [2007] EWCA Civ 200.
[4] [2010] 998 CLA 35 (CLB).

commences a competing business with the company in which he/she is currently holding the directorial position.

VI. CONNECTING SECTION 166 OF CA AND THE PILLARS OF CORPORATE GOVERNANCE:

The pillars of successful business management are accountability, fairness, transparency and independence.

1. **Accountability:** Corporate accountability connects with the responsibility to describe the behaviour and behaviour of the company.
2. **Transparency:** It is an important part of corporate governance because it ensures that outside observers can check all the actions of an entity at any given time.
3. **Fairness:** It refers to equal treatment, for example, all shareholders should receive equal consideration for whatever shareholdings they hold.
4. **Independent Assurance:** It is verification by a third party (not directly responsible for the quality assurance and acceptance of products/deliverables and/or the reliability of the test results obtained from quality control and acceptance testing.

VII. CRITICAL ANALYSIS:

Section 166 of Companies Act, 2013, discloses the facts that are to be submitted to the directors based on which they will arrive at a decision. The decisions made by the directors have to be well-founded and must be based on a factual investigation of all the relevant facts. The Act requires a comprehensive way to deal with decision making at the Board level.

Codification of directors' obligations and powers into being more responsible and comprehensible towards the administration of an organization, thus improving straightforwardness and corporate administration principles Also shareholders have the right to initiate a class action suit for the damages caused to the company and its directors.

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So, this provision is more transparent, accountable, fair and thus increases good corporate governance.

VIII. CONCLUSION AND SUGGESTIONS:

Therefore, in terms of the duties and responsibilities of directors, the new "***India Companies Act 2013"***, is undoubtedly a very innovative and landmark piece of legislation.

In this mature directorship legislation, two categories of directors have been properly considered, namely, directors who have a financial relationship with the company and independent directors.

It is obvious from the above illustration that CA-2013 sincerely seeks to pass effective legislation to regulate Indian company management and good corporate governance, making it fully accountable, transparent, and benefiting all stakeholders and related professionals to the greatest extent directors of the Indian company.