

Nominee on which
the work is done by



**ASSIGN
BUSTER**

Nominee director had been for a long time referred to as institutional director, after 1971; there were numerous numbers of nationalized institutions such as IDBI, IFCI and ICICI which established their names. Generally, though the story is not different from the current scenario too, it could be seen that they by themselves had and now, have a glorious account. While engaging in the process of mobilizing and distributing the hard-earned saving of their customers and investing the same savings in the companies through the investment is obviously associated with some form of risk but indeed now has gained positive image in the eyes of the investors, and hence the financial institution to match the interest of the company and also the institution itself, need to appoint someone in the board who take a look in their interest. The financial institution not only looks for the nominee director but also make sure that the dealing of the company is not in such a way that there is a compromise between the interest of the parties of the contract that is the financial institution and the company. The principles of the contract and the terms and condition of the same, actually along with the various guidelines of Ministry of Corporate Affairs, 2003 and 2011, the Companies Act, 2013, and for the nominee director are basis on which the work is done by Nominee Director. It is also important to analyze that in what ways they can be criminally liable and what all things the nominated director need to keep in mind while working in the interest of the II.

ANALYSIS OF CASE LAWS AND JUDICIAL INTERPRETATION OF THE CASE LAWS TO ASCERTAIN THE LIABILITIES OF THE NOMINAL DIRECTOR. 2. 1 Is nominal word “ real or a misnomer”? Nominal word in itself a disguise and a misnomer, the appointment of the Nominal director is itself based on inter institutional

basis by rotation, and barring exception regarding share, qualification, age limit as contemplated in and guided by section 6A of the Life Insurance Corporation of India. Though people and the cooperate thinkers, generally do discuss that that the director nominated are nothing but are puppets of the institutions, and the election of such nominee director is an empty formality. Though the role and the duties of the directors have been envisaged by the Company Law Act, 2013 and there have been enough guide available about the same, it is quite easy that the role of the director who accept there directorship is nothing but a mix of statutory, regulatory and also partly depending on the laws of agency along with partly that of a fiduciary relationship.

Under the Companies Act, as it stood before the Companies (Amendment) Act, 1988, an officer of an company who is default is, shall be liable to punishment or penalty, whether by way of imprisonment, fine or both. The expression has been clear in this regard and there is as such no differentiation between director, and say anyone else. In regards with company law, the officer who is knowingly guilty of the default, non-compliance, failure, refusal or contravention mentioned in that provision. Though the general criminal law, the criminal liability result from the fault which has a personal touch or is personally committed by the person, and in this regard it is just not an overt act but also contains omissions, the criminal law regards the person responsible for his own crimes only. In *Dharma Prathistham vs. Union of India*², there was a prosecution which was launched against the trust and it was reported that they falsely showed the expenditure and the purpose was to escape tax on its income. The

President, along with the Vice-President was charged under the income tax act as they were those who were in charge of the statements of the company.

They were charged under Section 2763 of the Income Tax Act, 1961. The trust also contended that it would not be liable for any offence in which the offence requires mens rea. The Delhi High Court held that-“ Those who manage or control the affairs of the company can be regarded as the legal mind of the company, because their act defines the acts of the company, whenever they are managing the company’s affairs or acting in the capacity of the company. If the higher directorate has the guilty mind it is the guilt of the company.

The analysis of the case law suggest this clearly that whoever manages the “ affairs of the company” and the “ affairs of the company” can be one which may be assigned to any one, and hence , one who has been assigned the particular affair , if he or she commits the error or say a blunder, while managing the affair company will be liable, similarly if the nominee director has been allotted a work and he while acting for the company or acting within the contractual limit, and the memorandum of association .

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