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Policy Insights

RBI's 2025 Rules Arm Banks to Hunt Down Wilful and Large Defaulters

The Reserve Bank of India (RBI) on November 28, 2025, has released the **RBI (Commercial Banks Treatment of Wilful Defaulters and Large Defaulters) Directions, 2025 ("Direction"),** with an object to provide for a non-discriminatory and transparent procedure, having regard to the principles of natural justice, for classifying a borrower as a wilful defaulter by banks and hence mandating strict procedures for identifying, penalizing, and reporting defaulters to protect lenders. These guidelines apply to commercial banks (excluding Small Finance Banks, Payments Banks, and Regional Rural Banks) credit information sharing via Credit Information Companies (CICs).

Aimed at curbing fund diversion and ensuring accountability, the directions define wilful defaulters as those with ≥ ₹25 lakh outstanding who default despite capacity, siphon funds, or dispose secured assets without approval.

Identification and Classification Framework

The said Direction provides that the Banks must form Identification Committees of senior officers, chaired by Whole-Time Directors or equivalents, to initially scrutinize Non-Performing Assets (NPAs) ≥ ₹25 lakh within six months of NPA classification. These committees shall issue show-cause notices, disclose evidence, and propose classification to Review Committees (formed with combination of MD/CEO plus independent directors) for hearings and reasoned orders. Guarantors face co-extensive liability under the Indian Contract Act, with separate classification if they fail to honour invocations. Identification of the wilful default shall be made keeping in view the track record of the borrowers and shall not be based of isolated transactions / incidents. All default to be categorised as wilful must be intentional, deliberate, calculated.

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Penal and Preventive Measures

In terms the said Direction, Wilful defaulters and associates (subsidiaries, joint ventures, or promoter-linked entities) face a one-year ban on additional credit facility post-delisting and five years on new ventures. The Banks can initiate criminal proceedings, publish photos per board policy, and incorporate covenants barring List of Wilful Defaulters (LWD) persons from boards. Preventive steps include end-use monitoring via stock audits, CA certifications, and forensic audits for high-value accounts, with internal audits reviewing adherence.

Reporting and Resolution Protocols

As per the Direction, the Commercial Banks must submit monthly reports, as per the format provided in Annexure I of the Directions to the Credit Information Companies for large defaulters, for this classification, those with ₹1 crore or more in suit-filed accounts or classified as doubtful/loss and for Annexure II for wilful defaulters (≥₹25 lakh with intentional defaults like fund diversion), and for precise identification PAN and DIN of the Directors shall be submitted. The names of the defaulter will be removed from the List of Wilful Defaulter only after the full recovery, complete compromise settlements or resolutions under the insolvency provisions and RBI frameworks involving full ownership and management changes; further the transferee must continue to report until the balance falls below the threshold. The banks in order to make the auditors accountable, can file complaints with the National Financial Reporting Authority (NFRA) or Institute of Chartered Accountants of India (ICAI)

against any sort of negligent or deficient statutory auditors who misses falsified accounts, while the third parties aiding defaults, like valuers or consultants, get added to IBA caution lists to deter future engagements.

Conclusion:

These directions are intended to strengthen banks risk management by linking the wilful default checklist to credit appraisals and transfers, fostering a cautious lending ecosystem. By disseminating defaulter data, RBI aims to prevent further institutional finance to high-risk borrowers, promoting financial stability amid rising stressed assets and creating better information-sharing across the system and enhance transparency on high-risk borrowers.

RBI INCOME RECOGNITION, ASSET CLASSIFICATION AND PROVISIONG DIRECTIONS, 2025: CONVERGENCE AND DIVERGENCE IN PRUDENTIAL NORMS FOR BANKS AND AIFIs

On November 28, 2025, the Reserve Bank of India ("**RBI**") issued multiples directions for **All India Financial Institutions ("AIFIs") and Commercial Banks ("Commercial Banks" or "Banks")**. One of the major aspects covering the provisioning norms were also introduced for both AIFIs and Banks namely **RBI (All India Financial Institutions- Income Recognition, Asset Classification and Provisioning) Directions, 2025** **("AIFI Directions")** and **RBI (Commercial Banks – Income Recognition, Asset Classification and Provisioning) Directions, 2025** **("Commercial Bank Directions")** (collectively to be referred as "**Directions 2025**" or "Directions"). The Directions 2025 has consolidated and replaced the existing prudential norms which were applicable to AIFIs and Banks.

These directions are intended to align the domestic prudential regulations with the evolving international practice; enhancing transparency and strengthens the credit risk management.

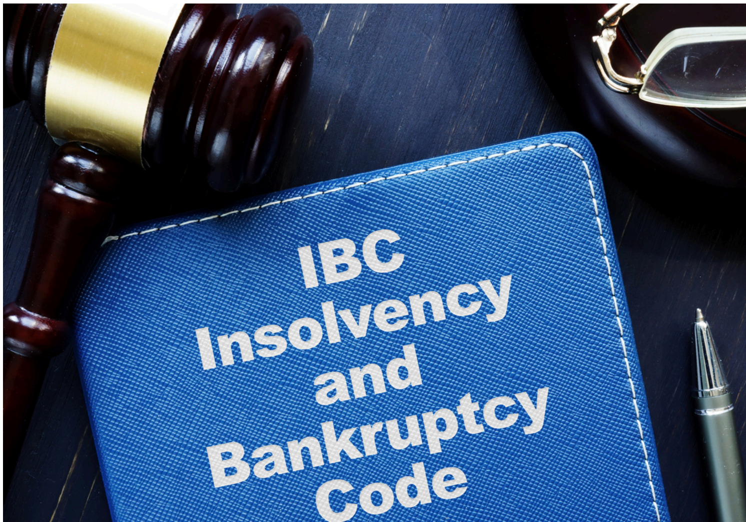
The Directions has indtroduced system-based, day-end recognition of overdue status, SMA and NPA classification. Asset classification dates must reflect the actual calendar date of delinquency, eliminating scope for manual intervention or post-facto adjustments. It has been reaffirmed that once a borrower is classified as NPA, all facilities/loans and investments relating to that borrower are treated as non-performing, subject to limited exceptions as provided therein.

Under the Directions, the account to be classified as standard asset or a NPA. However, the Commercial Banks has certain additional cases where the accounts are classified as SMA/NPA. For such classification, the following cases has been listed where the account to be classsifed as NPA/SMA- *term loans; Bills Purchased and Discounted; Securitisation Transactions; Derivative Transactions.* And for Commericail Bank three addditonal cases has been provided which includes- *Cash Credit/Overdraft Accounts; Working Capital Accounts; Credit Card Accounts.* As per the Directions the provisioning shall be made only on the basis of the classification of assets based on the period for which the asset has remained non-performing and the availability of security and the value that is realisable. As per the Direction, the term **Security** has been defined as *"shall mean tangible security properly charged to the bank and will not include intangible securities like guarantees (including State government guarantees), comfort letters, etc."* The Directions has clarified what shall constitute for the value of the underlying security. The Directions mark a significant consolidation of the prudential framework applicable to AIFIs and Banks. From emphasising on early recognition of stress, system-driven classification, robust provisioning and enhanced Board oversight, the Directions aim to strengthen balance sheet resilience and reinforce market discipline.

The new framework necessitates tighter internal controls, upgraded MIS capabilities and a more forward-looking approach to credit risk management. Collectively, these reforms contribute to greater transparency, stability and confidence in India's development finance ecosystem.

A detailed comparative analysis of the Directions is availabe at : RBI Income Recognition, Asset Classification and Provisiong Directions, 2025: Convergence and Divergence in Prudential Norms for Banks and AIFIs - Orbit Law Services

The Insolvency Insider



Non-Co Operation As Evidence: NCLT clarifies the scope of Section 66 of IBC

The order of the **National Company Law Appellate Tribunal** in **Rana Sarkar v. Bimal Agarwal (RP) & Ors**. revolves around the scope and evidentiary threshold for initiating and sustaining proceedings under **Section 66 "Fraudulent Trading or Wrongful Trading" of the Insolvency and Bankruptcy Code, 2016 (IBC), which states that directors of the company can be held personally responsible if they knowingly run the company in a manner intended to cheat creditors, or if they continue business despite knowing that insolvency is unavoidable and fail to take reasonable steps to reduce losses to creditors.**

Factual Background

The CIRP of the corporate debtor i.e. Dagcon (India) Pvt. Ltd. commenced on 20.11.2019, with Bimal Agarwal appointed as the Resolution Professional (RP). The suspended directors, including Rana Sarkar, allegedly failed to cooperate by withholding books of accounts and records despite directions under Section 19(2) IBC from both NCLT and NCLAT. In the absence of financial statements, the RP relied on bank statements of nearly 20 accounts and appointed a transaction auditor. The audit revealed substantial cash withdrawals aggregating more than 10 crores and payments to related parties without supporting documentation. Based on this, the RP filed an application under Sections 66 of IBC (Fraudulent Trading or Wrongful Trading) and 67 of IBC (Proceedings under Section 66 of IBC), which was allowed by the NCLT, directing the directors to contribute amounts with interest. The same was challenged before NCLAT.

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Core Legal Issue

The question raised was when the suspended directors do not corporate and provide documentary evidence, the RP's opinion formed after RP's independent application of mind in reliance on bank statements and appointment of a transaction auditor in examining the transactions and determining the existence of fraud is sufficient to establish fraudulent trading under Section 66 of IBC (Fraudulent Trading or Wrongful Trading), justifying directions for contribution to the assets of the Corporate Debtor. The Appellants also argued that the Ld. Tribunal failed to discharge its obligation of applying an independent judicial mind to the impugned transactions, insofar as the appellants were concerned, by erroneously proceeding on the premise that it could not examine or test the opinion formed by the Resolution Professional, thereby failing to assess whether the transactions in question actually fell within the ambit of Section 66 of the IBC.

Tribunal Reasoning

The NCLAT held that deliberate non-cooperation and not submitting the required documents by suspended directors justified the RP's independent application of mind in reliance on bank statements and appointment of a transaction auditor, as the RP in examining the transactions and determining the existence of fraud, had first scrutinized the bank statements and individual transactions and then formed a prima facie satisfaction, and only thereafter appointed a transaction auditor for closer and detailed examination. Large scale cash withdrawals and unexplained related party transactions, without vouchers or records, constituted strong circumstantial evidence of fund diversion.

The bench noted that **Section 66(1)** of IBC (fraudulent trading) and Section 66(2) of IBC (wrongful trading) operate independently and require assessment on the standard of preponderance of probabilities.

The bench also noted that the pattern of transactions along with failure to provide explanations, sufficiently demonstrated intent of the suspended directors to defraud creditors. The bench rejected the argument that a transaction audit report lacks evidentiary value per se, noting that it was supported by bank records and the conduct of the directors.

Outcome

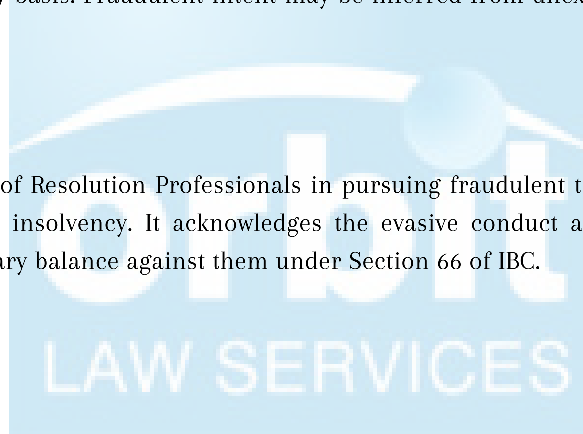
The appeal in the above matter stands dismissed. NCLAT upheld the NCLT order directing the appellant and other directors to jointly contribute to 'specified amounts' along with interest rate to the assets of the Corporate Debtor.

Present Position of Law

The decision of the Appellate Tribunal establishes that non-cooperation by suspended management cannot defeat Section 66 proceedings. It also notes that when primary records are withheld by the corporate debtor then bank statements and transaction audits can form a sufficient evidentiary basis. Fraudulent intent may be inferred from unexplained transactions and surrounding circumstances.

Conclusion

The judgement strengthens the hands of Resolution Professionals in pursuing fraudulent trading claims and it also underscores the accountability of directors during insolvency. It acknowledges the evasive conduct and lack of transparency by erstwhile management can itself tilt the evidentiary balance against them under Section 66 of IBC.



Judicial Precedent

Rebuilding of Leased and Cessed Buildings: Bombay High Court Clarifies Scope under the current MHADA probe

The redevelopment of the old leased and abandoned housing in South Mumbai has been a controversial topic over the decades. A majority of these structures are very ancient and most of them are pre-Independence and these are classified under repair cess methodology. Due to their state, the redevelopment is commonly associated not only with property rights but also with safety issues of inhabitants residing in such buildings.

Meanwhile, such redevelopment of these buildings is hardly ever simple. It involves landlords, tenants who have been in the premises over long periods of time, developers and the statutory agencies such as MHADA. The conflicts often occur due to the fact that redevelopment decisions influence the housing security of the inhabitants, their ownership rights and future rights.
In this context, an issue of great significance regarding Bombay High Court was decided not long ago in reference to redevelopment permissions issued by MHADA. The Court interrogated whether MHADA may permit redevelopment in some instances by the virtue that previous notices made on acquisition and redevelopment were established to be flawed in terms of law and were subjected to judicial scrutiny.

Background of the Dispute

The controversy was on the notices given by the officials of the Mumbai Building Repairs and Reconstruction Board which operates under MHADA. These notices were made under Section 79-A of MHADA Act and announced a number of abandoned buildings as a danger and in poor condition, which would be taken over and refurbished.
The big worry however, was that such notices were made without prior obtaining of a declaration of dilapidation that was mandatory by the municipal corporation. This statement is a legal mandate and serves as a crucial protection prior to the extreme measures such as an acquisition.
When the Bombay High Court was reviewing these notices, it noticed that such a mandatory step cannot be considered as a minor irregularity in the case of bypassing it. Therefore, the notices were declared prima facie illegal.

Analysis

- **Interim Protection Granted by the Court.**

Under the impugned notices, MHADA promised Court that no coercive actions were going to be undertaken during the hearings. It was further explained that unwilling tenants or landlords will not be forcibly redeveloped.
The Court fixed this statement and held proceedings on the notices already withdrawn. Such provisional safeguarding was essential because it meant that no irreparable harm was going to be caused without the legality of the notices having been properly discussed. The Court attitude was conservative in a way that would save the interests of the parties concerned in the absence of a decision on the case.

- **Appointment of a Committee**

Given that the number of such notices released within a relatively short period of time was large, the Court was a two-member committee led by a retired Bombay High Court judge. It was the mandate of the committee to review the legality of 935 such notices issued by MHADA.

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The rationale of having the committee in place was to establish whether these notices were within the statutory requirements or whether there was an overarching pattern of procedural failure. The Court underscored that any notice which was shown to be flawed would be suspended and this case served to underline the necessity of statutory observance in redevelopment issues.

Applicability of the PAGREE System

A key point of the case is associated with the PAGREE system (Property Acquisition, Grant of Reconstruction, and Redevelopment) to which a number of abandoned buildings in South Mumbai are subject to. With this system in place, MHADA is at the center of acquisition and redevelopment coupled with protection of tenant rights.
The premises of the current case are located in the regions that were traditionally under the management of PAGREE. The observations made by the Court suggest that redevelopment in these structures is to be consensus-driven and procedurally rational. The redevelopment cannot be forced by flawed notices especially in localities where protection of tenants is a fundamental issue of concern.

Consent-Based Redevelopment Permission

Although the investigation of the committee was still in progress, MHADA moved to the Court requesting it to allow the issuance of No -Objection Certificates in the instances where the redevelopment plans had been supported by the landlord and over 51percent of the tenants.
They indicated that in some of the buildings, redevelopment discourses had been flowing well and no disagreements were experienced among the stakeholders. Some of these cases had been already reviewed by the committee who did not find that they were victims of procedural or consent-related problems.

Considering this, the Court gave MHADA power to award NOCs in such rare instances. The Court believed that the redevelopment projects with a clear and voluntary consent should not just be stalled without any justifiable reasons when a wider inquiry had not begun.

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Reasonable Balance in the Judiciary

The Bombay High Court in its order of 5 December set out to clarify that its previous orders had never been intended to provide a complete stop on redevelopment. They were instead put in a manner that redevelopment is carried out in a lawful and authentic manner.

The Court was aware of the safety hazards of old buildings and was pragmatic through redevelopment in situations where stakeholders had no conflict. Simultaneously, it also made sure that this partial authorisation did not justify flawed notices that were passed without the statutory procedure.

Conclusion/ Takeaway

The Bombay High Court ruling can be defined as the delicate ratio between the redevelopment requirements and law. The Court upheld procedural discipline in urban redevelopment by concluding that such notices as granted without the necessary municipal certification are illegal.
At the same time, allowing redevelopment in cases of consent, the Court made sure that the real projects are not lagged when the administrative lapses are undermined and still under evaluation. The extension of the investigation conducted by the committee is another sign of the Court feeling accountable and transparent with redevelopment procedures.
Generally, the decision sends a strong signal that redevelopment has to be led by a legal process and informed consent but it also takes into consideration the realities of an older urban infrastructure in Mumbai.

Know Your Laws

Corporate Governance & Role of Independent Director

The Corporate Governance is the system of rules and process which governed the company through its board of directors and management to protect the interest of stakeholders. The concept of Corporate Governance is not new but evolved from time to time especially after the corporate world faces many financial crises due to mismanagement of companies including financial frauds by promoters 'directors of the company.

In order to protect the interest of corporate entities and investors, the legal foundation was laid down in many jurisdictions including in India. Therefore, in year 2013 the concept of **Independent Director** was introduced under **Companies Act, 2013 ("Companies Act") and Securities and Exchange Board of India Act.**

Legal framework of Independent Directors

Every director is appointed in accordance with the procedure as set-out under the Companies Act including an Independent Director. The appointment, role and responsibilities and liabilities of each director is defined from Section 149 to Section 172 of the Companies Act 2013 ("Companies Act"). The specific provisions of Independent Directors are under Section 149 of the Companies Act. SEBI has further regulated this concept under the SEBI (LODR) Regulations, 2015, particularly for listed entities and defined the Independent Directors under Regulation 16(1)(b) r/w Section 149(6) of the Companies Act 2013 as a person, other than Managing Director or Whole Time Director or Nominee Director, who in the opinion of Board of Directors is a person of integrity and possess relevant expertise and experience and who is or was not a promoter of a company or its holding subsidiary or associate company and not related to promoter or director of the company.

Difference Between Independent Directors and Other Directors

Independent Director is a non-executive director and fundamentally differ from executive and promoter directors as such promoters directors are involved in day to day management and decision-making process of corporate , whereas Independent Directors function is in accordance with the law and have a supervisory and advisory position at the board level to watch the process of decision making of promoters directors and advise such promoter directors or management as might be needed for corporate governance point of view.

This distinction has been judicially recognised in **SMS Pharmaceuticals Ltd. v. Neeta Bhalla (AIR 2005 SUPREME COURT 3512)** ,where the Supreme Court held that liability of directors cannot arise solely from designation. The Court ruled that only those directors who are "in charge of and responsible for the conduct of business" can be proceeded against, thereby excluding Independent Directors unless specific responsibility is pleaded and proved.

Appointment Mechanism of Independent Directors

The mechanism for appointment of Independent Directors is similar to appointment of any other directors. The Board of Directors recommend the name of director based on the recommendation of the Nomination and Remuneration Committee, supported by declarations of independence and disclosures of interest and shareholders in a general meeting appointed such

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persons as the director.

Judicially, the significance of this appointment mechanism was highlighted in **Pooja Ravinder Devidasani v. State of Maharashtra ((2014) 16 SCC 1),** where the Supreme Court held that a non-executive director, appointed without managerial control, cannot be presumed to oversee company affairs. The Court observed that the statutory mode of appointment itself negates any automatic assumption of operational responsibility.

Role of Independent Directors in the Company and Board

The main purpose of appointment of Independent Directors is to protect, inter-alia, the interest of minority shareholders and to supervise the compliance of corporate governance of the company in accordance with provisions as set out in the Companies Act and SEBI LODR Regulations. Therefore, Independent Directors are expected to bring objective judgment, oversee financial integrity, and protect minority shareholders' interests. Various courts/ tribunal have clarified that this role does not make them custodians of every corporate action. In **B. Ramalinga Raju vs. SEBI(AIR 2018 SC 3491)**, the Supreme Court held that Independent Directors cannot be expected to detect accounting fraud unless circumstances clearly indicate manipulation or red flags. Reasonable reliance on audited financial statements was held to be permissible.

Limitations of Independent Directors in Corporate Governance

Independent Directors depend largely on information provided by management and professionals and do not possess investigative powers. The Supreme Court in **Shiv Kumar Jatia v. State of NCT of Delhi ((2019) 17 SCC 193)** recognised this limitation and held that directors cannot be held criminally liable for negligence unless there is direct involvement or gross negligence with mens rea. The Court explicitly rejected the notion that directors are expected to foresee or prevent every mishap.

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Protection and Rights of Independent Directors Under Law

Section 149(12) of the Companies Act, 2013 limits the liability of Independent Directors. Unless the Independent Director acts, either omitting or committing, with their knowledge, consent, connivance, attributable through Board processes or lacks due diligence, he or she cannot be held liable. This provision has been judicially reinforced in **Rallis India Ltd. v. Poduru Vidya Bhushan ((2011) 13 SCC 88)**, where proceedings against Independent Directors were quashed for lack of specific allegations. The Court held that mechanical prosecution defeats the legislative intent of Section 149(12) and discourages competent professionals from joining boards. Independent Directors have the right to seek information, record dissent, access professional advice, and hold exclusive meetings without management. In **Sunil Bharti Mittal v. CBI ((2015) 4 SCC 609)**, the Supreme Court observed that the presence of Independent Directors on boards is to ensure checks and balances. Courts have treated recorded dissent as evidence of independence and due diligence, often shielding directors from allegations of connivance.

Liabilities and Duties of Independent Directors

Civil liability may arise from breach of fiduciary duty, while criminal liability requires proof of active involvement or culpable negligence. In **Gunmala Sales Pvt. Ltd. v. Anu Mehta((2015) 1 SCC 103),** the Supreme Court reiterated that criminal proceedings against **directors must disclose specific role attribution**, and vague allegations are insufficient. This principle has been repeatedly applied to protect Independent Directors from frivolous prosecutions. In **Harshendra Kumar D. v. Rebatilata Koley (AIR 2011 SUPREME COURT 1090)**, the Supreme Court quashed criminal proceedings against a non-executive director on the ground that statutory records showed cessation of directorship before the alleged offence. The Court held that documentary compliance records can be relied upon to prevent abuse of criminal process, reinforcing the importance of compliance documentation for Independent Directors.

Schedule IV of the Companies Act prescribes duties such as safeguarding stakeholder interests, ensuring integrity of financial information, and acting in good faith. In N. Narayanan v. SEBI (AIR 2013 SC 3191), the Supreme Court clarified that directors are expected to exercise due care and diligence, but the standard is that of a reasonable director, not an infallible one. The Court held that liability arises only where failure is deliberate or reckless.

In case of proceedings against Independent Directors under the Insolvency and Bankruptcy Code, 2016 ("IBC"), The National Company Law Tribunal ("NCLT"), Mumbai Bench, in **Anuradha Kapur v. Dinkar T. Venkatasubramanian (Company Petition No 1555 of 2017)** has ruled that independent directors and non-executive directors cannot automatically escape liability for alleged fraudulent transactions under Section 66 of IBC. The NCLT observed that merely holding the position of an independent or non-executive director does not exempt a person from scrutiny if there is evidence suggesting their awareness of irregularities in the company's affairs. In **SEBI v. Gaurav Varshney ((2016) 14 SCC 430)**, the Supreme Court cautioned regulators against indiscriminate prosecution of non-executive directors, reiterating that statutory safeguards must be respected before initiating action

Authorities Before Which Independent Directors Are Answerable

It may be noted that in case of Non-Application of Independent Director while approving any Board Resolutions he or she maybe answerable before Courts and Tribunals including SEBI. Independent Directors are required to raise concerns internally, approach SEBI, record dissent, or seek judicial remedies. Courts have recognised that Independent Directors who actively object or report irregularities demonstrate good faith. In **B. Ramalinga Raju. v. SEBI (AIR 2018 SC 3491),** the Supreme Court acknowledged that Independent Directors who raised concerns internally could not be equated with executive wrongdoers.

Conclusion

There is no doubt **"Judicial interpretation"** of Independent Directors' roles reflects a consistent effort to balance corporate accountability with statutory protection as courts in many cases have firmly rejected the doctrine of automatic or vicarious liability for Independent Directors. Despite the judicial interpretation, the position of Independent Directors is not a privilege but a great responsibility. Ignorance of responsibility in discharging their duties invites criminal liability including heavy penalty impose on them by the tribunals/ courts. Hence, Independent Directors must remain vigilant, record dissent, and exercise meaningful oversight and should not be ***"Silent Spectators"***, being a friend of promoters or directors.

The full article is avaialbe at: *Corporate Governance and Role of Independent Director - Orbit Law Services*

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