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Power, Duties, Liabilities of Company Auditor under Companies Act 2013

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Abstract

The auditor of a company has statutory rights and duties under Companies Act. The auditor of a statutory organization may also have specific statutory duties under the Act governing such organization. But the auditor of a sole proprietorship business or firm or the auditor of any other non-statutory organization does not have such specific statutory rights and duties. This Article discusses in detail Provisions of the companies Act 2013 relating to rights and duties of a company auditor. New section 143 provides for powers and duties of auditors. This section is similar to existing section 227.

Key Words: Auditor, power, duties, liabilities

Introduction: An auditor, to perform his duties must have certain powers, without which it may not be possible for him to perform his duties honestly and thereby, he might be held liable for any loss which the company might suffer. In the case of the auditor of a sole proprietorship business or a partnership firm, the power and duties depend upon the agreement which is entered in between him and the organization. But in the case of the auditors of Joint-stock Companies, the Companies Act has laid down the powers and duties of an auditor. Although there is no direct mention of specific powers of a company auditor in the Companies Act, the auditor enjoys certain powers in the course of performance of his duties. For example, the auditor has a right to receive notices and attend general meeting—this is an instance of right. Again, the auditor has a right to obtain information and explanation from the officers of the company in the course of his audit work – this right is the nature of powers.

Understanding the definition of auditor: An auditor is an independent professional person qualified to perform an audit. In accounting, an auditor is someone who is responsible for evaluating the validity and reliability of a company or organization's financial statements. The term is sometimes synonymous with "comptroller". In latin language the word is 'audire' which means 'to hear'. The word 'audit' has derived from 'audire' and the person appointed to examine the accounts came to be known as the auditor.

Powers of a company Auditor: Auditor will have access to books of accounts and vouchers, not only to those kept at registered office of the company but also to those kept at any other place. Such access shall be available at all times. Also, auditor of a holding company shall have access to the books of all of its subsidiary companies for the purpose of consolidation of financial statements of holding company and its subsidiaries. As per the provisions contained in the companies Act 2013, the following rights have been given in order to enable him to discharge his duties properly:

1. Rights to access:- According to Section 143(1), every auditor of a company has a right of access at all times to the books, accounts and vouchers of the company whether kept at the head office of the company or elsewhere and also to the returns submitted by the branch office to the head office. Here the term 'books' includes statutory, statistical and costing books.

The Auditor shall be entitled to require from officers of the company such information and explanation as he may consider necessary for performance of his duties.

There is an inclusive list of matter for which auditor shall seek information and explanation. This list helps auditor to take special care on serious issues. The list includes issues related to:

- a) **Loans and Advances made by the Company:-** Auditor shall inquire into "whether loans and advances made by the company on the basis of security have been properly secured and whether the terms on which they have been made are not prejudicial to the interest of the company or its members." It is applicable to all loans and advances made on the basis of security. The auditor should verify that the security held against the loans and advances made by the company are legally enforceable and also ascertain the valuation of securities to see whether the loan is fully secured or partly secured.
- b) **Transactions represented by book entries:-** Auditor is required to inquire "whether the transactions of the company which are represented merely by book entries are not prejudicial to the interests of the company". He should verify the all book entry transactions and determine whether such transactions have actually taken place and are not prejudicial to the interest of the company.
- c) **Sale of investments:-** Auditor should inquire, "whether so much of the assets of the company (except an investment company or a banking company) as consists of shares, debentures and other securities, have been sold at a price less than that at which they were purchased by the company". Auditor must verify the cases where securities are sold at a price less than their cost of acquisition and if he finds that such sale is bona fide the price realized is considered to be reasonable, having regards to the circumstances of each case, no further reporting is required.
- d) **Loans and Advances shown as deposits: -** Auditor must verify "whether loans and advances made by the company have been shown as deposits". The auditor must

inquire in respect of all the deposits shown by the company and satisfy himself that the loans and advances have not been shown as deposits.

- e) **Charging of Personal expenses to revenue account:** - Auditor should inquire as to “whether personal expenses have been charged to revenue account”. Auditor must ensure that no personal expenses of directors and officers of the company have been charged to revenue account.
- f) **Allotment of shares for cash:-** Auditor should inquire as to “whether cash has actually been received in respect of shares stated to have been allotted for cash and if no cash has actually been so received, whether the position as stated in the account books and balance sheet is correct, regular and not misleading”. In this connection, auditor must ensure in respect of shares allotted in cash by the company that cash has actually been received in respect of such allotment by the company.

2. Auditor to sign audit reports:- (According to see 145), only the person appointed as auditor of the company may sign the auditor’s report or authenticate any other document of the company required by law to be signed or authenticated by the auditor. Any qualifications, observations or comments on financial transactions matters, which have any adverse effect on the functioning of the company mentioned in the auditor’s report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

3. Auditor in general meeting: It is a prime requirement under section 146, that the company must send all notices and communication to the auditor, relating to any general meeting, and he shall attend the meeting either through himself or through his representative, who shall also be an auditor. Such auditor must be given reasonable opportunity to speak at the meeting on any part of the business which concerns him as the auditor. As per section 101, notice of general meeting must be given before 21 days either in writing or through electronic mode to the auditor in such manner as may be prescribed. Every notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

4. Right to remuneration:- On completion of his work an auditor is entitled to his remuneration. The rights of the auditor cannot be limited or abridged either by articles or resolution of the members. The remuneration of the auditor of a company shall be fixed in its general meeting or in such manner as may be determined therein. It must include the expenses, if any, incurred by the auditor in connection with the audit of the company and any facility extended to him but does not include any remuneration paid to him for any other service rendered by him at the request of the company.

5. Power to inspect branch accounts: - According to section 143(8), where the accounts of any branch office are audited by a person other than the company’s auditor, the company’s auditor shall be entitled to visit the branch office, if he deems it necessary to do so for the performance of his duties as an auditor. He shall also have access at all times to the books, accounts and vouchers of the company maintained at the branch office.

However, in the case of banking companies having a branch office outside India it shall be sufficient, if the auditor is allowed access to such copies of, and extracts from, the books and accounts of the branch as have been transmitted to the principal office in India.

6. Powers of Comptroller and Auditor–General of India in Case Government Company- Section 143 (5) To 143 (7)

In case of Government Company, the Audit Report among other things, shall include the directions, if any, issued by the Comptroller and Auditor –General of India (CAG), the action taken and the impact thereof on the Company’s accounts and financial statement.

The CAG shall have a right to the conduct a supplementary audit of financial statement of the company and comment upon or supplement such audit report within 60 days from the date of receipt of the audit report u/s 143 (5).

Provided that any comments given by the CAG upon, or supplement to, the audit report shall be sent by the company to every person entitled to copies of audited financial statements u/s 136 (1) and also be placed before the annual general meeting of the company at the same time and in the same manner as the audit report.

The CAG may, by an order, cause test audit to be conducted of the accounts of company covered u/s 139 (5) or 139 (7) and the provisions of section 19A of the Comptroller and Auditor-General’s (Duties, Powers and Conditions of Service) Act, 1971, shall apply to the report of such test audit.

Duties:

The duties of a company auditor under Companies Act 2013 may be discussed under the following heads:

1. Make Report: - Section 143 (2) requires the auditor to make a report to the members of the company on the accounts examined by him and on every financial statement which is required to be laid in the general meeting of the company. The Audit report should state that to the best of his information and knowledge, the said accounts and financial statements give a true and fair view of the state of the company’s affair as at the end of the financial year and the profit or loss and the cash flow for the year and such other matters as may be prescribed.

Section 143 (3) laid down that auditor’s report shall also state other details which are as under:

(a) Whether he has sought and obtained all the information and explanations which were necessary and if not, the details thereof and the effect of such information on the financial statements.

(b) Whether, in his opinion, proper books of account as required by law have been kept by the company and proper returns adequate for the purposes of his audit have been received from branches not visited by him.

- (c) Whether the branch audit report prepared by a person other than the company's auditor has been sent to him.
- (d) Whether the company's balance sheet and profit and loss account dealt with in the report are in agreement with the books of account and returns.
- (e) Whether, in his opinion, the financial statements comply with the accounting standards.
- (f) The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company.
- (g) Whether any director is disqualified from being appointed as a director under section 164 (2)
- (h) Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith.
- (i) Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

2. Auditing Standards: - According to section 143 (9) & (10) every auditor must comply with the auditing standards. While the Central Government prescribes the Auditing Standards or addendums thereto, it shall consult with and take recommendations of the Institute of Chartered Accountants of India (ICAI) and the National Financial Reporting Authority (NFRA). Till such time the Auditing Standards are notified by the Central Government, the auditing standards specified by the ICAI are deemed to be the audit.

3. Fraud Reporting: - Section 143(12) to 143 (15) & Rule 13: - If an auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall immediately report the matter to the Central Government within such time and in such manner as may be prescribed.

Section 143 (12) and Rule 13 provides that if the auditor of a company, in the course of the performance of his duties as auditor, has reason to believe that an offence involving fraud is being or has been committed against the company by officers or employees of the company, he shall report the matter to the Central Government immediately but not later than 60 days of his knowledge and after following the procedure indicated herein below:

- (i) Auditor shall forward his report to the Board or the Audit Committee, as the case may be, immediately after he comes to knowledge of the fraud, seeking their reply or observations within 45 days;
- (ii) On receipt of such reply or observations the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within 15 days of receipt of such reply or observations;
- (iii) In case the auditor fails to get any reply or observations from the Board or the Audit Committee within the stipulated period of 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was

earlier forwarded to the Board or the Audit Committee for which he failed to receive any reply or observations within the stipulated time.

The provision of section 143 applies mutatis-mutandis to Cost Accountants in practice conducting Cost Audit under section 148 or the Company Secretary in practice conducting secretarial audit under section 204. If any auditor, cost accountant or company secretary in practice fails to comply with the provisions of section 143 (12) for reporting of an offence involving fraud, they will be punished with a fine of minimum Rs. 1 lakh and upto Rs. 25 lakhs but they will not be punished if Auditor done such reporting in good faith.

3. Winding Up: - As per section 305, at the time of voluntary winding up of a company it is a mandatory requirement that auditor should attach the copy of the audits of the company prepared by him.

5. Other Duties: - Besides the above duties, there are other duties of an auditor to be performed in course of his audit. These are:

- a) The auditor should give all possible assistance to the inspectors in case of an investigation of the affairs of the company.
- b) In case an existing company issues prospectus, it should contain a statement of profit & losses for the last 5 years showing the rate of dividends paid each classes of shares for each year and a statement of assets & liabilities of the company. It is the duty of auditor to certify all these statements.

Liability of Directors: Directors will have no personal liability so long as they exercise the duties set out earlier in this Article. It should be noted that pursuant to the provisions of Section 149(12) of the new Act a non-executive director including an independent director and nominee directors will 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.

Under Section 195 of the new Act, a director, inter alia, is prohibited from indulging in Insider Trading. There are many provisions in the Act, which are not in line with the Regulations framed in this regard by the Securities and Exchange Board of India, which are applicable to listed companies. Thus in their cases there could be duplications and the requirements of the Act or SEBI Regulations may be stringent. In such situations it would be prudent and in fact is required that listed companies should comply with more stringent requirements of the two so that they are not hauled up for possible violations.

Conclusion: The auditor of a company has statutory power and duties under the companies Act 2013. An auditor is 'watch dog' not a 'blood hound'. Like a dog should bark and chase when something found wrong. Same like that duty of auditor is to verification and detection, but he must go deep if suspicion arises. His business is to ascertain and state true financial position of the Company as the time of audit, and his duty is confined to that. He should do so by examine the books of the Company. It is

observed by ICAI that Chartered accountants play a vital role in monitoring finances of and ensuring financial discipline in business, more particularly Companies registered under Companies Act, 2013. It is their responsibility to discharge of their duties that the shareholder's Interest are adequately protected. If those professional fail to perform their duties in the manner required of them, such failure would not be merely a case of serious misconduct on the part of a professional but also prejudices the trust which society has reposed on those professionals with regard to the competent discharge of duties entrusted to them'.

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