

## **Analysis of Adjudication Orders under the Companies Act, 2013: Evolving Responsibilities of the Company Secretary**

### **Regulatory Context and Increasing Scrutiny**

In a recent knowledge-sharing webinar organised by Mehta & Mehta, distinguished professionals deliberated on the increasing number of adjudication orders passed by the Registrar of Companies (RoC) and Regional Directors (RD) under the Companies Act, 2013, and their growing implications for Company Secretaries in employment as well as in practice. The session focused on regulatory expectations, recurring compliance failures, interpretational challenges, and the expanding accountability of governance professionals in the contemporary corporate regulatory environment. The discussion reflected a clear shift in enforcement approach and underscored the need for heightened diligence, independent judgment, and proactive compliance oversight.

### **Evolution of the Role of the Company Secretary**

The role of the Company Secretary has undergone a profound transformation over the decades. From being historically perceived as a clerical functionary, the position has evolved into that of a Key Managerial Personnel under the Companies Act, 2013, entrusted with statutory recognition and defined responsibilities. Section 205 of the Act expressly mandates that the Company Secretary shall ensure that the company complies with applicable Secretarial Standards and other laws. This statutory duty is no longer theoretical; regulators are increasingly enforcing it through adjudication proceedings, thereby reinforcing the Company Secretary's position as a principal officer within the compliance architecture of the organisation.

### **Shift in Enforcement Philosophy**

A significant theme of the webinar was the changing regulatory mindset. Authorities are no longer treating procedural lapses as minor irregularities. Even technical or seemingly trivial non-compliances—such as improper numbering of minutes, failure to circulate draft minutes, non-recording of directors' disclosures, incomplete statutory registers, delay in dividend transfers, or non-adherence to Secretarial Standards—are attracting penalties. The emerging enforcement pattern demonstrates that regulators expect meticulous compliance and are unwilling to accept routine explanations such as oversight, clerical error, or lack of management support.

### **Enforceability of Secretarial Standards**

Particular emphasis was placed on the enforceability of Secretarial Standards. What were once considered procedural best practices have now become binding governance benchmarks. Adjudication orders have clarified that compliance with Secretarial Standard-1 and Secretarial Standard-2 is mandatory, and the Company Secretary bears a direct statutory obligation to ensure adherence. Violations relating to conduct of meetings, recording of minutes, or distribution practices during general meetings have resulted in personal consequences, highlighting that governance lapses, even at the micro level, may lead to regulatory action.

## **Intersection of Financial Reporting and Corporate Law Compliance**

The discussion also addressed a recurring misconception regarding the demarcation of responsibilities between the Chief Financial Officer and the Company Secretary. While accounting entries and financial computations may fall within the finance domain, statutory disclosures in financial statements—such as related party transactions, loans and investments, charges, CSR obligations, dividend compliance, and directors' responsibility statements—are intrinsically linked to corporate law provisions. The Company Secretary cannot treat financial statements as external to their governance function, as the Board's Report and statutory declarations rely upon accurate legal compliance disclosures.

## **Liability of Practicing Company Secretaries**

From the perspective of practicing professionals, the webinar analysed instances where Secretarial Auditors were subjected to regulatory scrutiny. Authorities have emphasised that reliance solely on management representations or statutory auditor reports does not absolve a professional from exercising independent application of mind. Regulators have, in certain cases, relied upon professional guidance notes while evaluating the adequacy of secretarial audits. This underscores the importance of maintaining detailed working papers, documentary evidence, and verification records before issuing certifications.

## **Recurring Compliance Gaps Leading to Adjudication**

The session identified recurring compliance gaps that frequently lead to adjudication proceedings. These include deficiencies in board and general meeting procedures, improper CSR fund transfers or utilisation, inadequate related party transaction approvals and disclosures, lapses in maintaining statutory registers, delayed filings, and inaccuracies in annual return declarations. Notably, many of these defaults arise not from complex legal ambiguities but from operational negligence, inadequate internal controls, or insufficient review mechanisms.

## **Governance Leadership Beyond Routine Compliance**

A broader governance message resonated throughout the discussion: the Company Secretary must not reduce the role to routine filing and documentation. The modern governance framework expects the professional to actively participate in board deliberations, raise compliance concerns candidly, and ensure that statutory obligations are not compromised. Independent judgment, clarity of communication in the boardroom, and the ability to sensitise management about regulatory developments are now indispensable attributes in a regime marked by data-driven scrutiny and heightened regulatory vigilance.

## **Practical Risk Mitigation Measures**

To mitigate exposure to adjudication risk, the panel recommended implementation of practical safeguards such as comprehensive compliance checklists, maker-checker mechanisms, periodic internal compliance audits, and circulation of regulatory updates to management. Professionals were cautioned against over-reliance on automated drafting tools without thorough review, as minor typographical or documentation errors can have disproportionate

consequences in enforcement proceedings. Attention to detail, structured review processes, and continuous professional updating were identified as critical components of effective compliance management.

### **Conclusion**

The evolving landscape of adjudication under the Companies Act, 2013 reflects a decisive shift toward stricter compliance enforcement and enhanced accountability of governance professionals. The Company Secretary today occupies a central position within the corporate compliance framework, with statutory duties that extend beyond procedural formalities to substantive governance oversight. As regulatory expectations continue to rise, professional diligence, independent application of mind, and proactive compliance leadership will determine not only individual liability exposure but also the integrity and resilience of corporate governance systems.

To stay informed or access the webinar recording, visit the YouTube channel:

 **“Decoding Corporate Laws with Mehta & Mehta**