



## **Does a Stay on a Jail Sentence Stop a Director's Disqualification?**

Understanding the difference between suspension of sentence and stay of conviction under Sections 164 and 167 of the Companies Act, 2013

### **I. The Question**

Consider a simple situation. A director of a company is convicted by a criminal court and sentenced to eight months in jail. He files an appeal. The appellate court suspends his sentence and releases him on bail, so he does not go to jail at all. The next week, the company has a board meeting, and he arrives expecting to take his usual seat.

Can he? Most people would say yes. The court has granted him relief, he is not in jail, and his appeal is still pending. Surely everything else is on hold too. The answer, however, is no. The reason is a distinction well known to criminal lawyers but easy to miss for those of us who work mainly on the corporate side: suspending a sentence and staying a conviction are two different things, and the Companies Act, 2013 attaches its consequences to one of them and not the other. This article explains that difference, and why it decides the question.

### **II. Two Different Kinds of Relief**

When a convicted person files an appeal, he usually applies for relief so that he need not go to jail while the appeal is pending. That relief comes from Section 430 of the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced Section 389 of the Code of Criminal Procedure, 1973 with effect from 1 July 2024 and carries forward the same idea. Its wording is important: the appellate court may, for reasons recorded in writing, order that the execution of the sentence or order appealed against be suspended, and that the appellant, if he is in custody, be released on bail.

Notice what is being suspended: the execution of the sentence. A sentence is something that has to be carried out, and the court is saying it need not be carried out for now. A conviction is different. It is simply the court's finding that the person is guilty. It is not carried out; it exists on the record, and it stays there unless the appellate court finally sets it aside or specifically stays it. So after an ordinary order suspending the sentence, the director is out of jail, but in the eyes of the law he remains a convicted person who has been sentenced to imprisonment. The finding of guilt is untouched.

### **III. What the Companies Act Requires**

Section 164(1)(d) says that a person is not eligible to be appointed as a director if he has been convicted by a court of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for not less than six months, and five years have not passed since the expiry of that sentence. The proviso goes further: if the sentence is seven years or more, the person cannot be appointed as a director in any company at all.

Section 167(1)(f) deals with a director already in office. The office becomes vacant if he is convicted of any offence, whether involving moral turpitude or otherwise, and sentenced to imprisonment for not less than six months. Separately, Section 167(1)(a) provides that the office becomes vacant if the director incurs any disqualification under Section 164.

The key words in both provisions are the same: “convicted ... and sentenced”. The Act is concerned with the fact that a sentence has been passed. It says nothing about whether the sentence has actually been served.

### **IV. Why a Stay of the Sentence Does Not Help**

Once the two provisions are placed side by side, the answer becomes clear. A director sentenced to eight months’ imprisonment has been “sentenced” from the moment the trial court pronounces that sentence. It makes no difference whether he serves those eight months in jail or spends them at his desk on bail. Suspension of the sentence under Section 430 of the BNSS does not cancel the conviction and does not wipe out the sentence; it only postpones the carrying out of the sentence. Since the conviction and the sentence both continue to exist, Sections 164(1)(d) and 167(1)(f) continue to operate. The disqualification stands. Bail does not save the seat.

This is not a technicality. If a director continues to act after his office has become vacant, Section 167(2) makes him punishable with a fine of not less than one lakh rupees, extending up to five lakh rupees, and the company is left with board decisions taken by a person not entitled to sit at the table.

### **V. What Does Help: A Stay of the Conviction**

There is, however, a second kind of relief, and this is where a convicted director does have a remedy. Courts in India have accepted for many years that the appellate court’s power extends not only to the sentence but, in a fit case, to the order of conviction itself. If the conviction is stayed, then for the period of the stay there is no conviction on which Section 164(1)(d) or Section 167(1)(f) can operate. The foundation is removed, and the disqualification cannot stand on it.

The leading judgment on this point is itself a company law matter, which makes it especially useful here. In *Rama Narang v. Ramesh Narang*, the appellant had been convicted under the Indian Penal Code and had obtained an interim order from the Delhi High Court. The question

was whether he could still continue as Managing Director, given Section 267 of the Companies Act, 1956, which prohibited the appointment or continuance of any person convicted of an offence involving moral turpitude.

The Supreme Court explained the difference clearly. What Section 389(1) of the Code ordinarily suspends is the execution of the sentence or order appealed against; it is the sentence, the fine, the compensation or the order of probation that are capable of being executed. The order of conviction does not disappear simply because an appeal has been filed, and reading the disqualification provision as applying only to a “final” conviction would defeat the very purpose for which it was enacted. But the Court also held that the appellate court does have the power to stay the order of conviction itself, and added a caution worth remembering: a person seeking such a stay in order to escape a statutory disqualification must tell the court plainly that this is why he wants it. No one, the Court said, can be allowed to play hide and seek with the court by seeking a general suspension while hiding the real purpose behind it.

Later judgments have built on this. In *Ravikant S. Patil v. Sarvabhuma S. Bagali*, a three-Judge Bench held that the power to stay a conviction should be used only in exceptional cases where a refusal would cause injustice and irreversible consequences, and that such a stay operates from the date it is granted. In *Navjot Singh Sidhu v. State of Punjab*, the Court made the procedure explicit: the applicant must specifically point out the consequences that will follow if the conviction is not stayed, failing which the stay cannot be obtained.

The practical position for a director is therefore straightforward. An ordinary application for bail and suspension of sentence will not protect his office. He must specifically ask for a stay of the conviction, place the disqualification under Sections 164 and 167 before the court as the consequence he wants to avoid, and persuade it that his case is exceptional. Bail is comparatively common; a stay of conviction is not.

## **VI. A Twist in the Statute**

There is one more layer to this, and it often surprises practitioners. Before the Companies (Amendment) Act, 2017, the two sections said opposite things. The proviso to Section 164(3) provided that the disqualifications under clauses (d), (e) and (g) would not take effect for thirty days from conviction, and where an appeal was filed in that window, until seven days after its disposal. The proviso to Section 167(1)(f) was blunt to the contrary: the office shall be vacated even if the director has filed an appeal. A convicted person thus got breathing space against fresh disqualification but lost his existing seat at once. The Company Law Committee pointed out the inconsistency, and the 2017 Amendment, effective 7 May 2018, substituted both provisos. The two did not become identical, however. In effect, they exchanged places.

The substituted proviso to Section 164(3) now says that the disqualifications under clauses (d), (e) and (g) shall continue to apply even if an appeal or petition has been filed against the order of conviction or disqualification. The substituted proviso to Section 167(1)(f) now says that the office shall not be vacated for thirty days from the date of conviction; where an appeal is filed

within those thirty days, until seven days after its disposal; and where a further appeal is filed within seven days, until that too is disposed of.

Read together, this produces an unusual result. A director sentenced to six months who appeals within thirty days keeps his office under the proviso to Section 167(1)(f) while the appeal runs its course, yet is at the same time disqualified under Section 164(1)(d), that disqualification expressly surviving the appeal. He continues to sit on one board while being ineligible for appointment or reappointment anywhere, including in that same company when his own term comes up for renewal.

In my view this is not as illogical as it first appears. The scheme makes sense if one reads it as drawing a line between entry and exit. Parliament is not willing to let a convicted person walk into a boardroom merely because an appeal is pending, but is willing to let a sitting director keep his chair while the appeal is completed, so that a person who ultimately succeeds does not lose an office he should never have lost. Entry is barred; exit is postponed. The policy is sound, even if the drafting could have been clearer.

One further point deserves attention. Both sections are triggered only where the sentence is imprisonment for not less than six months. A conviction resulting only in a fine, or in a shorter sentence, attracts neither. The length of the sentence, a matter for the sentencing court, therefore quietly decides whether a five-year corporate disqualification follows or nothing follows at all.

## VII. Case Laws

**Rama Narang v. Ramesh Narang** (1995) 2 SCC 513 (*Supreme Court of India, judgment dated 19 January 1995*)

**Crux of the judgment:** What an appellate court ordinarily suspends under Section 389(1) of the Code of Criminal Procedure, 1973 is the execution of the sentence, not the conviction. The order of conviction does not disappear merely because an appeal has been filed, and a company law disqualification provision cannot be read as applying only to a “final” conviction without defeating its object. The appellate court does, however, have power to stay the order of conviction itself, and a person seeking such a stay to escape a statutory disqualification must disclose that purpose to the court.

**Ravikant S. Patil v. Sarvabhuma S. Bagali** (2007) 1 SCC 673 (*Supreme Court of India, three-Judge Bench*)

**Crux of the judgment:** The power to stay a conviction is to be exercised only in exceptional circumstances, where a failure to stay would cause injustice and irreversible consequences. A mere suspension of sentence does not make a disqualification inoperative; only a specific order staying the conviction does so, and it takes effect from the date it is granted.

**Navjot Singh Sidhu v. State of Punjab** (2007) 2 SCC 574 (*Supreme Court of India, judgment dated 23 January 2007*)

**Crux of the judgment:** An appellate court can suspend or stay an order of conviction, but the person seeking the stay must specifically draw the court's attention to the consequences that will follow if it is not stayed. Unless that is done, an order staying the conviction cannot be obtained.

## VIII. Conclusion

The answer to the question in the title is no, subject to one important qualification. A stay on the jail sentence does not stop a director's disqualification, because the Companies Act, 2013 fastens its consequences to the fact of having been convicted and sentenced, not to the serving of the sentence. Bail and suspension of execution leave the conviction standing, and while it stands, Sections 164(1)(d) and 167(1)(f) continue to do their work. The qualification is that a stay of the conviction itself, specifically applied for and specifically granted, does interrupt the disqualification, because it removes the very fact on which those sections operate.

In my opinion this is the correct position and should not be diluted. Disqualification under Section 164 is not a punishment. It is a test of fitness, similar to the eligibility conditions any regulated profession imposes on its members. Bail, by contrast, is granted for reasons that have nothing to do with whether a person is fit to manage other people's money, such as the strength of the appeal or the time it is likely to take. It would be strange if a decision taken purely on custodial considerations automatically restored a person to a position of trust in a company. By requiring a separate application for stay of conviction, in which the disqualification must be specifically pleaded, the law compels the appellate court to consider the corporate consequence as a question in its own right. Seen this way, the caution in *Rama Narang* against playing hide and seek with the court is not merely a reprimand; it is an essential safeguard.

For those advising boards, three practical points follow. First, when a director says a court has "stayed" his matter, never accept that at face value; read the order and find out whether what was stayed was the sentence or the conviction. Second, if only the sentence has been suspended, the thirty-day and post-appeal timelines under the proviso to Section 167(1)(f) become important and must be tracked, not assumed. Third, a director may hold office in more than one company, and Sections 164 and 167 may not give the same answer for each of them at the same time. In this area, the difference between a suspended sentence and a stayed conviction can come down to a single word in a court order, and that single word decides the entire question.

## References

1. Rama Narang v. Ramesh Narang, (1995) 2 SCC 513 (SC).
2. Ravikant S. Patil v. Sarvabhuma S. Bagali, (2007) 1 SCC 673 (SC).
3. Navjot Singh Sidhu v. State of Punjab, (2007) 2 SCC 574 (SC).
4. Companies Act, 2013, ss. 164(1)(d), 164(3), 167(1)(a), 167(1)(f), 167(2), as amended w.e.f. 7 May 2018.
5. Bharatiya Nagarik Suraksha Sanhita, 2023, s. 430 (formerly s. 389, CrPC, 1973).
6. Companies Act, 1956, s. 267.