BEST ANSWER - CASE STUDY - JULY, 2026

Overview of the Dispute

XYZ Private Limited proposed a fast-track merger under Section 233 of the Companies Act, 2013. For the purpose of the amalgamation, the Company filed a declaration in Form CAA-11 certifying that the scheme had been approved by the requisite majority of members.

Upon scrutiny, the Registrar of Companies (ROC) formed a view that the approval requirement prescribed under Section 233(1)(b), namely approval by members holding at least ninety per cent of the total number of shares, had not been satisfied. Consequently, the ROC alleged that the declaration filed in Form CAA-11 was false and initiated criminal proceedings against the Company Secretary under Sections 447 (Fraud) and 448 (False Statement) of the Companies Act, 2013.

The Company Secretary approached the High Court seeking quashing of the criminal proceedings.

Issue 1

Whether a statutory declaration filed under Section 233 based on a particular interpretation of the shareholder approval requirement can attract criminal liability under Sections 447 and 448 of the Companies Act, 2013?

A. Statutory Framework

Section 233(1)(b) – Fast Track Merger

Section 233(1)(b) requires that a scheme of merger or amalgamation be approved by members holding at least ninety per cent of the total number of shares.

Section 448 – Punishment for False Statement

Section 448 provides that if any person makes a statement in any return, report, certificate, financial statement, prospectus or other document required under the Act which:

- is false in any material particulars; and
- is made knowingly; or
- omits a material fact knowing it to be material,

such person shall be liable under Section 447.

Section 447 – Punishment for Fraud

Section 447 contemplates fraud involving:

- deceit,
- abuse of position,
- concealment of facts,
- intention to deceive,
- wrongful gain, or
- wrongful loss.

Therefore, mens rea (guilty intention) is an essential ingredient of fraud.

B. Whether Mere Incorrect Interpretation Constitutes a False Statement

The central allegation of the ROC is that the declaration in Form CAA-11 was incorrect because the statutory threshold of ninety per cent approval was not achieved.

However, every incorrect statement does not amount to a "false statement" within the meaning of Section 448 unless it is shown that it was knowingly false or omitted a material fact with knowledge of its materiality.

For invoking Section 448, the prosecution must establish:

1. The statement was materially false; and
2. The person making the statement knew it to be false at the time of making it.

The facts indicate that the petitioner adopted an interpretation that the 90% requirement was to be calculated based on members present and voting. The declaration was filed on the basis of that interpretation and the records available with the company. Where the dispute essentially concerns interpretation of a statutory provision, the element of deliberate falsity becomes difficult to establish.

C. Whether Section 447 (Fraud) is Attracted

Section 447 is attracted only where there is fraud involving deceit, dishonest intention, wrongful gain, wrongful loss, or abuse of position.

In the present case:

- No allegation has been made that the petitioner derived any wrongful gain.
- No material has been placed to show wrongful loss caused to any stakeholder.
- There is no allegation of fabrication of voting records.
- The complaint primarily proceeds on the basis that the legal interpretation adopted by the petitioner was incorrect.

Even assuming that the interpretation of Section 233 ultimately turns out to be erroneous, an erroneous interpretation by itself does not amount to fraud. Fraud requires a higher threshold of culpability than mere negligence or mistake.

Santosh Kumar Lahoti v. The Registrar of Companies, 2024 SCC OnLine Cal 3220	*The Calcutta High Court observed that the dispute regarding the computation of the 90% approval requirement under Section 233 was essentially one of statutory interpretation. Even if the Registrar disagreed with the interpretation adopted by the company, such disagreement by itself could not justify criminal prosecution under Sections 447 and 448.*

The present dispute primarily concerns the interpretation of Section 233(1)(b) and therefore, in the absence of allegations demonstrating the essential ingredients of Sections 447 and 448, continuation of criminal proceedings would amount to abuse of the process of law.

D. Absence of the Principal Offender

A significant circumstance is that:

- the company which filed the statutory declaration has not been prosecuted; and
- the directors and persons controlling the affairs of the company have not been arraigned as accused.

The declaration was filed on behalf of the company. Proceeding solely against the Company Secretary while excluding the company and other responsible officers weakens the prosecution case, particularly when the alleged act arose out of a corporate decision and statutory filing.

Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd.	*The High Court relied upon the principle in Aneeta Hada v. Godfather Travels & Tours Pvt. Ltd., holding that where the alleged offence is attributable to a company, prosecution of its officer alone is ordinarily not maintainable without impleading the company itself.*

E. Whether the Matter Should Proceed to Trial

While the ROC argues that mens rea can be determined only during trial, courts exercising jurisdiction to quash proceedings are entitled to examine whether the complaint, even if accepted at face value, discloses the essential ingredients of the alleged offences.

If the complaint merely alleges an incorrect certification without averments demonstrating knowledge of falsity or fraudulent intent, continuation of criminal proceedings would amount to misuse of the criminal process.

Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749	*The Supreme Court held that summoning an accused is a serious matter and criminal law should not be set into motion as a matter of course. Where the complaint does not disclose the essential ingredients of the alleged offences, the High Court is justified in quashing the proceedings.*

Conclusion on Issue No. 1:

NO – A statutory declaration filed under Section 233 based on a bona fide interpretation of the shareholder approval requirement does not automatically attract criminal liability under Sections 447 and 448 of the Companies Act, 2013.

Key Legal Principles

- **A company officer cannot ordinarily be prosecuted alone** for an offence attributable to the company where the company itself is not arraigned as an accused (unless exceptional circumstances exist).
- **Section 448 (false statements)** requires careful examination of whether there was a knowingly false statement; a mere interpretational dispute is not sufficient.
- Where there is disagreement regarding compliance with **Section 233**, the appropriate statutory remedy may be to proceed under the normal merger provisions rather than immediately invoking criminal prosecution.

To invoke Sections 447 and 448, the prosecution must establish that the petitioner knowingly made a false statement and acted with fraudulent intent. A genuine interpretational dispute regarding the computation of the 90% approval threshold, without evidence of deliberate falsity, deceit, wrongful gain or wrongful loss, is insufficient to constitute offences under Sections 447 and 448.

Issue 2

What is the extent of due diligence expected from a Company Secretary while authenticating statutory filings under the Companies Act, 2013?

A. Duties of a Company Secretary

A Company Secretary is recognised as a Key Managerial Personnel under Section 2(51) and Section 203 of the Companies Act, 2013.

While authenticating statutory filings, a Company Secretary is expected to:

- verify corporate records;
- examine resolutions and approvals;
- ensure procedural compliance;
- exercise professional care and diligence; and
- certify documents on the basis of information reasonably available.

The position carries a high degree of professional responsibility.

B. Standard of Care Expected

The standard expected is one of:

- reasonable professional diligence;
- good faith verification; and
- prudent examination of available records.

A Company Secretary is not expected to guarantee the correctness of every legal interpretation where multiple interpretations are reasonably possible.

Liability may arise where:

- records are knowingly ignored;
- material facts are deliberately concealed;
- false information is consciously certified; or
- certification is given without any verification whatsoever.

C. Application to the Present Facts

The petitioner:

- signed the declaration in his official capacity;
- relied upon corporate records and voting results;
- certified compliance based on his understanding of Section 233.

The complaint does not disclose:

- fabrication of records;
- suppression of voting data;
- personal benefit obtained by the petitioner; or
- any material indicating conscious knowledge of falsity.

Sunil Bharti Mittal v. CBI, (2015) 4 SCC 609	*The Supreme Court held that criminal intent cannot be attributed merely because a person occupies a managerial position. There must be sufficient material showing active involvement or the existence of the necessary mens rea before criminal prosecution can be sustained.*

Conclusion on Issue No. 2:

A Company Secretary is expected to exercise reasonable professional care, diligence and verification while authenticating statutory filings. However, the law does not impose criminal liability merely because a legal interpretation adopted by the Company Secretary is later found to be incorrect.

Criminal liability arises only where there is evidence of conscious falsity, deliberate suppression of material facts, recklessness amounting to fraud, or dishonest intention.

FINAL DECISION

Applying the principles laid down, the allegations contained in the complaint, even if accepted in their entirety, do not disclose the essential ingredients of the offences punishable under Sections 447 and 448 of the Companies Act, 2013. The complaint fails to establish that the petitioner knowingly made a false statement or acted with fraudulent intent. The dispute essentially arises from a bona fide interpretation of the statutory requirement under Section 233(1)(b), which cannot, in the absence of mens rea or deliberate falsity, be converted into a criminal offence. Accordingly, the prosecution is liable to be quashed.