ANALYSIS OF COMPANY LAW AMENDMENTS: AS A PROGRESSIVE STEP TOWARDS BETTER CORPORATE GOVERNANCE

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ABSTRACT

This paper seeks to critically analyse the role of various amendments to the Companies Act, 2013 (hereinafter referred to as "the Act"), namely the Companies (Amendment) Act, 2015 and the Companies (Amendment) Act, 2017, and allied laws in promoting ease in doing business. In view of increasing emphasis on adherence to norms of good corporate governance, Companies Law assumes an added importance in the corporate legislative milieu, as it deals with structure, management, administration and conduct of affairs of Companies.[1] The enactment of the Companies Act, 2013, was the most significant reform which introduced various changes in the company law in India. However, the implementation of the same was met with various difficulties. In order to overcome them, various amendments were made in the Act. These amendments thus focus upon the flaws and faults which were observed in the bare text of the Act and were aimed at widening and enlarging the scope of the provisions of the Act, to make company law free from ambiguities. Thus, the authors have attempted to explain the present position of the amended provisions in this paper. This

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paper is thus an analysis of the amendments that are aiding the businesses by adopting a liberal and progressive corporate governance mechanism.

1. INTRODUCTION

The Companies Act, 1956 underwent a huge change with the introduction of the Companies Act, 2013, whereby the latter instead of repealing all the provisions of the 1956 Act, added new concepts like One Person Company (OPC), women directors, Corporate Social Responsibility (CSR), class action etc. The establishment of National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) were two other additional features. This Act was a step forward by the Indian legislature to bring company law of India in consonance with the global standards. Greater emphasis was placed on disclosures, accountability, investor protection, and corporate governance.

Yet, there were a number of discrepancies in the application of the new Act and the Parliament of India was constrained to bring two new amendments in the Act within a short span of four years. These were the amendments of 2015 and 2017. Both these amendments have tried to cater to various subjects which were quite ambiguous and needed strict interpretation for the application of the company law jurisprudence. The Act consists of 470 sections, of which 283 sections and 22 sets of rules corresponding to such sections have so far been brought into force in two phases – one on 12th September, 2013 and the other on 1st April, 2014.

Due to such hurried implementation of the Act, many loopholes and ambiguous provisions remained unattended, which created massive

difficulties and interpretational issues for the corporate world. The Rules that were introduced to supplement the Act were an attempt to rewrite the Act itself and did a poor job in stitching together the gaps left in the Act. The Rules created various inconsistencies with the provisions of the Act, and this left the business environment baffled at the thought of how to cope up with the new piece of poor legislation. The changes which were brought to the Companies Act, 2013 by the 2015 and 2017 Amendments are discussed below in detail.

2. THE COMPANIES (AMENDMENT) ACT, 2015

The Ministry of Corporate Affairs (MCA) came up with a clarification spree and accidentely assumed the role of the lawmaker instead of a subsidiary body responsible for the practical implementation of the existing law. The period was a saga of circulars and notifications passed by the MCA to clear the mess created by the earlier notifications and circulars. Thus, the Act instead of facilitating the ease of doing business created an atmosphere of ambiguity and chaos. The same was also evident by India's fall in position from 140 to 142 out of 189 counties assessed under the World Bank's report called 'Doing Business 2015'.[1] In order to address the issues in regard to practical applicability of the Act and in accordance with the suggestions made by various stakeholders, the government decided to amend certain provisions of the Act with an objective of facilitating the ease in doing business. It thereby introduced

[1] THE WORLD BANK, http://www.doingbusiness.org/reports/global-reports/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB15-Chapters/DB15-Report-Overview.pdf.

the Companies (Amendment) Bill, 2014 which received the approval of both Houses of the Parliament, and then the assent of President of India on May 25, 2015.

The various amendments which facilitated the ease in doing business and their impact on the corporate governance in India are as follows:

1) Removal of minimum paid up share capital: The definition of "private company" and "public company" stipulated under Section 2(68) and 2(71) respectively, were correspondingly amended to omit the words "of one lakh rupees or such higher paid-up share capital" and the words "of five lakh rupees or such higher paid-up capital". However, the Sections 2(68) and 2(71) retained the words "minimum paid-up share capital as may be prescribed". Thus, the amendment removed the previously stipulated paid-up share capital without taking away the right of the central government to prescribe a minimum capital requirement in the future and at the same time it gave a boost to the new business ventures.
2) Removal of compulsion of common seal: The Act by various sections made it mandatory for the company to have a common seal. However, the Companies (Amendment) Act, 2015 removed the requirement of common seal by amending various sections in the principal act. For instance, in Section 9 (which prescribed the effect of registration) the words "and a common seal" were omitted; and Section 12(3)(b) was substituted by "(b) have its name engraved in legible characters on its seal, if any". Further, Section 22(2) (which deals with execution of

bill of exchange) and Section 46(1) (which deals with certificate of shares) of the Act were amended to prescribe that the authorization in regard to the companies not having a common seal for the above mentioned two sections shall be made by two directors or by a director and the company secretary (where appointed). This removal of a procedural requirement may go a long way in ensuring the smooth functioning of business.

Thereafter, the proviso to Rule 5(3) of the Companies (Incorporation) Rules, 2014 (which dealt with shares that are not in dematerialized form) was also amended to provide that in case of a company not having a common seal, the share certificate shall be signed by two directors, or by a director and company secretary (where appointed). In case of a one-person company not having a common seal, the share certificate shall be signed by the person in whose presence the seal is required to be fixed.[2]

3) Removal of requirement of declaration of commencement of business: Section 11 of the Act was omitted. It prescribed that in order to commence the business or exercise borrowing power, the director of the company having a share capital, was required to file a verified declaration with the ROC (Registrar of Companies). The declaration provided that the requisite value of shares required to be paid by the subscriber and the criteria of minimum paid-up share capital (also removed by virtue of this amendment) has been satisfied along with verification of its registered office. By the virtue of this omission, the

[2] Companies (Incorporation) Rules, 2014, G.S.R 250(E).

restriction on the commencement of business by the registered companies has been eliminated. However, despite the complete omission of Section 11, its effect has not been eliminated as no amendment has been made to Section 248 which prescribes that the name of the company shall be removed, if the members do not subscribe to the shares within stipulated time and "a declaration under sub-section (1) of Section 11 to this effect has not been filed".[3]

Thus, while interpreting the Section 248, reference to Section 11 is required to be ignored. Post-amendment, this reference has reduced the effect of omission of Section 11 to the business, by prescribing that the companies can commence operation after receipt of certificate of incorporation, however, they still have to ensure that agreed subscription amount is paid by the subscribers, within 182 days of incorporation.

4) Prohibition of public inspection of certain board resolutions: Section 117(3)(g) has been amended to remove the requirement of making available by the companies, the board resolutions on the matters mentioned in the Section 179(3). This includes matters related to buying back, issuance of securities, borrowing or investing money, approving financial statements, granting loans, acquisition of controls etc. However, the companies are still required to carry out the fillings in respect of these matters. The amendment has facilitated doing of business for companies by not only providing them the liberty to not expose its regular business operations to general public, but also by

[3] Companies Act, 2013, No. 18, Acts of Parliament, 2013.

reducing the formalities and saving time which can be invested in the principal business activities.

5) Regulation of the transfer of unclaimed dividend and shares to investor education and protection fund: Section 124 of the Act stipulates that where dividend is declared, but has not been paid or claimed within 30 days to or by any shareholder entitled to the payment, the company shall within seven days from the date of expiry of such period transfer the unpaid dividend to the Unpaid Dividend Account.[4] The 2015 Amendment amended Section 124(6) to state that where the dividend has not been claimed or paid for seven consecutive years or more, the same shall be transferred in the name of Investor Education and Protection Fund. Further, an explanation was added to the proviso of the amended sub-section providing that if the dividend is claimed or paid for any year during the said period of seven consecutive years, then such shares shall not be transferred to the Investor Education and Protection Fund. Overall, the provision ensures the use of the dividend in just, equitable, and transparent manner.

6) Reporting by Auditor in case of Fraud: By the Company Law (Amendment) Act, 2015, the auditors of the company are made responsible to inform the central government about the frauds which have taken place in the company or in its name, or if the auditors have a reason to believe that there are any fraudulent activities taking place in the company. The enabling provision of Section 143(12) prescribes

[4] *Id.*

a threshold limit, above which, the fraud is to be disclosed to the central government. The auditors who have reported frauds to the Board or to the audit committee, but have not disclosed the same to the central government are also required to disclose the details in the Board's report.[5]

The Amendment ensures that there must be a threshold limit above which the fraud must be brought to the notice of the central government, and the auditors are assigned this responsibility. This provides for a quicker relief, whether the fraud has been committed or not.

7) Audit Committee empowered to give omnibus approvals in case of related party transactions: With the 2015 Amendment, the audit committee may, subject to prescribed conditions, give omnibus approvals for related party transactions as provided under Section 177(4). With such approvals, the decisions can be taken faster, implemented at the earliest, and the results follow accordingly, where the audit committee is satisfied, after the fulfilment of certain conditions.

8) Loan to Directors: According to Section 185, a company can give loans, guarantees, and securities to the directors or the person(s) in whom the interest of the director lies. The 2015 Amendment has added certain additional exceptions, according to which, nothing contained in Section 185 shall apply to loans and guarantees given by the holding company to its subsidiary company. Same applies to any

[5] U.S. SECURITIES AND EXCHANGE COMM'N, https://www.sec.gov/news/pressrelease/20.

guarantee or security by a holding company to a bank or any financial institution, provided that the loan so taken in the name of the subsidiary company is for the principal business of such company.

By excluding the loans, guarantees or securities given or taken for the subsidiary company, the holding company is relieved from the tedious processes. This ensures ease of doing business for both companies.

9) Related party transactions: Earlier, when a company entered into an agreement with a related party, it had to fulfil certain conditions and the Board of Directors had to pass a special resolution at the board meeting to that effect in accordance with Section 188.

However, with the 2015 Amendment, two changes were brought in this section. Firstly, now the Board of Directors may pass a simple resolution instead of a special resolution. Secondly, where there is a related party transaction between a holding company and a fully-owned subsidiary company, their accounts can be placed before the shareholders in the general meeting for approval in a consolidated manner.

By virtue of these changes, where a company is regularly performing its business with a certain related party, both the parties are allowed to carry out day-to-day tasks with much ease. The word 'may' is directory in nature, i.e., where the company feels to discuss the matter before entering into any agreement, it is free to do so.

10) Special Courts: The Amendment Act of 2015 has restricted the power of special courts, established by the central government by virtue of

Section 435, to the trying of cases where the punishment of offence is two years or more. For the offences punishable with imprisonment of two years or less, the Metropolitan Magistrate or a Judicial Magistrate of First Class is empowered to try cases, as under the present company law or any other previous company law.

By limiting the power of the special court, it can focus on heinous and grave offenses, rather than wasting its expertise and valuable time on petty cases.

Section 436 lays down the jurisdiction for the special courts, which derives its powers and limitations from the provisions of Section 435.

3. THE COMPANIES (AMENDMENT) ACT, 2017

The Companies (Amendment) Act, 2015 enabled India to take a step ahead in the "Ease of Doing Business" rankings where after 2015 India's position improved by four places. However, the Indian Government continued to receive recommendations that the principal act needed further amendments. The Hon'ble Minister of Corporate Affairs, at the time of consideration of the amendments in the Rajya Sabha in May 2015, underscored some of these concerns. It was decided to constitute a committee in which the representatives of the Company Secretary institute, the CA institute, and the Department were to find place. A broad-based Committee, was decided to be constituted to go into this whole question for the next few months and to figure out as to where the 'shoe pinches'. In view thereof, the Ministry of Corporate Affairs (the "MCA") constituted the Companies Law Committee (the "CLC" or the

"Committee") under the chairmanship of the Secretary, Ministry of Corporate Affairs vide an office order dated 4th June 2015.[6]

Thereafter, based on the recommendations received from various stakeholders the CLC prepared a report which was made available to the general public to comment on. Based on the final report, the Companies (Amendment) Bill, 2017 was passed by Lok Sabha and Rajya Sabha on July 27, 2017 and December 19, 2017 respectively. It was published in the official gazette on January 3, 2018. The various changes, brought by this amendment, which facilitated the ease in doing business and their impact on the corporate governance in India are as follows:

1) Definition of small company: Section 2(85), which denies small companies, was amended to increase the threshold limit of maximum paid-up share capital from five crore rupees to ten crore rupees, and the prescribed turnover amount has been increased from twenty crore rupees to one hundred crore rupees. Thus, by increasing the threshold limit, the legislature has made it easy for more companies to avail the benefits that are given to small companies.
2) Key Managerial Personnel: The definition of key managerial personnel given in Section 2(51) was amended to include any officer at a post up to one level below the director.[7] Thus, it removed hindrance in working of business in absence of directors.

[6] MINISTRY OF CORPORATE AFFAIRS, REPORT OF THE COMPANIES LAW COMMITTEE (2016).
[7] Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, G.S.R 249(E).

3) Increase in the time period for declaration of registered office**:** The time frame for giving notice of situation or change in registered office has been increased from 15 days of incorporation or such change to 30 days under Section 12 of the Act.

4) Authentication of Documents: Section 21 of the Act before the amendment prescribed authentication of a document or proceeding by any key managerial personnel or an officer of the company duly authorized by the Board in this behalf. However, post 2017 Amendment, all employees of the company have been empowered to sign documents and contracts on behalf of the company. The same is a progressive step towards business liberalization and it waters down the accountability provided in the existing provision.

5) Private Placement of Shares: Section 42 of the principal act dealt with a private placement of shares and was completely substituted. The new section has brought the following changes: a) the requirement of a letter of private placement has been substituted by the issue of private placement offer and application in the prescribed form to identified persons without the right of renunciation; and, b) there is no need of filling private placement of offer letter. The new section thereby ensures ease in arrangement of capital by simplifying the procedure of private placement of shares.

6) Issuance of shares at discount: Section 53(1) of the Act prohibited the issue of shares at a discount except in case of sweat equity shares. The Amendment Act of 2017 provides that company may issue shares at a discount to its creditors when its debt is converted into shares in

pursuance of any statutory resolution plan, or debt restructuring by the RBI under the RBI Act, 1934 or the Banking (Regulation) Act, 1949. The addition of another exception to the general prohibition will aid the company as it will enable the company to reduce its liability and at the same time, increase its capital subject to the consent of creditor on the same.

7) Sweat equity shares: Section 54(1)(c) has been omitted which elucidated that companies could issue sweat equity shares only after one year of commencement of business; thus, post-amendment, newly incorporated companies are also eligible to issue sweat equity shares of a class of shares already issued. This is a welcoming change which will facilitate the startups in arranging investment.

8) Diversified modes of dispatch of notice of the issue of shares: Section 62(2) of the Act prescribed that the notice for the issue of shares can only be circulated through electronic mode, registered post or speed post. However, the amendment has relaxed this provision to include courier or any other mode of dispatch which is capable of ensuring a proof of delivery.

9) Provisions pertaining to deposit: Section 73(2)(d) has been amended to abolish the requirement of deposit insurance, and to relax the lifetime ban on a company defaulting repayment of deposit accepted or interest thereon. Instead, a cooling period of five years commencing from the date of clearance of default was provided for. This has increased the chances of revival of a company, which had defaulted for the first time.

10) Punishment for contravention of Section 73 or 76: According to Section 76A of the Act, the threshold limit of punishment has been reduced to twice the amount of deposit accepted by the company or one crore rupees, whichever is less in comparison to the earlier stipulated fixed sum of one crore rupees. Now, offences punishable with fine can also be compounded with offences punishable with fine and/or imprisonment. Earlier, only offences punishable with fines were compounded.

11) Registration of charge: Before the 2013 Act, the 1956 Act prescribed a list of charges which were required to be registered; the same was done away with by the 2013 Act. In the absence of a list, all the transactions covered by the wide definition of charge, which included pledges and liens, were required to be registered.

The Amendment Act of 2017 inserted a proviso to Section 77(1) providing a negative list of charges which shall be decided in consultation with RBI to which this section will not apply. This amendment is likely to cure the lacuna of 2013 Act and might once again exclude the registration of charges for pledge etc.

12) Satisfaction of Charge: The Amendment of 2017 inserted a proviso to Section 82(1), which deals with the registration of modification and satisfaction with the registrar. The proviso erroneously omitted the power of Registrar to grant an extension time of up to 300 days after the expiry of the earlier prescribed period of 30 days from the date of payment or satisfaction in full of any registered charge by straight

away prescribing the same to be made within 300 days by sending an application to the registrar in that regard.

13) Annual Return: The Amendment of 2017 has reduced the paperwork formalities for the companies by bringing various amendments to Section 92. The amendments are:

- The requirement of filling MGT-9 i.e. an extract of final returns to form a part of boards report has been omitted and instead the company is now required to upload the copy of the same on its website if any and attach its link in the Board's Report.
- An abridged form of report may be filled for one person company, small company, or such other class or classes as may be prescribed by the Central Government.
- It has omitted the requirement of disclosing indebtedness and details with respect to name, address, country of incorporation etc. of FII in the annual return of the company.
- The time limit of 270 days within which additional return can be filed on payment of additional fees has been removed and the company has been empowered to file ROC at any time.[8]

14) Omission of filing of returns for change in stake: The Amendment has omitted Section 93 whereafter, the requirement of filing a return with the ROC in respect of change in promoter's stake & submission of an advance copy of the special resolution for place of keeping register etc. has been done away with.

[8] Companies (Amendment) Act, 2017, No. 1, Act of Parliament, 2018.

15) Place of holding Annual General Meetings: The Amendment Act of 2017 has amended Section 96 to authorize the unlisted companies to hold Annual General Meeting (AGM) at any place in India (which as per the earlier regulations were required to be held at the registered office of the company) provided that all the members of such company are required to give their consent in advance either in electronic mode or in writing.[9] Thus, reducing physical constraints while conducting an AGM.

16) Extra Ordinary General Meetings: Section 100 of the Act has been amended to authorize the fully owned subsidiaries of the company which are incorporated outside India to hold the EGM anywhere in the world. This has cleared the mist in regard to the EGM in India created due to the lack of any provision in this regard in the Act or the erstwhile Act. Further the same has been mistakably reiterated in the Rules by way of an Explanation to Rule 8(3)(ix) of Companies (Management and Administration) Rules, 2014 and in the Secretarial Standard.[10]

17) Relaxation in the items restricted to be transacted through only Postal Ballot: Section 110 of the Act has been amended by 2017 amendment to allow items of business which earlier could only be passed in the general meetings of the company to be passed by postal ballet provided that an e-voting facility shall be provided by the company.

[9] *Id.*

[10] Companies (Management and Administration) Amendment Rules, 2015, G.S.R. 669(E).

The said amendment is likely to increase the shareholder's participation in meetings, discussions and casting of vote further will also save the cost of conducting the general meetings.

18) Resolutions and agreements to be filed: Section 117 has been amended to provide an exemption to banking companies from fillings resolutions and agreements in relation to passing of loans, giving of guarantee or providing security in respect of loans in the ordinary course of business. Further, the minimum fine for non filling by the company and officer has been reduced from rupees five lack to one lakh rupees and from rupees one lakh to fifty thousand and the time limit of 270 days within which resolutions and agreement could be filled has also been done away with.

19) Interim dividend: The Amendment of 2017 added clarification to the Section 123(3) where after the companies have been authorized to declare their interim dividend, after the closing of the financial year and till conduct of the AGM. However, cannot be out of surplus in profit & Loss account or out of the profit of that financial year or out of the profit generated until the quarter before the declaration.

20) Books of Account: Under Section 130(3), books of accounts can be reopened for a period of eight financial years, unless a longer period of keeping the books is directed.

21) Web Address: According to the amendment to Section 134(3)(a), web address, if any, where the annual returns of the company are displayed, shall now be a part of the Director's Report instead of Extract of Annual Returns.

22) Abridged Board's Report: As per Section 134(3A), central government may specify the format of Abridged Board's Report for One Person Companies (OPCs) and Small Companies.

23) Amendments related to CSR: As per Section 135, the tenure of threshold limit has been reduced to the end of immediately preceding financial year; whereas, earlier it was any financial year, thereby covering the lacunae of 2013 Act. It further provides that where the appointment of an independent director is not required, in such class of companies, any two directors can constitute the CSR committee.

24) Receipt of financial report along with auditor's report: According to Section 136, if agreed by 95% majority or more, when the copy of financial reports along with auditor's report is sent to the members of the company in less than 21 days, then it must be deemed to be received by all.

25) Disclosure of indebtedness: The disclosure of liabilities of the companies in its annual returns has been removed by the 2017 Amendment, thereby ensuring stability in the internal working of the company.

26) Statutory auditor: The amendment to Section 139 of the Act has removed the earlier statutory requirement of obtaining the ratification of members in regard to the appointment of auditors in every general meeting during the tenure of the auditor. The said amendment restricts the rights of shareholders to appoint or reject the appointment of auditors in every meeting. However, it would bring predictability and stability in the internal working of the company.

27) Resident Director: Section 149(3) has been amended to stipulate that for a newly incorporated company the requirement under the above-mentioned sub-section shall apply proportionately till the end of the financial year. The section earlier imposed an unconditional applicability of the requirement of having at least one director who shall be a resident of India i.e. stayed in India for a total period of not less than 182 days in the previous calendar year.

28) Deposit of amount on the appointment of directors: Section 160 of the Act was amended to exclude the independent directors and directors appointed by Nomination and Remuneration Committee from the requirement of making a directorship election deposit.

29) Disqualifications from appointment of directors: Section 164 has been amended to provide that in situations wherein the director appointed by the company has defaulted in fillings; in financial statements; in payment of interest; in repayment of deposits; in payment of interest on debentures; or in redemption of debentures etc. then such a director shall not be disqualified before the expiry of the period of six months from the date of appointment. It has further clarified that the disqualification arising due to conviction by court or order passed by a court or tribunal or conviction related to Section 188, will continue to exist irrespective of whether an appeal or petition has been filed against the conviction or disqualification.

30) Number of directorships: Section 165(1) has been amended to exclude the directorship in a dormant company from the statutory limit that

prescribes that no director can hold directorship in more than 20 companies at a time.

31) Filing requirement for DIR-11: The requirement of filing the DIR-11 form by the resigning director has been done away with by the 2017 Amendment to the Companies Act, 2013. According to Section 168(1), now it has become optional. This is a positive change as it allows a director to resign where it is out of mutual consent and not because of management issues. Hence, it also facilitates the ease of doing business.

32) Participation of director through video conferencing: A second proviso has been added to Section 173(2) to enable any director, in case where the quorum of the directors is present physically, to attend the meeting through video conferencing or any other audio visual means on any specified matter as stated under the first proviso to this sub-section. This proviso gives relief to the non-resident director to attend a meeting and discuss important issues without actually travelling to that place to attend the meeting.

33) Audit and Nomination Committee: Under Sections 177 and 178, the 2017 Amendment has amended the words “every listed company” to “every listed public company” providing relief to private companies from the provisions of Audit Committee and Nomination and Remuneration Committee. This amendment is also in tune with SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

34) Loan to Director: Section 185 of the Act has been completely substituted by a new provision which allows extending a loan to a

director or for his guarantee or security on the basis of fulfilment of certain conditions given in sub-section 2 of the newly instituted section. It also provides for a detailed explanation, in order to remove any ambiguities and includes a penalty clause to heftily penalize the defaulting company.

35) Loan and Investment by the Company: The 2017 Amendment to Section 186 excludes employees from the ambit of this section and has done away with the requirement of shareholder's approval when a company wants to give a loan, guarantee, or security for its wholly owned subsidiary. Therefore, it provides a speedy decision making process and ensures separation of control of the company from its ownership.

36) Related Party Transactions: The 2017 Amendment has also introduced two changes in this regard. The first one being that where 90% or more of the members of a company are relatives or related persons to the promoters of that company, the company cannot restraint such members from voting in a general meeting; and the second one prescribes that non-ratification of a transaction shall be voidable at the instance of the board as well as the shareholders. Earlier, this right was only available to the board.

37) Insider Trading: Section 194 and 195 of the principal act were omitted. They dealt with forwarding dealings in securities by key managerial personnel, and insider trading respectively.

38) Remuneration to Managerial Personnel: A number of amendments were made to Section 197. They are:

- The requirement of approval from central government for paying managing director or manager of a company when the total pay exceeds 11% of the profits was removed.
- Now, approval of central government will only be necessary in case of variance under Schedule V Part 1 for the appointment of personnel.
- While payment of remuneration or for waiver of recovery of excess remuneration, prior approval of banks or financial institutions, etc., is required in case the company has defaulted in the payment of the dues.
- Directors have to repay the excess remuneration, if any, within a stipulated period of two years.
- It is the duty of the auditor to report payment of remuneration in conformity with the provisions of the Act, and disclose excess remuneration, if any.

39) Conversion into a company: Any form of business which has two or more members can now be converted into a private company under the provisions of the Section 366 of the Act, which has made the process of business transfer easier.

40) Fee for filing: Section 403 and its provisos have been amended in order to lessen the strict ties of the previously existing penalties under this section. Now, delayed filing of fees will vary depending upon the number of defaults, the nature of forms to be filled and the class and category under which a company falls.

4. CONCLUSION

The rationale behind corporate governance in India as also envisaged by the Companies Act, 2013, is to empower independent directors with proper checks and balances so that such extensive powers are not exercised in an unauthorized manner but in a rational and accountable way. However, within a short span of its incorporation various stakeholders started noticing the lacunae in the hastily drafted and implemented legislation. The same is also evident by the fact that the same attracted two amendments within a span of five years. Some of those changes are a mere attempt to reduce or clarify certain existing formalities, whereas most so far appears to be a step forward in the direction of aiding smooth running of the management and affairs of the companies in the interest of stakeholders. As analysed above, most of these changes are welcome changes in the globalized corporate world of today and are an endeavour to strengthen the core corporate machinery by instilling strong corporate governance norms in a company leading to economic efficiency and higher ethical standards which will always inspire the company's management to uphold its goals of maximization of wealth of stakeholders and building good corporate repute.

The 2015 Amendment to the Act focused on enhancing ease in doing business by providing various procedural relaxations and bringing the law in tune with the global standards for corporate laws. The Amendment of 2015 also provided for stricter penalties in case of frauds to make the Act more investor or business-friendly. The amendment enabled the existing companies to function efficiently by reducing formalities and red-tapism,

but most importantly, by way of substantial amendments such as the elimination of minimum share capital requirements and common seal etc., India has taken a leap ahead in terms of encouraging aspiring businessman to set up new ventures.

The 2017 Amendment to the Act targeted the difficulties which were faced during the implementation of the Act because of stringent compliance requirements. This Amendment also focused upon the aspect of ease in doing business and promoted growth and employment. The 2017 Amendment has done the necessary task of harmonizing the Act with the accounting standards; SEBI Act, 1992 and the regulations made there under; and, the RBI Act, 1934 along with its regulations made thereunder. The Amendment of 2017 has further contributed towards rectifying the existing lacunae and inconsistencies of the principal act. The said change has improved India's business regulations in absolute terms which is envisaged by the fact that India for the first time moved into the top 100 in the World Bank's Ease of Doing Business global rankings on the back of sustained business reforms over the past several years. This was announced by the World Bank Group's latest 'Doing Business 2018: Reforming to Create Jobs' report. Last year the report had ranked India at 130.[11]

The Act already had various provisions which supported the aim of providing ease in doing business, but this was further supported and substantiated by the following two amendments. The authors are of the firm view that, these amendments are quite unambiguous and mainly

[11] World Bank, *India Jumps Doing Business Rankings with Sustained Reform Focus*, Press Release (Oct. 31, 2017).

cover the large grey areas which were not discovered earlier, but were identified only after the implementation of the Act. However, there may still be many more areas where judicial decisions and reasoned orders will fill in the gaps. However, the job of the government never comes to an end in the dynamic field of law. Whether it is to maintain global standards or to introduce amendments to the existing laws, it is all for the government to look into it and amend according to the needs of the changing time.