

Debate on Companies Bill, 2012, held in Rajya Sabha on 6-8 August 2013¹

The Upper House of Parliament (Rajya Sabha) on August 8th, 2013, passed the Companies Bill, 2012 with some amendments, following a debate that started on 6th August 2013. The Bill was earlier passed by the Lower House of Parliament (Lok Sabha) in December 2012. After the assent of the President of India, the new legislation is going to replace the existing Companies Act, 1956. A considerable debate on the Companies Bill, 2012 has taken place in the Rajya Sabha and many of our Hon'ble Members of Parliament across the parties have given their views on the proposed bill. The following are excerpts from the debate that took place in the Rajya Sabha, for the information of readers.

The Minister of State (Independent Charge) for Ministry of Corporate Affairs (Shri Sachin Pilot), moving the motion for consideration of the Bill, said:

- The Bill intends to replace a Bill which was introduced hundred years ago.
- It is a progressive, forward looking Bill and it will replace the Companies Act of 1956.
- I am going to listen to all the Members with a very open mind, and I and my ministry will try to accommodate all the suggestions of the Hon'ble Members of Parliament.

Shri Mani Shankar Aiyar:

- It was back in 1913, exactly a century ago, that the first Companies Act was passed by the Legislature of the time. In 1956, it was felt that the Act of 1913 needed to be replaced by a fresh Act.
- It has been explained that a principal motive for this new Companies Act is to ensure that we function in a business friendly manner, and the private sector is able to function efficiently.
- It is a reality that the private sector has grown in the last 20 years. However, the experience of regulatory authorities in India has not been uniformly satisfactory. So, the mere fact of setting up a regulatory authority does not ensure that we actually have an effective regulatory authority.
- I think it should be made obligatory to spend CSR exclusively on the rehabilitation and welfare of the tribal people.
- A huge number of corporate entities have come into existence. They are being set up not with the purpose of undertaking any business but they are cheating the revenue of India and thereby cheating the poor of India. So, it is absolutely essential that the Regulatory Authority assures itself that a company is being set up with a business purpose in mind and not with tax evasion purposes.

Shri V. P. Singh Badnore:

- All aspects of corporate governance and international practices have been taken care of in this Bill. This has been done by the Standing Committee and by the Minister.
- We need corporate freedom, opportunities, transparency and regulations.
- The concept of One-Person-Company is a new concept. We must see that it is not misused. We need more checking before a one-person company comes in existence.
- The Clauses for appointment of Independent Directors is another concept.
- The auditor's responsibility and penalties on him is another issue. There should be a limited liability. There can be frauds but not necessarily by the CA.
- The CSR is a good concept. How much money is going to be spent, there should be some norms for it. We must look into the human rights and labour standards.
- RoC has to look into the defaulter companies. But if the RoC is really alert, fraud would not happen.

Prof S. P. Singh Baghel:

- The Clause related to social liability (responsibility) is the best part of the Bill.
- The changes, which have been carried out in procedure of making laws through Government Notification and provision of independent directors, are very good.
- Unless S.F.I.O. is given more powers, this law will be futile. Usually, we hear that common poor people invest their hard-earned money and companies vanish suddenly with their lifetime savings.
- I have an apprehension related to this Bill that more foreign companies might purchase Indian companies.
- I bid thanks for the Clause related to appointment of women directors.
- All the members are concerned about the Corporate

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Social Responsibility. Every company having valid income shall spend 2% of its income on social, educational, literary and cultural field. A little strictness is required for it. A rule is required to be made that the companies would spend certain percent of CSR on the population belonging to SCs, STs and OBCs. It would be much better if 2% is increased in the CSR.

Shri P. Rajeev:

- While a new Bill is presented, it should address changes in society. There is nothing to protect the interests of the Scheduled Castes and Scheduled Tribes in this Bill.
- One of the specific features of this Bill is making Corporate Social Responsibility of the companies. There is no specific mention regarding rural areas and backward areas. It should be incorporated in this Bill.
- There was a demand earlier, and we still have this demand from various sections of the society that there should be workers' participation in management of industries. There should be at least one Director, either elected or nominated, from amongst employees. There should be some safeguard to protect the interests of our workers.
- My next point is regarding winding up issue. I urge upon the Government to look into these issues and close the loopholes.

Shri Vivek Gupta:

- I urge upon the Minister that people should be made aware of the new act and the massive changes made therein.
- It would be much better if you could do something to encourage the entrepreneurs.
- The words 'as may be prescribed' have been used many times. It raises so many question marks on many things. It requires to be clarified.
- Sales tax return and income tax return should be made a part of annual report so that minority shareholders should know as to what companies provide at various places.
- A little provision of CSR should have been made for the economically backward and minorities.
- All the people could be benefited if you could do something in the direction of depreciation.
- There should be a provision that if a bank seeks some action against a sick enterprise, it would be better for them to be a bit sensitive.
- There is no clarity in the concept of 'one person company'.
- The auditor should have the responsibility to protect the secret of the company he comes across while auditing.

Dr. Ashok S. Ganguly:

- For several years, modernisation of corporate rules and regulations are overdue. The new Companies Bill is attempting to fulfill it.
- We must give even a bigger prominence to the role of Independent Directors. If you want checks and balances in the operations of a company, then Independent

Directors must enter into a covenant while accepting the role of an Independent Director, in order to understand his or her responsibilities and obligations not only towards a company, not only towards the shareholders, not only towards employees, but to the society in general.

- We also need to pay a lot of attention in modernising and acknowledging the role of trade unions.
- Passing the Act should not be an end point, so that we look at it, at least, once in two years in order to see whether all the provisions are still relevant or new provisions required or should we modernise them.

Shri N. K. Singh:

- The Parliamentary Standing Committee has recommended that the Board of Directors should consider the implications of Government Directors on the financial position of company. In my view, this is a very important suggestion.
- The Bill provides Members of the existing Law Board must be made eligible to become Members of the NCLT. However, the Parliamentary Standing Committee noted that the functioning of the CLB has been very unsatisfactory and, therefore, the Membership of the NCLT should be considered afresh.
- The Bill does not have any provision of what may be called a Sunset Clause in terms of companies which have really structured themselves in accordance with their own regulation.
- I must compliment the fact that Corporate Social Responsibility has now been made mandatory. This is a very satisfactory provision. But there is an escape Clause in this provision. Since the requirement of the CSR is based on the net worth or the turnover of a company, there is a risk that the net worth of a company may change from year to year. It is unclear how this will affect the responsibility to make the CSR spending.
- There are several issues of regulatory overlaps and conflicts. There are several features, in which there are overlaps and there are discrepancies of what is contained in the Bill and what is contained in many other regulations, particularly, the SEBI regulations. The Bill should consider aligning the definition of Independent Director in the Bill with the definition in the Listing Agreement under SEBI. The definition, as contained in the SEBI, is more rational and more comprehensive.

Shri Rabinarayan Mohapatra:

- The Bill introduced several new concepts like e-Governance to strengthen the corporate governance, making the concept of corporate social responsibility mandatory, enhanced accountability on the part of companies, audit accountability, empowering Serious Fraud Investigation Office, including one woman director in the company. But the Bill does not take into consideration the profile of typical start-ups for a developing country like India with a huge rural population. The start-ups have to be created mainly for the job-seeking people in the rural areas. The objective of the Bill would be to create the necessary and sufficient

conditions for rural employment and opportunities for the young entrepreneurs in the shortest possible time.

- The recommendation of the Standing Committee regarding public sector undertakings should be accepted. Nothing should be made public to protect the PSUs who are going through major turbulence. It should be included in the Bill.
- There is a need to involve farmers as stakeholders in growth process by giving them access to technology.
- Implementation holds the key to its success. For this purpose, the corporate and regulator would need to work together so as to tread a balance between freedom and regulation.

Shri D. Raja:

- What is the alignment between the Company Bill provisions and the SEBI Consultative Paper on Corporate Governance? While the SEBI Consultative Paper says that shareholder approval is needed for a company to divest its subsidiaries, there is no provision in the Company Bill.
- Then, there is a provision for appointing Minority Shareholder Director, but there is no provision for workers' nominees on the Board. The Nominee Directors of financial institutions are not considered to be Independent Directors under the Bill. They should be considered to be independent because they are not appointed by promoters.
- It is good that the Government is proposing 2% Corporate Social Responsibility Expenditure. But how this is going to be monitored, how many corporate houses or companies will adhere to it, how they will spend this 2% which has been mentioned in the Bill, and what is the mechanism to monitor their budgets?
- There is a need to regulate many non-banking financial institutions. We have come across many incidents of cheating of our people. The corporate sector needs to be disciplined and regulated because they have grown now.

Shri Hishey Lachungpa:

- I rise here to mention the serious objections in extending the Act to the whole of India. As it infringes upon the special provisions contained in Clause (k) of Article 371F of the Constitution of India.
- The proposed repeal of the Registration of Companies Act, 1961, has the potential to disrupt the peaceful ambience prevailing in Sikkim. The provisions will also negate the very object of exempting the minuscule population of the 'Sikkimese' under Section 10 (26AAA) of the Income-tax Act, 1961, from its purview.
- All local Companies in the State have so far been functioning under the local Act. This sudden change in the regulatory and legal framework will have an overwhelming impact on the existing businesses and will stifle the nascent-free enterprise in Sikkim.
- The lawmakers cannot shut their eyes to the local needs. I, therefore, request the Hon'ble Minister that the Bill is in direct conflict with the spirit of article 371F of the Constitution, be reconsidered. I also propose

that the consent of the State Government be taken into consideration.

Shri Piyush Goyal:

- Government is responsible for taking action against bogus companies. This new act is basically a rehash of the existing Companies Act. The act and provisions of the act should be made simple so that the business community and people may not face problems.
- Prescribed rules under the clauses of the act are too much. The Government should focus on ease of doing business.
- We accept the good provision regarding corporate social responsibility in the act but there is no punishment in violation of the same. I request that there is a need to make amendment in the said provision. Non-spent amount under corporate social responsibility may be seized or transferred to the Prime Minister's Relief Fund or there should be some other planning for that.
- If an auditor makes an error, how can the whole firm be held responsible for the acts of one person? Fine or stringent penalty should be imposed only on the auditor responsible for making the error in the auditing.
- If experts, consultants and advisers are required then you have to protect the interests of these people otherwise expenditures in the companies will shoot up. Clause 247(7) makes provision for frivolous and vexatious litigation. This should not be used as a blackmailing tool. When it is adjudicated that the person has filed a case with bad intention, in such a case, I feel that punishment may be made more stringent.
- The Government has not accepted the concept of leveraged buyout while there is provision for leveraged buyout in other countries of the world. I think that the Government should take care of it.
- I think that there is some mistake at the drafting level as clause 167(1) and clause 164(3) are contradicting each other because one is related to vacation of the office of the director and latter is related to the appointment of the director. This anomaly should be removed.
- There is restriction that independent directors cannot be offered ESOP. I am not able to understand such a thing. If independent directors will get ESOP or will have stake in the company then they will discharge their duties in a better way. The Government should reconsider this issue.
- Clause 131 makes provision for revision of accounts and it can be a very dangerous possibility as any company can make revision of their accounts to cover the misdeeds found in investigation by any agency. After revision company can claim that we have corrected our mistake by looking into it.
- Government intends to increase its control on the autonomous bodies. Provision of National Financial Reporting Authority in the current bill is a step in this direction. Whether this authority will be able to control 11 lakh companies? Government wants to give control of everything to the bureaucracy which is not a good tendency.
- Provision in the article 141(1) that firms where majority

partners are Chartered Accountants can be auditors. It is very dangerous. A non-Chartered Accountants partners' firm can become auditor. This is a backdoor entry to the foreign companies. I suggest that meaning of majority of partners should be specified clearly.

- Too many checks have been imposed on the auditing standards while auditors perform to the best of their ability. The Government should not infringe upon the independence of auditors. Subjects to be reported should be left to the auditors.
- I request the Hon'ble Minister that he should apprise us whether this act will be implemented from retrospective effect or from prospective effect.

Shri Anil Desai:

- The Standing Committee had recommended around 193 recommendations and most of the recommendations have become part of this Bill.
- On the Corporate freedom, checks and balances in the form of regulatory authorities and their responsibilities are also contained in this Bill.
- The Bill is very voluminous and it needs to be simplified. O.P.C. and K.M.P. need to be clarified.
- I appreciate the provision for the Woman Director. Regarding independent Directors, their expertise and remuneration have been mentioned.

Dr. Prabha Thakur:

- I want to know two or three things related to women. What arrangements have been made by the government to monitor the status of women at their workplace in Corporate Houses?
- Women should be appointed to key posts in Corporate Houses and their ratio should be no fewer than 25%. Would they be provided vehicles to drop them at their houses? What would be their policies in respect of the provision of maternity leave and financial assistance?

The Minister of State (Independent Charge) of The Ministry of Corporate Affairs (Shri Sachin Pilot), replying to the debate, said:

- 96% of the recommendations of the Standing Committee were accepted while this Bill was made. I think, by making a new Act on companies, we are giving another push towards creating the impetus for growth, prosperity and betterment of our society. The core focus of this Bill is to enhance transparency to give good corporate governance and ensure regulation that is complied with.
- We are trying to make the system more transparent. We are looking at e-Governance within the corporate governance. In India, today we have more than a million companies. When the Act was first made in 1956, there were hardly a few thousand companies. We did not have e-commerce even 20 years ago. New companies, new revenue models and new technologies have emerged. So, the law that we have in India today, must be compliant with all these aspects.
- We made a distinction between a limited company and

a one-person company which is a new initiative. I am hopeful that this initiative will take ground in India and encourage a lot of young people, a lot of craftsmen, weavers, and artisans to take this advantage of having access to banks and credit facilities.

- In this Bill, we have made a provision to have at least one woman Director in the Board in prescribed set of companies. If we wish, the number of women Directors can further be increased. We would also encourage the companies to give representation to the Dalits, poor people women in Boards but it is not possible to specify the same in this Bill as of now.
- I would like to point out that Corporate Social Responsibility (CSR) is now, for the first time, being put as a part of the statute. We are providing, for the first time, to the corporate sector, a structured format to report what they are doing and also to give a framework to the activities that the companies are able to do through their profits. 2 % of net profit has to be ploughed back into the communities. All we want is that, these companies should put this money as investment into those communities where they are drawing their manufacturing and earning revenue.
- I think that all of you will agree that CSR is a new initiative. The provision of 2% of net profit is a welcome step. The freedom to choose the area of work should be with the company, but there must be enough disclosures so that the good work is reported on the companies' websites and on our own website.
- We do not want to create an Inspector Raj. We have said that one-third of the Board should have Independent Directors. There is also a provision to safeguard employees' wages and salaries in case of liquidation or the company winding up. There is a provision for minority shareholders.
- We have also started some new initiatives to detect fraud before the fraud really happens. Faster winding up of companies will happen. The NCLT will be created where faster redressal of issues will be there.
- Before the notifications are issued, I will personally consult the Government of Sikkim. This Bill will take into consideration all the issues that may come from Sikkim. It will help both the rest of India and the State of Sikkim. It is a historic moment for our country and economy.
- I thank the Chair and all the Members who participated in this debate. I propose that the Bill be passed.
- In the Non-Banking Financial Companies, there are many companies which have tried to misuse the current provisions in raising money from the people. The NBFCs can raise money that is at one time. How many times in a year they can do it, that is not yet decided. But when the rules will be made, we will take into account the request of NBFCs to make sure that people who are genuinely raising money in the right fashion, will not be hampered.

The motion for consideration of the Bill was adopted. Clauses etc., as amended, were adopted. The Bill, as amended, was passed. ■