Impact of Companies Act, 2013 on First AGM of a Company and Deposits

The Companies Act, 2013 has brought about a plethora of changes and amendments when compared to the Companies Act, 1956. Be it the very widely-discussed and talked-about *quasi-mandatory* CSR provisions or the establishment of the SFIO or the permission to participate in Board meetings through videoconferencing or the requirement to have at least one resident director or the more and more tightening of grip on the auditors, the Companies Act, 2013 has brought about vast changes in the corporate legal framework of our country. It could be deduced that the new law has been drafted by keeping in mind not only the developments that have taken place in the past in the way the corporate functions, but also specific responsibilities that the corporate sector must fulfil towards the society. Having said that, one must not falter in making the incorrect assumption of perfect draftsmanship for even in its nascent stage, the new law has left some questions unanswered. Through this article, the author has tried to analyse the impact of the Companies Act, 2013 on the time limit for holding the first AGM of the company and on the acceptance of deposits by a company. Read on...

CA. Raghav Kumar Bajaj

(The author is a member of the Institute who may be contacted at raghav.b.bajaj@gmail.com.)

The Companies Act, 2013 aims at ensuring much more security and safety to the hard-earned money of innocent investors. Considering a fall in the value of money of investors, the lawmakers have incorporated very stringent penal provisions in the new law marking a razor-sharp augment in the amounts of fines in cases of contravention. While most of the provisions of the new law should be welcomed (including the CSR provisions wherein the company shall give preference to the local area and areas around it where it operates), the provisions relating to audit clearly show a drop in the trust that the authorities and common people have in the professional community. One can only hope and pray that this turns out to be a wakeup call for all the professionals so that nobody takes for granted his/her position as a responsible professional.

1. INTRODUCTION

1.1. Cricketing career of the legendary Sachin Tendulkar has lasted for over two decades, but

there are not many things, which can outlast such an extensive span of time. Fortunately, the Companies Act, 1956 has been able to successfully survive for the better part of the last century; and one must say that it has performed fairly well. The Companies Act, 1956 had been enacted with the object to consolidate and amend the law relating to the companies and certain other associations. The said Act had been in force for about 57 years and amended several times since 1956. The number of companies has expanded from about 30,000 in 1956 to nearly 8 lakh as of date. Indian economy has also experienced a substantial expansion and growth. However, in the last decade, even the Companies Act, 1956 was showing signs of ageing. Corporate society had successfully started taking advantage of some of the loopholes contained in the lengthy act, and also arrive at unilateral conclusive interpretations in the cases of uncertainty prevailing in this law.

1.2. In view of the changes in national and international economic environment and expansion and growth of economy of our country, the Central Government after due deliberations decided to repeal the Companies Act, 1956 and enact a new legislation to provide for new provisions to meet the changed national and international economic environment, and further accelerate the expansion and growth of our economy. In this light, recently, on December 18, 2012, the Lok Sabha passed the Companies Bill, 2012 and subsequently, on August 8, 2013, the Rajya Sabha passed the Companies Bill, 2012 (to be enacted as the Companies Act, 2013). And more recently, on August 29, 2013, it also received the assent of the President of India. Then, the Government needs to notify the effective date of this new law in the official gazette of India. However, the new corporate law was not the same initially when the action began to amend the Companies Act, 1956. The following graphic will show a better picture about the sequence of events leading to August 29, 2013, i.e. the date when the Companies Act, 2013 received the assent of the President of India:

Companies Act, 1956	• Received the assent of the President of India on 18-January-1956 • Came into force on 1-April-1956 vide Notification No. S.R.O. 612 dated 8-March-1956
JJ Irani Committee	• A Concept Paper on Company Law placed on the Ministry's officiaI web-site on 4-August- 2004 for suggestions/ comments by all interested stakeholders • To examine the comments, suggestions and to advise the Central Government on various issues, the Government constituted a Committee under the Chairmanship of Dr. J. J. Irani, Director, Tata Sons Ltd. • The Committee submitted its report to the Government on 31-May-2005 • Based on the Report of the Irani Committee and views, comments and suggestions received by the Ministry from various quarters, the Companies Bill 2008 was prepared.
Companies Bill 2008	• Introduced in the Lok Sabha on 23-October-2008 by Shri Prem Chand Gupta • Referred to the Parliamentary Standing Committee on Finance for examination and report • Before the Committee could present its report, the 14th Lok Sabha was dissolved and the Companies Bill, 2008 lapsed as per Article 107 (5) of the Constitution of India.
Companies Bill 2009	• Introduced in Lok Sabha on 3-August-2009 by Shri Salman Khurshid • Referred to the Parliamentary Standing Committee on Finance for examination and report on 9-September-2009 • The Standing Committee presented its report on 31-August-2010 • Keeping in view the recommendations made by the Standing Committee, the Central Government withdrew this Bill in the winter session of 2011; and a revised Companies Bill, 2011 was prepared which was approved by the Cabinet on 24-November-2011
Companies Bill 2011	• Introduced in Lok Sabha on 14-December-2011 • Referred to the Standing Committee on Finance on 5-January-2012 for examination and report thereon • The Standing Committee on Finance submitted its 57th Report on 'The Companies Bill, 2011' on 26-June-2012
Companies Act, 2013	• Based on the Standing Committee recommendations, the Companies Bill, 2011 was amended and introduced as the Companies Bill, 2012 • Passed in the Lok Sabha on 18-December-2012 • Passed in the Rajya Sabha on 8-August-2013 • Received the assent of the Hon'ble President of India on 29-August-2013

2. HIGHLIGHTS OF COMPANIES ACT, 2013

2.1. The Companies Act, 2013 has been divided into 29 Chapters comprising 470 clauses and 7 Schedules as against the existing Companies Act, 1956 comprising 658 Sections and 15 Schedules. The new Company law is the result of detailed consultative process adopted by the Government. It is far more forward looking than the existing law and has been drafted, keeping into mind the considerable developments that have taken place during the last half century in the corporate world. In addition to the insertion of many new provisions, it has even deleted some of the existing provisions relating to the special audits under the Section 233A of the Companies Act, 1956; provisions relating to the sole agents; requirement of qualification shares to be held by the directors, etc. The new law is also more technologically inclined and reflects the major technological advancements that have taken place in the corporate sector which can be clearly understood from some of the provisions of the new law. The novel law also recognises that women's participation is indispensable for the growth of corporate sector in India by incorporating appropriate provisions for the inclusion of woman directors on the Boards of companies. The Companies Act, 2013 has also addressed the concerns of corporate governance in Indian companies by incorporating appropriate provisions in the new law, making sure that the company form of an organisational structure will not just be used by persons as a tool to shield them. The new law also lays down simplified procedure for compromise or arrangement including for merger or amalgamation of holding companies and wholly owned subsidiary(ies), between two or more small companies and for such other class or classes of companies as may be prescribed. This would result in faster decisions on approvals for mergers and amalgamations resulting in effective restructuring in companies and growth in the economy. For other companies, such matters would be approved by the Tribunal.

2.2. The Companies Act, 2013 has brought about a plethora of changes and amendments when compared with the Companies Act, 1956. Be it the very widely-discussed and talked-about *quasi-mandatory* CSR provisions or the establishment of SFIO or the permission to participate in Board meetings through videoconferencing or the requirement to have at least one resident director or the more and more tightening of the grip on the auditors, the Companies Act, 2013 has brought about vast changes in the corporate legal framework of India.

The new Company law is the result of detailed consultative process adopted by the Government. It is far more forward looking than the existing law and has been drafted keeping into mind the considerable developments that have taken during the last half century in the corporate world.

2.3. It is quite clear that the new law has been drafted by keeping in mind not only the developments that have taken place in the past in the way of the functioning of the corporate world, but also specific responsibilities that the corporate sector must fulfil towards the society. Having said that, one must not falter in making the incorrect assumption of perfect draftsmanship for even in its nascent stage, the new law has left some questions unanswered. Let us look at how certain provisions of the Companies Act, 2013 would have an impact on the legal and regulatory framework governing the Indian corporate world.

3. IMPACT OF COMPANIES ACT, 2013

3.1. TIME LIMIT FOR HOLDING THE 1ST AGM OF THE COMPANY

A. Companies Act, 1956:

Under the Companies Act, 1956, the provisions relating to the holding and convening of the first AGM of a company are contained under the Section 166 which has to be read in conjunction with Section 210. A combined reading and a harmonious construction of both these sections lead to the conclusion that the first AGM of a company should be held latest by the earlier of the following two dates:

a) within 18 months from the date of incorporation of the company;

b) within 9 months from the end of the first financial year of the company (interestingly, as per the Section 2(17) of the Companies Act, 1956, the *financial year* means, in relation to anybody corporate, the period

in respect of which any profit & loss account of the body corporate laid before it in AGM is made up, whether that period is a year or no).

B. Companies Act, 2013

Section 96 of the Companies Act, 2013 states that the first AGM of the company should be held within 9 months from the end of the first financial year of the company. Further, as per the Section 2(41) of the Companies Act, 2013, financial year is defined as:

"(41) "financial year", in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that on an application made by a company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Tribunal may, if it is satisfied, allow any period as its financial year, whether or not that period is a year:

Provided further that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause;"

In other words, for the companies incorporated on or after 1-April-XXX0 but upto 31-December-XXX0, the first financial year will end on 31-March-XXX1; and for the companies incorporated on or after 1-January-XXX0 but up to 31-March-XXX0, the first financial year will end on 31-March-XXX1.

C. Let's try to understand the impact of these provisions relating to the first AGM of a company with the help of the following two illustrations:

ILLUSTRATION 1		
Date of incorporation of company	1-November-2012	
	Companies Act, 1956	**Companies Act, 2013**
1st Financial Year ended on	31-March-2013 (assumed)	31-March-2013 (mandatorily)
Due date of 1st AGM	As per Section 166 ↓ 30-April-2014	As per Section 96 ↓ 31-December-2013
Due date of 1st AGM	As per Section 210 ↓ 31-December-2013	
Therefore, due date of 1st AGM	31-December-2013	31-December-2013

ILLUSTRATION 2		
Date of incorporation of company	1-January-2013	
	Companies Act, 1956	**Companies Act, 2013**
1st Financial Year ended on	31-March-2013 (assumed)	**31-March-2014 (mandatorily)**
Due date of 1st AGM	As per Section 166 ↓ 30-June-2014	As per Section 96 ↓ 31-December-2014
Due date of 1st AGM	As per Section 210 ↓ 31-December-2013	
Therefore, due date of 1st AGM	31-December-2013	**31-December-2014**

D. Thus, a careful analysis of the above illustrations and the relevant law makes it clear that assuming the 31st March financial year under the Companies Act, 1956:

- in respect of the companies incorporated on or after 1-April-XXX0 but up to 31-December-XXX0, there would be no change in the time limit available for holding the first AGM;
- in respect of the companies incorporated on or after 1-January-XXX0 but up to 31-March-XXX0, the time limit available for holding the first AGM has been effectively increased by one year.

E. Further, the penalty applicable for noncompliance of the provisions relating to the AGM has also undergone considerable changes. A comparative chart of the penalty applicable on the company and every officer of the company who is in default is produced below:

Companies Act, 1956
• Fine up to ₹50,000/- • In the case of a continuing default, with a further fine which may extend to ₹2,500/- for every day **after the first** during which such default continues
Companies Act, 2013
• Fine up to ₹1,00,000/- • In the case of a continuing default, with a further fine which may extend to ₹5,000/- for every day during which such default continues

3.2. IMPACT ON DEPOSITS

A. One major change in the new law is the manifold increase in the amount of fines and penalties. It seems that the lawmakers have simply added a few zeros to the penalties applicable under the Companies Act, 1956 without application of mind and without keeping into consideration the commercial aspects and its consequences. Take, for example, the penalties and fines that have been mentioned under the Companies Act, 1956 in case of default in repayment of deposits.

In other words, for the companies incorporated on or after 1-April-XXX0 but up to 31-December-XXX0, the first financial year will end on 31-March-XXX1; and for the companies incorporated on or after 1-January-XXX0 but up to 31-March-XXX0, the first financial year will end on 31-March-XXX1.

B. As per the Section 74 of the Companies Act, 2013, where in respect of any deposit accepted by a company before the commencement of the Companies Act, 2013, the amount of such deposit or part thereof or any interest due thereon remains unpaid on such a commencement or becomes due at any time thereafter, the Company shall:

a) file, *within a period of three months from such commencement or from the date on which such payments, are due*, with the Registrar a statement of all the deposits accepted by the company and sums remaining unpaid on such amount with the interest payable thereon along with the arrangements made for such repayment, notwithstanding anything contained in any other law for the time being in force or under the terms and conditions subject to which the deposit was accepted or any scheme framed under any law;

Impact:

Such a language creates doubt as to the time period within which this statement is to be filed by the Company, i.e. it is not clear whether the Company has to file this statement within 3 months from the commencement of this Act or within three months from the date on which such amount(s) become due.

OR

Does it mean that in respect of the amount(s) outstanding on the commencement of the Companies Act, 2013, the statement has to be filed within three months from the commencement of the Companies Act, 2013? And, in respect of the amount(s) which haven't become due on the date of commencement of the Companies Act, 2013, the statement has to be filed within three months from the date on which such amount(s) become due for repayment by the company.

b) *repay within one year* from such commencement or from the date on which such payments are due, whichever is earlier.

Impact:

The doubt which exists in the 1st provision has clearly been taken care of here. It is very much clear that the maximum time available to a company to repay the entire amount

is one year from the commencement of the Companies Act, 2013. A careful analysis of this provision makes it evident that under the new law, it will be mandatory for the company to repay the entire amount within the stipulated time period. Perhaps the law makers have overlooked the fact that there might be some depositors who would not want this before time repayment of their money for lack of investment options or for tax consequences or for any other reason whatsoever. Rather, the law should have made a provision wherein such deposit holders' assent would also be required to be obtained by the company before making the aforesaid repayment. Everything said, one thing is certain that all the companies who fall within the ambit of this very illogical clause might face acute funds flow problems due to the requirement of this premature repayment of deposits.

C. The only breather available to the companies under the provisions relating to deposits is that if a company is having some financial crunch or difficulties in making such huge repayment suddenly, then it can apply to the National Company Law Tribunal (NCLT) seeking extension of this time period. One can easily figure out that the NCLT would be flooded with such applications. Even the professionals who practice in the corporate laws will have to be prepared for this probable new type of professional work.

D. The requirement of this early repayment of the entire amount(s) is not the only set back as far as the deposits are concerned. The most crucial is the huge fine that will be leviable on the company for default in repayment of the amount(s) within the stipulated time period or within the extended period, if any, allowed by the NCLT. A summarised position of the penalty applicable for default in repayment of deposits is:

On the company				
Minimum fine ₹1 crore				
Maximum fine ₹10 crore				
On every officer of the company who is in default				
Minimum fine ₹25 lakh Maximum fine ₹2 crore	or	Imprisonment up to 2 years	or	BOTH

E. Having heavy fines is good so that the wilful defaulters are not inclined towards committing such defaults. But, one thing that the law makers have missed out is that neither the minimum nor the maximum amounts of these fines have been linked with the amount of default involved. In other words, it is quite possible that even if the company defaults in respect of a deposit of ₹10 lakh only, it shall be fined with a minimum of ₹1 crore. Seems unfair. Doesn't it? Similarly, it is quite possible that even if the company defaults in respect of a deposit of ₹150 crore, it shall be fined with a maximum of ₹10 crore. Seems unfair. Doesn't it?

4. CONCLUSION

The new Companies Act marks a major shift from the existing company law framework in India. It is a reflection of the change, development and the events that have unfolded in the Indian corporate world—be it a steep rise in the number of companies registered in India or an increased participation in the Board meetings *via* videoconferencing or, corporate scams and frauds that have taken place in the past, more so in the recent past. The new law also aims to ensure much more security and safety to the hard-earned money of innocent investors. The current law is more than 57 years old and some of its provisions had become redundant or futile in the present world considering the fall in the value of money. With this perspective in mind, the lawmakers have incorporated very stringent penal provisions in the new law marking a razor-sharp augment in the amounts of fines in cases of contravention. While most of the provisions of the new law are welcome (including the CSR provisions wherein the company shall give preference to the local area and areas around it where it operates), the provisions relating to audit clearly show the drop in the trust and the faith that the authorities and the common people have in the professional community. One can only hope and pray that this turns out to be a wakeup call for all professionals, so that they do not take their position for granted. ■