

Parliament Paves Way for Ease of Doing Business

Taking forward its commitment with respect to ensuring and facilitating ease of doing business in India, the Government got passed in the Rajya Sabha the much awaited and needed Companies (Amendment Bill), 2014, which was earlier passed by the Lok Sabha. Coming as a welcome relief to corporate India, as many as 16 amendments have been made to the Companies Act, 2013, mainly removing various practical difficulties in the law. Primarily, the requirement of minimum capital is being done away with, common seal is optional now, transactions between holding company and wholly-owned subsidiary are exempt, and except offences of fraud, all other offences are bailable and winding up cases would be heard by a two-member bench instead of three-member bench, *etc.*

These amendments were the need of the hour as there have been complaints from the corporates about the problems ever since the law had been enacted in 2013. The Finance Minister mentioned that various queries were received that are being addressed through issuance of Notifications/Amendment in Rules and some of them have been addressed through these amendments.

However, these 16 amendments are not enough to cover everything. As such, it is welcome that the Finance Minister has stated: *...a broad-based committee will continue to go into this question for the next few months as to where the shoe pinches, and this may not be the last amendments which we are bringing in.* The Expert Committee comprising representatives of bodies of company secretaries, chartered accountants, industry chambers and officials will look into the discrepancies and suggest changes.

From the perspective of accountancy profession, provisions with respect to auditors being required to report suspected frauds at the companies audited by them are particularly important. It includes a major amendment for the auditors which The Institute of Chartered Accountants of India was pursuing, *i.e.*, an amendment in Section 143 (12) of the Act which prescribes that the auditor is required to report to the Central Government any fraud which is above the threshold. The Finance Minister in his speech mentioned that earlier even a small fraud of ₹20 was required to be reported to the Central Government, now fraud above only a threshold is required to be reported to the Central Government. This would bring great relief to both corporate as well as auditors.

For ease of doing business, some amendments have also been made in Section 185- Inter-company Loans

and Section 188- Related Party Transactions which is the major area of concern.

Section 134(3)(ca) provides details in respect of frauds reported by auditors under sub-Section (12) of Section 143 other than those which are reportable to the Central Government. In Section 134 sub-Section (3) after clause (c) additional clause has been inserted.

In a nutshell, other amendments pertain to prohibition of public inspection of Board Resolutions with the Registrar of Companies that would help the company to protect its confidential and competitive information. Also, allowing related parties to vote on the resolutions where they are interested would help the companies to take the decision on the contracts or arrangements. Further, maximum penalty of rupees 10 crore is provided for acceptance of deposits in violation of the Companies Act, 2013.

The onerous provisions were dissuading entrepreneurs to incorporate companies and prompting them to set up limited liability partnership (LLP) firms for carrying out business. Among the major concerns of stakeholders were protecting confidentiality of board resolutions as the practice of public scrutiny of board resolutions was not being followed anywhere in the world.

An amendment approves prescribing specific punishment for raising illegal deposits from public, a condition that was left out in the act inadvertently.

Among other amendments, the Companies (Amendment) Bill includes the winding up of companies that would be heard by a two-member instead of three-member bench. Also, the bail restrictions will apply only for offence relating to fraud under Section 447 of the Companies Act, 2013. Now, except in case of serious frauds, normal CrPC (code of criminal procedure) provisions would apply. It is welcome that the changes have also been cleared to fast-track the approval process for draft notifications aimed at granting exemptions from various provisions of the Companies Act.

All in all, the amendments in Companies Act, 2013 come at a very opportune time when corporate India was craving for speeding up of reforms and ease of doing business. However, as also stressed by the Finance Minister, this should be taken as just a beginning and the proposed "broad-based committee" should do more to repair the areas "where the shoe pinches" as promised. ■

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