

The Companies (Amendment) Bill, 2016: An Analysis

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Abstract— Companies (Amendment) Bill 2016 has been introduced in the Lok Sabha on 16th March 2016, by the Central Government. Based on the recommendations made by the committee, the Government of India placed a bill to amend the Companies Act, 2013. The panel had proposed changes in 78 sections of the Companies Act, 2013, which along with consequential changes, would result in about 100 amendments to the Act. The proposed changes are broadly aimed at addressing difficulties faced by the stakeholders in implementation owing to stringency of compliance requirements and improve the ease of doing business in the country. In this article the author discuss some of the important amendments proposed in the Bill.

Keywords— Definition, Incorporation, Memorandum, Registered office.

I. INTRODUCTION

The Companies Act 2013 enactment was one of the most significant legal reforms in India, aimed at bringing Indian company law in tune with global standards and to improve the corporate governance. The act consists of 284 sections. The Ministry of Corporate Affairs had issued various notifications, circulars for resolving the issues and to help in smooth implementation. Further, certain amendments were also introduced through the Companies (Amendment) Act, 2015. The Ministry of Corporate Affairs had constituted the Companies Law Committee during June 2015, chaired by Corporate Affairs Secretary. The Committee also had nominees from Reserve Bank of India, Securities Exchange Board of India, Industry bodies, and also from three professional Institutes namely Institute of Cost Accountants of India, Institute of Chartered Accountants of India and Institute of Company Secretaries of India. The main purpose for which the committee have been constituted is to address difficulties and challenges expressed by various stakeholders and also to further the government's objective of improving ease of doing business, encouraging start-ups and the need for harmonising various laws. The committee held extensive consultations with stakeholders such as industry chambers, law firms, financial sector entities and other regulators before making its recommendations and received more than

2000 suggestions during the process. The panel had proposed changes in 78 sections of the Companies Act, 2013, which along with consequential changes, would result in about 100 amendments to the Act. Based on the recommendations made by the committee, the Government of India placed a Bill to amend the Companies Act, 2013 on 16th March 2016. In this article the author discuss some of the important amendments proposed in the Bill.

II. SECTIONS: EXISTING PROVISION AND PROPOSED AMENDMENT

1. Key Managerial Personnel Section 2(51):

The amendment has been proposed to remove practical difficulty.

Existing Provision

“Key managerial personnel”, in relation to a company, means— (i) the Chief Executive Officer or the managing director or the manager; (ii) the company secretary; (iii) the whole-time director; (iv) the Chief Financial Officer; and (v) such other officer as may be prescribed;

Proposed Amendment

In sub-clause (iv), the word "and" shall be omitted; (b) for sub-clause (v), the following subclauselevel below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"s shall be substituted, namely:— "(v) such other officer, not more than onelevel below the directors who is in whole-time employment, designated as key managerial personnel by the Board; and (vi) such other officer as may be prescribed;"

2. Net Worth Section 2(57):

The amendment has been proposed as the net worth of a company reflects its intrinsic value and it does not include the ‘debit or credit balance of the profit and loss account’

Existing Provision

“Net worth” means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves

created out of revaluation of assets, write-back of depreciation and amalgamation;

Proposed Amendment

For the words "and securities premium account", the words ", securities premium account and debit or credit balance of profit and loss account," shall be substituted.

3. Related Party Section 2 (76):

The amendment has been proposed as the term related party", as currently defined, used the word "company" meaning thereby that those entities that were incorporated in India would come in the purview of the definition.. This resulted in the impression that companies incorporated outside India were excluded from the purview of related party of an Indian company. It noted that this would be unintentional. The Committee, therefore, recommended that Section 2 (76) (viii) be amended suitably.

Existing Provision

"Related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager is a member or director;
- (v) a public company in which a director or manager is a director or holds along with his relatives, more than two per cent. of its paid-up share capital;
- (vi) anybody corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any company which is—
 - (A) a holding, subsidiary or an associate company of such company; or
 - (B) a subsidiary of a holding company to which it is also a subsidiary;
 - (C) such other person as may be prescribed;

Proposed Amendment

The following sub-clause shall be substituted, namely:— "(viii) any body corporate which is— (A) a holding, subsidiary or an associate company of such company; (B) a subsidiary of a holding company to which it is also a

subsidiary; or (C) an investing company or the venturer of a company;"

4. Small Company Section 2(85):

The amendment in the definition of small company has been proposed to remove inadvertent drafting error and also, the thresholds have been revised. Currently, the law does not give much statutory liberty to a small company. Hopefully, the government may use its power of notifying exemptions to give more space to small companies under the law.

Existing Provisions

Small Company means a company, other than a public company,-

- i) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- ii) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees:

Provided that nothing in this Section shall apply to—

- A) a holding company or a subsidiary company
- B) a company registered under section 8; or
- C) a company or body corporate governed by any special Act;

Proposed Amendment

(a) in sub-clause (i), for the words "five crore rupees", the words "ten crore rupees" shall be substituted; (b) in sub-clause (ii),— (A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted; (B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;

5. Subsidiary company Section 2(87):

It was pointed out that it was problematic to treat preference shares on par with equity shares, and this could also affect raising of funds for several industries, especially infrastructure and allied sectors. The amendment has been proposed in order to address the practical problems

Existing Provision

As per Section 2(87) "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or

- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:
- (iii) Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Proposed Amendment

(a) in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;

6. Turnover Section 2(91):

The Institute of Chartered Accountants of India (ICAI) suggested that the definition of turnover should mean the amount of revenue recognised as per the applicable Accounting Standards followed by the company.

Existing Provision

“Turnover” means the aggregate value of the realisation of amount made from the sale, supply or distribution of goods or on account of services rendered, or both, by the company during a financial year;

Proposed Amendment

The following clause shall be substituted, namely:— '(91) "turnover" means the gross amount of revenue recognised in the profit and loss account from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a financial year;'

7. Memorandum Section 7:

The amendment has been proposed for smooth implementation and more liberal operational regime for companies.

Existing Provision

The memorandum of a company shall state— (a) the name of the company with the last word “Limited” in the case of a public limited company, or the last words “Private Limited” in the case of a private limited company: Provided that nothing in this clause shall apply to a company registered under section 8; (b) the State in which the registered office of the company is to be situated; (c) the objects for which the company is proposed to be incorporated and any matter considered necessary in furtherance thereof;

(5) (i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application.

(6) The memorandum of a company shall be in respective forms specified in Tables A, B, C, D and E in Schedule I as may be applicable to such company.

Proposed Amendment

In section 4 of the principal Act,— (i) in sub-section (1), for clause (c), the following clause shall be substituted, namely:— "(c) that the company may engage in any lawful act or activity or business, or any act or activity or business to pursue any specific object or objects, as per the law for the time being in force:

Provided that in case a company proposes to pursue any specific object or objects or restrict its objects, the Memorandum shall state the said object or objects for which the company is incorporated and any matter considered necessary in furtherance thereof and in such case the company shall not pursue any act or activity or business, other than specific objects stated in the Memorandum;";

(ii) in sub-section (5), in clause (i), for the words "sixty days from the date of the application", the words "twenty days from the date of approval or such other period as may be prescribed" shall be substituted;

(iii) after sub-section (6), the following subsections shall be inserted, namely:— "(6A) A company may adopt the model memorandum applicable to such a company.

In case of any company, which is registered after the commencement of the Companies (Amendment) Act, 2016, in so far as the registered memorandum of such company does not exclude or modify the contents in the model memorandum applicable to such company, those contents shall, so far as applicable, be the contents of the Memorandum of that company in the same manner and to the extent as if that was contents of the duly registered memorandum of the company."

8. Incorporation of a company Section 7:

The amendment has been proposed for removing additional documentary burden.

Existing Provision

7. (1) There shall be filed with the Registrar within whose jurisdiction the registered office of a company is proposed to be situated, the following documents and information for registration, namely:— (a) the memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed; (b) a declaration in the prescribed form by an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and by a person named in the articles as a director, manager or secretary of the company, that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with; (c) an affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that he is not convicted of any offence in connection with

the promotion, formation or management of any company, or that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

Proposed Amendment

In section 7 of the principal Act, in subsection (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.

9. Registered Office Section 12:

The amendment has been proposed as the time was insufficient.

Existing Provision

12. (1) A company shall, on and from the fifteenth day of its incorporation and at all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.

(4) Notice of every change of the situation of the registered office, verified in the manner prescribed, after the date of incorporation of the company, shall be given to the Registrar within fifteen days of the change, who shall record the same.

Proposed Amendment

In sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words " within thirty days of its incorporation" shall be substituted;

(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.

10. Formation of company Section 3:

The amendment has been proposed to be made the members liable in case the company has lesser number of members than as prescribed.

Existing Provision

3. (1) A company may be formed for any lawful purpose by—

(a) seven or more persons, where the company to be formed is to be a public company;

(b) two or more persons, where the company to be formed is to be a private company; or

(c) one person, where the company to be formed is to be One Person Company that is to say, a private company, by subscribing their names or his name to a memorandum and complying with the requirements of this Act in respect of registration:

Proposed Amendment

After section 3 of the principal Act, the following section shall be inserted, namely:— "3A. If at any time the

number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor."

III. CONCLUSION

These amendments are made to fill the gaps, to relax the stringent provisions that exist in the Companies Act, 2013; facilitating ease of doing business, harmonisation with accounting standards, the SEBI Act 1992 and the regulations made thereunder and the RBI Act 1934 and the regulations made thereunder, rectifying omissions and inconsistencies in the act.

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