**Companies Bill 2016: A Scope Of Paradigm Shift In Corporate Governance**

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**ABSTRACT**

Encompassing the alleviating controversies in the legal sector, Corporate law is now been considered as one of the most disputable arena. An attempt has been made to combat such discrepancies by passing a Companies Amendment bill, 2016 in the Lok Sabha. The main idea of the research paper is to emphasize the loopholes persisting in the current Company Act, which paved the way for amendments. This paper aims towards providing an overview of the resultants if the proposals get accepted by Rajya Sabha and to assess whether the proposals presented to restructure it have successfully filled in the incongruity.

The main objective behind this research paper is to evaluate the modifications proposed in Companies Act 2013 by the Company Law Committee (CLC) and to ascertain as to whether the outcome would run parallel to the intended resolution of the bill. It critically analyses the repugnant provisions in the act and the assistance of proposed amendments in strengthening corporate governance in India and whether they really contribute to ease of doing business. The overview of the provisions not only brings forth the discrepancies but also provides for the solution to overcome the same.

Whilst analyzing the proposals made by Ministry of Corporate Affairs it was concluded that some of the draconian provisions of the Company Act 2013 were in dire need to be modified. Where some proposals proved to be indispensable, there were certain modifications which might prove to be mundane.

**INTRODUCTION**

In the wake of ameliorating business standards certain scams have followed as repercussions. Combating such deterrents of development have not only become a desire but also a necessity of this era. One of such attempt is Companies (Amendment) Bill 2016, passed by Lok Sabha on 16th March 2016. With 87 modifications contained in 61 pages, this bill is all set to bring a turning point in the corporate law. Companies Act, 2013 was also an outcome of a trial to curb the scams and frauds in some large corporations.

The Companies Amendment Bill, 2016 introduced by Ministry of Corporate Affairs proposes certain changes in the provisions as recommended in the report of Company Law Committee dated 1st February 2016. This bill remains pending in Rajya Sabha after being introduced by a private member on 26th February 2016. This bill majorly emphasizes towards the corrective action by the government required to be taken because of phasing out of certain unreasonable and impractical provisions of Companies Act 2013, in relation to overhaul of Companies Act, 1956. So, to avoid the repetition of poor hasty decision there is a dire need to analyse the proposals recommended in this bill.

## OBJECTIVES OF THE BILL

The bill in present discussion has been proposed mainly keeping in mind the following objectives:

- To facilitate the ease of doing business by making provisions for solving the problems of stakeholders.
- It aims at strengthening the corporate governance.
- It proposes to initiate strict actions against defaulters as person as well as defaulting companies.
- Addressing the obstructions faced in implementation of the provision owing to stringent compliance requirements.
- Promotion of growth and employment for the smoothening of business activities.
- Harmonizing with the current accounting standards and regulations as mentioned in the Securities and Exchange Board of India Act, 1992, the Reserve Bank of India Act, 1934.
- Correcting any kind of inconsistence in the present provisions and providing for rectification of the omissions.

## AMENDMENTS PROPOSED IN THE BILL

### 1. Definition clause

The 2016 amendment bill proposes many changes in the definition of various words in The Companies Act, 2013. The changes include- altering the definitions of associate company, cost accountant, debentures, financial year, holding company, key managerial personnel, net worth, related party, small company, subsidiary company and turnover, and omitting the definition of interested director. The important proposals are as follows-

- **Associate company-**

Present- Section 2(6) of Companies Act, 2013 gives the definition of 'associate company' as-

"Associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation - For the purpose of this clause, "significant influence" means control of at least twenty percent of total share capital, or of business decisions under an agreement"[1]

Associate company thus means any company which exercises a 'significant influence' over the other company and may include a joint venture but not a subsidiary company. Control is specified here as twenty percent of the total share capital in the company.

Control is defined under Section 2(27) in the Act as,

"control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders

[1] Companies Act, 2013

agreements or voting agreements or in any other manner"[2]

Proposal- the word 'significant influence' is proposed to be used in a wider sense so as to include control of at least twenty percent of voting power and participation in business decisions under an agreement. Moreover, the word 'associate company' also includes joint venture under the Act. Since the word 'joint venture' is no where defined under the Act, the bill seeks to add its definition as "joint arrangements whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement."

Analysis- It widens the scope of the definition of 'associate company' and brings clarity to certain terms.

- **Holding Company**

Present- Section 2(46) of Companies Act defines holding company as a company which has another company under it as subsidiary company.

Proposal- the definition of 'holding company' is proposed to be expanded by including body corporate within the term "company".

- **Small company**

Present- The concept of small company was brought in Companies Act, 2013 with a view to boost small companies and to endow them with certain benefits. The introduction of small company in the Act was aimed at enhancing business and economy. 'Small Company' is defined in Section 2(85) of Companies Act, 2013 as,

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

1. 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; and
2. Turnover of which as per it's 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 clause 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."

Proposal- The bill seeks to increase the maximum prescribed paid-up share capital from five lakhs to ten crores for the reason to determine a company as a small company. Also the turnover has been revised from two crores to maximum twenty crores.

Analysis- Increasing the number of the paid-up share capital permits many more companies to come under the ambit of 'small companies' and take the certain advantages that are provided to them.

- **Subsidiary company**

Present- Section 2(88) of the Act defines "subsidiary company" as

[2] Section 2(27) of Companies Act, 2013

"“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:

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."

Proposal- The change in requirement of ‘one-half of total share capital’ to ‘one-half to the total voting power’ needed for company to be a subsidiary company has been suggested. If the holding company exercises one-half control over the ‘total voting power’ instead of ‘total share capital’ either on its own or together with one or more subsidiary company, then it will be treated as subsidiary company. Moreover, it also purports to remove the provisions pertaining to layers of company.

- **Turnover**

Present- Companies Act, 2013 in section 2(91) defined Turnover as,

“Turnover means the aggregate value of the realization 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.”

According to the provision, the turnover of the company will be ascertained by amount of realization made during the financial year, not by value of goods sold or service rendered during the financial year.

Proposal- The definition of ‘turnover’ is proposed to be changed in its entirety. It is recommended in the bill that the turnover be calculated on the basis of gross revenue recognized 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 in a financial year.

2. **Proposal for addition of a new section, Section 3A:**

Present: Although, Section 3(1) of the Companies Bill Act provides for minimum number of persons required to form a company, it remains silent on the requirement of minimum number of persons for continuation of a company and legal penalty to be imposed on failure of the compliance of the desired number.

Proposal: The bill imposes the liability on the members of the company that if the business is carried on for more than six months with less than seven members in case of public companies and less than two members in a private company, they will be severally liable for the payment of debts and will be in a position to be sued severally.

Analysis- it seeks to make the laws regarding the requirement of members more stringent to bring effectiveness in the carrying of a business.

**3. Matters relating to Prospectus**

Present-

- Section 26 of the Act mentions the information that is required to be stated in prospectus. It mandates a public company to mention certain things when the prospectus is issued on behalf of the company.
- Section 35 of the Act makes the director, promoter, anyone who authorized the issue of prospectus liable for any inclusion or omission in the prospectus which is misleading or had caused any damage or harm.

Proposal-

- Clause 8 of the Amendment bill proposes certain changes related to matters to be stated in prospectus. It says that the prospectus shall include the reports and information in financial statement as per the guidelines of SEBI in consultation with the Central Government instead of detailed disclosures. The rules under SEBI Act, 1992 shall apply until it specifies the information in regard to financial statement.
- Clause 9 proposes to hold the expert liable for any misleading statement and relieve the Director, promoter etc. from any civil liability if they had the reason to believe that the person making the statement had given his content and was fully qualified to give it.

**4. Private placement of Securities**

Present: According to Section 42 of the Act, all kinds of securities can be utilised for private placement and offer can be made in accordance with the form and terms and conditions.

"A private placement is the sale of securities to a small chosen group of investors in order to raise capital."[3]

It is a sale of equity share capital to selected investors as opposed to a public offering. Private placement of shares is commonly seen in banks, insurance companies etc.

Proposal: The bill seeks to amend the current section entirely, prominent among them are-

1. Money raised through private placement shall not be put into use by the company until it is allotted.
2. Return of allotment, a form filed after allotting the securities, is to be filed within fifteen days from the date of allotment instead of thirty.
3. Penalty for not filing the return of allotment within the prescribed date is proposed to be equivalent to the amount raised through private placement or two crore rupees, whichever is lower.
4. The offer letter of private placement cannot be subjected to renunciation.

Analysis: The proposed amendment intends to make the process easier by doing away with many complicated procedures, filings and separate offer letters and also by enforce dual penalty on filing return to allotment. The process of private placement is simplified.

[3]Harper Collins Dictionary

5. **Prohibition on issue of shares at discount**

Present- Companies Act, in Section 53 states that shares at a discount cannot be issued unless otherwise provided by Section 54 and that any share issued at a discounted price will be void.

Proposal- The proposal aims to substitute the word 'discounted price' with 'discount'. It also seeks to change the law regarding prohibition to issue shares at a discount and suggests that discount should be given to creditors whose debt is converted into shares in accordance with debt restricting scheme or statutory resolution while also following the guidelines of Reserve Bank of India under the Banking Regulation Act, 1949, Reserve Bank of India Act 1934.

6. **Prohibition on acceptance of deposits from public**

Present- Section 73 of the Act mandates that a company shall not accept any deposits from the public but it may accept deposits from its members. At the same time banking companies or companies specified by the Government has been tackled leniently by creating an exception of the same.

Proposal- Clause 15 aims to eliminate the requisite of insurance of deposits and provides that the reserve of deposit repayment shall not be less than twenty percent of the amount of deposit maturing in the following financial year. If the default of repayment of deposits is made good and a period of five years have elapsed then the companies are also allowed to accept the deposit.

7. **Repayment of Deposits, etc., accepted before commencement of this act**

Present- Presently, Section 74 clearly incorporates the provisions as per which the company is liable to pay the deposit amount or interest on that which has remained unpaid from the commencement of the Act, within the span of one year.

Proposal- the proposal increases the period to repay the amount to 3 years from the date of commencement or before expiration of the time period for which the deposit was taken, whichever of the both is earlier.

Analysis- It provides a respite to all the companies who have deposits in their account by extending the payment period.

8. **Declaration of any beneficial interest in the share**

Present- Beneficial interest is generally referred to a profit or advantage. It is the right to receive profit on the assets of another person. For example, trusts.Section 89 of the Act mentions registered owner and beneficial owner. According to this provision, they are required to declare to the company about those shares which are held by the registered owner but in which beneficial owner holds the beneficial interest regardless of its title. It requires the

VOLUME 2 | ISSUE 1 | ISSN 2456-9704

particulars of each other and nature of interest held by the beneficial owner in the prescribed form.

In case of failure to declare by the respective owners to the Company or by the Company to the Registrar of Companies, the persons defaulting will be charged with a heavy penalty apart from losing the beneficial share.

Proposal- The proposal says that the beneficial interest in shares will include directly or indirectly, right of a person alone or together with another person to-

i. Exercise all the rights in relation to that share and

ii. To receive any dividend or any other distribution in respect of that share.

9. **Annual General Meeting**

Present- Companies Act, under Section 96 requires that every company shall hold an annual general meeting within 9 months from the date of closing of the first financial year.

Proposal- If all the members of the company consent, then the Annual General meeting of unlisted companies can be held anywhere in India.

10. **Declaration of dividend**

Present- Dividend' refers to the profits of a company that is distributed to the shareholders. It is paid from the distributable profits in a particular financial year. Section 123 of Companies Act, contains provisions relating to the declaration of dividend. It says that a company can declare dividend if it has made profits in a current year. If it incurs loss in a financial year, then it can also declare dividend out of the undistributed, residual profits of the previous year.

Proposal- the proposal provides for the declaration for interim dividend of a company by the board of directors during a financial year or before the annual general meeting is held. The dividend may be distributed out of the surplus of the 'profit and loss account' or out of the profits in a financial year or out of the profits incurred in the financial year till the quarter preceding the date of declaration of the interim dividend. Although, if the company incurs loss in a financial year till the period preceding the declaration of dividends, the dividend shall not be of a higher rate than that of the average dividends given of the previous three financial years.

11. **Corporate Social Responsibility**

Corporate Social Responsibility (CSR), as mentioned in Section 135 of the Company Act embodies a notion that tries to reach for sustainable development and better corporate governance by promoting the companies to be more vigilant of the impressions of their business on the society and environment. It encourages the companies to embody a self-regulation structure so that it can manage all aspects- social, economic and environmental in equilibrium while also looking after the interests of the shareholders.

Present- Any company which comes within the area of net worth, net profit or turnover is required to have a CSR Committee in any financial year.

Proposal- As per the suggestions of High level CSR Committee, the CSR Committee should be formulated in the preceding financial year instead of any year and the expenditure of CSR is to be calculated on the basis of the preceding financial year too. Also, in certain companies where independent directors are not mandatory to be appointed, the least of two or more directors is to be appointed.

12. **Provisions related Financial Statement**

Present

- Section 129 of the Act mentions the nature and rules regarding financial statement, a statement showing records of a company's financial affairs.

- Section 134 mandates that the financial statement should be approved by the board of directors and signed by the chairperson who is authorized by the board. The Chief Executive Officer (CEO) can also sign if he is also the director in the company.

- Section 136 of the Act says that the copy of financial statement and all the legal documents which are to be annexed or attached to the financial statement should be sent to every member of the company and also to all the trustees.

- Section 137 is that the documents mentioned in Section 136 are to be duly filed with the Registrar within 30 days of the Annual General Meeting.

Proposal

- Clause 32 of the Companies Amendment bill, 2016 seeks to amend Section 129. It purports that the consolidated financial statements of the subsidiary companies shall be prepared in accordance to the accounting standards and also that consolidating the accounts of a joint venture is no longer a requisite.

- Clause 35 aims to amend the clause by proposing that the CEO will be authorized to sign the financial statement whether he is a director or not. It also states that the disclosures already made in the financial statement need not be mentioned in the report again.

- Clause 37 says that if ninety percent of the members entitled to vote at the meeting agree, the copies audited financial statement and other documents can be sent at an earlier notice. It also says that the accounts of the subsidiary or subsidiaries of a company may only be required if it is a listed company rather than for all the companies.

- Clause 38 proposes to enable the filing of the unaudited financial statements of a foreign company which are not required to be filed.

### 13. Issuance of sweat equity shares by a newly incorporated company

Present: Section 54(1)(c) of Companies Act, 2013 required that a company can issue sweat equity shares only when a year has elapsed after its incorporation. "Sweat equity shares" means such equity shares that are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, whatever it may be called[4].

Proposal: Clause 13 of this bill proposes deletion of the aforementioned provision according to which the requirement of completion of one year as a pre-condition of issuance of sweat equity share should be removed.

Analysis: The ability of newly incorporated company to issue sweat equity share just after its incorporation will surely act as a fillip for emerging start-ups. However, the promoters have still been kept out of its range as per the guidelines of Employee Stock Ownership Plan (ESOP).

[4]Section 2(88) of the Companies Act, 2013

Advantages: It would help the newly formed companies to retain the employees and extract their talent. Already engaged in tussle for finances, the newly formed companies can now take a sigh of relief as this provision is cost efficient in nature and can save the salaries spent on employees.

Disadvantages: A feeling of ownership and power might pave way for laziness and inefficiency among new employees which would affect adversely the growth of company. Sweat equity shares often lead to irregularity in income of the employees which might not be taken quite well by the newly recruited employees.

### 14. Director Identification Number

Present: For the first time the concept of DIN was introduced with the insertion of section 266A- 266G in the Companies (Amendment) Act 2006. DIN is an identification number allotted by the Central Government to any individual, intending to be appointed as Director or to any existing director of a company for the purposes of identifying as a director of a company.[5] As per Section 153 of Companies act DIN must be obtained by filling an application in DIR-3 form along with fee prescribed.

Proposal: Clause 46 of the 2016 bill has slacked the requirement of DIN for directors by making any other such identification number, which can be recognized by Central Government as per Clause 47 and the same be made eligible in place of DIN.

[5]Rule 2(d) of the Companies (Appointment and Qualification of Directors) Rules, 2014

Analysis: DIN helps to maintain a rich database of the directors of the companies and is also authentic source to trace back the fraudulent companies who raised capital from public and vanished.

The proposed change would certainly simplify the incorporation procedure as the procedure of availing DIN would no more be an obligation for the companies.

Yet there is a dire need to develop such a mechanism which would enable the government to trace the various companies in which a concerned person is a director and see whether the provisions of company law have been duly complied with in such companies.

**15. Provision relating to directors**

Present- Under Section 130 of the Companies Act, 2013, the appointment of an independent director was followed by deposition of 100,000 rupees in the company's share capital.

An independent director is the non-executive director of the company, who helps a company to improve its credibility and does not have any personal relation with the company which would prepossess the judgments. This deposited amount is liable to be refunded on two occasions:

(a) When the proposed person gets elected as director of the company.
(b) When he receives 25% of the total valid votes.

Under Companies Act 1956, the amount was limited to 500 rupees but later on it was raised in order to avoid perversion of power and ill-intent people becoming the directors.

- Number of directorships: Section 165 of Companies act 2013 has trammeled the holding of directorships to not more than 20 companies by a person.
- Under the act a person would be disqualified to be reappointed as director on failure of repayment of deposit by company or on non-filing of financial statements or annual returns for a continuous period of three financial years[6].

Under the Act, on account of creation of vacancy due to disqualification as mentioned in section 167(1) and yet continued holding of office would lead to imposition of fine or imprisonment or both. Section 167(2) of the act states" If a person, functions as a director even when he knows that the office of director held by him has become vacant on account of any of the disqualifications specified in subsection (1), he shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both."

- A director is required to forward a copy of his resignation in form DIR-11 to the registrar.[7]

Proposal: Clause 48 of the bill has exempted the independent directors recommended by nomination and remuneration committee to

[6] Section 164(2) Companies Act, 2013
[7] Section 168 Companies Act, 2013

deposit 100000 rupees. Also Clause 49 seeks to amend section 161 of the Companies Act whereby a person would be restrained from being appointed as an additional director if he is already a director in the Company concerned.

For counting the number of directorships in the company the directors of the dormant company would also be taken into consideration as per Clause 51 of the bill and thereby the ceiling for the same would be ascertained. Also the limit of 20 companies as specified in section 165 of the act has been done away with for the dormant companies.

Section 164(2) of the act specifically disqualifies reappointment of a person as director on account of failure to file annual return etc. But with the proposal of Clause 50 of the bill a window of six months has been provided for compliance of the aforementioned provision.

Clause 53 of the bill seeks to amend section 167 in relation to vacancy created in directorship on account of disqualification under section 164. According to the proposal such a person will have to vacate his position as director in all the other companies other than the company in default.

Seeking to amend Section 168 of The Companies Act 2013, this bill under clause 53 has made filling of resignation with registrar optional.

Analysis: This exemption would certainly foster the credibility of the company. A competent person who suffers backlog due to insufficient finance may finally get an opportunity to showcase their leadership skills. The company's governance would improve as the directors would act as the watchdogs for it. The recommended person would be selected by the committee after considering the qualities required and hence the work would be done more efficiently. Also clause 49 of the bill would avoid concentration of power in one person's hand.

Clause 51 of the bill has clearly specified the method to be adopted to fix the ceiling for directorship and hence removed all the dubiousness existing in this regard.

Clause 52 will surely act as a deterrent for the directors intending to commit any malicious or fraudulent act as they will end up losing directorships in all other companies.

Clause 53 may lead to cumbersome business activities as now the main motive of introduction of DIR-11, which was to bar unauthorized filling of DIR-12 without intimating the resigning director, gets obliterated.

16. **Loans, advances etc. to the directors etc.**

Present: Section 185 of the Companies Act, which imposes restriction on grant of loans and advances to subsidiary companies by holding companies has been considered as one of the draconian sections of this act. Exceptions of these restrictions are two-fold:

a. First case is of subsidiary company which is a wholly-owned subsidiary and the loan is used for its (i.e., the wholly-owned subsidiary's) principal business activities.

b. Second case is of a private limited company (subject to certain conditions) in which no body corporate has invested in the share capital of such company. Therefore, a private company with any foreign investment could not avail this benefit, which did not help the situation.[8]

Proposal: The 2016 bill proposes to amend section 185 by replacing these restrictions with requirement of passing special resolution for availing the benefits of loans and advances subject to the condition that such finances shall be used only for principle business activities by the subsidiaries. However there is proposal of two fold prohibition in regards to granting of loans:

- To a director of lending company, director of its holding company and partner or relative of such directors.
- Firms in which such directors or relatives are partners.

Analysis: This bill would enable a holding company to grant loan to subsidiaries, irrespective of it being a public or private holding company by just passing a special resolution.

For utilizing finances for other than 'principal business activities' the firms will have to resort to current practice of changing the Memorandum of Association and including 'grant of loans to subsidiaries', so as to label it as 'ordinary course of business' and hence avail the exemption under the bill by paying some specific rate of business upon it. This may act as a loophole and hence is quite speculative.

This bill might create confusion as more liberty is being provided to public company as compared to private company under the exemption. Hence there is a dire need to amend the exemption notification as well.

17. **Restrictions on layers of investment companies**

Present: As per Section 186 of the Act there are certain thresholds that are applicable on loans and investments by company:

- An investment beyond two layers of investment companies is not permitted.
- No loan/ security/ guarantee/ acquisition may be made exceeding 60% of (paid-up share capital + free reserves + securities premium account) or 100% (free reserves + securities premium account), whichever is higher.

Proposal: Under Clause 60 of the bill proposal has been made seeking:

1. Deletion of restriction on investments up to two layers of investment companies.
2. Application of the thresholds on the grant of loans/ security/ guarantee/ acquisition on value of such transactions as well as to the sum of the value of such existing transactions and any proposed new transaction including such aspects.
3. Investment made by a banking company/ insurance company/housing finance

[8]Notification No. GSR 464 (E) dated June 05, 2015 ("**Exemption Notification**")

VOLUME 2 | ISSUE 1 | ISSN 2456-9704

company/ companies established with the object of and engaged in the business of financing industrial enterprises or infrastructural activities under the exemption provided under Section 186 (11) of the 2013 Companies Act has been proposed to be included under this clause.

4. Requirement of passing special resolution at general meeting is no more mandatory if a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company of the securities of its wholly owned subsidiary company.
5. The definition of "Investment Company" has been proposed to include:

I. A company's assets in the forms of investments in shares, debentures or other securities constitute not less than 50% of its total assets; or

II. If its income derived from investment business constitutes not less than 50% as a proportion to gross income; such company shall be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities.

Analysis: This proposal would ease the structuring of group companies and inter co-investments.The calculation based on the proposed revised threshold limits would be restrictive in the sense, where a company may enjoy liberty to provide loans to subsidiaries (subject to certain conditions) under Section 185, would now have to apply the applicable interest rates as mandated under Section 186, upon crossing the stipulated thresholds.

This proposal would bring equity-linked debt (upon conversion to equity) and other investments made by such companies within its ambit.

18. **Provisions in relation to auditors**:

Present: Section 140 of the act clearly specifies that it is must that the auditor of a firm be a Chartered Accountant. Following person has been specifically disqualified from becoming auditors:

(*a*) a body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008;

(*b*) an officer or employee of the company;

(*c*) a person who is a partner, or who is in the employment, of an officer or employee of the company;

(*d*) a person who, or his relative or partner.

The act also requires submission of resignation of auditor in Form ADT-3. The failure of which attracts penal provisions[9].

Proposal: Clause 41 of the bill simplifies the term relative as mentioned in Section 141, by including spouse of a person. It also includes a parent, sibling or child of such person or of the spouse, financially dependent on such person, or who consults such person in taking decisions in relation to his investments.

[9] Section 141, Companies Act 2013

Through Clause 42 of this bill it has been proposed that a person will not be eligible to be appointed as auditor if he directly or indirectly, renders any service referred to in section– 144 to the company or its holding company or its subsidiary company. At present this restriction is applicable on the person, his subsidiary, associate company or any other form of entity.

Also the formality of annual ratification of appointment of auditors by members has been proposed to be relaxed. Moreover the penalty to be paid in case of failure to submit resignation in Form ADT-3 has been reduced by Clause 43 of the bill.

Analysis: As per first proviso to section 139(1), the matter relating to appointment of auditor should be placed for ratification by the members in each AGM. This particular arrangement raised various concerns on ratification of auditors as it was defeating the objective of giving five year term to the auditors. Furthermore, ambiguities persisted in case the shareholders who chose not to ratify the auditor's appointment as per Section 139 (1) or where they did not ratify any appointment during the period of five years, as this would be akin to removal of the auditor and hence Section 140(1) should be made applicable.

Explanation to Rule 3 of Companies (Audit and Auditors) Rules, 2014, mentions that in case of any aforementioned ambiguities the Board shall appoint another individual or firm as the auditor(s) after following the procedure laid down in this behalf under the Act. On critical analysis of the present scenario it can be concluded without any iota of doubt that there exists inconsistency due to the two provisions. Thereby blazing a trail to avoid the present conflict and thus proposing the omission of the provisions with respect to ratification.

**CONCLUSION**

Pondering over the need of the hour to overcome the rampant misuse of the current Company Act, bobbed up the requirement of reviving the process of amendment as followed in 2013. Although Companies Act 1956 was reformulated giving birth to the Companies Act 2013, yet the persistence of certain loopholes are undeniable.

In macb ro-perspective, the bill calls for more flexibility in the business procedures while giving the companies a relaxation in various sectors. It aims to perpetuate a better field of corporate governance, accentuate business opportunities, remove obscurity and bring a state of clarity and transparency. But when critically examined, it raises several questions about the effectiveness of the proposals and whether they are potent enough to achieve the envisioned goals.

This bill certainly aims towards providing for more certain, unambiguous and corporate style of doing business. Yet can sheer justification be claimed to have been achieved by this proposal? Company Act, 2013 contains some f the provisions which are contrary to the other contents of the same act. This issue has already been taken into consideration whilst suggesting amendment but whether all such deficiencies can be tackled by such proposal? The aim of the bill indicates strengthening of corporate governance for which certain penal provisions have been made more stringent. But would it be righteous to affirmatively claim that the proposals will not act prejudicially in interest of the companies in future?

While such questions are yet to be mooted upon, the possibility of reduction in hassle of compliance and complexities cannot be neglected. Success of any law depends upon due compliance by its subjects so refusal to pass the bill basing the contentions totally on future possibilities is not fully justified.

The bill acclaims the strengthening of corporate governance and hence providing for the ease of doing business. On one hand this paper shall act against hollow acclamations made, if any and there on the other, it also applauds the effort made to bring out the discrepancies and also make provision for its removal.

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