

“Amendment of Companies Act, 2013: A Boon to Indian Companies in this present Pandemic Situation”

Dhanaeswar. Gudapalli

INTRODUCTION:-

Prime Minister Modi’s 2.0 Government will promulgate an Ordinance to amend various provisions of Companies Act, 2013 through Companies Amendment Bill, 2020 for ease of doing business in India in the present Pandemic situation. “In line with the government’s stated goal of promoting ease of doing business, the Company Law Committee, set up by the Ministry of Corporate Affairs (MCA), has recently submitted its report to the MCA, recommending decriminalization of compoundable offences under the Act”¹.

In the perspective of decriminalizing business law, is not new in India. This process is started with liberalization of Indian Economy in 1991. Imports and Exports (Control), 1994 was the first commercial law in India to get decriminalized. Foreign trade (Development and Regulation) Act, 1992 replaced the Imports and Exports (Control) Act, 1994, which decriminalized certain offences related to Imports and Exports Act. Foreign Exchange Regulation Act (FERA), 1973, was replaced by Foreign Exchange Management Act (FEMA), 1999 which is fundamental step taken in this direction , which decriminalized offences related to foreign Exchange regulation.

“In this Bill, violation including minor, technical and procedural defaults, shortcomings of CSR reporting, inadequacies in board report, filling defaults and delay in holding Annual General Meeting would be decriminalized”².

58 sections of Companies Act, 2013 would be dealt with internal adjudication mechanism compared to 18 sections earlier, 7 compoundable offences would be relinquished altogether and 5 compoundable offences would be dispensed through alternative framework. This move is taken to ease the rigorous compliance which comes at a time, when the Indian economy slopes down due to slump in consumption. Besides these, from the ease of doing business point of view, a lot of other measures have been taken.

One of such is exempting the companies, which have an obligation to spend 50 lakh rupees or less from the requirement of having a corporate social responsibility committee. Also if company spend their net profits more than 2 % towards corporate social responsibility, then general approach is to calculate 2% only under this obligation but from now the spent excess amount will be adjusted against the obligation of subsequent year.

¹ Girish Chandra Prasad, Cabinet clears decriminalization of company law breaches and eases CSR rules, Live Mint (Mar 4, 2020), <https://www.livemint.com/politics/policy/cabinet-clears-decriminalization-of-company-law-breaches-eases-csr-rules-11583317655758.html>.

² AM Legal, Decriminalization of Compoundable offences, Mondaq (Jul 8, 2020) <https://www.mondaq.com/india/operational-impacts-and-strategy/963080/decriminalisation-of-compoundable-offences>.

Illustration

“If A company gives 1 crore rupees to B Corporate Social Responsibility Committee towards Corporate Social Responsibility criteria which is 4% of its profits. Then B would adjust its extra 2% profits i.e.50 lakhs for the next year towards its Corporate Social Responsibility criteria.”

This bill which will be placed in the Parliament to be passed in current budget session, will amend the Companies Act, 2013.

Decriminalization of Companies Act, 2013 will help the criminal courts to get off the burden from solving more cases. As the criminal courts are already clogged with so many under trial cases to solve, which hampering our Indian Judicial system.

COMPANY LAW COMMITTEE’S ROLE:-

Company Law Committee suggested only compoundable offences to be decriminalizes under the Companies Act. Compoundable offences means offenders punished with imprisonment as well as fine. And Non-Compoundable offences to be remained under the criminal justice system as per the Criminal Procedure Code, 1973.

“Company Law Committee has divided compoundable offences into 8 categories”³:-

1. **Category A:-** Non-compliance of orders of authorities, such as NCLT/ROC.
2. **Category B:-** Defaults in respect of maintenance of certain records, in the registered office of the company.
3. **Category C:-** Defaults on accounts of non-disclosure of interest of persons to the company, which vitiates the record of the company.
4. **Category D:-** Defaults related to certain corporate governance norms.
5. **Category E:-** Technical defaults relating to intimation of certain information by filing forms with the ROC or in sending notices to stakeholders.
6. **Category F:-** Substantial violations that may affect the going concern value of the company or are contrary to larger public interests or with serious implications to stakeholders.
7. **Category G:-** Defaults involved in liquidation proceedings.
8. **Category H:-** Defaults not punishable under any provision, but made punishable through an omnibus clause”⁴.

“The Company Law Committee has adopted principle-based approach to decriminalization of offences, as under”⁵:-

³ Bharat Vasani, Decriminalizing our Company Law-Has the pendulum to moved to far, Cyril Amarchand Blog(Dec 5, 2019), <https://corporate.cyrilamarchandblogs.com>.

⁴ Bharat Vasani, Decriminalizing our Company Law-Has the pendulum to moved to far, Cyril Amarchand Blog(Dec 5, 2019), <https://corporate.cyrilamarchandblogs.com>.

⁵ Ministry of Home Affairs Government of India, Report of Company Law Committee (Nov 8 2019), http://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf.

1. **Principle 1:** 23 offences that are minor – less serious compliance issues, and which can be objectively determined, will be transferred to internal adjudication mechanism provided in Section 454 of the Act.
2. **Principle 2:** 7 offences that can be appropriately dealt with under other laws will be omitted from the Act.
3. **Principle 3:** 11 offences which do not fit into 1 and 2 above, the CLC has provided an alternative method of imposing sanctions.
4. **Principle 4:** 5 offences that involve subjective determination but are not very serious violations, will be punishable with fine only.
5. **Principle 5:** For 20 serious offences that may involve elements of substantive non-compliance requiring detailed adjudication, the Company Law Committee has recommended no change”⁶.

Company Law Committee also suggested rationalization of penalty in respect of six provisions. We have to clearly note that Company Law Committee has carried out this entire exercise in less than two months in just three meetings. They don't have an adequate amount of time to carefully evaluate the gravity of the offences before decriminalizing, because there were sharp U -turns by the Company Law Committee in respect of certain provisions. For example under section 135 of the Act provision related to Corporate Social Responsibility, originally where no penalty was prescribed in the 2019 amendment, a provision was introduced with imprisonment and fine. In the 2020 amendment it was proposed to get decriminalized.

Similarly, under Section 90 of the Act provision relating to declaration of Significant Beneficial Owner, originally in this only Civil penalties were given. Under 2019 amendment it was treated as fraud under section 447 of the Act under certain circumstances. Now within few months Company Law Committee recommended to decriminalize this offence.

Illustration

“If A person holds share in a Company and B holds not less than 10% beneficial interest in that share. Then A has to declare B as a Significant Beneficial owner to the company. If A doesn't declare B as Significant Beneficial Owner then A will be punished with fifty thousand rupees in continuing offence and which may extend to two lakh rupees.”

It is surprise to see that some offences, which are affecting larger public interest have been recommended by Company Law Committee to decriminalize. Such provisions are Section 8 of the Act which are relating to violation of requirements imposed on companies, Section 26(9) relating to contravention of matters prescribed to be stated in the prospectus and Section 188 of the Act relating to related party transactions, which were very serious offences.

⁶ Ministry of Home Affairs Government of India, Report of Company Law Committee (Nov 8 2019), http://www.mca.gov.in/Ministry/pdf/CLCReport_18112019.pdf.

PROVISIONS OF AMENDMENT BILL, 2020

In this Bill there are two types of provisions which are boon to Defaulters in this pandemic situation, these provisions save them from getting penalized with Imprisonments and heavy fines even in minor defaults. They are:-

1. Decriminalized provisions
2. Penalty provisions

DECriminalized PROVISIONS

Before this Amendment Bill, 2020 the companies defaulters, used to get penalized with imprisonments even for minor default but after passing of this bill in Parliament, these provisions save defaulters from imprisonments, they get punished only with fines and “or with both” with discretion of the Court.

Provisions which were decriminalized by the Companies Amendment Bill, 2020 :-

1. Section 3 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to three years or” of the Section 8 of principal Act and included words “twenty five lakh, or both” and the words “twenty five lakh” shall be substituted.
2. Section 6 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to three years or” of the Section 26 of principal Act and included the words “three lakh rupees or with both” and words “three lakh rupees” shall be substituted.
3. Section 7 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to one year or” of the Section 40 of principal Act and included the words “three lakh rupees or with both” and the words “three lakh rupees” shall be substituted.
4. Section 14 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to three years or” of the Section 68 of principal Act and included the words “three lakh rupees or with both” and the words “three lakh rupees” shall be substituted.
5. Section 24 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to one year or with both” of the Section 128 of principal Act.
6. Section 31 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to one year or” of the Section 147(1) of principal Act and included the words “one lakh rupees or with both” and the words “one lakh rupees” shall be substituted.
7. Section 34 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to one year or” of the Section 167(2) of principal Act and included the words “five lakh rupees or with both” and the words “five lakh rupees” shall be substituted.

8. Section 43 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to six months or” of the Section 242(8) of principal Act and included the words “one lakh rupees or with both” and the words “one lakh rupees” shall be substituted.
9. Section 44 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to one year or” of the Section 243(2) of principal Act and included the words “five lakh rupees or with both” and the words “five lakh rupees” shall be substituted.
10. Section 49 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to six months or” of the Section 347 of principal Act and included the words “fifty thousand rupees or with both” and the words “fifty thousand rupees” shall be substituted.
11. Section 54 of the Companies Amendment Bill, 2020 omitted the words “with imprisonment for a term which may extend to six months or” of the Section 392 of principal Act and included the words “five lakh rupees or with both” and the words “five lakh rupees” shall be substituted.

PENALTY PROVISIONS

These provisions will save defaulters from getting heavy fines in this pandemic situation when economy of country is not stabilized position. The Company has to pay salaries to its employees and other financial requirements to be done. So, govt helping companies to revive its financial position in the situation by establishing these provisions. They are:-

1. In Section 12 of the Companies Amendment bill, 2020 for the words “one thousand rupees”, the words “five thousand rupees” shall be substituted. And for the words “five lakh rupees” the words “subject to a maximum of five lakh rupees in case of a company and one lakh rupees in case of an officer who is in default” shall be substituted. Section 12 of Amendment Bill substituted the words of Section 64(2) of the Companies Act, 2013.
2. In Section 20 of the Companies Amendment bill, 2020 for the words “fifty thousand rupees”, the words “ten thousand rupees” shall be substituted. And for the words “five lakh rupees” the words “subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default” shall be substituted. Section 20 of Amendment Bill substituted the words of Section 92(5) of the Companies Act, 2013.
3. In Section 20 of the Companies Amendment bill, 2020 for the words “punishable with fine which shall not be less than fifty thousand rupees and which may extend to five lakh rupees”, the words “liable to a penalty of two lakh rupees” shall be substituted. Section 20 of Amendment Bill substituted the words of Section 92(6) of the Companies Act, 2013.
4. In section 21 of the Companies Amendment Bill, 2020 for the words “who knowingly issues the invitations as aforesaid or wilfully authorizes or permits their issue shall be

punishable with fine which may extend to one lakh rupees” the words “who issues the invitation as aforesaid or authorizes or permits their issue, shall be liable to penalty of fifty thousand rupees” shall be substituted. Section 21 of the Amendment bill substituted the words of Section 105(5) of the Companies Act, 2013.

5. In Section 28 of the Companies Amendment bill, 2020 for the words “one lakh rupees”, the words “ten thousand rupees” shall be substituted. And for the words “five lakh rupees” the words “fifty thousand rupees” shall be substituted. Section 28 of Amendment Bill substituted the words of Section 137(3) of the Companies Act, 2013.
6. In Section 29 of the Companies Amendment bill, 2020 for the words “five lakh rupees”, the words “two lakh rupees” shall be substituted. It means Section 29 of Amendment Bill substituted the words of Section 140 of the Companies Act, 2013.
7. In Section 36 of the Companies Amendment bill, 2020 for the words “punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees, or with both”, the words “liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to pay penalty of one lakh rupees” shall be substituted.. Section 36 of Amendment Bill substituted the words of Section 178(8) of the Companies Act, 2013.
8. In Section 41 of the Companies Amendment bill, 2020 for the words “punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees”, the words “liable to a penalty of two lakh rupees” shall be substituted. Section 41 of Amendment Bill substituted the words of Section 204(4) of the Companies Act, 2013.
9. In Section 45 of the Companies Amendment bill, 2020 for the words “punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees”, the words “liable to a penalty of fifty thousand rupees” shall be substituted. Section 45 of Amendment Bill substituted the words of Section 247(3) of the Companies Act, 2013.
10. In Section 63 of the Companies Amendment Bill, 2020 for the words “punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues”, the words "liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person" shall be substituted. Section 63 of Amendment Bill substituted the words of Section 450 of the Companies Act, 2013.

CONCLUSION:-

By concluding all the above data, I want to say that government has took the right step in this pandemic situation as the economy of the Country is not in its stability. People are loosing jobs as their companies not in a position to pay their employees salary. So, by amending the provisions of Companies Act, 2013 it helps Companies to overcome this situation and also their employees. As Companies will not get punished with criminal charges for their defaults and if they get default then also they face minimal penalty charges and employees get paid and don't loose their jobs in this horrifying situation.