

SUDHAKAR SARASWATULA VICE-PRESIDENT (CORPORATE SECRETARIAL)
RELIANCE INDUSTRIES LIMITED

COMPANIES (AMENDMENT) BILL, 2020

WIRC OF ICSI – 26.9.2020

S.SUDHAKAR

VICE-PRESIDENT (CORPORATE SECRETARIAL)

RELIANCE INDUSTRIES LIMITED

MOB: 9967651570

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Learning

The illiterate of 21st century will not be those who can't read and write, but those who can't Learn, Unlearn and Relearn – Alvin Toffler

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Disclaimer

Views expressed are of my own and not of the organisation in which I am employed

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COMPANIES ACT 2013

- Companies Act, 2013 was a historic legislation and enacted with a view to consolidate and amend the law to meet the prevailing and prospective regulatory requirements
- This Act has introduced several significant changes relating to disclosures which have substantially raised the bar of Corporate Governance
- Satyam, Sahara, Sharada and other various scams alerted the law makers and stringent penal provisions were provided under the Companies Act, 2013
- The word 'fine' appeared 189 times, 'penalty' 41 times, 'prosecution' 24 times and 'imprisonment' 76 times in this Act
- An ineptly drafted and hastily implemented Companies Act, 2013 made it an arduous and risky affair to interpret as well as its implementation



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LEGAL REFORMS

- Realizing the ground realities, industry views and market practices, on the recommendations by the following committees, various legal reforms were initiated by the Government
 - Companies Law Committee of 2016 (CLC – 2016)
 - Committee to Review of Offences under the Companies Act, 2013 (Offences Committee)
- So far, the Companies Act, 2013 was amended thrice
 - Companies (Amendment) Act, 2015
 - Companies (Amendment) Act, 2017 and
 - Companies (Amendment) Act, 2019

Company Law Committee - 2019

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COMPANY LAW COMMITTEE - 2019

- The Company Law Committee was set up on September 18, 2019 under the Chairmanship of Shri Injeti Srinivas
- **Terms of Reference inter-alia were**
 - to recommend **further re-categorization of certain 'Criminal Compoundable Offences' to 'Civil Wrongs'** carrying 'civil liabilities'
 - focus on **decriminalization of offences** based on their gravity
 - to recommend certain changes to **facilitate and promote ease of doing business and ease of living**
 - **foster improved corporate compliances** for stakeholders and law-abiding corporates
- The Committee has submitted its report on November 14, 2019

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COMMITTEE DELIBERATIONS

- The **Committee deliberated upon the following proposals**
 - Streamlining corporate compliance and governance
 - Providing an appellate mechanism against orders of Regional Directors
 - Enacting a framework for producer companies
 - Decrease duplication in disclosures
 - Decrease onerous compliances for small companies, one person companies, producer companies, start-ups etc

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WHY TO DECRIMINALIZE OFFENCES

- Criminal sanctions may prove to be **higher deterrent** than civil sanctions
- In spite of rigours of criminal law, critics have questioned the efficiency of criminal law in dealing with corporate misconduct
- Criminal proceedings clog the courts, cost intensive, time consuming and are complex
- Excessive high penalties or fines may be **counter productive**
- **There should be a balance** between civil and criminal sanctions to regulate corporate conduct
- Therefore there is a **need to review the quantum of penalties**

Company (Amendment) Bill - 2020



Companies (Amendment) Bill 2020

Introduced on : March 17, 2020

Passed in Lok Sabha : September 19, 2020

Passed in Rajya Sabha: September 22, 2020

President's consent : Awaited

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MAJOR AMENDMENTS

- The Companies (Amendment) Bill, 2020 made one more attempt to further **decriminalize and rationalize certain offences** under the Companies Act, 2013
 - Imprisonment for procedural lapses – example contravention of provisions of sections 177, 178, 184
- **Apart from the above the following are certain major amendments**
 - A full-fledged chapter on **Producer companies**
 - To permit certain class of public companies to issue and **list certain class of securities on permitted stock exchanges in permissible foreign jurisdictions**
 - Payment of adequate **remuneration to nonexecutive directors** in case of inadequacy of profits
 - Specified classes of unlisted companies to prepare and file their **periodical financial results**
 - **Exemption from constitution of CSR Committee**

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OBJECTS & REASONS FOR AMENDMENTS

- a) **to decriminalise certain offences** under the Act in case of defaults which can be determined objectively, and which otherwise **lack any element of fraud or do not involve larger public interest;**
- (b) to empower the Central Government **to exclude**, in consultation with the Securities and Exchange Board of India, **certain class of companies from the definition of "listed company"**, mainly for listing of debt securities;
- (c) **to clarify the jurisdiction of trial court on the basis of place of commission of offence** under section 452 of the Act for wrongful withholding of property of a company by its officers or employees, as the case may be;



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OBJECTS & REASONS FOR AMENDMENTS CONTD...

- (d) to incorporate a new Chapter XXIA in the Act relating to Producer Companies, which was earlier part of the Companies Act, 1956;
- (e) to set up Benches of the National Company Law Appellate Tribunal;
- (f) to make provisions for allowing payment of adequate remuneration to nonexecutive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases;
- (g) to relax provisions relating to charging of higher additional fees for default on two or more occasions in submitting, filing, registering or recording any document, fact or information as provided in section 403;

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OBJECTS & REASONS FOR AMENDMENTS CONTD...

- (h) to extend applicability of section 446B, relating to **lesser penalties for small companies and one person companies, to all provisions of the Act** which attract monetary penalties and also extend the same benefit to Producer Companies and start-ups
- (i) **to exempt any class of persons from complying with the requirements of section 89** relating to declaration of beneficial interest in shares and exempt any class of foreign companies or companies incorporated outside India from the provisions of Chapter XXII relating to companies incorporated outside India;
- (j) **to reduce timelines for applying for rights issues** so as to speed up such issues under section 62;
- (k) **to extend exemptions to certain classes of non-banking financial companies** and housing finance companies **from filing certain resolutions** under section 117;



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OBJECTS & REASONS FOR AMENDMENTS CONTD...

- (l) to provide that the companies which have Corporate Social Responsibility spending obligation up to fifty lakh rupees **shall not be required to constitute the Corporate Social Responsibility Committee** and to allow eligible companies under section 135 to **set off any amount spent in excess** of their Corporate Social Responsibility spending obligation in a particular financial year towards such obligation in subsequent financial years;
- (m) to provide for a window within which penalties shall not be levied for delay in filing annual returns and financial statements in certain cases;
- (n) to provide for **specified classes of unlisted companies to prepare and file their periodical financial results;**
- (o) to allow **direct listing of securities by Indian companies in permissible foreign jurisdictions** as per rules to be prescribed.

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REMOVAL OF IMPRISONMENT

- buy-back of shares without complying with the Act;
- default in complying with procedure for formation of Charitable company;
- knowingly participating in issue of prospectus in contravention of the law;
- default in complying with procedure for dealing with Securities in stock exchanges;
- default in complying with procedure for variation of shareholders' rights;
- default in keeping Books of Accounts at registered office, etc.;
- continuing in office of director despite knowledge of disqualification;
- failure of a Director to disclose interest in the company;
- execution of contract in violation of provisions for Related party transactions, etc.

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2(52) LISTED COMPANY

- The present definition says that “a company which has any of its securities listed on any recognized stock exchange is a ‘Listed Company’”
- In view of this even a private company which has its debt securities listed on a stock exchange is considered to be a listed company for the purpose of Companies Act, 2013 and has to comply with all the related compliances
- There is no differentiation under the Companies Act whether it is equity listed company or debt listed company and the compliances are the same, which is not the case with LODR
- It is provided that such class of companies, which are listed or intended to be listed such class of securities, as may be prescribed in consultation with the SEBI, shall not be considered as listed companies



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16 RECTIFICATION OF NAME OF COMPANY

- In the opinion of Central Government if the name of the company is identical or too nearly resembles to an existing trademark, it may direct the company to change its name **within a period of three months as against six months** from the issue of such directions
- If a company is in default in complying with any direction given under sub-section (1), the Central Government shall **allot a new name to the company and issue a fresh certificate of incorporation** with the new name, which the company shall use thereafter:
- The company is at liberty to change its name subsequently

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23 LISTING OF SECURITIES ON FOREIGN EXCHANGES

- **New sub-sections 3 and 4 were introduced** in section 23 relating to public offer or private placement
- **Certain class of public companies may be permitted** to issue certain class of securities for the purposes of **listing on permitted stock exchanges, in permissible foreign jurisdictions** or such other jurisdictions, as may be prescribed.
- The **Central Government may exempt any class or classes of public companies** referred to in the newly inserted sub-section (3) from any of the provisions of Chapter, III i.e. prospectus & allotment of securities, Chapter IV i.e. share capital and debentures, sections 89, section 90 or section 127 i.e. failure to distribute dividends

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62 TIMELINES FOR APPLYING TO RIGHTS ISSUE

- In case of Rights issue the minimum period for which the issue shall be kept open is – **fifteen days or such lesser number of days as may be prescribed**
- For closely held companies this amendment will be very useful, wherein keeping the issue open for such long period of 15 days, has no meaning

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89 DECLARATION OF BENEFICIAL INTEREST

- New sub-section II was inserted under which the **Central Government may exempt** any class or classes of persons **from complying with any of the requirements of section 89**, except sub-section (10)
- The Central Government may **notify such exemption in the public interest** which may be unconditional or subject to certain conditions

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117 FILING OF RESOLUTIONS & AGREEMENTS

- Earlier provisions in respect of filing of resolutions passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business **were not applicable to a banking company**
- **Now the same has been extended to** any class of **non-banking financial company** registered under Chapter IIIB of the Reserve Bank of India Act, 1934 and to any class of **housing finance company** registered under the National Housing Bank Act, 1987

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129A PERIODICAL FINANCIAL RESULTS

- A new sub-section 129A is inserted under which the Central Government may, require such class or classes of unlisted companies, as may be prescribed,—
 - (a) **to prepare the financial results** of the company on such periodical basis and in such form as may be prescribed;
 - (b) to **obtain approval of the Board of Directors and complete audit or limited review** of such periodical financial results in such manner as may be prescribed; and
 - (c) **file a copy with the Registrar** within a period of thirty days of completion of the relevant period with such fees as may be prescribed

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135 CORPORATE SOCIAL RESPONSIBILITY

- A new proviso is added as the third proviso to sub-section 5
 - If the company spends an amount in excess of the requirements provided under this sub-section i.e. 2% of the average net profits made during the three immediately preceding financial years , such company may set off such excess amount against the requirement to spend under this sub-section for such number of succeeding financial years and in such manner, as may be prescribed

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PENAL PROVISIONS FOR NON-COMPLIANCE

- (b) for sub-section (7), a new sub-section was substituted, namely:—
- **If a company is in default** in complying with the provisions of sub-section (5) i.e. spending of 2% of the average profits or sub-section (6) i.e. transferring the unspent amount to a special account, the company shall be liable to a **penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account**, as the case may be, or **one crore rupees, whichever is less**, and
- **Every officer of the company who is in default** shall be liable to a penalty of **one-tenth of the amount** required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, **or two lakh rupees, whichever is less**
- **Provision for imprisonment is removed**

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CSR COMMITTEE

- A new sub-section 9 was inserted
 - Where the amount to be spent by a company under sub-section (5) does not exceed fifty lakh rupees, the **requirement of constitution of the CSR Committee shall not be applicable**
 - **Functions of such Committee** shall be discharged by the Board of Directors of such company

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149 REMUNERATION OF INDEPENDENT DIRECTORS

- A new proviso has been added to section 149(5) Providing that **if a company has no profits or its profits are inadequate, an independent director may receive remuneration,** exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V

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165 NUMBER OF DIRECTORSHIPS

- Earlier if a person was appointed as a director in more companies than prescribed, he was punishable with fine which shall not be less than five thousand rupees which may extend to Rs 25,000 for every day after the first day during which the contravention continues
- This was **rationalized by Companies (Amendment) Ordinance 2018** to penalty of five thousand rupees for each day after the first day during which the contravention continues
- Now the same has been **further rationalized to** that he shall be liable to a penalty of **two thousand rupees for each day after the first during which such violation continues, subject to a maximum of two lakh rupees**

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197 MANAGERIAL REMUNERATION

- Earlier there was no provision for payment of remuneration to non-executive directors including independent directors by companies which have no profits, or the profits are inadequate. Now the same is provided
- **Such remuneration shall be exclusive of** any fees payable for attending the meetings of the Board or Committees or for any other purpose whatsoever as may be decided by the Board
- Such remuneration shall be payable in accordance with the provisions of Schedule V

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403 FEE FOR REPEATED LATE FILINGS

- Earlier where there is a default on two or more occasions in filing documents the penalty shall not be lesser than twice the additional fee provided
- Now the same has been amended as “payment of such higher additional fee as may be prescribed”

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410 NUMBER OF MEMBERS OF NCLAT

- Maximum number of 'eleven members' of NCLAT is removed

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418A BENCHES OF NCLAT

- A new sub-section 418A was inserted
- (1) The powers of the Appellate Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson:
 - Such Benches shall have at least one Judicial Member and one Technical Member
- (2) The Benches shall ordinarily sit at New Delhi or such other places notified by the Central Government, in consultation with the Chairperson
 - The Central Government may, in consultation with the Chairperson, establish such number of Benches, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016

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435 JURISDICTION OF SPECIAL COURTS

- Jurisdiction of Special Courts on trail of offence regarding wrongful withholding of property under section 452 is removed

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446B PENALTIES FOR ONE PERSON & SMALL COMPANIES

- Earlier for certain non-compliances by one person and small companies the penalties were **one half of the penalty specified** in respective sections
- However **the said non-compliances shall be in respect of section 92 i.e. annual return, 117 i.e. filing of resolutions and agreements and 137 i.e. filing of financial statement with ROC**
- now the same has been extended to any non-compliance under the Act
- The **penalty shall not be more than one-half of the penalty specified** in such provisions **subject to a maximum of two lakh rupees** in case of a company and **one lakh rupees in case of an officer** who is in default or any other person, as the case may be

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452 WRONGFUL WITHHOLDING OF PROPERTY

- Under 452(2) the court may order the officer or employee to return such property wrongfully held within a prescribed time or in default to undergo imprisonment
- Now a proviso has been inserted providing that
- "imprisonment of such officer or employee, shall not be ordered, if the court is satisfied that the company has not paid to that officer or employee, any amount relating to—
 - (a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company;
 - (b) compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of death or disablement

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THANK YOU

