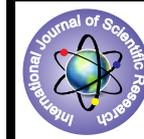


Company law Reforms in India- An Overview



Commerce

KEYWORDS : Companies Act, Company Law Reforms, Corporate Governance, Stakeholders

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ABSTRACT

The expression 'Company Law' may be defined as a branch of law governing the companies. The Companies Act, 1956 is the principal landmark legislation that governs companies in India. Companies in our country have by and large played and are playing an important role in our industrial and economic development. In response to the changing business environment, the Companies Act, 1956 has been amended from time to time so as to provide more transparency in corporate governance and protect the interests of small investors, depositors and debenture holders, etc. The post reforms corporate India has witnessed tremendous growth and expansion as a result of deregulation and procedural simplification of Company Law. Thus, the Companies Act, 1956 in India, is always a step ahead of other corporate and economic legislations towards ensuring the good Corporate Governance in the liberalized global economy.

INTRODUCTION

The expression 'Company Law' may be defined as a branch of law governing the companies. It deals with all aspects relating to companies, such as incorporation of companies, allotment of shares and share capital, membership in companies, borrowings by companies, management and administration of companies, winding up of companies. Thus, the company law is that branch of law which exclusively deals with all matters relating to companies. The Company Law, in India, is codified, and contained in THE COMPANIES ACT, 1956. This Act extends to the whole of India, and came in to force on 1st April, 1956.

THE COMPANIES ACT, 1956

The Companies Act, 1956 is the principal landmark legislation that governs companies in India. The Companies Act, 1956 is 150 years old and the largest Act in India comprising of 658 Sections and 15 Schedule. In addition thereto, there are various Rules & Regulations notified by the Government under the Act. The Act prescribes provisions for protection of the interests of the investors, creditors and public at large but at the same time permits the management to utilize its resources for optimum results and prosperity.

OBJECTIVE

The objective of this paper is to examine the Company Law Reforms and its effectiveness on corporations and their accountability to ensure proper management of corporate affairs and enlarge investor protection.

NEED FOR THE STUDY

The corporate status of a business venture has led to the evolution of innovative culture in the field of economic development the world over. The various types of business talents and the bulk finance required for the marked growth of commerce and industry would not have been possible without the process of innovation conceived and practised through the corporate sector. Companies in our country have by and large played and are playing an important role in our industrial and economic development. Company is a juristic entity and a corporate citizen bearing a social responsibility towards the society in general. The company law in India has been undergoing a phase of transitions over the last 25 years. More than a dozen major legislative initiatives have been introduced or attempted in Indian company law, the prime mover for this high level of company laws reforms process has been the changing corporate landscape and internationalization of business. With the initiation of market oriented policies in July 1991, the government has expedited the process to modify the company law in like with policy objectives and to harmonise it with the international developments.

COMPANY LAW REFORMS

Companies play very vital role in any economy. In our country, the Companies Act, 1956 primarily regulates the range of activities from formation to liquidation and winding up of companies. The Act prescribes regulatory framework for various aspects including organisational, financial and managerial aspects of companies. The winding up matters, presently are largely within jurisdiction of High Courts. Regulation of the corporate

governance, structure and obligations of companies towards their stakeholders, statutory disclosure obligations, powers of inspection, investigation and enforcement and company processes such as mergers/ amalgamations/ arrangements/Re-constructions etc., constitute the main focus of the Act. In the functioning of corporate sector, along with freedom of operation of companies, protection of investors and shareholders are considered equally important. The Companies Act enables a statutory platform for essential Corporate Governance requirements essential for functioning of the companies with transparency and accountability, recognizing and protecting the interests of various stakeholders.

In response to the changing business environment, the Companies Act, 1956 has been amended from time to time so as to provide more transparency in corporate governance and protect the interests of small investors, depositors and debenture holders, etc. The Act has been amended from time to time in order to address the issues raised by the corporate sector and to protect the interests of the investors. The last major amendments were made in the year 2002 by the Companies (Second Amendment) Act, 2002 which became effective from 13th January, 2003.

Company Law, has undergone major transformation in the last decade. The impetus for such transformation germinated partially from the worldwide move for market oriented policies and partially by disquieting features of globalization, resulting into focused attention on need for Good Corporate Governance. The advancements in information technology and influence of faster means of communications over corporate operations have also provided impetus for such transformation. In other words, the paradigm shift witnessed in the global economy and corporate sector the world over, have cumulatively presented various issues that have triggered debate and become important factors for initiating changes in Company Law in our country and abroad.

The Companies Act, 1956 provides the legal framework for the administration of companies/ corporate entities in India. The need for reviewing this Act was felt from time to time as the corporate sector grew in pace with the Indian economy, with as many as 24 amendments taking place since 1956. In the midst of grave balance of payment, the Government of India in 1991 redrafted its economic policy to lead new era of deregulation, decontrol, liberalization and global integration. Since then significant policies initiatives have been taken to provide stimulus to accelerated growth, industrial efficiency and global competitiveness. As a part of reform process, Government of India has initiated number of legislative reforms and radical changes in the area of Companies Laws

Major amendments to the Act were made through Companies (Amendment) Act, 1988 after considering the recommendations of the Sachar Committee, and then again in 1998, 2000 and finally in 2002 through the Companies (Second Amendment) Act 2002, consequent to the report of the Eradi Committee. It is widely accepted that reform and updation of the basic legal framework for corporate entities is essential to enable sus-

tainable economic reform. India took up its economic reforms programme in the 1990s. A need was felt for a comprehensive review of the Companies Act, 1956. Unsuccessful attempts were made in 1993 and 1997 to replace the present Act with a new law. Companies (Amendment) Bill, 2003 containing important provisions relating to corporate governance was also introduced, the consideration of which has been held back in anticipation of a comprehensive revision of the Company Law

In the year 1996, a Working Group was constituted to re-write the Companies Act, to facilitate healthy growth of Indian corporate sector under a liberalised, fast changing and highly competitive and contestable business environment. Based on the Report prepared by the Working Group and taking into account the developments that had taken place in corporate structure, administration and the regulatory framework the world over, the Companies Bill, 1997 was introduced in Rajya Sabha on August 14, 1997 to replace the Companies Act, 1956. Since the Bill of 1997 was under consideration and an urgent need was felt to amend the Companies Act, the President of India promulgated the Companies (Amendment) Ordinance, 1998 which was later replaced by the Companies (Amendment) Act, 1999 to surge the capital market by boosting morale of national business houses besides encouraging FII's as well as FDI in the country. The amendment of 1999 brought about number of important changes to tailor the Companies Act in consonance with the then prevailing economic environment and to further Government policy of deregulation and globalisation of economy.

The post reforms corporate India has witnessed tremendous growth and expansion as a result of deregulation and procedural simplification of Company Law. The corporate India experienced multifaceted growth in terms of number, size, volume and extraterritorial reach. This growth can be gauged from the fact that with about 30,000 companies in 1956 when the Companies Act was enacted, India now has the largest corporate base with over 9 lakh companies at work, which are spread through out the country, and larger numbers of new companies are being incorporated every year. Today, the Indian corporate sector has spread its wings in other parts of the world also and even resorted to acquisitions abroad. The catalyst behind this growth has been Government's commitment to provide growth oriented policy and regulatory framework for corporates. However, this corporate growth has been punctuated by incidences of corporate failures, securities scams, vanishing companies, mismanagement, growing shareholders dissatisfaction and unethical business practices. The Enron debacle and meltdown of certain once mighty US corporations have further aggravated the situation and raised various issues of Good Corporate Governance and attracted worldwide focus.

The corporate sector, with a view to ensure standardization of accounting practices of financial reporting, the compliance of Indian Accounting Standards was made mandatory. Accordingly, National Committee on Accounting Standards was set up. Investor Education and Protection Fund was constituted to educate the investors to enable them to take well informed and considered investment decisions.

With a view to expedite the harmonization process, the Companies Act was further amended in the year 2000 to provide certain measures of good corporate governance and for ensuring meaningful shareholders' democracy in the working of companies. The amendments effected in the year 2000, included inter alia setting up of Audit Committee, introduction of Postal Ballot, abolition of the office of the Public Trustee, abolition of the

concept of "Deemed Companies", appointment of auditors in the Government companies directly by the Comptroller and Auditor General of India, restricting a person to become director in more than 15 companies, prohibiting an auditor to hold securities carrying voting rights, introduction of secretarial compliance certificate to ensure better compliance of Companies Act by smaller companies, deletion of redundant provisions relating to managing agents, secretaries and treasurers and increase in penalties by way of fine to ten fold.

As a part of reform process, Government of India has initiated number of legislative reforms and radical changes in the area of Companies Laws. New issues, concepts and practices keep on emerging in respect of the working and administration of corporate sector. Many new and unheard concepts have been introduced in the Companies Act and many are in the pipeline. The reforms in company law has given an impetus to corporate governance frame work and related issues, which are not only important for companies to gain credibility and trust but also as part of their strategic management for survival, consolidation and growth in the emerging knowledge economy. Directors / Company Secretary's are now encouraged to use the electronic media in a wider and cost effective way to provide information beyond the mandatory disclosure. There are also strong influences of institutional investors, pressing for more transparency, accuracy, authenticity in corporate reporting and governance structures of companies they invest. The regulators are also keeping pace with the expectation of the capital markets with the reforms in regulation in order to enhance investor confidence.

After the recent Satyam Scam, there has been a lot of debate with regard to the measures which need to be taken to strengthen the standards of corporate governance in the country. The Companies Act, 1956, the bulkiest of the Indian legislations, has always been a piece of enigma. Every major amendment to the Act in the past had to undergo a tortuous route before becoming a part of the statute. Somewhere in between the Government thought of replacing the entire Act by a total new enactment. The Bill seeks to replace the present Companies Act, 1956 which has undergone major amendments over 24 times during the last five decades. To keep in consistency with Global Standards the Central Government has brought out the New Companies Bill to have new statutory framework for regulating the corporate.

After hanging in limbo for over two decades, the Union Cabinet cleared the revised draft of the Companies Bill, 2011. The Bill is now expected to be introduced in the Parliament in the winter session. The Bill will replace the Companies Act of 1956 after the Parliament's approval. The changes in the Companies Bill aim at improving corporate governance, increasing transparency and making independent directors more accountable.

CONCLUSION

The Companies Act has met the myriad requirements of the corporate sector, corporate professionals and other interested persons, including investors and the general public. The post reforms corporate India has witnessed tremendous growth and expansion as a result of deregulation and procedural simplification of Company Law. No Act is perfect or can remain static. Even if a new Companies Act is passed, amendments may have to be made in keeping with the changing times, subject to parliamentary debate and scrutiny. Thus, the Companies Act, 1956 in India, is always a step ahead of other corporate and economic legislations towards ensuring the good corporate Governance in the liberalized global economy.

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