

Implications of Companies (Amendment) Bill 2016

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Abstract – In this paper I have examined the Companies (Amendment) Bill, 2016 in which overview of the significant perspectives and changes incorporated in the bill in light of the CLC report and also discussed the Standing Committee report. It likewise endeavors to analyze whether the progressions incorporated in the bill are to the greatest advantage of the companies and whether these progressions will truly help in accomplishing the objectives envisaged by the Ministry of Corporate Affairs.

Keywords: Companies, Amendment, Bill, Corporate, Affairs

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INTRODUCTION

The Companies Act was enacted and enforced on twelfth September 2013 which supplanted the old Companies Act of 1956. The demonstration was purchased in to address the escape clauses and discrepancies that were available in the old demonstration. From that point forward, the demonstration has been corrected vide the Companies (Amendment) Act, 2014 and the Companies (Amendment) Act, 2015. The Companies (Amendment) Bill, 2016 presented in the Lok Sabha on March 16 2016, to additionally change the demonstration. It was alluded to the Standing Committee of Finance on April 12, 2016 and the board of trustees presented its 37th report on December 6, 2016. The bill is as yet pending with the Lok Sabha.

The Companies (Amendment) Bill, 2016 has been encircled so as to alter the Companies Act, 2013 as per the recommendations made in the Companies Law Committee report. The progressions incorporated in the bill expect to address troubles in actualizing the stringent compliance requirements, facilitating the way of working together, and evacuating any escape clauses in the demonstration. The bill further endeavors to orchestrate the Accounting Standards, rules and regulations made by SEBI and the rules and regulations made by the RBI with the Companies Act, 2013.

So as to facilitate simplicity of working together in India, the Lok Sabha on 27th July, 2017 passed The Companies (Amendment) Bill, 2016 ("Bill") accordingly conveying change to the present Companies Act, 2013 ("Act") concerning structuring,

disclosure and compliance requirements for the companies.

HIGHLIGHTS OF THE BILL

- The Bill amends the Companies Act, 2013 in connection to structuring, disclosure and compliance requirements for companies.
- The Act limits the quantity of intermediary companies through which ventures can be made in an organization. Additionally, the Act limits the quantity of layers of auxiliaries an organization can have. The Bill removes these limits.
- The Act requires a person who has a beneficial enthusiasm for the offers of an organization to disclose the equivalent. The Bill additionally requires a gathering of people who practice beneficial control (above 25%) in an organization to disclose such intrigue.
- Under the Act, a different offer letter ought to be issued to people to whom a private idea of offers has been made. The Bill removes the requirement of such offer letter, however retains the arrangement identified with notifying the Registrar of the arrival of allotment.
- The Act allows the arrangement of individuals at the dimension of Joint Secretary to the semi legal tribunal. Under the Bill, a technical part should be in any

event of the dimension of an Additional Secretary.

PRIMARY OBJECTIVE OF AMENDMENT

- The Bill amends the Companies Act, 2013 in connection to structuring, disclosure and compliance requirements for companies.
- The Act limits the quantity of intermediary companies through which speculations can be made in an organization. Correspondingly, the Act limits the quantity of layers of auxiliaries an organization can have. The Bill removes these limits.
- The Act requires a person who has a beneficial enthusiasm for the offers of an organization to disclose the equivalent. The Bill likewise requires a gathering of people who practice beneficial control (above 25%) in an organization to disclose such intrigue.
- Under the Act, a different offer letter ought to be issued to people to whom a private idea of offers has been made. The Bill removes the requirement of such offer letter, yet retains the arrangement identified with notifying the Registrar of the arrival of allotment.
- The Act permits the appointment of individuals at the dimension of Joint Secretary to the semi legal tribunal. Under the Bill, a technical part should be at any rate of the dimension of an Additional Secretary.

FOCAL POINTS OF THE BILL

1. **Associate Company:** In request to align the definition with the Accounting Standards, the Bill propose to change the definition of "significant influence" in section 2(6) of the Act and in like manner, it will mean control of 20% of the all out voting power, or control of or participation in business decisions under an understanding.

The Bill propose to incorporate the definition of "joint endeavor" which will mean a joint game plan whereby the parties that have joint control of the course of action have rights to the net assets of the game plan.

2. **Key Managerial Personnel (KMP):** The definition of KMP as given in section 2(51) has been extended to incorporate some other officer of the organization (I) who isn't more than one dimension underneath the executives; (ii) who is in entire time

employment; and (iii) has been assigned by the Board as a KMP.

3. **Related Party:** The expression "organization" under section 2(76) (viii) is proposed to be substituted with "body corporate" to incorporate the companies incorporated outside India identified with the Indian organization under the related party definition. Furthermore, a body corporate which is an investing organization or the venturer of an organization would likewise be a related gathering.
4. **Liability of Members:** Insertion of new clause 3A accommodating liability of individuals when the base number of individuals falls beneath as far as possible for example seven in the event of an open organization or two if there should be an occurrence of a privately owned business and such a circumstance proceeds for a period exceeding a half year or more. The people proceeding to be required with the organization as individuals will be severally subject for the installment of the debts contracted amid the above period and they will likewise be at risk to be sued severally for such debts.
5. **Business Objects:** The organization would not be required to have primary items in its Memorandum of Association as required under section 4(1) (c) and 4 (5) (I) and is permitted to take part in any legitimate demonstration or movement or business, or any demonstration or action or business to pursue a particular article or articles, according to the law until further notice in power. Be that as it may, where the companies propose to complete a particular item or movement, it needs to make reference to the equivalent in the Memorandum and the organization will not pursue some other action than referenced in the Memorandum. As far as possible for reservation of name of the organization by the Registrar of Companies has been proposed to be decreased to twenty days from the current time of sixty days.

'CONTROL' AND ITS INTER-PLAY WITH TYPES OF COMPANIES:

The 2013 Companies Act characterizes an "Associate Company" to mean – in connection to another organization – one in which such other organization has 'significant influence'. Further, 'significant influence' is characterized to reference the control of a base 20% of the all out offer capital or business decisions of the other entity, under an understanding. 'Control' is characterized under the

2013 Companies Act to incorporate – (I) the privilege to delegate most of the chiefs of the other entity; or (ii) to control the management or strategy decisions exercisable by an individual or people acting separately or in show, straightforwardly or by implication, including by virtue of their shareholding or management rights or investors understandings or voting understandings or in some other way. This definition was presented in the 2013 Companies Act out of the blue (the 1956 Act did not have any such definition). It is a definition that has, strikingly, been taken from the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (the "Takeover Code") issued by the Securities and Exchange Board of India ("SEBI"). Moreover, the idea of 'people acting in show' (or 'PAC') is exceptional to the Takeover Code and, to that degree and inside that specific situation, was thought not to legitimize a nearness in the companies law. In any case, the intention behind the 2013 Companies Act in including such a definition of 'Control' in the companies resolution was to align the two arrangements of laws and regulations (specifically with the current laws, including the Takeover Code), so as to maintain a strategic distance from numerous elucidations and overlap.

It is proposed to enlarge the definition of 'control' as a parameter to decide 'significant influence' under the definition of 'Associate Company' – by broadening the idea of 'associate companies' to cover even 'control of or participation' [emphasis added] in business decisions under an understanding. The 2016 Amendment Bill additionally looks to supplant the 20% edge with that of 'absolute voting power' not simply 'all out offer capital'. At long last, the proposed amendments try to fill a lacuna in the 2013 Companies Act – that had given that 'associate companies' incorporate 'joint endeavor' companies, without characterizing what the term 'joint endeavor' implied. The 2016 Amendment Bill currently tries to insert a definition of 'joint endeavor' as signifying "joint game plans whereby the parties that have joint control of the course of action have rights to the net assets of the game plan".

AMENDED SECTIONS

Private Placement of Securities – Section 42

Section 42 deals with the 'private placement' of a wide range of securities by companies and requires the offer and acknowledgment to be made in specific structures and subject to the terms and conditions recommended under the 2013 Companies Act and, specifically, Rule 14 of the Companies (Prospectus of Securities) Rules, 2014.

Despite the fact that it is proposed to substitute Section 42 completely, there are just sure essential major or main changes, as pursues: 1. It is proposed to get rid of private placement offer Form PAS-4. 2. A

dual penalty clause for failure to record returns of allotment, is proposed to be presented – (I) A general penalty clause for accepting monies in repudiation of Section 42, forcing a penalty of the lower of the aggregate sum raised by means of such private placement or INR 2 Crores; and (ii) explicit penalty of INR 1,000/- for every day amid which the default proceeds up to a limit of INR 25 Lakhs. Liability in the two cases is looked to be forced on the Company, the advertisers and the chiefs.

A dual penalty clause for private placement offer made to in excess of 200 people, is tried to be presented. Proposed Section 42(11) states that despite the punishments (as in # 2 over), a private placement offer to in excess of 200 people will be deemed to be an open offer. Consideration of "issue of securities" looked for in the definition of 'Private Placement'. As of now, Section 42 is liable to the provisions of Section 26 of the 2013 Companies Act, which deals with outlines to be issued if there should arise an occurrence of an open offer; that will never again be explicitly the situation going ahead, if the proposed changes are received.

Loans etc. to Directors etc. – Section 185

This arrangement has come to be regarded as a standout amongst the most draconian sections introduced in the 2013 Companies Act. Section 185, read with the allied rules, imposes (among others), a confinement on the allow of an advance from a holding organization to its subsidiary organization, aside from in the accompanying cases –

- Where the subsidiary is a completely possessed subsidiary and the credit is utilized for its (i.e., the entirely claimed subsidiary's) main business exercises.
- In instance of a private restricted organization (subject to specific conditions), including the stipulation that no body corporate will have put resources into the offer capital of such organization so as to profit the exemption from Section 185. Hence, a private organization with any foreign investment couldn't profit this advantage, which did not support the circumstance. We attract reference to Notification No. GSR 464 (E) dated June 05, 2015

The 2016 Amendment Bill proposes to preclude concede of loans to – (An) a chief of the lending organization, executive of its holding organization and the partner or relative of such executives; (B) firms in which such executive or relative is a partner. Every single other confinement have been eased, subject to going of a unique resolution and utilization of such loans just for primary business exercises by the backups. The 2016 Amendment

Bill proposes to erase the 'funds' arrangement toward the start of Section 185 – the arrangement that states Section 185 will apply except if, or spare as, generally gave somewhere else in the resolution.

INTER-CORPORATE INVESTMENTS – SECTION 186

Section 186 of the 2013 Companies Act deals with loans and investments by an organization subject to specific conditions and limits where (subject to conditions contained in that) – (i) companies are not permitted to make investments past two layers of investment companies; and (ii) no advance/security/ensure/acquisition might be made exceeding 60% of (paid-up offer capital + free holds + securities premium record) or 100% (free saves + securities premium record), whichever is higher. There have been overlaps between Section 185 and Section 186 in regard of between corporate loans (counting security or assurance) particularly with regards to a holding organization granting loans to its subsidiary. This is on the grounds that Section 186 exempts holding companies from compliance with the limits as for loans conceded to its subsidiaries. The provisions of Section 186 were at first demonstrating to be repetitive, since Section 185 had restricted loans to subsidiaries. Be that as it may, with the rules and the Exemption Notification becoming effective, loans to subsidiaries in specific cases (as clarified above) were permitted.

The limitation on investments up to two layers of investment companies is tried to be erased. The edges on the concede of loans/security/ensure/acquisition would now (it is proposed) apply to the estimation of such transactions, however to the total of the estimation of such existing transactions and any proposed new exchange including these viewpoints. Consideration of "investment made" by a banking organization/insurance agency/lodging fund organization/companies "set up with the object of and engaged in the business of financing industrial undertakings or infrastructural exercises under the exemption gave under Section 186 (11) of the 2013 Companies Act. Proposed expansion of the exemption under Section 186(11) to companies "built up with the object of and engaged in the business of financing industrial endeavors". Proposed augmentation of the exemption under Section 186(11) to any investment made by an investment organization. Proposed adjustment of the definition of "Investment Company" under the clarification to the section to incorporate a deeming arrangement that: (i) where an organization's assets in the types of investments in offers, debentures or different securities comprise at least half of its complete assets; or (ii) if its income derived from investment business constitutes at the very least half as an extent to net income; such organization will be deemed to be primarily engaged in the business of

acquisition of offers, debentures or different securities.

ANALYSIS OF COMPANIES ACT

1. The inclusion of a more extensive definition of 'control' to cover even 'participation in business decisions under an understanding' in the definition of an 'Associate Company' will have a particular, remarkable result on 'related gathering transactions' under the 2013 Companies Act. A 'related gathering' incorporates an 'Associate Company' and the related party restrictions under Section 188 of the 2013 Companies Act would, accordingly, apply to substances which fall inside the wide ambit of 'control' under the Act; and, thus subject to more prominent guideline of a relationship which, on parity, may not be regarded as a 'related gathering' one. It is felt that if the more emotional piece of the definition of 'control' – to be specific, the control of the management or approach decisions of an entity – is itself excessively unsure and fit for changing translations and the coming to of oppositely inverse conclusions in its application to explicit factual instances; that is currently proposed to be extended to incorporate even 'participation', which is considerably increasingly free and fit for including business connections that should not to interpret substances as "Associate Companies". Along these lines, even a NBFC or comparative moneylender with a board chosen one or non-key institutional financial specialists with defensive rights might be considered to 'control' an organization (in the way the definition of an "Associate Company" will work out as proposed) and every single such limitation incorporating those regarding 'related gathering transactions' under Section 188 of the 2013 Companies Act would apply, which may not really be the intention of the MCA, particularly in the event that it wishes to align with SEBI laws, which are unmistakably further developed. In the light of the equivalent, it would have been fitting for MCA to make a special case regarding minority protection rights in the definition of 'control'.
2. The expulsion of the requirement of Form PAS-4 is a positive advance in the light of the equivalent being an unwieldy methodology. The dual penalty clause for failure to record returns of allotment, as showed above, is a reason for worry as the purpose behind presentation of a different penalty clause for return of allotment is vague. In the event that the intention was to limit the penalty for return of allotment, in

perspective on the equivalent being a less basic offense, at that point such a special case ought to have been reflected in the general penalty clause. The dual penalty clause for 'deemed public offers' endeavors to rebuff both the defaulter for issuing securities to in excess of 200 man by burden of penalty; just as requiring such people to agree to the public offer requirements under the 2013 Companies Act. This shows the MCA has taken a serious note of the event of such offenses, considering the penalty in such a case would be at least INR 2 Crores, at some random point; and, where an arrival of allotment default happens, the applicable extra penalty will likewise apply.

3. A holding organization would in this way, regardless of being a public or private organization and without conditions imposed on the nature of its shareholding, have the option to allow loans to its subsidiaries subject to the death of an uncommon resolution and the subsidiary using such sum for its chief business exercises. This might be a reason for concern in such a case that the end-utilization of the advance is as yet limited to the 'main business exercises', it gives the idea that, if there should arise an occurrence of loans required by the subsidiaries for reason other than for its 'foremost business exercises', holding companies may need to proceed with the present routine with regards to altering its items in its memorandum of relationship to incorporate 'concede of loans to subsidiaries', so as to have such loans granted in the 'normal course of business' – and, all things considered, claim an exemption under sub-section (3) (b) of the proposed to be changed Section 185, which exempts companies giving loans/ensures/securities in the conventional course of business, gave the predefined rate of intrigue is charged. Be that as it may, once more, if the MCA expected to allow such a special case, it would have been reflected in the proposed amendments as contained in the 2016 Amendment Bill. In any case, that isn't so and, along these lines, this routine with regards to revising the articles clause may demonstrate to be risky. It is relevant to take note of that the Exemption Notification must be revised to mirror the above relaxations under the (proposed to be altered) Section 185 – in that, disarray ought not be caused that public companies under the (proposed to be corrected) Section 185 appreciate more liberty than private companies under the Exemption Notification.
4. The proposed deletion of the limitation on investments up to two layers of investment

companies would demonstrate positive particularly for structures including venture companies and investment companies in its layers, considering in such situations, it is hard to confine the structure to two layers. A figuring dependent on the proposed amended edge limits in # 2 above would be prohibitive. For example, where an organization may appreciate liberty to give loans to subsidiaries (subject to specific conditions) under Section 185 however at this point in perspective on cutting down the edge limits under Section 186, such elements would need to apply the applicable financing costs as commanded under Section 186, after intersection the stipulated edges. The definition of 'Investment Company', as in the proposed amendment, would be like that of the determination of financial movement as the 'vital businesses with the end goal of NBFCs. This proposed amendment in the law may cause worry since the determination would be increasingly prohibitive and the equivalent can't be managed absolutely by an amendment to the organization's memorandum of affiliation, which has been the usual practice for determination of the business of the organization.

CONCLUSION

The vision behind the bill for example the simplification of the methods of and the laws administering the carrying on business is the need of the hour. A reasonable and complete component to conduct business would just spur the beginning and development of businesses, which will make greater employment openings and will at last advantage the country all in all. On a full scale level, the charge, it appears has accomplished its points. An enormous bit of the bill accommodates lucidity, unambiguity, transparency and assurance. In any case, the end result for those provisions which are obviously in opposition to the objectives of the bill? The progressions proposed by the Company Law Committee have been all around accepted by the service and incorporated inside the bill barring out some minor exemptions. Be that as it may, as stated in prior sections, a portion of these amendments may end up being biased to the interests of the companies. Should these amendments be checked on?

Another inquiry we should consider over is whether the amendments have been taken excessively far? Has the service, so as to reduce the complications and bothers of compliance, prepared for wild abuse of these provisions for example the provisions as for private placements?

While these are questions open for discussion, the accomplishment of the bill will be successfully

surveyed just in the event that it comes into power as a demonstration, and it does, in reality reduce the weight of compliance on the businessmen realizing development in the business sector. It will intrigue perceive how the progressions recommended by the Standing Committee are gotten by the Lok Sabha and whether it would be incorporated in the bill in the following session. On the off chance that the bill retains the positive provisions and addresses the worries raised, I trust it would achieve major developments in the business and result in an all the more thriving economy. Without hardly lifting a finger working together in India, the Government of India through this Bill tends to irregularities and procedural restrictions in the present Companies Act, 2013. Considering the progressions the Bill propose to realize, it tends to be obviously said that there will be an ocean change in the present Act which will help economic development and lift foreign investment in India.

Therefore, it isn't amazing that while the 2016 Amendment Bill addresses and rectifies numerous operational anomalies just as procedural jug necks, a considerable lot of the worries communicated about the structure of the 2013 Companies Act being defective in principle just as in genuine application, stay unaddressed notwithstanding the Committee's Report featuring a large number of these angles. Having said that, still, the 2016 Amendment Bill might be invited as a positive move, however with the expectation that a lot progressively such remedial measures pursue rapidly enough if the Government's affirmed goal of guaranteeing that the simplicity of working together in India is translated into a concrete reality soon.

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