In Depth - The Companies (Amendment) Bill, 2020

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Recently, a Bill to amend the **Companies Act, 2013** and decriminalise various offences under it was introduced in the Lok Sabha. The proposed amendments aim to reduce the burden on the **National Company Law Tribunal.** The Bill was however vehemently opposed and was demanded to be referred to the **Parliamentary Standing Committee on Finance.**

Proposed Amendments in the Bill

- The Bill removes the penalty and imprisonment in certain offences along with the reduction in the amount of fine payable.

- **Decriminalization:** The Bill proposed 72 amendments to the Companies Act, 2013 to decriminalise various offences which can promote **Ease of doing ethical business and Ease of doing honest business.**
    - It will also boost the confidence of the investors along with giving an impetus to the business as the fear of imprisonment will be reduced.
    - The decriminalization is only for **minor, procedural and technical falls** which do not involve fraud, injury to the public interest, or non- compoundable offences.
- **Recategorization:** The changes **recategorize** at least 23 offences out of the 66 compoundable offences mentioned under the Act in case of **defaults** (which can be **determined objectively** and which **lack an element of fraud** or do not involve larger public interest). Such cases will be dealt with an **in-house adjudication framework.**

    Compoundable Offences are those which can be conciliated by the parties under dispute (without the requirement of the permission of the Court).
- **Producer Companies:** Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, the conduct of meetings, and maintenance of accounts. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.

    Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries.
- **Direct Listing in Foreign Jurisdictions:** The Bill empowers the Central government to allow certain classes of Indian public companies to directly list classes of securities (as may be prescribed) in foreign jurisdictions.

    This is likely to **help start-ups to tap overseas markets** for raising capital.
- **Remuneration to non-executive Directors:** The 2013 Act made special provisions for payment of remuneration to executive directors of a company (including managing director and other full-time directors) if the company has inadequate or no profits in a year. The Bill extends this provision to non-executive directors, including independent directors.

    This will **enhance the productivity** of such non-executive directors because of their increased remuneration.

- **Financial Results Filing & Corporate Governance:** Specified class of unlisted companies will now have to prepare and file their financial results periodically and also complete the **audit or review** of such results.
    - Also, the Bill provides for a window within which the penalties shall not be levied for delay in filing of annual returns.
    - This aims to improve corporate governance as it will bring more transparency into affairs of closely held companies which are used by major shareholders of large public interest companies **to divert funds** through transactions that are not on an **arm's length basis.**
- **Benches of NCLAT:** The Bill seeks to establish benches of the **National Company Law Appellate Tribunal** in order to ease their burden and decrease the pendency of cases.
- **Penalties:** It extends **lesser penalties** for small companies (i.e., with lower paid-up share capital and turnover thresholds), one-person companies (i.e., companies with only one member), and producer companies, in case of all offences which attract monetary penalties.
- **Exclusion from listed companies:** The Bill empowers the Central government, in consultation with the **Securities and Exchange Board of India (SEBI),** to exclude companies issuing specified classes of securities from the definition of a "listed company".
- **Exemptions from filing resolutions:** The 2013 Act required companies to file certain resolutions with the Registrar of Companies (RoC). However, banking companies were exempted from filing such resolutions. This exemption has been extended to registered non-banking financial companies and housing finance companies by the proposed Bill.
- **Corporate Social Responsibility (CSR):** Under **Section 135** of the Companies Act, 2013, companies with net worth, turnover or profits above a specified amount are required to constitute **CSR Committees** and spend 2% of their average net profits in the last three financial years, towards its CSR policy.
    - The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees.
    - Further, the Bill allows eligible companies (which spend any amount in excess of their CSR obligation in a financial year) to set off the excess amount towards their CSR obligations in the subsequent financial years.

Corporate Social Responsibility

- **Corporate Social Responsibility** is a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders.

- While CSR law mandates spending across **12 prescribed schedules** ranging from education and health care to sports or gender equality, few companies spend towards community development, infrastructure, social & child welfare, etc.
- Under it, companies are mandated to constitute a **CSR committee,** comprising at least 3 members of the Board (with at least 1 independent member).
- **Related Facts:**
    - Indian businesses spend more than Rs. 10,000 crore a year on CSR.
    - **CSR expenditure** of companies listed at the **National Statistical Commission** have **grown** at a Compounded Annual Growth Rate (CAGR) of 17% over the last 5 years.

Companies (Amendment) Act, 2019

- It was enacted to consolidate and amend the laws relating to companies.
- It tightened the **CSR compliance norms** and ensured stricter norms for non-compliance of the company law regulations.
    - It allowed companies to transfer their unspent CSR funds to a separate account, the same has to be spent within three financial years.
    - In case, the money remains unspent, then it should be transferred to any fund specified in Schedule VII of the Act.
- It empowered the Registrar **of Companies** to initiate action for removal of a company's name if it is not carrying out business activities as per the Companies Act.
- It provided for **transferring of functions** with regard to dealing with applications for change of financial year and **shifting of powers** for conversion from public to private companies from NCLT to the Central government.
- It provided more teeth to the Central government to deal with violators and reduced the burden on special courts and enabled the **National Financial Reporting Authority (NFRA)** to perform its functions through divisions and executive bodies.

A healthy business can only succeed in a healthy society. Thus, it is in the best interest of a company to produce goods and services which strengthen the health of the society along with the supportive efforts of the government to provide and create a conducive environment for the growth of the companies.