5 NEW COMPANY LAW BILL AND ITS IMPLICATIONS ON CSR - A CAUTIONED APPROACH

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ABSTRACT

Corporate sector is vital to the Indian economy as it contributes significantly to it. The sector not only meets the products and service requirements of the people but also provides employment to millions of people in India. However, the presence of a legal framework is important not only for governing the routine functioning of the corporate sector but also for the purposes of assessing their social contribution. Recently the new Companies Bill has been passed by the Rajya Sabha replacing the previous Companies Bill. The new Bill contains important implications for corporate social responsibility. This paper presents a critical discussion of the same along with identifying the major differences between the new Bill and the earlier version.

ABOUT COMPANY LAW BILLS IN INDIA

Company Law Bills provide a legal framework to the corporate functioning in India. India got its first Company Law Bill in the year 1913 as the Companies Act, 1913. Over the time, the external environment of businesses in India witnessed a radical shift which created the need to bring a new company law bill in existence. After independence, the Companies Act, 1956 was enacted comprising the procedures relating to structure, management, administration and conduct of affairs of the corporate firms. However, change is the nature's rule and in around 5 decades, the need was again felt to replace this Bill with a newer more effective one. This has resulted in the introduction of recent Companies Bill, 2013 encompassing major changes in the provisions of its predators. The company laws in a country are considered as absolute essential for economic development (Paredes, n.d.). However, recently with greater focus on social aspect, the new Bill encompasses the social responsibility of the companies too.

INTRODUCTION TO THE NEW COMPANY LAW BILL IN INDIA

The new Company Law Bill has been passed by the Parliament in August 2013 after a long wait of two decades. The new Bill has replaced 58 years old Companies Act 1956 ushering in better transparency in the Indian corporate sector (Express News Service, 2013). The Bill was passed by the Lok Sabha on December 18, 2012 and contains various chapters relating to the incorporation of a company, prospects and allotment of securities, management and administration, declaration and payment of dividend, corporate board meetings, appointment of directors and managerial persons, prevention of oppression and mismanagement, as well as winding up (Lok Sabha, 2012). The Bill has introduced 33 new definitions including the definition of 'associate company', 'employee stock option', 'promoter' and 'related party' (Subramanian, 2013). The new Bill brings company law in India closer to the global standards and allows many new forms of corporate setting like 'One Man Company.' The Companies Bill 2013 accentuates corporate social responsibility of the firms and strengthens the shareholder rights (Sharma and Prusty, 2013). Besides, this Bill also empowers Indian women and stipulates at least one women director in the Board of the company (Balaji, 2013).

COMPANY LAW BILL AND CSR - ITS RELATION

The new Company Law Bill not only governs the economic profit-making activities of the Indian corporate sector but also recognizes the social contribution of the corporate sector. By incorporating a compulsory corporate social responsibility (CSR)

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clause in the Companies Bill, 2013 India becomes the first country in the world to mandate corporate firms to set aside a part of their profits for corporate social responsibility activities (Balaji, 2013). Although in recent times, there have been increasing awareness among Indian corporate arena for socially responsible activities including better health and safety measures for the workforce, contributing towards environment protection by adopting greener production and supply chains; but nothing was mandatory by the law providing an escape to many. But no longer can the corporate firms escape from their responsibility towards society with the introduction of the Companies Bill, 2013 (Balaji, 2013).

LITERATURE REVIEW

THE IMPORTANCE OF COMPANY LAW BILLS

The company law bills in any country form the basis of administering the corporate sector. These are framed with a view to provide legal framework to the activities of corporate arena and leave little scope for any kinds of discrepancies. Right from the incorporation to management and winding up of the corporate firm, everything is prescribed under the company law bills. Besides the powers, remuneration, qualification and appointment of directors etc. is also prescribed. The company law bills hold significance not only for the business community but also for the general society as they make corporate responsible towards the society. In the absence of the company law bills, there would be chaos and confusion in the corporate sector leaving an adverse impact on the economy. It is simply impossible to imagine the governance of vast corporate arena across the globe without well-framed company law bills today in complex business environments.

ABOUT THE OLD COMPANY LAW BILL IN INDIA

The old Company Law Bill here refers to the Companies Act, 1956 which regulated the Indian corporate scenario for more than 5 decades. The Companies Act 1956 was enacted to consolidate and amend the laws relating to companies and some other associations mentioned under the Act. The Act when came into force repealed the old Companies Act of 1913 which was in force until then (Taxmann, n.d.). The Act provided a legal framework to the Indian corporate sector and offered greater autonomy of operation and innovation with lesser process formalities and compliance costs. The Companies Act 1956 has played crucial role in the economic development of India. The Act has contributed majorly by facilitating the establishment of corporate form of businesses in India which in turn not only expanded the range of products and services in India but generated vast employment opportunities in the country. The growth of corporate has also led to manifold increase in the country's exports as well as international investments (Taxmann, n.d.).

However, the Bill suffered from several limitations and failed to sustain the requirements of changing business scenario, hence the need was felt to replace it with a Bill that suits the present day business environment in the country and internationally.

DISADVANTAGES OF THE PREVIOUS BILL & HOW THE NEW BILL ADDRESSES THEM

The Companies Act, 1956 which was in existence until now has been frequently criticized as outdated and cumbersome. It was passed in the first decade of independent India and continued like that with minor revisions at times. But, the business landscape of India and the world has changed radically over the last 5 decades. The new Companies Bill meets the requirements of the today's corporate India (Balaji, 2013). The previous Bill often led to delays in incorporation due to procedural formalities but the new Companies Bill, 2013 makes it easier for the prospective businesses to register faster as compared to the previous Bill through fully electronic MCA-21. The Companies Bill, 2013 also enhance the ease of doing business in India by allowing the firms to hold meetings through e-governance mode (PTI, 2013). The basic difference that the Companies Bill, 2013 has brought in the Indian business scenario is that the old Bill was based upon developing government/ regulatory approval based regime; however the new Bill supports the idea of self-regulatory business regime. The Companies Bill, 2013 lay emphasis upon transparency and disclosure of facts. Besides, the Companies Bill, 2013 also identifies the concepts of 'One Person Company' (OPC) and 'Small Company' which were not recognized by the previous Bills (PTI, 2013). Now it is possible to set up a one person company

helping the budding entrepreneurs establishing a business all by themselves. The previous Bill also did not contain any mandatory clause regarding corporate social responsibility of the firms due to which firms often succeeded in escaping from their social responsibilities. But the new Bill overcomes this drawback of the previous Bill by mandating CSR for firms qualifying the requirements mentioned under the new Bill.

ABOUT CSR, AND HOW COMPANY LAW BILLS ARE RELATED TO CSR

Carroll (1979 cited in Crane et al., 2008) offered a very simple definition of corporate social responsibility (CSR) embracing various aspects of a firm's social responsibility. The definition says, "the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time." This definition in itself clears the purpose of the term corporate social responsibility. It makes businesses obliged to the society from where they make profits to return a share of such profit for welfare. Although it is expected from every business to contribute to social development but the previous company law bills did not make it mandatory. The firms are expected to contribute towards the betterment of their employees, environment, as well as society in general. A number of non-government organizations raised voice from time to time asking corporate to contribute to the society. But since nothing was mandatory until now, this freedom led firms to escape from their responsibility. But Clause 135(5) of the new Bill makes it compulsory for all firms with a market capitalization of more than INR 500 crore, a turnover of INR 1,000 crore or a net profit of 5 crore needs to spend 2% of average profits of last 3 years on CSR activities. The new Bill has been drafted in such a manner that it clears many ambiguous provisions contained in the previous Bill (Lee, 2012). This way the new Bill paves way for social development in India apart from economic development.

NEW COMPANY LAW BILL AND ITS IMPLICATIONS

The Companies Bill, 2013 has broadened the scope of Indian corporate sector. By legalizing the 'one person company', this Bill has brought the Indian corporate regime at par with global standards (Babwani, 2013). Moreover, by stipulating the appointment of at least one woman director in the Board of every company, the Bill makes a significant move in the direction of empowering Indian women. Women constitute 24% of the Indian workforce but only 14% occupy senior management positions and the proportion is even less in case of top management positions where women constitute only 5% of the positions (Balaji, 2013). Further the Bill also aims to reduce nepotism in corporate firms by mandating that one-third of a company's board. In addition to this, the Bill promotes the company secretary to management level from a mere record keeper in many organizations today. This would enhance the probability of better legal administration in companies and help to create newer jobs in the country (Balaji, 2013). The Companies Bill, 2013 simplifies the incorporation, administration, governance, as well as strategic management of the firms.

However, the Bill also has a darker side and the experts are skeptical about the benefits mentioned under the Companies Bill, 2013. The biggest flaw recognized by the experts is that this Bill although lays emphasis on CSR contains no definition of CSR (Lee, 2012). A few experts including Harvard's economist Levitt criticize the CSR clause contained in the Bill is motivated by Government's intention to shed their responsibility of social development (Sharma, 2013). Besides a number of provisions in the new Bill are in contradiction with the Constitution of India and the provisions of other laws (Lee, 2012).

EFFECTS OF NEW BILL ON CSR

The new Companies Bill is aimed towards fostering the growth of Indian corporate sector and bringing in greater transparency by promoting self-regulation and disclosure and lesser regulations. This Bill makes the corporate sector more responsible towards society besides fostering economically. The Bill under clause 135(5) provides that the specific companies mentioned thereby need to spend at least 2 percent of the average profits for the last 3 years on corporate social responsibility activities (Express News Service, 2013). On one hand, it offers a ray of hope that there would be better societal development in India by directing a share of abundant corporate resources

towards corporate social responsibility activities, but on the other hand it also raises questions like how these activities will be managed during times of slowdown or recession in the economy. Many therefore criticize the mandatory CSR clause of the new Bill saying that this is coercive extraction for the companies who already take such CSR initiatives. Although the provision regarding CSR is not mentioned clearly as mandatory but critics say that the disclosure requirements make it mandatory. The Bill does not provide any definition of CSR and also does not mention any specific areas where CSR amount needs to be spent by the firms (FP Staff, 2013). These loopholes may also give space for frauds and non-compliance in future.

CONCLUSION

The new Companies Bill, 2013 has both a fairer as well as darker side. It offers considerable improvements over previous Bills. The number of sections has been reduced and the provisions have been mentioned in a clear, unambiguous manner leaving no scope for misunderstandings. Many new definitions have been introduced and the outdated provisions of the previous laws have been cut. The new Bill provides for compulsory setting aside of business profits for CSR activities. However, it leaves many doubts in the minds of critics whether the same would be really followed in the absence of clear mandatory status, definition and non-compliance penalty of the CSR by firms.

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