

Conclusion

Banking today has set a new benchmark for itself. It has been renovated, redefined and restructured with the use of information technology and it is sure that the future of Banking will offer more sophisticated services to the customers.

A major challenge is to keep pace with a increased customer base in wake of sudden spurt in Bank accounts both in urban and rural sector due to the financial inclusion

drive. Another one is to meet the ever increasing demands of high-end customers and NRIs. Introduction of Multi-currency cards for the global traveller in a positive step in this direction but a lot more needs to be done to lower the charges on international transactions. Then only can we venture towards a forward looking global society. We are sure that there will be increase in the number of banks and a multifold increase in the number of bank branches in the near future to cater to the needs of rural, urban and global Indians.

COMPANIES ACT, 2013 - A STEP TOWARDS AN EFFECTIVE CORPORATE SECTOR IN INDIA

By

—ROOPALI GARG,

B.A., L.L.B. (Gold Medalist), L.L.M.

Faculty Member,

Mahatma Gandhi Law College, Hyderabad

Introduction

Companies Act, 2013, is being seen as a landmark in Corporate sector. It is a renewed enactment which is expected to take out the old Companies Act of 1956 from the clutches of darkness and uncertainty and throw a new light on certain areas which had become a cause of concern in the changed scenario. This article is an attempt to define the fine lines in Companies Act, 2013. There are many areas where the new act sounds promising but here I have attempted to bring to fore a few key areas which need to be applauded for their incorporation in the new act especially because they deserved attention since many years.

There have been many changes in corporate governance since 1956 and the act posed hurdles in treating a number of matters which play an important role in modern management. Companies Act, 1956

had undergone many amendments, moreover there have been changes in SEBI guidelines due to which the old act lost its lustre and compatibility. This paved way for a complete overhaul. It however, needs to be seen whether the new act of 2013 comes upto the expectations of the corporate world or not.

There is scepticism about its success and people are calling it 'an old wine in a new bottle' but I would say that it depends on us the way we look at it, 'whether the glass is half full or half empty'. I feel that we need to apply a more optimistic approach and not be judgmental about it.

Companies Act, 2013 renews and reshapes the old act to make way for new thinking and dimensions in company law. It incorporates within its fold many areas of progressive approach and tries to tie many loose ends of the sector. Let us pin-point five fields in which the new act will be called an achiever.

1. One person company (OPC)

Companies Act, 2013 introduces a new type of entity to the list of companies.

According to Section 3(1) of the act, a company may be formed for any lawful purpose by:

- (a) seven or more persons, in case of a public company
- (b) two or more persons, in case of a private company (the new requirement increases the maximum limit of no. of members in a private company from 50 to 200)
- (c) one person, where the company is to be formed as a one person company. That is to say, only one person can form a private company.

However, the memorandum of one person company shall indicate the names of the other person, with his prior written consent in prescribed form, who shall in event of subscriber's death or incapacity to contract become the member of the company. The written consent of such person shall also be filed with the registrar at the time of incorporation along with memorandum and articles. The name of such person can be changed by giving notice or such other person may withdraw his consent but this should be informed by the registrar.

Section 455 of the act of 2013 states that when a company is formed and registered under this act for a future project or to hold an asset or intellectual property rights and has no significant accounting transaction such a company or an inactive company may make an application to the registrar for obtaining the status of a dormant company. A dormant company shall have such minimum number of directors, file such documents and pay such minimum annual fee that may be prescribed by the registrar to retain its dormant status

in the register of dormant companies and such company may become an active company on its application made for such purpose and accompanied by such documents and fee as prescribed.

The incorporation of concepts like one person company and dormant company in the act are laudable and the idea behind it can open a new window of entrepreneurship in times to come. After all, we need young and innovative minds to see our nation progress.

2. Directors

There have been some changes in the pattern of directors in the Companies Act, 2013:

- (a) Maximum no. of directors has been raised from 12 to 15 by the 2013 act. Further, the condition for approval of Central Government for raising the number of directors has been dispensed with *i.e.* the Company may now appoint more than 15 directors after passing a special resolution.
- (b) Type of Directors: The Board may consist of several categories of directors like: (1) Managing Director, (2) Whole time directors, (3) Independent Directors, (4) Nominee Directors, (5) Women Directors.

Managing Director is the highest ranking corporate official of a company and is responsible for daily operations of a company.

Whole Time Director is the person who devotes his whole time of working for the company and has interest in the company. The company is his source of income.

Independent Director is a new term introduced in Companies Act 2013. Section 149(6) enumerates that an independent director of a company shall be a person other than a Managing Director or whole time director. He shall be a person who in the opinion of the board is a person of

integrity and possesses relevant expertise and experience. He should not be the promoter of the company or any person who has any interest in the company, either himself or through his relations.

The intent behind incorporating such a provision is to create a 'watch dog' to ensure transparency in matters of corporate governance. Independent directors may be selected from a Data bank notified by Government of India. Section 149(4) of the act envisages that every listed public company shall have at least one-third of the total number of directors as independent directors.

Nominee Director means a director nominated by any financial institution in persuasion of the provisions of any law or agreement or appointed by Government to represent its interests.

Women Directors: Section 149(1) specifically states that a certain class of companies shall have at least one woman director. These include every listed company or even other public companies having paid up capital of one crore rupees or more or turnover of three hundred crore rupees or more. Incorporation of such a provision in the act is a progressive step towards improving gender equality in corporate world and the makers need to be applauded loud for this. Presence of women in a board room will definitely add diversity to the board room and lift the future of women in corporate sector.

Another notable feature incorporated in the act is that now, every company shall have at least one director who has stayed in India for a total period of not less than hundred and eighty two days in previous calendar year, thus, ensuring Indian experience and working for the company.

Penalties for Directors under different sections in case of contravention with any provision of the act has been increased from

a minimum of ten thousand to fifty thousand by this act.

3. Meetings

First Annual General Meeting (AGM)

Section 9(1) of the Companies Act, 2013 states that the first annual general meeting should be held within nine months from the date of closing of the first financial year of the company.

Further, every company other than one person company should in each year compulsorily hold a general meeting as its annual general meeting. This is to be specified in the notices calling the meeting as an annual meeting. The gap between annual meetings of a company should not be more than fifteen months.

Section 96(2) says that an annual general meeting must be called between business hours that is, 9:00 a.m. to 6:30 p.m. on any day that is not a national holiday.

This was not specified in the old act.

Section 101(1) says that a general meeting of a company may be called by giving not less than a clear notice of twenty one days either in writing or through electronic mode. However, a meeting may be called at a shorter notice if consent is given in writing or by electronic mode by not less than ninety five percent of the members entitled to vote at such a meeting.

Quorum for Meetings

According to Section 103(1) of 2013 Act, Quorum will depend on number of members on the date of meeting. In case of a public company, the required quorum is as follows:

- (1) five members, if number of members is not more than one thousand,
- (2) fifteen members, if number of members is more than one thousand but upto five thousand,

- (3) thirty members, if number of members is more than five thousand.

It is pertinent to note that the 2013 act requires every company to observe secretarial standards as specified by the institute of company secretaries of India with respect to general and board meetings which was not given recognition by the old act of 1956.

4. Investor Protection

Prospectus:

Section 26 envisages additional disclosures in prospectus:

Any litigation or legal action pending or taken by a Government department or a statutory body during the last five years immediately preceding the years of the issue of the prospectus against the promoter of the company must be included in the prospectus.

Section 28 of 2013 Act includes a new section under which members of a company in consultation with the board of directors may offer a part of their holding of shares to the public. The document by which the offer of sale is made to the public will be treated as prospectus issued by the company.

Related Party Transactions:

Through Section 188, the new Act envisages that the transactions of a company with its related parties which are not in its ordinary course of business and which are not arms length would require the consent of the board of directors of the company. Related party transactions have been defined to mean the following:

- (a) Sale, purchase or supply of any goods or material,
- (b) Selling or otherwise disposing of, buying property of any kind.
- (c) Leasing of property of any kind.
- (d) Availing or rendering any services.

- (e) Appointment of any agents for purchase or sale of goods, materials, services or property.
- (f) Related parties appointment to any office or place of profit in the company, its subsidiary company or associate company and
- (g) Underwriting the subscription of any securities or derivations of the company.

Further, it has been made mandatory to obtain prior shareholders approval by special resolution in respect of related party transactions exceeding prescribed limits for example, if paid up share capital of the company equals or exceeds one crore rupees. Then, no member who is a related party shall vote on the special resolution. The directors report would include details of party transactions requiring consent of board or any other special resolution of members along with justification of entering into them. As envisaged earlier, Central Government approval would be required for appointment of any director or any other related person to any office or place of profit in the company or its subsidiary.

The section further provides that in case the directions relating to consent of board of directors and special resolution have not been obtained then:

- (a) the contract may be rendered as void.
- (b) Directors concerned will have to indemnify the company for loss suffered.
- (c) The director or employee involved can be imprisoned for a term which may extend for one year or with fine which shall not be less than twenty five thousand rupees and may extend to five lakhs or both.

Investments and Loans

Section 186 of the Act of 2013 envisages that all provisions relating to inter corporate

loans and investments shall extend to 'any person or other body corporate'. No loan shall be given at a rate of interest lower than the prevailing yield of one year, three years, five years or ten years government security closest to the tenor of the loan.

Class Action Suits

This concept is new to India, It is prevalent in European countries and USA. Section 245 adds a new dimension to the act by introducing class action wherein one or any number of members or depositor of a company can, if they are of the opinion that management or conduct of affairs of a company are being conducted in a manner prejudicial to the interests of the company or its members and depositions, file an application before the tribunal for seeking any orders against the company *viz.*, restraining the company from doing an *ultra vires* act, restraining it from committing breach of any provision of company's memorandum or articles, claim damages or compensation or demand any other suitable form of remedy against the company or sue its director for any fraudulent, unlawful or wrongful act or omission of conduct.

Dealing with Fraud

Section 447 of Act of 2013 defines fraud. "Fraud in relation to affairs of a company or any body corporate includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person present with the connivance in any manner, with intent to deceive, to gain undue advantage from or to injure the interests of the company and its shareholders or its creditors or other person, whether or not there is any wrongful gain or loss"

* 'wrongful gain' means the gain by unlawful means of property to which the person gaining is not legally entitled,

* 'wrongful loss' means the loss by unlawful means of property to which

the person losing is legally entitled. The section further prescribes the following penalties.

- * Imprisonment for a term of not less than six months but which may extend to ten years.
- * Fine not less than the amount involved in the fraud but which may extend to three times the amount involved in the fraud.
- * Also, where the fraud is in question involves the interests of the public, the term of imprisonment shall not be less than three years.

The provisions of this section are bound to have a significant impact on various areas of the legislation. It is bound to create fear in the minds of people who create fraudulent companies and do not comply with provisions of the Act and violate depositors' interest. It should be seen as a powerful tool in the hands of members, depositors and shareholders to unveil the mismanagement and fraudulent activities being conducted in the company. The inclusion of such provisions in the new Act deserves a standing ovation, especially in present day situation where shareholders and depositors have no choice but to be mute spectators to the growing greed of directors of the companies.

Investor Education and Protection Fund (IEPF)

According to Section 125 of Companies Act, 2013, the Central Government shall establish a fund called the Investor education and protection fund. This fund shall have amounts given by the central government, amount in unpaid dividend account of companies, matured deposits with companies other than banking companies, matured debentures with companies, interests accrued on such deposits; *etc.*

This fund shall be utilised for the benefit of investors that is, refund in respect of

unclaimed dividends, promotion of investor's education, awareness and protection, reimbursement of legal expenses incurred in pursuing class action suits under Sections 37 and 245 by members or depositors as maybe sanctioned by the Tribunal.

5. Corporate Social Responsibility (CSR)

Companies Act, 2013 gifts a wonderful provision to India in the form of Section 135. According to this every company having net worth of rupees 500 crore or more, or turnover of rupees 1000 crore or more, or net profit of rupees 5 crore or more during any financial year shall constitute a corporate social responsibility committee of the board consisting of three or more directors out of which at least one director shall be an independent director. The composition of the committee will be included in the board's report. The committee shall formulate CSR policy which shall indicate the activities to be undertaken by the committee as specified in Schedule VII.

The board of every company shall ensure that the company spends in every financial year at least two percent of average net profit made during three preceding financial years in pursuance of its corporate social responsibility policy.

According to the clarification given by the ministry of corporate affairs (MCA) on the types of activities to be undertaken as per schedule VII, the following categories of activities will fall within its ambit and the company can make two percent CSR expenditure on them.

Promoting education

1. Educating the masses and promotion of road safety awareness in all facets of road usage

2. Safety traffic engineering and awareness through print, audio and visual media

3. Setting up Applied Research Training and Innovation Centre (ARTIC) at Nasik

(also qualifies under Vocational skills and Rural development)

4. Consumer education and awareness:

- Providing effective consumer grievance redressal mechanism
- Protecting consumer's health and safety, sustainable consumption, consumer service, support and complaint resolution
- Consumer protection activities
- Consumer rights to be mandated
- All consumer protection programmes and activities on the lines of rural development, education, etc.

5. Donations to Indian Institute of Management, Ahmedabad for conservation of buildings and renovation of classrooms

6. Non Academic Technopark Technology Business Incubator (approved by Department of Science and Technology, Government of India) not located within an academic institution

7. Research and studies (or identified specifically under respective items of Schedule VII).

Promoting health care including preventive health care

1. Social business projects such as giving medical and legal aid, treatment to road accident victims.

2. Provisions for aids and appliances to the differently-able persons.

3. Medical aid provided as a disaster relief measure.

4. Trauma care around highways.

Vocational skills

1. Drivers' training, etc.

2. Capacity building for farmers covering best sustainable farm management practices

to predominantly benefit rural farming community.

3. Training agriculture labour on skill development to predominantly benefit rural farming community.

Eradicating hunger, poverty and malnutrition

1. Food supply as a disaster relief measure
2. Supplementing government schemes like mid-day meal by corporate through additional nutrition.

Ecological balance

1. Own research for individual crops to identify the most cost optimum and agro-ecological sustainable farm practices.
2. Applied research with a focus on water management.

Conservation of natural resource

Product life cycle analysis from the perspective of soil conservation (also qualify under 'maintaining quality of soil, air and water').

Environmental sustainability, ecological balance and conservation of natural resources

Renewable energy projects.

It has also been provided in the act that the company shall give preference to the local area around which it operates for spending the amount earmarked for corporate social responsibility activities. It further provides that if a company fails to spend such amount, the board must specify the reasons for not spending the amount in its report.

Concluding remarks

In a nutshell, we can conclude that Companies Act, 2013 ushers in a progressive change to corporate society and it must be embraced with warmth and positivism. Its provisions are encouraging and if implemented properly they will benefit the common man and give the much needed impetus to the country. Those close to my heart are provisions vesting increased power to shareholders and investors of the company. And of course the much awaited one comes in the form of fixing Corporate social responsibility which is a move towards ensuring a equitable social order for the country. The act however omits to provide any penal provision in case the companies do not adhere to the requirement of corporate social responsibility. But, all in all we need to embrace it with optimism and hope that it will not only make significant contribution to the growth of Corporate sector but will also pave the way for bright future of India.

CHALLENGE POSED TO LAW BY THE GROWING MENACE OF SEXUAL OFFENCES AGAINST WOMEN

By

—ACHUTA PARTHASARATHY,
Principal Senior Civil Judge, Gajuwaka,
Visakhapatnam

Law is a response to the Social Change

Law is not the only Solution for the Social Problems

The sexual offences against women are increasing day-by-day notwithstanding the

changes brought to the existing laws and enactment of new laws. The Indian Penal Code is a comprehensive enactment which provides protection, generally to the women against sexual offences. It covers various offences and punishments for the said