

COMPANIES BILL 2009 - HIGHLIGHTS

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HISTORY OF COMPANY LEGISLATION IN INDIA:

Company legislation in India owes its origin to 'English Company Law'. The Companies Act enacted from time to time in India have been following the English Companies Act with certain modifications. Even the Companies Act, 1956 is said to have closely followed the UK Companies Act of 1948. In London, the earliest business associations during the 11th and 13th Centuries were called the "Merchant Guilds" and these guilds obtained charters from the crown mainly to secure for their members a monopoly in respect of particular trade or commodity. These associations, were nonmenclatured as Commenda, Societas. The Commendas were operated in the Partnership firm the financier being a sleeping partner with limited liability. The liability was basically born by the working partners. In Societas all the members took part in the management of the trade and had an unlimited liability more or less reckoning to the present day partnership.

In the 14th Century, the word company was adopted by certain merchants who traded overseas which was almost expansion of the guilds in foreign trade. In the 16th Century Royal Charters granted by the crown virtually gave monopoly of trade to the members of the company over a certain territory which were called as regulated companies and THE FIRST company was established in the year 1600 was the East Indian company which may be perhaps treated as the Father of the First company formation. It had a monopoly trade in India and the charter permitted its members could carry on trade individually and had the option to subscribe to the joint fund or stock of the company.

The profits made after each voyage was distributed among the members which was the first concept sharing of profits which later on came to be known as Dividend. In 1653 a permanent subscribed fund was introduced called Joint Fund or the stock of the company which later on called as Capital provided by the shareholders. By 17th Century, all these companies which were originally merchants guilds more or less regulated companies with fixed capitals represented by shares, which were freely saleable and transferable. The concept of property vesting with a few people later on called as directors who were under the exclusive control of the same and the division between the members and the directors was not available throughout but were available at interval time which is the first concept of an annual general meeting.

During this period, a company could be incorporated only with a Royal Charter or by an Act of Parliament which were expensive and time consuming which led to formation of companies by agreements without incorporation. This situation in 18th Century continued for about 20 years and witnessed flood of speculation and fraudulent schemes of company flotation.. In 1855 an Act of Parliament was passed called the Limited Liability Act, 1855 by which any company is registered under the Act of 1844 might limit the liability of its members for its debts and obligations generally, to the amount un-paid on their shares which was the first concept of the limited liability. The Act were repealed at various times and ultimately, the Companies Act, of 1985 is the one which governs the companies in England.

The story of the Company Legislation in India is more or less on the similar lines that happened in England. The First Legislative Act for registration of a Joint Stock company came in 1850 which was based on the English Companies Act of 1844. This Act recognized the distinct legal entity of the company but did not introduce the concept of limited liability. In 1857, the limited liability concept was first recognized in India and thereafter in 1866, the Companies Act was passed for consolidating and amending the Law relating to incorporation, Regulation and winding up of trading companies and other associations. This Act was re-cast in 1882 which almost brought out the provisions of the English Companies Act of 1862 which continued till 1913. The Act of 1913 was more or less based on English Act, 1908. The Indian Companies Act not only closely followed the English Acts, the decisions of the English Courts and also the English Company Law were also closely followed. Till 1956 the 1913 Act reigned supreme.. However, piecemeal amendments were made in 1914, 1915, 1920, 1926, 1930 and 1932 and also in 1936 and a number of minor amendments were made many times in between. At the end of 1950, the Government appointed HC Baba as the Chairman to go into the question of revision of the Indian Companies Act keeping into account the development of Indian trade and industry.

The Act of 1956 was introduced in the Parliament which inter alia dealt separately on the promotion and formation of the company, capital structure company meetings and procedures, accounts and audit, powers and duties of Auditors, inspection and investigation of the company, constitution of the Board, powers of directors and managing directors administration of law.

The Act of 1956 underwent major amendments in 1960, 1962, 1963, 1964, 1965, 1966, 1967, 1969, 1974, 1977, 1985, 1988, and 1991. Further to 1988 the Companies Act have been amended several times both in piecemeal or otherwise and major amendments came in the year 2000. All these amendments especially those made after 1988 had a tremendous impact on the working management and administration of the company. These amendments virtually considered the changes in the Corporate Sector, the scenario in the International business WTO recommendations, liberalization,

globalization and privatization and poised for a good economic growth which has brought many new concepts in the working of the corporate sector in India.

This has made the economy more diverse, complex and dynamic. In this scenario, the corporate form of organization is increasingly emerging as a preferred vehicle for economic and commercial activity and has contributed significantly to the growth of the Indian economy and the emergence of service information and knowledge based enterprises. The number of companies which were hardly 30000 in 1956 has swelled 800000 and odd companies as on date. Companies are now mobilizing resources at a scale which was never even thought of, perhaps a decade ago resulting in emergence of new activities in to the fold of Indian economy, exporting a wide range of goods and services not to speak of the increase in employment opportunities in the corporate sector.

Added to this, the international investing community has evinced keen interest in the growth of the Indian economy. There is a need for sustaining growth in a globalised and competitive environment, ever increasing options and avenues for international trade ad business, inflow of capital have made it imparity for the growth of the Indian economy not only to harness, its enterpreneural and economic resources efficiently but sustain the competitive economic scenario in attracting investment to sustain impressive growth.

Many investors are also looking towards the statutory and regulatory frame work for the corporate sector in the country while deciding their investment. Modernization of corporate regulation governing various aspects of SEBI, setting up of enterprises structure for sharing of risk and rewards, governance and accountability to stake holders, financial procedures and responsibilities of disclosure, procedure for rehabilitation, liquidation and winding up has become critical to the perceptions of the investors and determining their business and investment decisions.

In the back ground of above developments and the competitive and technology driven business environment today, the government feels that the corporate entity should have greater autonomy of operation and innovation with reasonable process requirement and compliance costs, to help sustain the growth of the corporate sector by having a new legal frame work that could be compact, amenable, clear interpretation, respond in a timely and appropriate manner to meet the requirements of the day which should faster the positive environment for investment and growth which lead to a new concept and to have a comprehensive but meaningful new Companies Act, in the form new Companies Bill which has considered all the essentials to achieve the desired form

A comprehensive revised companies bill 2009 has been introduced in the Loksabha and is before the Select Committee of the parliament members and awaiting their recommendations and observations which will be incorporated and bill will become an Act.

There are 426 sections in the new bill as against 658 sections in the present Companies Act. It is also interesting to note that in several sections, the section says “as may be prescribed”.

HIGHLIGHTS OF COMPANIES BILL

01. SIMPLIFICATION OF COMPANY LAW

The bill aims at simplification of company law by:

- ✓ Revising and modifying the Act in consonance with changes in economy both national and international
- ✓ Retaining essential features of the existing frame work, segregating substantive law from the procedures keeping in view of good corporate governance and address the concerns of all stakeholders equitably.
- ✓ Deleting certain provisions that has become reluctant and re-grouping the scattered provisions to specific subjects.
- ✓ Easy interpretations of the provisions.
- ✓ To de-link the procedural aspects from the substantive law and provide greater flexibility in rule making to enable adaptation to the changing economic and technical environment.
- ✓ Directors and their duties- though there is no definite clause anywhere in the bill on the duties of the directors, it should be located with some of the provisions in the Act, the fiduciary has time and again has defined in various forms, the directors duty as fiduciary in nature.
- ✓ One of the important duty of the director is the obligation to act with care, skill and diligence in relation to the affairs of the company and to avoid conflict of interest with the company.

02. BOARD MEETING THROUGH VIDEO CONFERENCING - (NEW CONCEPT)

The Globalization and advent of information technology has removed the economic barriers and speed has over taken all the other things and the conform and consequences that are offered by the IT advent has been considered by the new bill.

The Present sec.285 contemplates that four board meeting should be held in a year – at least once in every three months. There is a huge demand from Industry and trade organization to permit them to hold video conferencing, by using the latest technology. The Bill has recognized this request and the Cl.No.154 provides that board meetings can

be held through video conferencing or other electronic mode with careful and reckoning the directors and storing the same of such meetings

The Central government may by notification prescribes which are the subjects which cannot be dealt through video conferencing, but should be dealt only in a board meeting on the lines of present sec.292 corresponding to the Cl.No.159 of the bill . this will come as a boon to the NRI who are residing in distant places and they can participate in the board meeting from a work place and also reduces the travel costs.

Cl.No.107 (10) provides to make it mandatory for every company to observe such secretarial standards as may be prescribed with respect to general and board meetings.

03. REGISTERED VALUER - (NEW CONCEPT)

Cl.No.218 of the bill provides that if valuation is required in any of the provisions of the Act relating to property, stock, assets, it should be done by a registered valuer appointed by the Audit Committee of the Board and the valuer should be a Chartered Accountant, or Cost and Works Accountant, or a company secretary or such other person possessing such qualification as may be prescribed who has to apply the Central Government to become a registered valuer.

Cl.No.56 which is related to further issue of capital by private placement provides that the price of such issue should also be done registered valuer,

Cl.No.201 of the bill which deals with compromise arrangement, amalgamations with creditors and members (present Sec.391 to Sec.394) provides for valuation report in respect of shares, other properties and all assets, tangible and intangible, movable and immovable of the transferor company by a registered valuer.

04. SETTING UP OF SPECIAL COURT OUTSIDE INDIA.

Register of members is one of the statutory registers prescribed by the Act which establishes an evidence of ownership of a share held by a member.

Cl.No.53 of the Bill provides for rectification of register of members and a person aggrieved or the company may appeal to the tribunal (at present CLB,) for rectification of register of members. The new concept is to establish a special court outside India for the benefit of the foreign members or debenture holders to have this right.

05. KINDS OF SHARE CAPITAL

Cl.No.37 of the Bill corresponding to Sec.85 and 86 seeks to provide that there shall be only two kinds of share capital – Equity and Preference – Preferential Share capital carries a preferential right with respect to the payment of dividend and also repayment of the capital at the time of winding up

In respect of equity capital that clause clarifies that it has not limits for participation either with respect to dividend or with respect to capital in the distribution of the profits or otherwise, the result of this is doing away with the deferential voting rights as to dividend, voting or otherwise, at present recognized by Sec.86 of the Act the companies which have issued shares with preferential rights have to take effective steps to cancel such shares.

06. KEY MANAGERIAL PERSONNEL (NEW CONCEPT)

First time in the Companies Act, a new concept of key managerial personnel has been introduced and the Managing director, a CEO, the Manager, the Wholetime director/s, company secretary and CFO has been brought under this group.

Cl.No.178 seeks to provide that every company belonging to such clause or description shall have whole time key managerial personnel who should be appointed by means of a board resolution fixing the terms of appointment including the remuneration and such person shall not hold any office in more than one company at the same time but can be a director of any company with the permission of the company and any vacancies in Key managerial personnel can be filled up by the board within six months and the key managerial personnel have also been drawn under the clause of ‘**officer who in default**’ and in about 24 clauses excluding winding up provisions, key managerial personnel have been brought under the definition of Officer in Default. .

07. DIRECTIONS

DUTIES OF DIRECTORS

Cl.No. 117 provides for the manner in respect of regulation of arrangement between a company and its directors in respect of acquisition of assets for consideration other than cash, such arrangement requires prior approval in a general meeting and if the Director or concerned person is a Director of its holding company approval is required in the general meeting of the holding company also.

Cl. 147 defines duties of directors which are

- ✓ To act in accordance with the Articles of Association
- ✓ Act in good faith in order to promote objects in the company
- ✓ Keeping in view of the benefits to its members
- ✓ Perform duties with due and reasonable care, skill and diligence
- ✓ Not to place in a concrete situation directly or indirectly in the interest of the company

- ✓ Not to gain any undue advantages for himself and relatives, partners, or associates, not to assign his office and contravention of any of the duties is punishable with fine.

The codification of duties of directors as mentioned above, has been brought out in the bill and any deviation will attract penal consequences.

Cl.No. 171 provides for the manner in which certain transactions or contracts are entered between a person company and its own member. It provides the OPC Limited by shares or by guarantee enters into a contract with a sole member of the company who is a director, unless the contract is in writing ensure that the terms of the Contract or offer are contained in a Memorandum or are recorded in the minutes of the Board Meeting held after entering into contract and such contract shall be intimated to ROC.

Cl.No. 172 prohibits whole time director and key managerial personal from buying certain kinds of mutual contracts in relation to securities of the company. If it is acquired by the Wholetime director or Key managerial personal in contravention of this clause he has to surrender such securities and the company shall not register the same in his name in the ROM and if it is in demat shall inform the depositor not to record such application.

Cl.No. 173 provides to prohibit Directors or KMP to deal in securities of the company are counsel procure communicate directly or indirectly about any unpublished price sensitive information to any person. **INSIDER TRADING**

RETIREMENT OF DIRECTORS

Cl.No. 133 more or less reckoned to Section 254 to 256 and 264 intends to provide the manner in which the Directors including the First Directors shall be appointed by the Company. The clause provides that one third of the total number of Directors of a Public Company shall retire and out of the remaining, one third shall retire by rotation at every AGM in accordance with the rules as may be prescribed.

Cl.No. 147 is a new clause which has statutorily castes certain duties on the Directors they are he shall act in a good face to promote the objects of the company for the benefits of its members and in the interest of the company, to exercise his duties with due and reasonable care skill and diligence, not getting into a situation where there is conflict of interest with a company, he shall not attempt to achieve any undue gain advantage either to himself or his relatives, partners, or associates, non assignment of office, contraventions of the above results in stringent penalties.

RESIGNATION OF DIRECTORS

Cl.No. 149 deals with resignation of the Directors. It provides that the Director may resign from his office by giving a notice in writing to the Company and the Board shall take note of the same and intimate the Registrar as prescribed and shall place the resignation before the general meeting held immediately. The Resigned Director may

also forward a copy of the Resignation to the ROC in the manner as may be prescribed. Resignation shall take effect on the date on which it is received or any other date specified by the director in his letter which ever is later.

MANAGERIAL REMUNERTION

Cl. No. 174 deals with appointment of Managerial personal.

(1) No company shall appoint or re-appoint any person as its managing director, whole-time director or manager for a term exceeding five years at a time:

Provided that no re-appointment shall be made earlier than one year before the expiry of his term.

(2) No company shall appoint any firm, body corporate or other association as its manager.

(3) No company shall appoint or continue the employment of any person as its key managerial personnel who –

(a) is below the age of twenty-one years or has attained the age of **seventy years**:

Provided that appointment of a person who has attained the age of seventy years may be made by passing a special resolution;

(b) is an undischarged insolvent or has at any time been adjudged an insolvent;

(c) has at any time suspended payment to his creditors or makes, or has at any time made, a composition with them; or

(d) has at any time been convicted by a court of an offence involving moral turpitude.

(4) A managing director, whole-time director or manager shall be appointed by the Board of Directors at a meeting with the consent of all the directors present at such meeting, which shall be subject to approval by a special resolution at the next general meeting of the company:

Provided that a notice convening Board or general meeting for considering such appointment shall include the terms and conditions of such appointment, remuneration payable and such other matters including interest, if any, of a director or directors in such appointments, if any.

(5) Subject to the provisions of this Act, where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

Cl. No. 175 provides for the manner in which the remuneration to managerial personal can be paid either by way of monthly remuneration or on the % of net profit basis. The gist of these clauses are that the Government intends to do away the approval of the Central government as is now in existence under Schedule 13 where the remuneration exceeds the limits prescribed in Schedule 13.

INDEPENDENT DIRECTORS

Cl.No.132 of the Bill provides that every listed company having such paid up capital as may be prescribed should have one third of its total no. of directors who should be independent directors. Central Government may prescribe the minimum no. of directors in the case of other public companies.

These directors are non-executive directors of integrity and should have expertise and he or his relatives should not have any pecuniary relationship with the company nominee directors are excluded from the definition of independent directors.

Existing companies should have to comply with the requirement of independent director within one year from the commencement of the new act. . the bill for the first time has defined and recognized the role of independent directors irrespective of the board chairman being executive or non-executive.

A Satyam episode especially on the role of independent directors has resulted in a critical analysis of their role. The remedy lies in selecting the independent directors keeping in view of their background, their efficiency, and the expectation by the company from them to the company in terms of their valuable suggestions.

08. CONTRACTS AND INTERESTED DIRECTORS

Clause No. 166 provides to do away with a requirement of obtaining approval of the Central Government for a Company entering into contracts for sale, purchase, supply of goods, materials, selling or otherwise disposing of or buying property of any kind, availing or rendering any services, appointment of agents, for purchase or sale of goods, materials, services or property, appointment to any office or place of profit in the company or its subsidiary and for underwriting the subscription of any securities of the Company. The new clause requires the prior approval of the Company by a special resolution where the companies' paidup capital is not less than such amount or transactions not exceeding such sums as may be prescribed. There are exceptions in this clause where the transactions are not on an arm's leg basis and it means that the transactions between 2 related parties which are conducted on terms as if they were unrelated and there is no conflict of interest. All contracts refer to this clause has to be reported in the Director's report. There are penal provisions for contravention which

includes that the director or the Director's who are involved in the contravention as to indemnify the company against any loss incurred by it.

09. MERGERS AND AMALGAMATIONS

Cl.No.201 to 205 corresponding to sec.391 - 394 deals with mergers and amalgamations which will include compromises and arrangements with creditors and members, takeover offers, scheme of debt restructuring, valuation of shares, and other properties of the company, merger by absorption or by formation of a new company, amalgamation by mutual consent of the companies in the jurisdiction of such countries as may be notified by the government.

This provision helps to provide for amalgamation of foreign companies with Indian companies and pay such for such acquisition in cash or partly in IDRs. While the scheme requires the sanction of the tribunal except mergers and amalgamations by absorption or formation of new company shall be by mutual consent of the companies without seeking the consent of the tribunal. The effect of this clause in the powers of approving amalgamation are shifted to NCLT from the High Courts.

Cl.No.208 corresponding to sec.398 empowers the government to amalgamate any company in public interest.

10. ONE PERSON COMPANY

Cl.No.3 of the Bill provides a new concept relating to formation of one person company which is a new form of business organization and which has only one person as a member. It provides that one person company can be incorporated for any lawful purposes and it enjoys limited liability. The Memorandum of such company should indicate the name of the person who shall in the event of the subscribers disability, death or otherwise becomes the member of the company and such change should be informed to the ROC and it will be considered as an alteration to the MOA. A OPC need not hold Annual General meeting as provided in Cl.No.85 of the bill, but all other provisions, relating to maintaining of books of accounts, audit etc., will apply. This is to bring out transparency in their operation and it offers some measure of protecting the creditors of the OPC. The Central Govt have to bring out more regulations on this.

11. ADJUDICATION PROCEEDINGS.

At present many offences under the Act are to be decided by the Tribunal courts irrespective of the gravity of the offence. The Bill provides a new concept of adjudication of penalties in respect of non compliance of procedural laws by fixing minimum and maximum penalties for each offence and also increase in the penalties for

repeated defaults. This is a good and refreshing concept without recourse to imposition of penalties under discriminatory basis.

The penalties range from five thousand rupees to fifty thousand rupees and for some it is between one lac to ten lacs as prescribed. In the case of failure to repay the matured deposit or interest within the agreed period or under any extension, the company is punishable with a fine of not less than one crore rupees and to the extent of Rs.10 cores in addition with officer in default being punished with fine of not less than 25 lacs and extend to 2 crores – Cl.No.67 of the bill.

The Penalties will be determined by the adjudicating officers and the Central Govt will publish the status of the offices in the Gazette who will not be below the rank of Registrar and who have powers to impose penalties on the company and officer in default by following the principals of natural justice. Appeal provisions have been included. There are 32 clauses of the bill which refers to officer in default for the penalties.

12. ABOLITION OF PUBLIC DEPOSIT.

It is proposed in the bill that companies will no longer permitted to accept deposits from public as can be done now in Sec.58A. Cl.No.66 of the bill provides that a company may subject to passing of a resolution in a general meeting and subject to complying with such rules as may be prescribed in consultation with RBI can accept deposits from its members on such terms and conditions including the provision of security. This means even the deposit from the members will have to be secured. This is a total departure from the present provision whereby the companies could have accepted the deposit from public and members as the companies felt that it is cheaper finance as compared to bank finance.

Contravention of this will result in heavy penalties which shall not be less than one crore but may extend to ten crores and fine and imprisonment every officer in default.

The new concept in the bill provides a safeguard to the deposit holders due to creation of a security for the deposits and deposit holders if they fail to get back their deposits can always enforce the security.

This restriction will not apply to the banking companies and non banking financial companies and to such other companies as the Central Govt may prescribe.

13. CONSTITUTION OF SPECIAL COURTS - NEW CONCEPT

It is a new concept relating to establishment of special courts for speedy trial of offences punishable for non compliance of law as envisaged in Cl.No.396 and 397. the Special Courts will be established in consultation with the Chief Justice of High Court who have use jurisdiction with the Judge to be appointed and he should be at least holding an office of session judge or additional session judge, who can only impose punishment by way of imprisonment pursuant to sec.28 of CPC.

There are many offences major and minor which comes within the jurisdiction of the special court. Minor offences like failure to file a resolution or agreement or failure to provide information about DIN may be considered to be removed from this clause and they can come under adjudication proceedings. This means the special court concentrates only on serious offences.

14. ANNUAL RETURN AND REPORTING ON AGM

Cl.No.82 of the bill provides for widening the scope of annual return. It includes in addition to the existing disclosures, disclosures relating to corporate governance practices in the company as well as certification of compliances and disclosures. The annual return of every company is required to be signed by a director and a company secretary or where there is no company secretary, by a company secretary in Wholetime practice. It means that the annual return of the every company, whether private or public, listed or unlisted (except one person and small companies) is required to be signed by either company secretary in employment or the company secretary in practice.

In case of listed companies and companies having the prescribed paid up capital the annual return is also to be signed by a company secretary in whole time practice certifying that the annual return states the facts correctly and adequately and the company has complied with all the provisions of the Act. This is a new addition as all these days, the company secretaries in practice were simply certifying for certifying the annual return without any attachment of a certificate in the prescribed form.

Cl.No.82 (2) provides that an extract of an annual return shall form part of the board's report.

15. REPORT ON AGM - NEW CONCEPT

Cl.No.109 provides for reporting of Annual General Meeting in the case of listed companies. The reporting should include the confirmation to the effect that the has convened, held and conducted as per provisions of the Act and Rules. A company has to file with the ROC a report referred to in sub-sec.1 within 30 days from the conclusion of AGM with fee. Failure to do so, the company shall be punishable with fine which shall not less than one lac rupees but may extend to five lacs and the penalty can also be imposed on the officer in default which shall be not less than twenty five thousand rupees and maximum rupees one lac.

16. AUDITORS

Cl.No. 123 to 131 deals with Audit and Auditors. The Important provisions are as under:

Cl.No. 125 provides that the remuneration of the auditors of the company shall be fixed in the general meeting or in such manner as determined therein.

Cl.No. 127 is a new provision and it provides that the Auditor can do such other services as approved by the Board or Audit Committee. This clause provides that the following services cannot be done by the auditors - Accounting and book keeping services, internal Audit, Actual year services, investment advisory services, investment banking services, rendering of outsourced financial services and Management services.

A new companies bill intends to bring stronger audit standards to provide a stronger regulatory platform which is to be notified as a part of the bill. In other words, it means recognition of both accounting and auditing standards. The role, rights and duties of the auditors as to maintain integrity and independence of the audit process. Consolidation of financial statements of subsidiaries with those of holding companies it proposed to be mandatory.

17. VOTING BY MEMBERS BY ELECTRONIC MEANS

Clause No. 97 provides a member may exercise his vote at a meeting by electronic means in the manner as may be prescribed.

18. DEFUNCT COMPANIES

Cl.No. 224 in addition to the existing provision of Section 560 provides that a company by a special resolution or with the consent of 75% members in terms of share capital may also file an application for striking of the name. However if the company is regulated under any special law approval of that regulatory body is also required.

Cl.No. 227 provides for penalties in case of fraudulent applications for removal of the name with the intention to deceive the creditors or to defraud any person or to avoid any liabilities of the company.

19. INSPECTION AND INVESTIGATION

Cl.No. 184 provides that no suit or proceedings shall lie in any court or tribunal or any action initiated by Central Government for making an investigation or for the appointment of the Inspector and no stay can be granted by any court on any ground until the conclusion of the investigation and the submission of the report by the Inspector . Clause No. 199 extends the power of inspection or investigation to Foreign Companies.

20. EXTINGUISHING THE RESTRICTION ON CLAIM OF AN INVESTOR FROM IEPF.

The new bill provides that claim of an investor over a dividend or a security not lent for more than seven years not being extinguished can be claimed by the investors from IEPF to be administered by a statutory authority by Clause no.216.

21. CLASS ACTION SUITS

Shareholders association and group of shareholders are enabled to take legal action in the case of any fraudulent action on the part of the company and to take part in investors protection activities and class action suits.

22. INSOLVENCY, REHABILITATION AND WINDING UP

Revised framework for regulation of mergers and amalgamations insolvency, rehabilitation, liquidation and winding up of companies are in the offing in the new companies bill. This should provide great scope for professionals like company secretaries and chartered accountants to act as liquidators, administrators and also provide an opportunity for them to represent the various stake holders before the Tribunal.

23. CONCLUSION

The notable features of the Bill is the Governments intention to allow the Corporate sector to work in independently with less restrictions and doing away with the requirements of Government approval but equally having the whip in their hand to regulate the affairs of the company especially on the erring directors

The Bill has brought out for the first time new concepts including the recognition of the professionals as the key managerial personnel and also the risks they face in the event of they not functioning properly within the regulatory framework of law,. A lot is expected by the Government from the Corporate sector, Managerial personnel who manage the affairs of the company, Professionals like Chartered Accountants and the Company secretaries and Cost Accountants who should adhere to the provisions of the law. However the Government should be always open to improvement and changes in the law as and when it is needed and a satyam episode should not be treated by the Government to reintroduce controls and restrictions and the satyam episode may be treated as an isolated case and though it may have its own ramifications in the Corporate working , every organization should be viewed separately. It is hoped that the Bill which is before the consultative committee of the Parliament will bring out more welcoming provisions for a healthy growth of corporate sector in India which has a great cultural history even in doing business.

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