



Study of new concepts introduced by the Companies Act, 2013

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Abstract : The Companies Act, 1956 was enacted with a view to consolidate and amend the law relating to companies and certain other associations. Since its inception, the Act has been amended on various occasions to keep pace with the changing business and economic scenario, emergence of professionalism and spread of portfolio awareness etc. In the early 1990s, a need was felt to

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harmonise the Companies Act with the developments taking place the world over to put in place a homogenous regulatory framework for the growth of Indian Corporate sector, and this was reflected in the Companies Bill, 1993. However, in August 1996, a working Group was constituted which submitted its report in 1997. On the basis of this report the Companies Bill, 1997 was introduced in the Parliament which was referred to the Standing Committee. In the mean time, with a view to tailor the Companies Act to cope up with the changing corporate environment, the Government amended the Act in the year 1996, 1999, 2000, 2001 and 2002 and give effect to various provisions of the Bill of 1997, besides introduction of new provisions. The New Act envisages an efficacious corporate governance regime based on enhanced self-regulations and with corporate democracy. The framework promotes new concepts of Corporate Social Responsibility and e-governance. The New Act seeks to insure stricter enforcement and investor/creditor protection. and the new insertions made by the New Act.

1. One Person Company {s. 2 (62)}
2. Corporate Social Mechanism (s. 135)
3. Vigil Mechanism {s. 177 (9)}

One Person Company

The concept of One Person Company (OPC) was introduced by the expert committee spearheaded by Dr. J.J. Irani in 2005, as a revolutionary new concept enshrined in the New Act.



According to the New Act, “One Person Company means a company which has only one person as a member.”[i] Further, OPC under Section 3 is classified as a ‘Private Company’. This dynamic concept seeks to synergize small and medium scale enterprises that are based on entrepreneurial acumen and individual initiative.

Furthermore, OPC’s occupy a unique position distinct from that of a public or a private company and also enjoy simpler legal regimes with respect to procedural and structural framework. OPC’s are subject to relaxed legal compliances in matters pertaining to corporate filings such as Annual Returns[ii], Financial Statement[iii]; holding of Annual General Meetings[iv], Contracts[v] and General Management and Administration[vi]. These provisions facilitate Mergers & Acquisitions as they become less cumbersome. This is expected to only augment substantial Foreign Investments, Joint Ventures and Mergers in startup enterprises.

The introduction of this concept will give rise to enormous opportunities and access to corporate structures in the future. The need for building procedural and institutional safeguards can hardly be exaggerated. However, as a new form of corporate structure, OPC shall be a potent vehicle of economic progress.

Corporate Social Responsibility

India is a country where corporates such as Tata Group among others have not only augmented to the economic growth of the country but have also been involved in social developments. The New Act under Section 135 provides for National Voluntary Guidelines for Social, Environmental and Economic Responsibilities of Business or the NVGs and the provision of Corporate Social Responsibility. This is to ensure that all corporates engaged in activities to fulfill, what is known as, “Corporate Social Responsibility”. The intention behind introduction of such a provision is to make sure that all companies give back something to the society in one way or the other.

The provision related to CSR forms the cornerstone of the New Act. There are several definitions of CSR all of which are distinct from one another yet they all focus on the impact of business enterprises on the society at large. The EC[vii] defines CSR as “the responsibility of enterprises



for their impacts on society”. To completely meet their social responsibility, enterprises “should have in place a process to integrate social, environmental, ethical human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders”.

India has always been at the forefront when it comes to volunteerism but such activities now coming under the New Act in the shape of CSR have become mandatory. According to Section 135, a company would be mandatorily required to keep 2% of its profits for “Corporate Social Responsibility”. The provision applies to all the companies who have: –

- Net worth of rupees five hundred crore or more
- Turnover of rupees one thousand crore or more
- Net profit of rupees five crore or more during any financial year
- Schedule VII of the New Act lists ten activities as CSR policies for a company inter alia being: – promotion of education, eradicating extreme hunger and poverty, etc. The New act not only promotes greater transparency in the functioning of a company but also works towards achieving sustainability.

Vigil Mechanism(Whistle-blowing)

The term “whistle-blowing” originated from the practice of the British policemen who blew their whistles, whenever they witnessed the commission of a crime and wanted the public at large to take notice of such committance.

On a corporate note, whistle blowing means calling the attention of the top management to wrongdoings and frauds occurring within an organisation. The term is now being heard more than ever before, as the media, corporates and the public are now becoming increasing aware of the concept, but unfortunately up till the New Companies Act, 2013, there were no safeguards provided to a whistle blower.



Now, it is pertinent to note that under Section-177(9) of the New companies Act, it has been made mandatory for all listed companies or such class of companies to establish a vigil mechanism for directors and employees to report genuine concerns, wrongdoings in a manner as may be prescribed.

“Most frauds result in some form of business disruption as well as reputation and financial losses. Whistle blowing is still at a nascent stage in India and most Indian companies do not use it as an effective tool against fraud.”^[viii] Thus, it is of utmost importance that Indian corporates introduce such a mechanism to avoid any such losses in the future.

As with other new provisions, The vigil mechanism too comes across as a half hearted attempt as it has major lacunas. The Section does not define ‘genuine concerns’ but going by global practices, vigil mechanisms normally have a wide scope ranging from conflict of interest to financial reporting. Also, generally it has been seen that it is the former employees of a company who end up taking the role of whistle blowers but there is no safeguard provided to them under section 177(9) of the New Act.

Conclusion

This essay seeks to examine the scope and import of the reforms ushered in by the New Companies Act. The acceptance of new innovations such as One Person Company is an important step towards unleashing economic potential. However, concerns of tax evasion, investor and creditor protection need to be adequately addressed.

The New Act seeks to bolster the enforcement machinery by developing ‘vigil mechanisms’ within the corporations. However, certain specific gray areas remain as a challenge to implementation.

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