

**COMMENTS ON REPORT OF COMPANY LAW COMMITTEE DATED
1ST FEBRUARY 2016:-**

Company Law Committee, chaired by Shri. Tapan Ray was set up on 4th June, 2015 to make recommendations to the Government on issues arising from the implementation of the Companies Act, 2013 as well as the recommendations received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies.

The CLC had its first meeting on 13th June, 2015. Further it had eight more meetings between July 2015 & January 2016. The CLC invited suggestions from the public on an online e-platform during the period 18th June, 2015 to 31st July, 2015. Six groups were set up to review the suggestions received during the public consultation which comprises as under;

Report of the Company Law Committee suggesting changes in the Companies Act, 2013, has been submitted on 1st Feb 2016.

STRUCTURE AND OVERVIEW OF THE REPORT:-

The Report was divided into 2 parts, namely Part I, which deals with amendments in the Companies Act, 2013 and Part II, proposing changes to Rules issued under the Act. Such recommendations would result in changes in 78 sections, and more than 100 changes in the Act.

Some of the recommendations by the Committee include the following:

- **Definitions** of certain terms are proposed to be changed to remove ambiguities and make the definitions more objective. Like definition of Associate Company, Debentures, Financial Year, Holding Company, Interested Director, Key managerial personnel, Net worth, Related Party, Small Company, Subsidiary Company and Turnover.
- **Object clause** Companies to be allowed to have unrestricted object clause in the memorandum of association at the time of formation to provide greater flexibility to carry out the business.
- **Private Placement** Simplifying the procedure of Private Placement mechanism to help business in raising capital and protecting the interest of all stakeholders.
- **Dividend declaration and payment** to harmonise the provisions in the Act and Rules
- **Accounts and audit** to improve transparency and the quality of information in relation to the financial position of the company. Such recommendations addresses ambiguities in relation to calculation of profits for determination of a company's CSR ('corporate social responsibility') obligations.

- **Corporate governance** These recommendations touch upon a wide range of issues and concepts including Independent Directors, Nomination and Remuneration Committee, Audit Committee, Disclosure of Interests, Loans and Investments, Managerial Remuneration and Insider Trading.
- **For start-ups** Recommendations were made for the following to encourage start ups:-
 - Simplifying the procedure to convert an LLP into a company
 - Issue of ESOPs to promoters working as employees
 - Availability of names are being made liberal to allow for more innovative names,
 - Relaxing the requirement for foreign nationals to be managing directors/whole, time Directors
 - Increasing the limits with regard to sweat equity that can be issued by a company from 25% of paid up capital to 50%.

SOME OF THE CHANGES SUGGESTED TO REMOVE PECULIARITY OF THE EXISTING LAW:-

- For Right issue of Shares dispatch of Letter of Offer can be any mode of delivery that would provide certain proof of delivery
- Allow private limited companies and wholly owned subsidiaries of unlisted companies to convene the AGMs at any place in India provided approval of 100% shareholders is obtained in advance .
- Clarity allowing financial statements to be circulated at a shorter period in accordance with the provision for shorter notice meeting under Section 101 be provided in Section 136.
- Requirement for annual ratification of auditors to be omitted.
- Right should be available to the Boards of private companies also to fill a vacancy cause by vacation of office of any director before the expiry of his term.
- Test of materiality to be introduced for pecuniary interest for testing independence of Independent Director.
- 'Body Corporate' be included under the ambit of the provision of 184(5), to align it to Section 184(2), where the words 'body corporate' have been used to evaluate the interest of a Director.
- Requirement for the amount to be deposited and kept in a scheduled bank in a financial year to be not less than 20% of amount of deposits maturing during that financial year pursuant to provisions of Sec.73(2) (c).
- Layering restrictions on Investment Companies as contained in the section 186(1) to be omitted.
- Enabling a whole time KMP, holding necessary qualifications, to hold more than one position in the same company at the same time.
- Requirement of Managing Director/Whole Time Director to be resident in India for previous one year may be done away subject to satisfaction of other applicable regulatory clearances.

- Allowing entities for conversion to company from partnership firms, LLP's, cooperative societies, or other business entities formed under any other law with 'two or more members' provided that in case of less than seven members, the conversion would be to a private company.
- Amending the definition of relating party by substituting the word 'company' with 'body corporate' in clause (viii) of Sec.2(76) and to also include investing company or the venturer of a company.
- Definition of Net worth as per Sec 2(57) to include 'debit or credit balance of profit and loss account'
- Consolidation requirements for financial statements to be aligned with accounting standards.
- Section 185, currently prohibiting companies from lending to directors or director' interested entities, to be made into an approval-based section, with approval being granted by members by special resolution. This will remove one of the major bottlenecks being faced by companies as sec 185 is currently a total prohibition.
- Appropriate guidelines may be put for condonation of delay in filing forms

MAJOR SHORTCOMINGS:-

- There is no exemptions made available to small company
- There is no change in the rule with respect to that Private Limited companies Profit and Loss Account should not be made available on public domain
- General Meeting of Private Limited Companies to be allowed through electronic mode
- Definition of associate company is modified whereby, if any investor is controlling business decision, then the company on whom the control is exercised is a subsidiary company rather than an associate. This need to be clarified .
- For any related party transactions, the Report eliminates, the MCA's circular, refraining only the contracting related party from voting and extending the bar on voting for all related parties. Thereby, approval of related parties will now truly be a "majority of minority" decision and this provisions have been made applicable to all companies large and small, thereby giving powers to minority.

CONCLUSION:-

The report presented by the Company Law Committee is a good attempt. It eliminates several small obstacles and also has some far reaching productive changes. Although, a lot more can still be achieved. At the same time, report invites comments from the public, and it is anticipated that this process can aspire a realistic view on various aspects of Company Law.
