

Company Law Committee Report 18 November 2019

REVIEW, REWARD & RESCHEDULE

Company Law Committee (CLC) which was set up by the Ministry of Corporate Affairs (MCA) on 18th September 2019 presented its Report on 18th November 2019 to Union Minister of Finance and Corporate Affairs Smt. Nirmala Sitaraman. CLC was constituted of 11 members including Shri Injeti Srinivas, Secretary, MCA who is Chairman of CLC.

CLC was to give report on further decriminalise provisions of the Companies Act, 2013 (CA 2013) to boost EASE OF LIVING by Corporate India .

To read our earlier Article on this, please click below link:

<http://www.amitadesai.com/uploads/Article%20on%20Company%20Law%20Committee.pdf>

Under Companies Amendment Act, 2019 which was notified on 31st July 2019 had made 16 minor technical lapses in compliances of CA 2013 into CIVIL WRONG .

A. Review of 46 Penalties and recommendation

In **Chapter 1** of its Report, CLC has recommended amendments to **46 more provisions** , detailed below under CA 2013 to reduce or remove criminality and de-clog the criminal justice system by retention of status quo in case of non – compoundable offences. CLC has adopted a principle based approach to further remove criminality, in case of defaults which can be determined objectively, and which otherwise, lack the element of fraud or do not involve larger public interest.

1. 23 Offences to be **re-categorised** which could be dealt with in the In House adjudication
2. 7 compoundable offences to be **omitted** all together
3. 11 compoundable offences to be limited **with only fines** and imprisonment provisions to be removed from it
4. 5 offenses to be dealt under **alternative framework**

B. Reward to Law abiding Corporates

In **Chapter 2**, of its Report, CLC has recommended, providing following for the **Ease of Living for law abiding corporates**

1. Power to exclude certain class of companies from the definition of 'listed company', mainly for listing of **debt securities**, in consultation with SEBI.
2. Clarifying the **trial court's jurisdiction** on the basis of place of commission of offence under Section 452, for wrongful withholding of property of a company by its officers/employees.
3. Including the provisions of Part IXA (**Producer Companies**) of the Companies Act, 1956 in the Companies Act, 2013.
4. Proposing benches of National Company Law Appellate Tribunal (**NCLAT**)
5. Provisions for allowing payment of **adequate remuneration** to **non-executive directors** in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases
6. Relaxing provisions related to imposition of **higher additional fees** under third proviso to Section 403(1);
7. Extending applicability of Section 446B (**lower penalties for small companies and one person companies**) to all provisions which attract monetary penalties and extending the benefit to producer companies and start-ups also.
8. **Excluding** certain companies/bodies corporate from applicability of **Section 89 (declaration of beneficial interest in shares)** and Chapter XXII (companies incorporated outside India);
9. **Reducing timelines** for Right Issues under Section 62 so as to speed up the issue
10. Extending exemptions from filing of certain resolutions to certain classes of **non-banking financial companies under Section 117** in consultation with RBI;
11. Providing power to enhance the thresholds which trigger applicability of **(CSR) Corporate Social Responsibility provisions;**
12. Non-levy of penalties for **delay in filing the annual returns** and financial statements in certain cases.

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C. Rescheduling of certain issues which need wider consultation

The CLC has also highlighted following areas that require wider consultation and need to be taken up in due course at a later stage.

1. Providing for appeal against the orders of the Regional Directors before the NCLT after due examination;
2. Exempting certain private placement requirements for Qualified Institutional Placements (QIPs) after due consultation with SEBI;
3. Reviewing provisions on disqualification of directors after due consultation and examination; and
4. Reviewing provisions in respect of debarment of audit firms after due consultation and examination.

Conclusion: There may be the intention of Government to bring a Bill on the recommendation by CLC in the winter session of Parliament itself. This decriminalisation gives signal to the world about Narendra Modi government agenda to get India among the top 50 countries in World Bank's ease of doing business ranking.

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