

The bliss and quail of the Companies Act, 2013

- S Kannan

Without doubt Companies Act, 1956 was one of the voluminous legislations in the country. Numerous amendments and countless corrections had made it thicker than the original bare act. In this context the new Companies Act, 2013 is a welcome and refreshing piece of legislation. It has seen the light of the day after several years of struggle, strain and strives. The Act was followed by the Rules. While the Act is thinner in size, the rules are all set to beat the trend to become more voluminous, intricate and complex.

Nevertheless, the new Act has brought in several changes for the good and growth of the corporate sector in India. Some of them are good, need of the day and would certainly bring cheer among the corporate and professionals working around the Corporate Law. There are a few changes which do not augur well among the corporate and professionals. Well, these are like two sides of a coin. One side of the coin is mostly embossed with a head and not so interesting. The other side is filled with numbers 1 or 2 or 5 or even 10. That is what is more interesting. It would be interesting for the readers to know some of these good changes to keep one abreast of the events happening around us more specifically in the corporate law.

The new Companies Act, 2013 provides for:

1. Increase in maximum number of directors from 12 to 15.

This is a welcome step more specifically for some companies which are large companies having multi country presence. This will also help companies to bring in new expertise and knowledge which would help growth and development of business. Companies need not wait endlessly for the approval from the Central Government for appointing directors beyond the earlier limit of 12. The Ministry has done well in increasing the maximum number of directors in a company and is expected to bring in global corporate expertise for the benefit of native corporate sector.

2. A third of the Board members should be independent directors.

Companies to have one-third of their board members as independent directors is very much acceptable in principle. It would help to bring in more transparency and self control for the corporate in conducting its business ethically and legally. This is so because lot of stress is given to the perception of Independent Directors and their duties and responsibilities. This is again a right step in the right direction. However, a few issues that would crop up could be:

- a. Do we have enough number of qualified independent directors available for such appointment by the corporate?

- b. How independent could the directors be when they are chosen and appointed by the promoters or large shareholders who control the company's affairs?
- c. The Act says that a person could be appointed as an independent Director in not more than 20 companies. The question that would crop up is if a person could be appointed in 20 companies as independent director, how is that he or she will perform their duties as an independent director of the company.

Well there are no definite answers for these questions as of now. However, time and experience would tell us if our trust on Independent Directors is well placed.

3. Representation for Women in the Board of directors is made compulsory;

Gender diversity at Board level is important to bring in young, diverse, energetic and to meet the modern economic thinking. The Companies Act, 2013 provides for mandatory inclusion of women as directors in the companies. This is a wishful thinking. Women today are proving themselves to be great corporate leaders in many national and international organizations. By nature women are better managers of their time and resource compared to men. There can be no doubt or second thought in using this skill of women in an organization. However, this requirement has its own practical difficulties. The number of women available and eligible to be

a director in a company is far less than the number desired. They need to be empowered and trained. The compliance could be years away.

4. Corporate social Responsibility (CSR) is mandatory for companies.

Making CSR mandatory is supposed to be good for society. It is possible for Corporate to reach places where Government has failed. The intention is what is earned from the society, should be given back for the betterment and growth of the society. This concept, though new in an Indian legislation is not new to the corporate world. It is existing in several countries for decades and even in India several companies have been doing great works without much fan and fare. Going by the noble thoughts of CSR, we have no reason to doubt the intentions. We need to wait and see how the corporate utilize this opportunity to showcase themselves a pro society and we also need to experience how CSR is destined to benefit the society and the corporate.

5. Right of minority shareholders and depositors in a company to launch class action suits against managements to defend their interests.

Undoubtedly, this is the best part in the Companies Act, 2013 strengthening the hands of shareholders and investors in India. But, how is it going to be implemented is a billion dollar question. Whether it will help our shareholders given the kind of transparency and corporate governance

system we have at present requires a wait and watch for all concerned. All said and done, it's a great beginning; we need to wait to taste its fruits. It may take years in our country

6. Director's Accountability

The Companies Act, 2013 requires that every person who intends to take up directorship in any company should obtain a Director Identification Number (DIN). This is expected to be a deterrent for those who intent fraud. The DIN may enable the government to monitor the number of directorships any person holds and also his track record. However, it remains a question if professionals and experienced and competent persons would prefer to be a director in any company given the stringent provisions for penalty and punishment under the Companies Act, 2013.

The Companies Act, 2013 also provides space for new concepts like One Person Company, which I am sure, will boost the activities relating to corporatization of individual efforts and more specifically proprietorship concerns. We need to wait and see how the individuals look at this option. We will separately discuss in detail on One Person Company. In the meanwhile we have all our time before us to look for a better change, a better corporate practices and better law to suit a sustained growth of the commerce. Let us hope for the best.

By
S Kannan, Consultant Company Secretary, Bangalore,
Mobile : 9845058441