



Certain Issues in Companies Bill 2012

CA Jayant Thakur
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Background

- Series of Bills
- Referred to standing committees, representations, etc.
- Some problems

Topics covered

- Selected Issues
 - OPC
 - Officer in Default/KMP
 - Corporate Governance, Board, etc.
 - Class Actions
 - Mergers and Amalgamations
 - Sick companies
 - Penalties and Prosecution
 - SFIO

One-Person Company

- One shareholder/one director company
- Avoids need of second person
- Director vs. shareholder
 - Concept of succeeding shareholder
- Formation
- Meetings
- Conversion from sole proprietor to OPC

One-Person Company

- Exemption from formalities
- Other advantages/disadvantages of Company
- Dissolution
- Allied laws – tax, NBFC, etc.

Officer in Default/KMP

- Natural persons to be held responsible for violations
- KMP
 - Top executives – MD/CEO/WTD/CS/CFO
 - Have primary responsibility
- OiD
 - KMP
 - If no, KMP, consented director or all directors
 - Designated persons

Officer in Default/KMP

- Shadow Directors/Promoters
- Directors who participate in board proceedings involving violations or receive minutes
- Restrictions on futures/options for KMP
 - ESOPs?
 - Share Warrants?
 - Unlisted companies?

Class Actions

- Background
- Shareholder/depositor
- Minimum number/value
- Action against:-
 - Company
 - Directors
 - Auditors
 - Expert/advisor/consultant, etc.
- To restrain from taking ultra vires and similar actions

Class Actions

- For compensation/damages/other action
- Basic condition – affairs/management of Company being conducted in prejudicial manner
- Joining others/lead person
- Frivolous actions
- Satyam US case study

Revival of Sick companies

- Present law – SICCA/BIFR
 - Potentially sick company
 - Sick company – reference, scheme, etc.
 - Overriding effect
- Concept of Sick Company
- Default in payment of debts to secured creditors
- Government/PFI/banks may also refer
- Limited protection against recovery suits

Revival of Sick companies

- 1st step – to determine whether debts may be paid in time
- Application with scheme of revival
- Interim Administrator
- Final approval/Company Administrator
- Approvals required
- No overriding powers
- However, single window approval

Penalties/Prosecution

- Widely framed provisions for penalties/prosecution.
- Both general and specific provisions
- No compounding for several violations
- Company, directors, employees, auditors, experts/other person covered
- Listed, unlisted/private/OPCs
- Compensation/damages

Penalties/Prosecution

- Fraud
 - Any person covered
 - widely defined
 - Minimum 6 months or 3 years if public interest involved
 - Maximum 10 years
 - Fine upto 3 times.
 - Deception/taking undue advantage of the Company, its creditors, shareholders, or any other person.

Penalties/Prosecution

- **Materially false statement/omission**
 - By any person
 - In any return, report, certificate, document, prospectus, statement, etc.
 - Misstatements in prospectus, etc.
 - Fraud
 - Compensation/damages
 - **Auditors**
 - Knowing/wilful deception

Penalties/Prosecution

- Intentional false evidence
 - Minimum three years/maximum 10 years imprisonment and fine.
- Same offence committed in next three years, double fine.
- Special Court
 - For speedy trial of offences under the Act
 - Single Judge (Sessions Judge/Additional Sessions Judge)

SFIO

- Statutory recognition
- Multi disciplinary team
 - Accounting, Company law, SEBI, tax, other revenue, criminal law, etc.
- Comprehensive investigation
 - But not comprehensive action
- Powers of investigation and prosecution
- Arrest without Warrant

Mergers/Amalgamations – new concepts

- Can be initiated by any member/creditor/Company
- Postal ballot
- Objections by creditors/members
- Notices to various authorities
- Set off of ROC Fees
- Buyback of shares
- Reduction of capital

Mergers/Amaglamations – new concepts

- Compliance with Accounting Standards
- Own shares post merger
- Small companies mergers
- Cross border mergers

Directors

- Maximum directors 15, can be increased by a special resolution.
- Woman director.
- Independent Directors
 - Definition
 - Nominee director
 - Minimum No.
 - Applicable to
 - Time for implementation

Directors

- Code for Independent Directors
- No stock options/remuneration for Independent Directors
- Term of Independent Directors/reappointment and cooling period
- Limitation of liability of Independent Directors
- Maximum no of directorships

Directors

- Absence in board meetings
- Meetings through audio-visual means
- Disclosure of interests

Audit Committee

- Number of members
- Eligibility
- Recommendations of Audit Committee not accepted by Board

Nomination and Remuneration Committee

- For whose nomination/remuneration is it applicable?
- What are purposes of Committee?
- Constitution of Committee/Chairman

Stakeholders Relationship Committee

- When to set up?
- Constitution of Committee
- Violations of provisions and consequences

Related party transactions

- Requires board resolution at meeting
- Approval by general meeting
 - Non voting by related parties
- Exceptions
- Transfer to/from directors/connected person for consideration other than cash
 - General meeting approval
 - Valuation

Certain decisions requiring general meeting approval

- Corresponding to Section 293
- Requires special resolution
- Sale, lease, etc.
 - Modified definition of undertaking



THANK YOU!