Key highlights of the Companies (Amendment) Bill, 2020

One step further close to improve ease of living for corporates

The Govt. has introduced the Companies (Amendment) Bill 2020 in the Lok Sabha on March 17, 2020 with an objective to decriminalise various offences, to declog National Company Law Tribunal (NCLT) Act and to provide further ease of doing business for corporates. The Amendment Bill, 2020 proposes 72 changes to the Companies Act 2013. The amendment legislation was approved by the Union Cabinet on March 4, 2020. The key amendments proposed in the Bill are discussed hereunder:

1. Decriminalization of offences:

The bill aims to decriminalize certain offences under the Act in case of defaults which can be determined objectively and which otherwise lack any element of fraud or do not involve larger public interest. The Amendment Bill, 2020 is based on the Company Law Committee which was constituted with a view to decriminalize offences and provide ease of doing business to the corporates and other stakeholders. The Committee presented its Report in November, 2019 provided for de-clogging of penal provisions as under:

a) Re-categorizing of 23 offences out of 66 compoundable offences to an in-house adjudication framework wherein penalty will be levied by an adjudication officer

b) Omitting 7 compoundable offences

c) Limiting 11 compoundable offences to fine only (by removing imprisonment part

d) Recommending 5 offences to be dealt with in an alternative framework

2. Amendment relaxing the CSR provisions

2.1 Set-off provision for CSR funds

The Bill proposes to allow CSR applicant companies, which have spent an amount in excess of the requirement provided under section 135 of the Companies Act, 2013 to set off such excess amount out of their obligation in the succeeding financial years in such manner as may be provided by rules.

2.2 Relaxation from requirement of CSR committee

The bill seeks to relax the rules for requirement of constitution of Corporate Social Responsibility Committee. It has proposed not the constitute CSR committee, in case the amount required to be spent under CSR does not exceed Rs. 50 lakh rupees.

2.3 Penalty on non-compliance of CSR provisions

The Bill has explicated that if a company is making a default in complying with the CSR provision, then such company shall be liable to penalty of twice the amount required to be transferred by the company to the Unspent CSR account or Rs. 1 crore, whichever is less. In addition to that, every officer shall also liable to pay a penalty of $1/10^{th}$ of the amount required to be transferred in Unspent CSR Account or Rs. 2 lacs, whichever is less.

3. Monetary penalty for related party transaction

The Bill seeks to amend provision of related party transactions in order to replace the punishment for imprisonment or fine with monetary penalty. It has been proposed to impose penalty of Rs. 25 lakh to listed company and Rs. 5 lakh to officer in default. At present 1 year imprisonment and maximum 5 lakh penalty has prescribed under the Companies Act, 2013.

4. Power to exclude companies from definition of Listed Cos.

The Bill proposes to empower the Central Government to exclude certain class of companies from the definition of listed company, mainly for listing of debt securities.

5. Remuneration to Independent Director

It has been proposed to include the provision for remuneration to non-executive director, including an independent director, if a company fails to make profits or makes inadequate profits in a financial year.

6. Setting up new NCLAT benches

The Bill seeks to insert a new section in the Act to provide for constitution of Benches of the Appellate Tribunal and related provisions.

7. Rectification of Name of Company

The Bill proposes that if a company has been registered inadvertently with a registered trade mark of a proprietor, and the name is too identical or resembles an existing trade mark, such company shall have to change its name within a period of 3 months from the issue of direction by Central Government. Earlier the time limit allowed for changing name was 6 months.

8. Exemption to NBFC & Housing Finance Cos. form filing resolutions

The Bill 2020 has propose to extend exemptions to certain classes of registered Non-banking financial companies and Housing Finance Companies from filing Form MGT-14 for filing resolutions and agreements with the Registrar of Companies under Section 117 of the Companies Act, 2013. Currently only Banking companies are exempted from filing resolutions with RoC.

9. Lesser penalty for small companies

The proposal for lessor monetary penalty has been proposed for a start-up company, Producer Company, One Person Company or small company on failure to comply with provisions of the Companies Act, 2013 which attracts monetary penalties. The proposed amendment provides that penalty shall not be more than one-half of the penalty specified in such provisions subject to a maximum of Rs. 2 lakh in case of a company and Rs. 1 lakh in case of an officer who is in default.

10. Reduction in time line for right issue

In order to speed up the process, the bill proposes to reduce the timelines for applying right issue as specified under section 62 of the Companies Act, 2013. At present, the time period for providing offer letter to the existing shareholders under rights issue process is 15 days to 30 days, beyond which the offer is deemed to be declined. Therefore, it has proposed to reduce the exiting timeline which may be prescribed later.

11. Removal of restriction on appointment of Judicial & Technical members

The bill seeks to remove the restriction on the number of Judicial and Technical members that the Central Government may appoint in the Appellate Tribunal.