RAJYA SABHA

*SYNOPSIS OF DEBATE

(Proceedings other than Questions and Answers)

Thursday, August 08, 2013/Shravana 17, 1935 (Saka)

GOVERNMENT BILLS

Following Bills were introduced:-

I. The Parliament (Prevention of Disqualification) Amendment Bill, 2013; and

II. The Registration (Amendment) Bill, 2013,

The Companies Bill, 2012- *Contd.*

SHRI MANI SHANKAR AIYAR, continuing his unfinished speech dated 07.08.2013, said: It was back in 1913, exactly a century ago, that the first Companies Act was passed by the Legislature of the time. In 1956, it was felt that the Act of 1913 needed to be replaced by a fresh Act. Now we have a new Companies Bill with the approval of the Lok Sabha to endorse it. Instead of seeking to move amendments my humble plea to the House is that we extend our full support to the Bill. It has been explained that a principal motive for this new Companies Act is to ensure that we function in a business friendly manner, and the private sector is able to function efficiently. There was the model that we had from 1956 onwards of the State directly controlling the economy and now hon.

***This Synopsis is not an authoritative record of the proceedings of the Rajya Sabha.**

Minister proposes to do is to put in place a regulatory authority. It is a reality that the private sector has grown in the last 20 years. However, the experience of regulatory authorities in India has not been uniformly satisfactory. So, the mere fact of setting up a regulatory authority does not ensure that we actually have an effective regulatory authority. Kindly bear in mind, the previous experience of the JPC set up in 1952 to look into the Harshad Mehata scam and subsequently, in 2002, to look into the Ketan Parikh scam. There is hope for the country that the regulatory authority will put the things right. We have obtained information from the National Sample Survey and the Twelfth Five Year Plan which shows that in our economy inequalities have been increasing. It is, in fact that those who constitute under 0.2 per cent of the population of this country are able to control at least 20 per cent of the assets of this country. The fact has come up that we can't trace 56 per cent of national income to the point of origin. Given the skewed nature of income distribution in our country, perhaps, 50 per cent of this 56 per cent is the result of under reporting by the rich of India. It is the job of regulatory authority to rein in these people. Be pro-business, but recognize that businessmen are not as morally good as they are economically affluent. Therefore, this Regulatory Authority has to be extremely careful about what they are doing. The other matter I wish to refer about the Corporate Social Responsibility. I think it should be made obligatory to spend CSR exclusively on the rehabilitation and welfare of the tribal people. Now I am talking about auditing. It is necessary that the auditors, who are working for these private companies, be brought within the ambit of Regulatory Authority. Huge number of corporate entities have come into existence. Back in 1956, it was about 8,000 and now it has come up to about eight lakhs. They are being set up not with the purpose of undertaking any business but they are cheating the revenue of India and thereby cheating the poor of India. So, it is absolutely essential that the Regulatory Authority assures itself that a company is being set up with a business purpose in mind and not with tax evasion purposes.

SHRI V.P. SINGH. BADNORE: This Bill should have come much earlier. It was about 100 years ago, in the British Raj, that the first company Act came into existence. The Companies Act came into existence in 1956. In those days there were 30,000 companies. This is a Bill to deal with certain internal affairs of the capitalist class.

All aspects of corporate governance and international practices have been taken care of in this Bill. This has been done by the Standing Committee and by the Minister. We need corporate freedom, opportunities, transparency and regulations. The concept of One-Person-Company is a new concept. We must see that it is not misused. We need more checking before a one-person company comes in existence. The Clauses for appointment of independent Directors is another concept. The auditor's responsibility and penalties on him is another issue. There should be a limited liability. There can be frauds but not necessarily by the CA. The CSR is the good concept. How much money is going to be spent, there should be some norms for it. We must look into the human rights and labour standards. We can incorporate the United Nations Global Compact's 10 principles. Looking at the fast growth, some entities may violate certain technical rules unintentionally. Law should emerge to protect them. We would have to distinguish between fraud and liability. There is another Clause which is related to revision of accounts. I feel that the Companies Bill empowers the Board that they will be able to review these accounts. You have looked after the small investors' view also. RoC has to look into the defaulter companies. But if the RoC is really alert, fraud would not happen.

PROF S.P. SINGH BAGHEL: I support the Bill. The Clause related to social liability is the best part of the Bill. The changes, which have been carried out in procedure of making laws through Government Notification and provision of independent directors, are very good. It will result in emergency of small companies. Unless S.F.I.O. is given more powers, this law will be futile. Usually we listen that common poor people invest their hard-earned money and companies vanish suddenly with their lifetime savings. I have an apprehension related to this Bill that more foreign companies might purchase Indian companies. I bid thanks for the Clause related to appointment of women directors.

The Bahujan Samaj Party in particular and we would like you to announce compulsory posting of Director belonging to SCs, STs, and OBCs like women Directors. All the members are concerned about the Corporate Social Responsibility. Every company having valid income shall spend two percent of its income on social, educational, literary and cultural field. A little strictness is required for it. A rule is required to be made that the companies would spend certain percents of C.S.R. on the populations belonging to SCs, STs and OBCs. It would be much better if two percent is increased in the C.S.R.

SHRI P. RAJEEVE: While a new Bill is presented, it should address changes in society. I want to know whether a specific provision is given in this Bill to address the increasing crony capitalism. There is nothing to protect the interests of the Scheduled Castes and Scheduled Tribes in this Bill. One of the specific features of this Bill is making Corporate Social Responsibility of the companies. Most of the public sector units utilize or spend their CSR where the Minister is coming from. There is no specific mention regarding rural areas and backward areas. It should be incorporated in this Bill. There is a contradiction as to who will prevail - NRFI or the IICA?

There was a demand earlier, and we still have this demand from various sections of the society that there should be workers' participation in management of industries. There should be, at least, one Director, either elected or nominated, from amongst employees. There should be some safeguard to protect the interests of our workers. Cross media ownership is a great threat to democracy. There is no specific provision regarding that. My next point is regarding winding up issue. I urge upon the Government to look into these issues and close the loopholes.

SHRI VIVEK GUPTA: I urge upon the Minister that people should be made aware of the new act and the massive changes made therein. It would be much better if you could do something to encourage the entrepreneurs. The words 'as may be prescribed' have been used many times. It raises so many question marks on many things. It requires to be clarified. Sales tax return and income tax return should be made a part of annual report so that minority shareholders should know as to what companies provide at various places. A little provision of CSR should have been made for the economically backward and minorities. All the people could be benefited if you could do something in the directions of depreciation. There should be a provision that if a bank seeks some action against a sick enterprise, it would be better for them to be a bit sensitive. There is no clarity in the concept of 'one person company'. There is no clarity as well about NFRA and ICAI. It would be better if you explain more about the company law. The auditor should have the responsibility to protect the secret of the company he comes across while auditing.

DR. ASHOK S. GANGULY: For several years, modernization of corporate rules and regulations are overdue. The new Companies Bill is attempting to fulfill it. However, one of the institutions which need to be modernized is the auditing profession in India which should not be allowed to be controlled by a closed group. We must give even a bigger prominence to the role of Independent Directors. If you want checks and balances in the operations of a company, then Independent Directors must enter into a covenant while accepting the role of an Independent Director, in order to understand his or her responsibilities and obligations not only toward company, not only towards the shareholders, not only towards employees, but to society in general. We also need to pay a lot of attention in modernizing and acknowledging the role of trade unions. Passing the Act should not be an end point so that we look at it, at least, once in two years in order to see whether all the provisions are still relevant or new provisions required or should we modernize them.

SHRI N.K. SINGH: The Parliamentary Standing Committee has recommended that the Board of Directors should consider the implications of Government Directors on the financial position of company. In my view, this is a very important suggestion. The Bill provides Members of the existing Law Board must be made eligible to become Members of the NCLT. However, the Parliamentary Standing Committee noted that the functioning of the CLB has been very unsatisfactory and, therefore, the Membership of the NCLT should be considered afresh. The Bill does not have any provision of what may be called a Sun-Set Clause in terms of companies which have really structured themselves in accordance with their own regulation. I must compliment the fact that Corporate Social Responsibility has now been made mandatory. This is a very satisfactory provision. But, there is an escape Clause in this provision. Since the requirement of the CSR is based on the net worth or the turnover of a company, there is a risk that the net worth of a company may change from year to year. It is unclear how this will affect the responsibility to make the CSR spending . There are several issues of regulatory overlaps and conflicts. There are several features, in which there are overlaps and there are discrepancies of what is contained in the Bill and what is contained in many other regulations, particularly, the SEBI Regulations. The Bill should consider aligning the definition of Independent Director in the Bill with the definition in the Listing Agreement under SEBI. The definition, as contained in the SEBI, is more rational and more comprehensive.

SHRI RABINARAYAN MOHAPATRA : The Bill introduced several new concepts like e-Governance to strengthen the corporate governance, making the concept of corporate social responsibility mandatory, enhanced accountability on the part of companies, audit accountability, empowering, Serious Fraud Investigation Office, including one woman director in the company. But, the Bill does not take into consideration the profile of typical start-ups for developing country like India with a huge rural population. The start-ups have to be created mainly for the job-seeking people in the rural areas. The objective of the Bill would be to create the necessary and sufficient conditions for rural employment and opportunities for the young entrepreneurs in the shortest possible time. The recommendation of the Standing Committee regarding public sector undertakings should be accepted. Nothing should be made public to protect the PSUs who are going through major turbulence. It should be included in the Bill. There is a need to involve farmers as stakeholders in growth process by giving them access to technology. Implementation holds the key to its success. For this purpose, the corporate and regulator would need to work together so as to tread a balance between freedom and regulation.

SHRI D. RAJA: What is the alignment between the Company Bill provisions and the Sebi Consultative Paper on Corporate Governance? While the Sebi Consultative Paper says that shareholder approval is needed for a company to divest its subsidiaries, there is no provision in the Company Bill. Then, there is a provision for appointing Minority Shareholder Director, but there is no provision for workers' nominees on the Board. The Nominee Directors of financial institutions are not considered to be Independent Directors under the Bill. They should be considered to be independent because they are not appointed by promoters. It is good that the Government is proposing two per cent Corporate Social Responsibility Expenditure. But how this is going to be monitored, how many corporate houses or companies will adhere to it, how they will spend this 2 per cent which has been mentioned in the Bill, what is the mechanism to monitor their budgets? There is a need to regulate many non-banking financial institutions. We have come across many incidents of cheating of our people. The corporate sector needs to be disciplined and regulated because they have grown now. They have grown to the extent of dictating to you, the Government and influencing your policies.

SHRI HISHEY LACHUNGPA: I rise here to mention the serious objections in extending the Act to the whole of India. As it infringes upon the special provisions contained in Clause (k) of Article 371F of the Constitution of India. The proposed repeal of the Registration of Companies Act, 1961, has the potential to disrupt the peaceful ambience prevailing in the Sikkim. The provisions will also negate the very object of exempting the minuscule population of the 'Sikkimese' under Section 10 (26AAA) of the Income Tax Act, 1961, from its purview. All local Companies in the State have so far been functioning under the local Act. This sudden change in the regulatory and legal framework will have an overwhelming impact on the existing businesses and will stifle the nascent-free enterprise in Sikkim. The lawmakers cannot shut their eyes to the local needs. I, therefore, request the hon. Minister that the Bill is in direct conflict with the spirit of article 371 F of the Constitution, be reconsidered. I also propose that the consent of the State Government be taken into consideration.

SHRI PIYUSH GOYAL: Government is responsible for taking action against bogus companies. This new act is basically a rehash of the existing companies act. The act and provisions of the act should be made simple so that the business community and people may not face problems. Prescribed rules under the clauses of the act are too much. The Government should focus on ease of doing business. We accept the good provision regarding corporate social responsibility in the act but there is no punishment in violation of the same. I request that there is a need to make amendment in the said provision. Non spent amount under corporate social responsibility may be seized off or transferred to Prime Minister relief fund or there should be some other planning for that. The Government should take note of the fact that we don't have chartered accountants in sufficient number who may audit about 11 lakh companies. I suggest that these should restrict for public limited companies only so that new chartered accountants and new auditors may get opportunity. If an auditor makes an error how can the whole firm be held responsible for the acts of one person? Fine or stringent penalty should be imposed only on the auditor responsible for making error in the auditing.

If experts, consultants and advisers are required then you have to protect the interests of these people otherwise expenditures in the companies will shoot up. Clause 247(7) m ake provision for frivolous and vexatious litigation. This should not be used as a blackmailing tool. When it is adjudicated that the person has filed a case with bad intention. in such case I feel that punishment may be made more stringent. The Government have not accepted the concept of leverage buyout while there is provision for leverage buyout in other countries of the world. I think that Government should take care of it. I think that there is some mistake at the drafting level as clause 167(1) and clause 164(3) are contradicting with each other because one related to vacation of the office of the director and later is related to the appointment of the director. This anomaly should be removed. There is restriction that independent directors cannot be offered ESOP. I am not able to understand such thing. If independent directors will get ESOP or will have stake in the company then they will discharge their duties in a better way. The Government should reconsider this issue.

Clause 131 makes provision for revision of accounts and it can be a very dangerous possibility as any company can make revision of their accounts to cover the misdeeds found in investigation by any agency. After revision company can claim that we have corrected our mistake by looking into it. Government intend to increase its control on the autonomous bodies. Provision of National Financial Reporting Authority in the current bill is a step in this direction. Whether this authority will be able to control 11 lakh companies? Government want to give control of everything to the bureaucracy which is not a good tendency. Provision in the article 141(1) that firms where majority partners are chartered accounts can be auditors. It is very dangerous. A non-chartered accountants partners' firm can becomes auditor. This is a back door entry to the foreign companies. I suggest that meaning of majority of partners should be specified clearly. Too many checks have been imposed on the auditing standards while auditors perform to the best of their ability. The Government should not infringe upon the independence of auditors. Subjects to be Reported should be left to the auditors. I request to the Hon'ble Minster that he should apprised us whether this act will be implemented from retrospective effect or from prospective effect

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**Supplement covering rest of the proceedings is being issued separately.