"The Ones who are going to be the winner are not those

Who are the strongest or, those who are fastest

But those who are the most adoptive to changes."

Yes with this feeling, Companies act 2013 welcomes itself and takes the position of "Paradigm Shift" as the existing law is over half a century old.

Yes Companies act 2013 is opportunity holistic and effective.

May be it bringing much stringent regulations but yet it is also bringing better transparency, self-regulation and corporate democracy.

"Necessity is the mother of invention."

I am going to discuss some major changes related to Preliminary introduction and incorporation taking place in companies act 2013.

Major terms that have been re-defined can be queued as follows:-

- ✓ Salient feature of **abridged prospectus** are to be specified by SEBI by making regulations. Previously they were specified by rules made by CG.
- ✓ **A.S.** to be notified based on recommendations of NFRA i.e. National Financial Reporting Authority. A.S. notified under 1956 Act were based on the recommendations of NACAs i.e. National Advisory Committee on Accounting Standards.
- ✓ **Alteration or Alter** included making addition or omissions previously, but not it also includes making substitutions also.
- ✓ **Associate Company** in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company, company of the company having such influence, and includes Joint Ventures Co.
    - o **Significant Influence** → Control of at least 20% of total share capital or of business decision
- ✓ The 2013 act recognise both **accounting standards and auditing standards**.
    - o Auditing standards→ Standards of auditing referred in section 143(10)
        - ▪ To be prescribed by CG
        - ▪ Recommended by ICAI
        - ▪ Consultation & Examination of recommendation made by NFRA
- ✓ **Authorised capital** means such capital as is authorised by the memorandum of a Co. to be the maximum amount of share capital of the co.
- ✓ **Book & Paper**→ For the first time, the 2013 act permits companies to maintain books of accounts and other books & papers in electronic mode. The 1956 act did not envisage maintaining books of accounts in electronic mode.
- ✓ **Books of Accounts**→ 2013 Act required a company to maintain Books of accounts in respect of Sales & Purchases of services by the co. also.
  Whereas Section 209(1) of the 1956 Act required Books of accounts only in respect of sale and purchase of goods by the company.
  Books of accounts can be in electronic mode.
- ✓ **Branch office**→ Only establishments "described as such by the co." shall be treated as branch office

- ✓ **Called up capital→** (Newly Inserted) Part of capital which has been called for payment
- ✓ **Chartered Accountant→** There was no definition of term C.A. in the 1956 Act. 2013 Act defines the expression as a CA who holds a valid certificate of practice under CA Act 1949.
- ✓ **Chief Executive officer→** (Newly Inserted) 2013 Act provides for statutory recognition to the CEO and CFO as key managerial personnel
- ✓ **Company→** Section 3 of 1956 Act
  - o No Change in definition
  - o However the concept of company has undergone a change under the 2013 act. The 2013 act permits one person company (OPC) which the earlier act did not.
- ✓ **Company limited by guarantee**: There can also be OPC limited by guarantee
- ✓ **Company liquidator**: The 2013 act, for the first time, provides for appointment of empanelled professionals (CA/Cost Accountants/CS/Advocates) as liquidators
  - o Liquidators means person appointed by
    - ▪ The tribunal in case of winding up by the tribunal or
    - ▪ The Co. or creditors in case of voluntary winding up
- ✓ **Maximum no. of members** have been increased from 50 to 200 for private company.
- ✓ Now, **financial year** shall compulsorily be from 1st April to 31st March every year. Existing companies need to align with these provisions within 2 yrs of commencement.
- ✓ **Small Company→** Company other than public co.
  - o Paid up capital not more than Rs. 50,00,000
  - o Turnover not exceeding Rs. 2,00,00,000
- ✓ New provision for **Cost Accountant** has been inserted
  - o Cost Accountant means as defined in Cost & Works Accountants Act, 1959. Now he can be an expert, internal auditor.
- ✓ **Court→** The Act provides for special courts to deal with offences under the 2013 Act.
  - o There was no such concept under 1956 Act.
- ✓ **Deposits→** Under 1956 Act, definition of deposit was exhaustive. Under the 2013 act, the definition is inclusive.
  - o Deposits includes receipts of money in any other form by a Co.

One Person Company

Individual proprietors doing business will now be able to avail the benefits of limited liability without a second person to form a company.

Idea of OPC was mooted by JJ Irani committee.

Salient features of O.P.C are as follows:

- ✓ OPC may be registered as a private company with one member and at least one director;
- ✓ Adequate safeguards in case of death/disability of the sole person should be provided through appointment of another individual as nominee director. On the demise of the original director, the nominee director will manage the affairs of the company till the date of transmission of shares to legal heirs of the demised member.

- ✓ Letters ‘OPC’ to be suffixed with the name of OPCs to distinguish it from other companies. A person can incorporate a maximum of 5 OPCs.

- ✓ An OPC is not required to hold an annual general meeting
- ✓ The minimum number of directors in the case of an OPC has been limited to one.
- ✓ An OPC must conduct at least 1 meeting of the board of directors in each half of a calendar year with a gap of at least 90 days between the 2 meetings.

Memorandum of Association (Section 4)

Change in object clause:

- ✓ Classification of objects under 2013 act is as follows:
  - o Objects for which company is proposed to be incorporated
  - o Any matter considered necessary for furtherance thereof
- ✓ Also Memorandum shall state liability of members whether limited or unlimited.

Change in Name clause:

- ❖ Company cannot be registered with a name which directly or indirectly gives the impression of its connection with CG or SG.
- ❖ Penalty of non-compliance has been enhanced upto Rs. 1,00,000
- ❖ Memorandum shall be in respective forms specified in Tables A,B,C,D & E of schedule I but unlike 1956 act, memorandum cannot be in a form as near to the applicable form. (It has to be exactly in the specified form)

Articles of Association (Section 5)

- ✓ Sec 5(1) & 7(1)(a) makes it compulsory for every company to have its own articles and file the same with ROC for registration
- ✓ Some general principles have also been laid down regarding contents of articles:
  - o Articles shall contain regulation for the management of company.
  - o Company may adopt all or any of the regulation contained in model articles (Table F/G/H/I/J)
  - o Articles shall also contain prescribed matters and such additional matters which are necessary.

Formation of companies with charitable objects (Section 8)

- ➲ Section 25 Companies are now to be called Section 8 companies.
- ➲ Section 8 introduces much more stringent regime for charitable companies.
- ➲ Objects of charitable companies registered under section 8 shall now **specifically include words like “sports”, ”education”, ”research”, ”social welfare”, “promotion of environment” (besides promotion of commerce, art, science, research etc.)**

- Now **previous approval of CG is mandatory for alteration of any provisions of memorandum** of company under section 8 (Section 25 required previous approval of CG to alter objects clause)
- Section 8 provides that now CG cannot only revoke license in case of contravention of provisions of section 8 but can also **order winding up of the company or amalgamate it with another company having similar objects**.
- Section 8 also provides several consequences of its violation (which were not there under section 25)
- This section provides that a **company registered under section 8 shall amalgamate only with another company registered under section 8 & having similar objects**.

Commencement of business (Sec 11)

- ✓ While Sec. 149 of the 1956 act applied only to public companies having share capital, Sec. 11 of the 2013 act applies to all companies having share capital whether public or private
- ✓ A company having share capital shall not commence its business or exercise any borrowing power unless-
    - A declaration is filed by a director with the registrar that every subscriber to the memorandum has paid the value of shares agreed to be taken by him and the paid up share capital of the co. on the date of making this declaration in case of public co. is Rs. 5,00,000 and in case of private co. Rs. 1,00,000.
- ✓ Declaration has to be filed within 180 days from the date of incorporation of the co.
    - The Co. has filed with the registrar a verification of its registered office.
- ✓ No provision of issuance of certificate of commencement by ROC & Provisional contracts.
- ✓ Default would result into a penalty upto Rs. 25,000 everyday on co. and Rs. 1,000 per day on every officer.

Registered Office of the Co. (Section 12)

- ✓ Co. must have a **registered office on and from 15th day of its incorporation**
- ✓ **Non-compliance** of which will result **in penalty of Rs. 1,000 per day but not exceeding Rs. 1,00,000**
- ✓ **Notice of change** shall be given to ROC **within 15 days** of such change.

Alteration in Memorandum (Section 13)

- Restriction on Alteration of object clause→ A co. which has raised money from public through prospectus and **still has any unutilised amount cannot change its object** unless Special Resolution is passed by company.

Alteration of Articles (Section 14)

- Section clarifies that private co. ceases to be private co. from the date it alters its articles to exclude the limitations and restrictions which are required to be included in articles of private co. (based on supreme court interpretation of case of Ram Purushottam Mittal Vs Hillcrest Realty)

- Alteration effecting conversion of public co. into private co.
  - Approval of tribunal required
  - Then copy of tribunal's approval to be file with registrar together with printed copy of altered articles within 15 days.
  - Then registrar shall register and alteration will take place
- Now no prospectus or statement in lieu of prospectus is to be filed with ROC in case of conversion of private into public co.
- Companies Act, 2013 is silent on issues like violation of provisions of articles and further proceedings.

Rectification of name of Co. (Section 16)

If name of a co. too nearly resembles or is identical with name of a registered trade mark of another person, rectification of name can be done only if and when CG directs on an application by proprietor of registered trade mark. (Previous act permitted voluntarily too without direction of CG)

- No Time Limit for issue of direction by CG
- Provision of time limit for making application by proprietor of registered trade mark to CG for seeking direction in case of resemblance is 3 yrs of incorporation or registration.
- Two main points:
  - Now it is irrelevant as to when the resemblance came in notice of proprietor, &
  - It is unfair from proprietor's point of view because now they will have to keep a track record of registration of every co.

Section 17

- Now if copies of memorandum, articles etc. is not given to members, penalty shall be levied as follows:

  Rs. 1,000 per day during which default continues but not exceeding Rs 1, 00,000.

- In previous act, penalty was Rs. 500 per day

Subsidiary company not to hold share in its holding company (Section 19)

- Whereas the 1956 act barred anybody corporate from being a member of its holding company, 2013 Act only bars companies and not the body corporates other than companies.
  So body corporates other than companies can hold shares in its holding company.

Service of Documents (Section 20)

- 2013 Act recognizes for the first time electronic mode for sending documents to the co.
- It has also recognised for the first time electronic mode for service of documents to ROC/Members.
- It also recognises service of documents on ROC/members by courier and speed post as valid service.
- Further, provision of serving of documents by company on joint holders have been omitted.

Authentication of Documents, Proceedings and Contracts (Section 21)

- 2013 act certifies authentication of contracts also besides authenticating documents and proceedings.