



SLS
NOIDA

SECOND NATIONAL CONFERENCE ON 'NEW COMPANY LAW'

ATTENDEES INCLUDE

Academicians, Business Executives, Advocates, Researchers
and Students engaged in the field of Law & Management

ON 30TH MARCH, 2013
Auditorium, Symbiosis Law School, Sector - 62, Block-A, Plot No-47/48, Noida-201301

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Report

Second National Conference

On

"New Company Law"

Symbiosis Law School, NOIDA

March 30, 2013

Introduction

Symbiosis Law School, Noida feels pleasure and privilege in sharing with you all that the Second National Conference on New Company Law organized by Symbiosis Law School, Noida, U.P.- India in association with Corporate Law Advisor and CLA online on March 30, 2013 was highly successful. The Conference was set to achieve the following objective -

'One of the dominant underlying consideration for enactment of new Act during 50's for young India was - company legislation for a Welfare State where State assumes a paternalistic role and steps into all walks of its citizens' daily existence. The State thus becomes a great underwriter. Hon'ble Supreme Court echoed similar sentiments in 1951.¹ Companies Act 1956 was thus enacted with democratic character with striking socialist features. This approach is ideally best suited for an under-developed economy, as was India the then.



With the adoption of LPG accompanied by commensurate economic and financial reforms, Indian economy has exhibited sustainable robustness. Our Companies Act had been repeatedly amended in bits and pieces to respond to the churning dynamics of Indian Inc. Continued retention of many redundant provisions defeated the intended objectives. Not to however suggest that attempts were not made to adopt a new Companies Act, all sincere efforts could not succeed.

Companies (Amendment) Bill, 2003; containing important provisions relating to corporate governance was also introduced, the consideration of which was held back in anticipation of the comprehensive review of the Company Law. While piecemeal reform continued through amendments, it had not yet been possible to bring about comprehensive, new legislation to replace the existing Act. At the same time, economic restructuring around the globe necessitated many countries including UK, Australia, Canada, and New Zealand etc to comprehensively reform their Companies Act to be more responsive and facilitate sustainable economic development. For the first time in the legislative annals of India, a committee of stakeholders headed by Dr. J J Irani, Director, Tata Sons Ltd comprising of practitioners of Companies Act to say Industry Chambers, Professionals, Legal experts, Professional Institutes were entrusted with the task of advising the Government on the proposed revisions to the Companies Act, 1956. The objective of this exercise is perceived as the desire on the part of the Government to have a simplified compact law that will be able to address the changes taking place in the national and international scenario, enable adoption of internationally accepted best

¹ Chiranjivil Chaudary v. Union of India (1951) 21 Comp Cas 33 at para 66

practices as well as provide adequate flexibility for timely evolution of new arrangements in response to the requirements of ever-changing business models. It is a welcome attempt to provide India with a modern Company Law to meet the requirements of a competitive economy.² After going through legislative rigour the Companies Bill 2012 (hereinafter referred to as the 'Bill') was passed by Lok Sabha on 18th December 2012'. This Conference aimed at bringing out various merits and demerits, if any, involved in the New Company Law. We received more than 80 research papers from academicians, professionals, researchers engaged in studies of Law, Management and other related courses.



The successful completion of the Conference was visional in the Book namely 'New Company Law: An Insight' (ISBN – 978-81-921804-2-7) joint publication of Symbiosis Law School, NOIDA and Corporate Law Advisor. It was released by Mr. Mr. Lalit Kumar, Partner, J Sagar Associates, Advocates & Solicitors; Mr. Rohit Kumar, General Counsel, United Phosphorous Ltd. Mumbai, Dr. C J Rawandale, Director, Symbiosis Law School, NOIDA in the august presence of Ms. Mamta Bhargava, Company Secretary & Executive Editor, Corporate Law Advisor and Mr. Manuj Bhargava, Managing Director, Corporate Law Advisor & CLAOnline.



² Concept Paper on Companies Bill 2011 (www.mca.gov.in)

Mr. Sukhvinder Singh Dari, Conference Secretary, in his welcome speech illustratively unfolded the vision and objective behind the Second National Conference on New Company Law. He informed about the research papers accepted for publication under various themes of the conference. Mr. Singh also informed about the schedule of the conference and keynote speaker's addressing the participants in the conference. He in his final words encouraged the participants to contribute in further research and congratulated them for pleasant and fruitful time in the conference.



Session I

Underlying Philosophy and New Concepts



The First Session of the Second National Conference had a illustrative panel including **Mr. Lalit Kumar**, Partner, J Sagar Associates, Advocates & Solicitors; **Mr. Saurabh Kalia**, Partner, Sastra Legal; and **Ms. Mamta Bhargava**, Company Secretary & Executive Editor, Corporate Law Advisor. The subject matter of the session was 'Underlying Philosophy and New Concepts' as envisaged and mentioned in the New Company Law.

Mr. Lalit Kumar discussed topics such as the proposed National Company Law Tribunal, the accountability of key managerial persons, class action suits, mergers and acquisitions and the overall impact of new corporate law. The issue of compulsory corporate social responsibility was discussed upon, and the mandatory nature of the same was said to be a drawback. Short form merger



and cross border mergers were the two forms of mergers discussed by the eminent speaker.



Mr. Saurabh Kalia took to the dais to discuss issues like secretarial audit; class actions suits and sweat equity under the new Company Bill, 2012. Topics like accounting standards, auditing standards, secretarial audit, and secretarial standards were discussed. The widened scope of filing suits by way of class action suits, the ones that can be filed by the depositors and not only the shareholders was elucidated by the speaker.

Ms. Mamta Bhargava discussed the philosophy of the company law bill as a response to the scams committed in the cases of the IT Company Satyam and the Sahara group. The speaker discussed various committees under the chairmanship of Sh. Kumar Mangalam Birla in 1999, by Sh. Narayan Murthy in 2003 as well as the voluntary guidelines on corporate governance decided in 2009. The concept of One Person Company as a transformation from a sole proprietorship was discussed. The novel concepts like the presence of woman directors on the board, as well as the enhanced accountability of independent directors.



Session II

Board Management and Administration



The Second Session of the Second National Conference had a distinguished panel including Mr. Rohit Kumar, General Counsel, United Phosphorous Ltd. Mumbai, Mr. V.K Agarwal, Former Principal Director, Institute of Company Secretaries of India (ICSI) and Mr. Amitav Ganguly, Former Company Secretary, Ansal Properties

Limited. The subject matter of the session was 'Board Management and Administration' as evolved in the New Company Law.



The start of the session was marked by Mr. Rohit Kumar, also being the moderator for the session, which occupied the rostrum and defined the present Companies Act as the mother of all legislations in the corporate world. Unlike the other sessions Mr. Rohit Kumar reserved a considerable amount of time for question which might emanate in various young curious minds and concluded by saying that the New Companies Bill of 2012 will open horizons for company secretaries as well as lawyers leaving a sign of relief on various faces.

Mr. V.K Agarwal, the second speaker of the day compared the Act of 1956 with the new Bill of 2012 on various facets such as general meetings, proxy and annual returns. Importance was given to board of directors and company executives of a company considering them as the acting human agency for the artificial person. Moving ahead the major additions and modifications in the new companies bill of 2012 was put forth in relation to the Annual General Meeting a few of them being the change in the period of the event of the first Annual General Meeting, defined under clause 96 of the Bill, the definition of the financial year, the definition of business hours from 9A.M to 6P.M, overshadowing of public holiday as defined in the Negotiable Instrument Act 1881 to national holiday as declared by the central govt. of the Republic of India. The Second topic elucidated by Mr. Agarwal was the Notice of the meeting under the new Bill of 2012. The better and clear definition of the number of days of notice and that the electronic medium could also be used for giving a notice coupled with that under the new bill the director of a company must also receive a notice were a few modifications that were categorised under this head. After elaborating on the Postal ballots the speaker moved on discussing about the filing of annual returns under the new Bill and provided that under such a filing the details have to be provided about the principal business activities, securities issued by the company, key managerial person, remuneration of directors and key managerial persons, certification of compliances, penalties and punishments imposed on the company as well as details of meetings of members along with attendance details. This in Mr. Agarwal's opinion was a major addition that would create accountability. This elaborate discussion was concluded by putting across the ideas of penalties and



change role of company secretaries from the Companies Act of 1956 to the new Bill of 2012.

Ears and eyes were now directed towards what the next dynamic personality had to present. Mr. Amitav Ganguly provided about the role of director under the new Bill to which every learner wanted to be at the receiving end. The definition of 'the Independent Director' as given by the J.J Irani and Kumar Mangalam committees along with the role of the director as defined by NYSE and NASDAQ were the first few sub heads to be discussed. Following this who can and cannot become an independent director was a thought that was very presentably tricked down by Mr. Ganguly on the floor of discussion. Moving ahead the duties of an independent director defined as "Ideal and not followed in practical world" were put across, a few of them being that a director should act ethically in a bona fide manner, not abusing his position and not to allow any extraneous consideration to deviate him. Clause 166 and 149 of the new bill giving the duties of other directors and the need for every company to have a board of directors, respectively were some matters of concern in the conference. Related party transactions need for a quorum and restriction of powers of the board were concluding topics of Mr. Ganguly's presentation.



After the two extensive as well as comprehensive presentations the floor was open for the questions of the moderator as well as for the audience. First question asked by Mr. Rohit Kumar was regarding the governance of the existing 12,0625 companies under the new Bill of 2012. To this Mr. Agarwal putting forward that the bill would be provided in a strategic basis and not all the sessions would be notified at once provided a two-fold answer. The role of NCLT was also discussed under the same. The second question was very pertinently addressed to Mr. Ganguly asking about what incentives anyone has to be an independent director. The spontaneous answer provided was that anyone having incentives to be a director of a company would have incentives to be an independent director as the liability is a little less than a director. The most favourite and loved question by the audience was the about the increasing role of company secretaries and lawyers under the new bill considering the major stack of the audience was occupied by them only. To this they answered and I reiterate that yes, all the company secretaries and corporate lawyers have a great scope ahead under the new Bill. The second session was dispersed for lunch after an interesting round of questions and answers. This was the mark of the second session of the second national conference on new company law held



at Symbiosis Law School, NOIDA.

Session III

Auditors and Auditing, Corporate Governance and Corporate Social Responsibility



The speakers in the Third Session of the National Conference included **Dr. S N Ghosh**, Visiting Scholar, Symbiosis Law School, NOIDA, **Mr. Yug Samrat**, Company Secretary, Network 18 and **Mr. Pramod Jain, Partner, Lunawat and Company**. The subject matter of the session was centered on the subjects of 'Auditors and Auditing, Corporate Governance and Corporate Social Responsibility'.

With regard to the topic of auditors and auditing, the eminent speakers elucidated the same in the context of the multi crore Satyam scam, which blemished the image of India Inc. like never before. The auditors of the firm Satyam Computer Services (Satyam), PriceWaterCoopers House as well as the various bankers of the firm, including HDFC bank and ICICI bank falsified on their parts to enable the scam achieve the scale it did. The crucial issue of the banks not complying with the process of due diligence before granting loans in favor of Satyam was discussed in great detail in this session. Forgery of bank statements and the irregularities in the bank reconciliation statement was another drawback attributed to the institutionalized creditors for Satyam, who in essence, abetted the financial fiasco.

It was also brought forth by the speakers that the independent directors exhibited a dormant role by being merely nodders in the boardroom.

The new Companies Bill, which was passed by the Lok Sabha on December 18, 2012, has aimed to radically amend the over 56 year old Companies Act. Certain provision, such as a new concept of 'small company', mandatory CSR compliances, the additional secretarial audit along with accounting audit, as well as the widened locus standi envisaged with regard to class action suits was discussed by the speaker.



The speakers further talked about proposed institution of the National Company Law Tribunal and its jurisdiction. They pointed out that the status of KMPs (Key Managerial Persons), to include the Chief Executive Officer, the Chief Financial Officer and the whole time directors has not been explicit in the new Bill which is one of stages of being passed. The mandatory nature of CSR was said to be a drawback whereas the concept of as OPC (One Person Company) was said to be a positive initiative in the backdrop of India's business structure and form.

In a nutshell, the proposed Bill was said to be a potential means of ensuring time bound measures and transparency with respect to the sensitive practices of auditing, corporate governance and corporate social responsibility.

The award for the Best Paper was given to Mr. Dharav Shah, Student of Rajiv Gandhi National University of Law and Mr. Chintan Shah, CA Final Student. The second Best paper award was given to Mr. Akshay, Dhruv Kaushal, Chitrangada Sharma Student of Amity Law School Delhi and Mr. Divanshu Gupta, student of Gujarat National Law University.

As all good things must come to an end, so does second national conference. Dr. Pushpa Negi, Conference Secretary, proposed the vote of thanks on behalf of the organisers to all directly and indirectly involved in making this academic and professional endeavor to be so successful.



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