

Companies Act , 2013 (18/2013)



Workshop NIRC of ICSI

21st September, 2013

Saurabh Kalia
Partner, Śāstra Legal

New Concepts & Opportunities
under Companies, Act 2013

NEW MODERN LAW

Companies Act, 1956

Companies Act, 2013

AS NOTIFIED IN THE GAZETTE OF INDIA EXTRAORDINARY PART (II) SECTION I
PURSUANT TO ASSENT OF THE PRESIDENT RECEIVED ON 29.08.2013

Journey so far CA,

13

- 18th December, 2012 – Passed from **Lok Sabha**
- 8th August, 2013 – Passed from **Rajya Sabha**
- 29th August, 2013 – **Presidential Ascent**
- 30th August – **Act was notified**
- 5th September, 2013 – **Rules** for 16 chapters are out for public comments till 08.10.2013
- 12th September, 2013 – **98 Sections** where no Rules are required have been **notified**
- 13th September – **Circular No. 15/2013** clarifying notification of 98 Sections
- 15th September – **Circular No. 16/2013** further clarifying notification of 98 Sections
- 20th September - **Rules** for remaining 9 chapters are out for public comments till 19.10.2013 and clarification on NCLT

Area of Focus

..... CA, 13

Encourage
Entrepreneurship

Transparency,
Accountability &
Corp. Governance

New Concepts &
Procedures

Stricter Action
/ Fraud

New Authorities,
Bodies

Role of
Professionals

Liberalisation /
Time Bound
Approvals

Accounts & Audit

Investor Protection

Types of Companies

**Private Limited
Company (Between 2
– 200 shareholders)**

**Public Limited
Company (At Least 7
shareholders)**

**One Person Company
(One Shareholder)**

**Limited Liability
Partnership**

Nidhi Company

Producer Company

Foreign Company

Dormant Company

Defunct Companies

New Concepts

- KMP
- OPC / Dormant / Associate Companies
- Electronic Mode
- Fast Track Merger / Cross Border Merger
- Summary Procedure for Winding up
- Registered Valuer
- Class Action Suits
- Private Liquidators

New Authorities

- National Company Law Tribunal - NCLT
- National Company Law Appellate Tribunal - NCLAT
- National Financial Reporting Authorities - NFRA
- SFIO Empowered - Investigation
- Special Courts
- Mediation & Conciliation Panel

Chapter I

Preliminary

New definitions introduced



□ Associate Companies

- A company in which another company has control over at least 20 % of the total share capital, or of business decisions
- A company which is not a subsidiary company of the company having such influence and includes a joint venture company.

New definitions introduced.....



- **Dormant Companies**
- New class of companies formed for future projects to hold an asset or intellectual property
 - Has no significant accounting transactions
 - That is, any transaction other than payment of fees, allotment of shares, statutory payments, payment to maintain office records
- Idea is to impose minimal requirements on dormant companies
 - Rules to be made in this regard

Chapter II

Incorporation - New Concepts

One Person Company

Definition

- “One person company” means a company which has only one person as a member.

Incorporation

- Will be formed as a private company
- Name of nominee who will continue in event of death to be specified
- Words “One person company” to be mentioned below name.

Meeting

- No AGM required
- No board meeting required in case of only one director
- Entering resolutions in minutes book is sufficient
- Minute book to be dated and signed.

OPC.....Cont

Director

Minimum one director required

Subscriber of MOA deemed to be first director till director is duly appointed

Accounts

Financial statement may not include cash flow statement

Accounts to be filled within 180 days of FY

Boards report to contain only response to auditors qualification.

Signing

financial statement can be signed by one director alone

Annual return to be signed by CS if appointed else by a director.

Incorporation Documents

❑ **Articles of Association:**

- ❑ Stricter provisions introduced – means AOA may prescribed more restrictive conditions for alteration of AOA.

❑ **Affidavit by Subscriber & First Directors:**

- ❑ They need to declare and confirm that:
 - ❑ Not Convicted for promotion/formation/management of Company;
 - ❑ Not guilty of Fraud / Mifeseance/ breach of duty during preceding 5 years.

Certificate of Incorporation & Commencement

- ❑ COI is not a conclusive evidence of compliances.
- ❑ Where a Company incorporated with false or incorrect information/representation or suppression of fact or information or by fraudulent action, Tribunal may pass following orders:
 - ✓ Regulation of Mgt. of Company,
 - ✓ Direct Liability to be unlimited
 - ✓ **Removal of name of Company from Register**
 - ✓ Pass order for winding-up.
- ❑ All Companies Limited by Shares to file declaration regarding Commencement of its Business.
- ❑ No provision for issuance of COB – Not filed in 180 days - **Removal of name by ROC** (Section 11).

Chapter III & IV

Prospectus & Allotment of Securities Share Capital & Debenture

Chapter V

Acceptance of Deposits

Acceptance of Deposits

- ❑ No company shall invite deposits or renew deposit except as per new Act
- ❑ Not applicable to
 - ❑ Banking Company
 - ❑ NBFCs;
 - ❑ Notified Companies;
- ❑ Special Resolution by company
 - ❑ Circular with details / filing with ROC within 30 days / 15% to be deposited in bank /
 - ❑ No default before or after under both Acts
- ❑ Other Companies may accept deposits from members only.
- ❑ Public deposits accepted as per CA, 1956 – to be repaid within 1 Year.

Chapter VI

Registration of Charges

Registration of Charges

- Now, all Charges are required to be Registered with ROC within 30 days
- Registrar can extend time period for 300 days
- Further extension upon seeking extension
- Exemption to charges on Pledges withdrawn.
- Charge holders allowed to file charges by giving 14 days notice to the Company.

Chapter VII

Management & Administration

ADMINISTRATION OF THE COMPANY – KMP

- Key Managerial Personnel [Section 2(51)] includes
 - THE CHIEF EXECUTIVE OFFICER OR THE MANAGING DIRECTOR OR MANAGER
 - **THE COMPANY SECRETARY**
 - WHOLE TIME DIRECTOR
 - CHIEF FINANCIAL OFFICER
 - SUCH OTHER OFFICERS AS MAY BE PRESCRIBED.
 - THE ACT PROVIDES THAT AT LEAST ONE OF THE DIRECTORS OF THE COMPANY SHOULD BE RESIDENT IN INDIA FOR AT LEAST 182 DAYS IN A PARTICULAR CALENDER YEAR.

KMP and Secretarial Audit

Drafts Rules

□ *APPOINTMENT OF KMP*

- Every **listed company** and **every other company** having a paid up share capital of **five crore rupees** or more shall have a whole time key managerial personnel.

□ *SECRETARIAL AUDIT*

- Other class of companies for sub-section (1) of 204 shall be:
- **Public company** having share capital of **one hundred crore rupees** or more
- Format of secretarial audit report shall be in **Form No. 13.3**

Annual Return (Section 92)

- ❑ Annual Return Certification by PCS [Section 92(1)]
 - Listed Company
 - Any other company having prescribed paid-up capital of 5 crore or turnover of 25 crore
 - Company not having Company Secretaries.

- ❑ Not required for Small Companies or OPC.

- ❑ Certification of Compliances of *all provisions of the Act*

- ❑ Wrong Certification – from Rs. 5,000/- upto Rs. 5 Lacs.

Annual Return....

- ❑ Annual Return Certification by PCS [Section 92(1)] :-
 - Principal business activities;
 - Particulars of its holding, subsidiary and Associate Companies;
 - Promoters, directors, KMP alongwith changes therein;
 - Meetings of members or a class thereof;
 - Board and its various committees along with attendance details;
 - Remuneration of directors and KMP, penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment.
 - Matters relating to **certification of compliances, disclosures as may be prescribed,**
 - **Such other matters as may be prescribed.**

AGM/EGM

- ❑ First AGMs to be conducted within 9 months from close of FY;
- ❑ AGM to be called during Business Hours (9 am to 6 pm);
- ❑ Not allowed on National Holiday;
- ❑ Quorum:
 - <1000 members – 5 members;
 - 1000-5000 members – 15 members;
 - 5000 or more members – 30 members.
- ❑ Voting through electronic mode allowed.

Chapter IX

Accounts of the Company

Electronic Mode



- The bill recognizes the fact that books of accounts may be kept in electronic form also.
- Proper system of storage, retrieval, display or printout.
- Books to be preserved for 8 years – CG may direct longer period, if investigation ordered.
- Compulsory consolidation of A/Cs of Subsidiaries and its laying before AGM (Section 129) – Also attach salient features of the financial statement of its subsidiary in prescribed Form.

Financial Year

❑ Financial Year [Section 2(41)] :-

- Uniform Financial Year - Period ending on 31st March every year.
- Incorporated on or after 1st January - Period ending on 31st March of the **following year**.
- Relaxation for Foreign Holding or Subsidiary – Approval of NCLT.
- Transition period of 2 (Two) Years to align with the provisions.

Recasting of Accounts

- ❑ Concept of Re-casting of Accounts introduced (Clause 130).
- ❑ Accounts can be re-opened /re-casted:
 - If Prepared in fraudulent manner, affairs are mismanaged (Casting a doubt on its relevancy),
 - Application to be made by CG, IT Authorities, SEBI or other regulatory body or authority to Court or tribunal.
 - An order has been passed by Tribunal / Court.

Voluntary Revision of Accounts

- ❑ Application to NCLT within 2 weeks;
- ❑ Hearing to be given to Auditor of original financial statement;
- ❑ Order of Tribunal to be filed with ROC within 30 days;
- ❑ General Meeting to be called – Notice of GM to be published in NP;
- ❑ Revised Financial Statement to be filed to RoC;
- ❑ If revision done by new Auditors – consent of previous auditors to be obtained;



CSR

Corporate Social Responsibility

Corporate Social Responsibility

- Every Company having net worth of rupees **five hundred crore** or more, or **turnover of rupees one thousand crore** or more or a **net profit** of rupees **five crore** or more during any financial year to constitute a CSR Committee.
- Corporate Social Responsibility Committee
 - ▣ Committee of three or more directors, out of which at least one director shall be an independent director
 - ▣ CSR Policy
 - ▣ Activities as per Schedule VII
 - ▣ Recommend the amount
 - ▣ Monitor the CSR activity

Corporate Social Responsibility

- If Board fails to spend, reasons to be given
- Notes to account to provide CSR activity
- Non Disclosure -
 - Company – Fine 25 thousand rupees – 25 Lacs,
 - every officer of the Company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both

Chapter X

Audit and Auditors

Audit & Auditors

- Mandatory rotation of Auditors
 - For 5 years – appointment for five years
 - However ratification every year
 - Written consent & certificate from auditor
 - After appointment co to inform & form with ROC in 15 days
- No listed co or such class of co to appoint for more than
 - Individual - 5 years
 - Firm – for more than 10 years
 - Even common partners whose tenure has expired are not eligible for reappointment
- This provision to comply within 3 years

Audit & Auditors

- Casual Vacancy
 - By Board within 30 days
 - In case resignation by shareholders within 3 months
- Where no auditor is appointed in AGM then existing auditor will continue to be auditors
- Removal – same provision – SR & CG approval
- Disqualification – addition –
 - Himself , relative or partner –
 - Is holding any security in co, subsidiary, associate co. with max cap of Rs. 1000
 - Is indebted to co, subsidiary, associate co.
 - Has given a guarantee / security to co, subsidiary, associate co. Directly or indirectly

Audit & Auditors

- No other services to be rendered by auditor :
 - Accounting or book keeping
 - Internal audit
 - Design and implementation of any financial information system
 - Actuarial services
 - Investment advisory services
 - Investment banking services
 - Rendering of outsourced financial services
 - Management services Any other kind of service as may be prescribed.

Chapter XI

Appointment & Qualification of Directors

Directors



- ❑ **One Women Director** for such class or class of companies, as may be prescribed.

- ❑ **One Resident Directors** for every company;

- ❑ Resignation mode provided
 - ❑ Directors to send their resignation to ROC as well.

- ❑ Elaborate Duties & Disqualification provided

Independent Director



- Section 149(6) of the Companies Act, 2013 deals with the concept of independent director.
- Every listed public company is required to appoint at least one third of the total strength as independent directors.
- Existing companies have been given one year sunset period for adherence to this clause.
- The Companies Act provides a complete code in Schedule iv of the Companies Act, 2013 for regulation of independent directors.

ID's

.....contd.....

- QUALIFICATIONS FOR APPOINTMENT AS INDEPENDENT DIRECTOR INCLUDE
 - Person with **integrity** possessing relevant expertise as may be prescribed.
 - He is or was **not a promoter** of the company or any holding company.
 - He is **not related** to the promoters or directors of the company, its holding or subsidiary entity.
 - He must not have any **pecuniary relationship** with the company, its holding, subsidiary or associate company during the two preceding financial years
 - He or his relatives must not hold the position of a **key managerial personnel** in the company

TermIndependent Directors

- ❑ Term - Up to Five consecutive years
- ❑ Eligible for reappointment on passing of a special resolution by the Company
- ❑ Not more than two consecutive terms
- ❑ Eligible for appointment after three years cooling period [Not to be associated with the Company in any capacity, either directly or indirectly during these 3 years]
- ❑ Independent Director may be re- appointed on the basis of report of performance evaluation.

Independent Directors

- ❑ No pecuniary Relationship with company
- ❑ No ESOP
- ❑ Responsibility
- ❑ Independent Data Bank by a body / Institutes / association as notified by CG
- ❑ Co. to exercise due diligence before appointment
- ❑ Qualification
- ❑ Code as per schedule VI – for guidelines, roles, duties, appointment, resignation, separate meeting, evaluation

Chapter XII

Meeting of Board and its Power

Board Meetings



- ❑ Participation of Directors in meeting through Video Conferencing.
- ❑ Participation shall be counted for quorum;

Chapter XIII

Compromise, Arrangements & Amalgamation

Fast Track Merger



- Applicable in cases of specified small companies and between holding and its wholly-owned subsidiary
- Merger/demerger will be approved by Central Government
- No requirement to approach NCLT
- Notice to ROC and OL or persons affected by the scheme, inviting objections to scheme within 30 days

Fast Track Merger.....cont

- Approval of scheme
 - At a general meeting by members holding at least 90% of the total number of shares
 - By majority representing 9/10th in value of creditors or class of creditors in meeting or approved in writing
- Merging companies to file a declaration of solvency with ROC
- Registration of scheme by CG.
- On registration transferor company is deemed to be dissolved.

Cross-Border Merger



- The Act permits merger of Indian company with foreign companies
- Applicable Between companies registered under this Act and companies incorporated in countries to be notified
- Approving authority
 - NCLT
 - Prior approval of the Reserve Bank of India also required
 - Other approvals or process same as merger or demerger discussed earlier

Corporate Debt Restructuring Scheme

□ Existing CDR provisions:

- RBI's Master Circular dated 01.07.2008 provided for establishment of CDR mechanism;
- CDR Mechanism is a voluntary non-statutory system based on Debtor-Creditor Agreement (DCA) and Inter-Creditor Agreement (ICA);
- The principle of approvals by super-majority of 75% creditors makes it binding on the remaining 25% to fall in line with the majority decision.

CDR under the Scheme

- **Introduction of CDR into New Law: Section 230 (2)(c) introduces the mechanism of CDR;**
- Applicant to disclose to the Tribunal by affidavit that scheme of CDR consented to by not less than **75 %** of the secured creditors in value; including;
- Creditor's responsibility statement in the prescribed form;
- Safeguards for protection of other secured and unsecured creditors;
- Report by the auditor that the fund requirements after the CDR, as approved, shall conform to the liquidity test based upon the estimates provided to them by the Board;
- A statement regarding adoption of CDR guidelines of RBI;
- Valuation Report by a registered valuer.

CDR under the Scheme

□ **Contentious issues:**

- ✓ RBI will have to bring-in consequential changes in its circular for CDR.
- ✓ Success will depends on efficient disposal of cases by NCLT.

Treasury Shares

- Treasury shares may arise from a corporate restructuring or buyback from shareholders; or it may have never been issued to the public in the first place and used either to generate additional funds in future or to keep controlling interest off the records.
- **Provision in New law** - The 2013 Act prohibits creation of any treasury shares/trust in a scheme of amalgamation / merger (proviso to section 232(3)(b)].

Dispensation of meeting

□ Introduction:

- 1956 Act, does not provide for any specific guideline for dispensation of the meeting of creditors.
- In practice, if consented by 100% - Court specifically issue an order for dispensation [First Motion Application].
- **Provision in New Law:** Tribunal may dispense with calling of meeting, if atleast 90% of total value of creditors or class of creditors should agree by way of an affidavit.

Dispensation of meeting

□ **Legal impact:**

- ✓ The Act only provides for dispensation of meeting of creditors and not the meeting of members – consent of members may become mandatory.
- ✓ However, considering NCLT's wider discretionary powers, it is believed that on case to case basis, NCLT may also dispense the meeting of members

Takeover offer facilitated

□ Existing Provisions:

- No provisions in respect to takeover offer within the framework of compromise / arrangement.
- Takeovers Regulations 2011 provides for takeover of substantial stake in listed companies.

□ Provision in New Law:

- The 2013 Act now facilitates takeover offer within the framework of compromise/ arrangement [section 230(11)].

□ Legal issues:

- Suitable transitional amendments have to be made in the Takeover regulations.

Conversion of preference shares into equity facilitated

□ **Provision in New Law:**

- Conversion allowed under scheme for compromise and arrangement now;
- The Tribunal's order approving the scheme may provide an option to pref. shareholders to obtain arrears of their dividend either in cash or in equity shares [section 230 (7)].

No listing of transferee unlisted Company

- **Provision in the Companies Act, 1956:**
- No provision for listing of shares of unlisted transferee Company upon amalgamation. However, it was practically allowed as per Listing agreement / ICDR Regulations.
- **Provision in the New Law:**
- The Act prohibits listing of transferee unlisted company within the framework of a scheme of compromise / arrangement, where the transferor company is listed [section 232(3)(h)].

Set-off of fee on authorized capital

- **Provision in the New Law:**
- The 2013 Act, now provides specifically that the “**Fee on authorized capital**” paid by the transferor company shall be set-off against fees payable by the transferee company consequential upon amalgamation (section 232(3)(i))
- **Legal issues:**
- Consequential system updation has to be made at MCA21

Objection to the Scheme

- **Scheme can only be objected by persons holding:**

- not less than 10% of the shareholding or

- having outstanding debt amounting to not less than 5% of the total outstanding debt as per latest audited financial statement, shall be able to raise any objection.

Notice of Meeting approving Scheme

- **Notice of any meeting of any arrangement or compromise shall also be given to:**
 - Central Government
 - Income Tax Authorities
 - Reserve Bank of India
 - Securities and Exchange Board of India
 - The Registrar
 - Respective Stock Exchange
 - Official Liquidator
 - Competition Commission of India

- **Now, Valuation Report of Registered Valuer to be send with notice.**

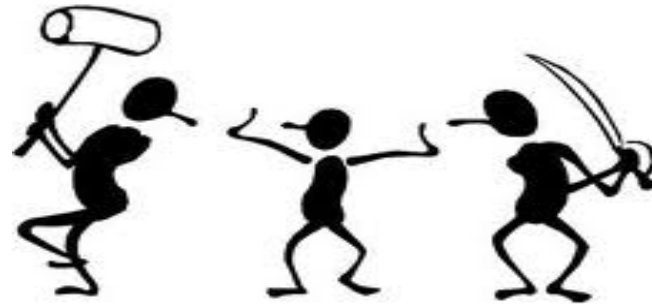
Certification of Compliance of Scheme

- ❑ A statement to be filed with Registrar in regard to compliance of scheme in accordance with the orders of the Tribunal.
- ❑ Form and Time Line to be prescribed.
- ❑ To be filed to Registrar every year the scheme is fully implemented.
- ❑ Certified by a chartered accountant or a cost accountant or a company secretary in practice.

CHAPTER XVI

Prevention of Oppression and mismanagement

Class Action Suits



- Meaning ?

Class Suit or a Representative Action is a form of lawsuit in which large group of people collectively bring a claim to tribunal / court against a group people are sued

- New Concept under Indian Law ?

Class Action Suits

- Section 245
- Application to be filed before the Tribunal
- Specified number of **members** or **depositors** may file an application
 - If the management or control of the affairs of the company are being conducted in a manner prejudicial to the interests of the company or its members or creditors
 - **Qualification – Rules**
 - **Shareholders' & Depositors : 100 Members or 1/10th of Member of 10% whichever is less**
 - **Public Notice within 7 Days**
 - **Information on website of NCLT, MCA, ROC & SE (for listed co.)**
 - **Alteration in MOA or Reduction – Deemed order**

Class Action Suits

contd.

- Provision of (2) -_Members or depositors may seek to
 - Restrain the company from :
 - Committing an Act ultra vires the MOA & AOA
 - Restrain from committing breach of MOA & AOA
 - Declare such resolution as void, which is based on misleading statement
 - Restrain co. & directors from acting on such resolution or contrary to resolution passed
 - Seek any damages or compensation or demand any other suitable action from or against
 - Company or its Directors
 - an auditor or firm from a misleading statement
 - Any **expert** or **advisor** or **consultant** or any other person

Class Action Suits

contd.

- LIABILITY shall be of the firm as well as of each partner who acted in a fraudulent, unlawful or wrongful manner.

- PENALTY
 - On company – not less than five lakh rupees extend to twenty-five lakh rupees.
 - On any default officer – imprisonment for a term extend to three years and fine not less than twenty-five thousand rupees extend to one lakh rupees

CHAPTER XVII

Registered Valuer

Registered Valuer



- All valuations under the Act to be made by Registered Valuer.
- To cover valuation of any property, stock, shares, debentures, securities, goodwill or any assets of the company as well as its net worth and liabilities.
- To be appointed by the Audit Committee or the Board of Directors of the company.
- To conduct valuation in accordance with the rules prescribed.
- To exercise due diligence while performing his job.

Registered Valuer.....cont

- Required to make an impartial, true and fair valuation of any asset to be valued.
- Prohibited from undertaking valuation of any assets in which he has a direct or indirect interest.
- If case of any default, he can be fined. If the intention was to defraud the company or its members, the Valuer can face imprisonment.
- On committing a default, valuer liable to refund the remuneration received from the company and pay for damages to the company or to any person for loss arising out of incorrect or misleading statements made in his report.

Draft Rules

..... Registered Valuer

- Persons eligible to be Registered Valuer :
 - a) A chartered accountant, **company secretary** or cost accountant in whole time practice or retired member of Indian Corporate Law Service holding equivalent Indian or foreign qualification as the MCA may recognise
 - b) A merchant banker registered with SEBI having qualification specified in (a)
 - c) Member of the Institute of Engineers, in whole time practice
 - d) Member of the Institute of Architects, in whole time practice
 - e) A person or entity possessing necessary competence and qualification as notified by CG

Proviso

- Provided that person referred in (a), (c) and (d) and qualified person in (b) shall not have less than **5 yrs continuous experience** after acquiring membership of respective institutions.

Draft Rules

..... Registered Valuer

- Other terms in Rules :
- Furnishing of particulars in certain case
- Removal and restoration of names of valuers from register
- Appeal
- Methods of valuation
- Contents of valuation report

CHAPTER XIX

REVIVAL & REHABILITATION OF SICK COMPANIES

Revival of Companies

Particulars	1956 Act / SICA	2013 Act
<ul style="list-style-type: none">• Type of Companies• Eligibility for Creditors / Company• Criteria for Filing application.	<ul style="list-style-type: none">• Only <u>Industrial Company</u> allowed• Allowed on basis of erosion in net worth.• Erosion of 50% of net worth was required for declaring the Company as sick	<ul style="list-style-type: none">• All Companies allowed.• Now, the secured creditors can apply, if Company failed to repay to creditors representing <u>50% or more</u> of the debt <u>within 30 days</u> of service of notice.• Company to apply, if fails to repay the debt of secured creditor representing 50% or more.• This criteria has been dispensed with.

Revival of Companies

particulars	1956act	2013act
<ul style="list-style-type: none">• Appointment of Agency• Preparation of Scheme• Measures	<ul style="list-style-type: none">• High Court through OL• Operating Agency• Under SICA	<ul style="list-style-type: none">• Interim Administrator / company administrator to be appointed by the Tribunal.• Company Administrator.• Additional measures prescribed such as:<ul style="list-style-type: none">• Takeover of the sick company by the Solvent Company.• Rescheduling or restructuring of debt or obligations of the sick company to any of its creditors or class of creditors

Revival of Companies

- ❑ The Tribunal shall within 60 days of the receipt of the pass an order sanctioning the scheme .
- ❑ Punishment has been increased by way of imprisonment which may extend to seven years.
- ❑ No appeal shall lie in any court or other authority and no civil court have any jurisdiction in respect o any matter empowered to Tribunal or Appellate Tribunal .

Company Secretary as Insolvency Practitioner

□ Section 259:

- Company Secretary in practice recognized as one of the professional to be appointed as **Interim Administrator** or the **Company Administrator** for Revival or Rehabilitation of SICK Companies.

Chapter XX

Winding Up

Company Secretary as Private Liquidator

- Section 275
- Tribunal during winding up may appoint an official liquidator or liquidator from a panel
- Liquidator from may include :
 - ▣ CA's / Advocates / **Company Secretaries** / cost accountants
 - ▣ Or firms or body corporate having such professionals with ten years experience
- Terms / fee to be determined by tribunal



New Authorities

Chapter XXVII

NCLT / NCLAT

NCLT - Establishment & Key Features

Salient Features

- NCLT – President with Judicial & Technical Members as per qualification – Sec. 408
- Benches – Bench of Two Members with one judicial & one technical - Sec. 419
 - ▣ *CS in practice with 15 ? 25 yrs exp can also become technical member in NCLT & NCLAT*
- Expeditious Disposal – Three months time frame for disposal of petition & application – Sec. 422
- Appeal to NCLAT – Sec. 421

NCLT -

contd.....

- Appeal from order of NCLAT to Supreme Court
- Power of Contempt now with Tribunal – Sec. 425
- President with Judicial & Technical Members as per qualification – Sec. 408
- Civil Court will have no jurisdiction – Sec. 430
- Limitation Act to apply – Sec. 433

CAUTION

- Mega Tribunal – effectiveness ?
- Appeal from any orders
- Exclusion of High Court Jurisdiction

Chapter XXVII - NATIONAL COMPANY LAW TRIBUNAL RULES, 2013

- **EDGAR (Electronic Data Gathering, Analysis and Retrieval) Filer Manual** - Means the current version of the manual prepared by the Tribunal setting out the technical format requirements for an electronic filing of Application or other documents with the Tribunal;
- **Electronic Format ; Electronic Filing ; Electronic Order ; Electronic Registry**
- **75. Electronic Filing Wholly Compulsory or Mandatory unless Ordered by Tribunal**
 - Except as provided by sub-rule (b) below, the electronic filing and serving of Tribunal documents is mandatory and compulsory
 - Tribunal may direct otherwise as well in a particular case
 - The rules made under this Part for electronic filing shall come into force on the date as may be notified by the Central Government in the Official Gazette

Chapter XXVII - NATIONAL COMPANY LAW TRIBUNAL RULES, 2013

- **Authorized Representative** - means a person authorised in writing by a party to present his case before the Tribunal as the representative of such party as provided under section 432 of the Act;
- 25. Rights of a party to appear before the Bench.
- (1) Every party may appear before a Bench in person or through an authorized representative.
- (2) A party may, in writing, authorize an Advocate or a **Company Secretary** in practice or a Chartered Accountant in practice or Cost Accountant in practice, to function as a representative of such party.
- A company may appoint and authorise its directors or **company secretary** or CFO or CEO or manager all under the Act to appear, in its behalf, in any proceedings before the Bench. The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorize an officer or an Advocate. The Company Liquidator shall make his appearance in person.

- **Language of the Tribunal** - The pleadings before the Tribunal may be conducted either in English or in Hindi and in case it is in some other Indian language
- **Form 5 – Service of Notice to other Party**
- **47. Review of decision-**
 - (1) The Tribunal may at any time within two years from the date of the order, with a view to rectifying any mistake apparent from the record amend any order passed by it, and shall make such amendment *suomotu*, or if the mistake is brought to its notice by the parties in terms of sub-section (2) of section 420:
 - Provided that no such amendment shall be made in respect of any order against which an appeal has been preferred under the Act.
 - (2) Any person considering himself aggrieved by any order of the Tribunal from which no appeal is allowed or from which appeal is allowed, but has not been preferred and who on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the order made against him, may apply in **Form No. 9** of these rules for review of a final order not being an interlocutory order, to the Tribunal.

NCLT

❑ **Matters before NCLT:**

- Extension of Financial year.
- Defend Companies against Removal of Name [proviso (i) to Cl.7(7)].
- Conversion of Company from Public to PVT.
- Variation of Right of Members.
- Rollover of Preference Shares – Consent of 75 % holders.
- Appeal against refusal to register transfer.
- Rectification of Register of Members.
- Consolidation and division which results in changes in the voting percentage of shareholders.

NCLT.....

❑ **Matters before NCLT:**

- Reduction of Capital.
- Extension of time for re-payment of deposits.
- Members' application for calling AGM/EGM by Company.
- Appeal against refusal to allow inspection of minutes of AGM.
- Approval for voluntary revision of financial statements or DR.
- Removal of Auditors.
- Application by members for Investigation of affairs(100 or 10%).
- Winding-up/merger/de-merger/Revival of Sick Company.
- Oppression and Mismanagement.

NFRA

□ National Financial Reporting Authority

Monitor & Enforcing the Compliance of Accounting & Auditing Standards

Power to investigate the matters of Professional or other misconduct committed by any member of ICAI.

No other Institute or Body shall initiate or continue any proceedings where NFRA has initiated an investigation

In case of misconduct, power to order the penalty of not less than Rs. 1 Lac (Individual) not less than Rs. 10 Lac (Firms)

Debarring the member or the firm from engaging himself or itself from practise for a period which can extend up to max 10 years

Empowered SFIO

CA, 1956

- Investigation into Affairs of Co. – S.235
- Investigation in other cases –S. 237
- Related Co. Production of Docs., Seizure, Inspector's Report
- Investigation by Registrar, MCA.
- SFIO in terms of IR No. 45011/16/20016-A-1 dated 02.07.2003

CB, 2013

- Power to call Info CI- 206 – Combination of S. 234 & 209
- Conduct of Investigation – Registrar have power as vested in Civil Court
- **Automatic vacation** of office by directors in case of conviction
- **Search & Seizure**
- Wide powers for Investigation
- Establishment of SFIO – Wide Powers
- **Whistle Blower Policy**

Establishment of SFIO – CI- 211

- CG to form SFIO
- Till then old SFIO will act as the agency
- Establishment
 - Director, not below rank of JS
 - Expert from
 - Banking
 - Corporate
 - Taxation
 - Forensic Audit
 - Capital Market
 - IT
 - law or
 - As prescribed
- Terms to be provided in Rules

Investigation by SFIO - CI- 212

- On opinion by CG, investigation by SFIO is required
- Reasons :
 - Report of Registrar or Inspector
 - Special Resolution by Company
 - Public Interest
 - Request of Dept., State of CG
- In case CG assigns :
 - No agency in India will investigate the matter
 - Will transfer all docs/info to SFIO
- Company, all officers & employees to provide all info/ docs to SFIO

Powers of SFIO

- Power to arrest
- Party to seek bail or bond in terms of CrPC
 - Opportunity of hearing
 - To be produced for Judicial Magistrate
- Interim & Final Report
- Special Court not to take cognizance of matters ending before SFIO
- Report to be provided to all other agencies by SFIO
- Report may provide for prosecution against directors, officers & employees of company

SFIO

contd.

- Investigation report to Special Court to be report u/s 173 for farming of charges
- Disclosure of Legal advisors & Bankers – Cl. 227
 - Legal advisor - Non disclosure of privileged communication except name & address.
 - Banker – No information except name
- Penalty
 - For destroying, mutilating, falsifying, concealing or any other action, false entry, false explanation
 - Penalty of fraud as provided u/s 447
 - 6 moths -10 years , monetary penalty – 1 – 3 times of amount

Whistle Blower Policy



- Clause 218
- Protection of Employees during investigation
- During the investigation, no employee to be
 - discharged or suspended
 - Punished by way of dismissal, removal, reduction, or otherwise
 - Change of terms to his disadvantage
- Without the approval of tribunal
- 30 days time frame provided for sanction
- Appeal to appellate tribunal, which shall be final
- This will be without prejudice to any other law in force

Special Courts – Clause 435-446

- New Concept
- In line it Special Courts in other laws
 - ▣ Notified by CG
 - ▣ Special Judge to be appointed by CG in concurrence with Chief Justice of High Court where such Special Court will function
 - ▣ Not less than SJ / ASJ
 - ▣ To be formed where registered office of co. is situated
- Offences :
 - ▣ Triable, power for custody, police report, other powers
- Appeal to High Court
- Non cognizable offense
- Transitional Provision - Till established by Court of Sessions of that area

Mediation & Conciliation Panel

- ❑ New Concept in Bill
- ❑ Speedy Resolution of Disputes then Litigation
- ❑ Saves Litigation Time & Cost
- ❑ Advice of Experts
- ❑ Presence of Professionals optional
- ❑ Option of Binding Mediation
- ❑ High Rate of Compliance



Mediation & Conciliation Panel

□ Clause 442

- CG to maintain a **panel of experts**
- The fee and other terms and conditions of such Panel as may be prescribed (NCLT Rules).
- The Panel to follow such procedure as may be prescribed (NCLT Rules).
- By recommendation of the Panel, aggrieved party may file objection to CG or Tribunal or Appellate Tribunal as the case may be ?.
- The Panel to dispose of the matter within 3 months
- NCLT Rules to provide detailed mechanism

Way Ahead

- Once Bill Gates was asked. What's your biggest success ? He replied -

“Its yet to come”

Mantra :

“What you have learnt, is only the past.
Your success is the present”

Thank you

CS Saurabh Kalia

Con. No. +91 98109 79440 ; +91 9711444434

Sastra Legal, E-96, Malcha Marg, Chankyapuri, New Delhi 110 021

Email : saurabh@sastralegal.com ; saurabhkalia@hotmail.com

Skype ID : kaliasaurabh15