

# India Yearbook 2018 Summary- Corporate Affairs

## Ease of Doing Business

- The Ministry has prescribed a Simplified Proforma for Incorporating Companies (SPICe) along with e-MOA (Electronic-Memorandum of Association) and e-AOA (Electronic-Articles of Association) which eliminates the requirement of physically signing the Memorandum of Association (MOA) and Articles of Association (AOA) by the applicant and helps entrepreneurs to start business in India, without much hassles
- Rule 15 of the Companies Rules, 2014 (Meetings of the Board and its Powers) has been amended from March 2017 to reduce the threshold to "10 per cent" of the networth/ turnover as the case may be against the earlier threshold of "exceeding 10 per cent" thereby needing approval of members instead of only board. This has increased the shareholders' rights with regard to voting and disclosure of related-party transactions.

## Companies Act, 2013

- The Companies Act, 2013, provides the corporate sector an opportunity for self-regulation, while mandating greater transparency and enhanced disclosures for improved compliance.
- The Companies Act, 2013 seeks to bring corporate governance and regulatory practices in India at par with global best practices. The corporate sector has been given more flexibility in regulating its own affairs, subject to full disclosure and accountability of its actions, while minimising Government interference.
- The Act provides more opportunities for new entrepreneurs and enables wide application of information technology in the conduct of affairs by corporates.

## Companies (Amendment) Act

- The Companies Act, 2013 was amended through the Companies (Amendment) Act, 2015 to facilitate business and address certain immediate concerns raised by stakeholders. These amendments along with the relevant rules have been notified and they provide exemptions under various provisions of the Act to

(i) Private companies,

(ii) Government companies,

(iii) Section 8 companies and

(iv) Nidhis.

### **Insolvency and Bankruptcy Code, 2016**

- The Insolvency and Bankruptcy Code, 2016 (Code) became functional from May, 2016.
- Government of India (Allocation of Business) Rules, 1961 were amended wherein **Ministry of Corporate Affairs** was entrusted with the responsibility to administer the Code.
- The Code has been framed with the objective to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.

### **Insolvency and Bankruptcy Board**

- The **Insolvency and Bankruptcy Board of India (IBBI)** was established in 2016 under the IBC, 2016.
- The IBBI has the mandate for regulation of insolvency professionals, insolvency professional agencies and information utilities besides exercising other powers and functions as envisaged under the Code.

### **National Company Law and Appellate Tribunal**

- The constitution of **National Company Law Tribunal (NCLT)** and **National Company Law Appellate Tribunal (NCLAT)** was done in 2016. These bodies have been constituted for faster resolution of corporate disputes and reducing the multiplicity of agencies thereby promoting 'ease of doing business' in the country.
- With the constitution of National Company Law Tribunal (NCLT), the **Company Law Board (CLB)** stands dissolved and cases pending with CLB were transferred to NCLT.
- The Insolvency and Bankruptcy Code, 2016 and SICA Repeal Act, 2003 have also been put in place in 2016.
- With this, the **Board of Industrial and Financial Reconstruction (BIFR)** and **Appellate Authority for Industrial and Financial Reconstruction** have been dissolved and Benches of NCLT have been designated to exercise the jurisdiction, powers and authority of Adjudicating Authority conferred by or under part II of the Insolvency and Bankruptcy Code, 2016.
- Central Government has also notified provision for transfer of proceedings relating to arbitration, compromise, arrangements and reconstruction to the benches of

NCLT. The applications pending before High Courts on winding up shall continue to be dealt by the respective High Courts and fresh applications are required to be filed before NCLT.

- The Benches of NCLT are being established in a phased manner taking into account the availability of physical infrastructure, members and other supporting staff, etc. NCLAT is having its headquarters at New Delhi. At present the NCLT has its Benches at 10 locations viz., New Delhi, Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.
- The Competition Appellate Tribunal under the provisions of Competition Act was dissolved in 2017 and merged with NCLAT. The appeal against the orders of Competition Commission of India is now with NCLAT. The pending cases of COMPAT have been transferred to NCLAT.

### Limited Liability Partnerships

- In India, about 95 per cent of industrial units are Micro, Small and Medium Enterprises (MSMEs). As per the survey conducted by MSME, over 90 per cent of these are registered as proprietorships, about 2 per cent to 3 per cent as partnerships and less than 2 per cent as companies. The corporate form does not appear to be widely prevalent amongst MSMEs. Analysis of the data collected by the Ministry of MSME suggests that high compliance cost under the Companies Act, 1956 deterred the MSMEs from adopting the corporate form.
- The functioning of a proprietorship or a partnership firm is too opaque, making assessment of credit-worthiness by bankers difficult, and therefore, the MSME sector is at a comparative disadvantage vis-à-vis corporate bodies in accessing loan/credit facilities from banks and other financial institutions. A need was felt for a new corporate form that would provide an alternative to the traditional partnership with unlimited personal liability on the one hand, and the statute-based governance structure of the limited liability company on the other. In this context, the Limited Liability Partnership (LLP) Act was enacted in 2008 and came into force from 2009.
- LLP is a form of business entity, which allows individual partners to be protected from the joint and several liabilities of partners in a partnership firm. The liability of partners incurred in the normal course of business does not extend to the personal assets of the partners. It is capable of entering into contracts and holding property in its own name. An LLP would be able to fulfil the compliance norms with much greater ease, coupled with limitation of liability. The corporate structure of LLP and

the statutory disclosure requirements are expected to enable higher access to credit in the market

### **MCA21 e-Governance Project**

- The Ministry operated an end-to-end e-governance project called 'MCA21' for end to end service delivery comprising Company and Limited Liability Partnership (LLP) registration, incorporation, registry and other compliance related services.
- The project was started in March, 2006 on Build, Own, Operate and Transfer (BOOT) Model with the vision was "to introduce a service-oriented approach in the design and delivery of Government services".
- The project was undertaken on a Mission Mode to bring about a service centric approach in the delivery of public services and administration of the Companies and LLP Act, and it specifically focuses on:
  - (i) speedy incorporation of companies and LLPs, and
  - (ii) providing Ease of Doing Business.
- With the help of e-services, the MCA21 System provides to the stakeholders a convenient, easy to use and secure access and delivers all MCA services with improved speed and certainty. It has brought about transparency, speed and efficiency in the functioning of the Ministry. After successfully launching the next generation SAP based platform version 2 of the MCA21 in March, 2016, the project has embarked on to a new phase with the objective of improving it further.

### **Investor Education and Protection Fund**

- The Companies Act provides for establishment of Investor Education and Protection Fund (IEPF) for promoting Investor Awareness and protecting their interests.
- The amount of dividend, matured deposits, matured debentures, application money, etc., which remained unpaid/unclaimed for a period of seven years from the date they first become due for payment, are transferred to IEPF.
- Section 205 C of the Companies Act, 1956 did not allow the refund of such amount to individual once it is transferred to IEPF. Section 125 of Companies Act, 2013 allows refund of unpaid amounts transferred to IEPF. Such refunds are to be made by the Investor Education and Protection Fund Authority under Section 125 of the Act.

- IEPF Authority was made functional from September, 2016. The IEPF Authority is also entrusted with the responsibilities of carrying out investor awareness activities using the amounts transferred to IEPF.
- Investor Awareness Programmes (IAPs) are organized in association with three professional institutes namely;
  - (a) Institute of Chartered Accounts of India,
  - (b) Institute of Company Secretaries of India and
  - (c) Institute of Cost Accounts of India.

### **Competition Commission of India**

- The Competition Commission of India (CCI) was established in 2003 under the Competition Act, 2002, with the objective of eliminating practices having an adverse effect on competition, promoting and sustaining competition, protecting the interest of consumers and ensuring freedom of trade in India.
- The Competition Act, 2002 was amended twice by the Government (Amendment) Act, 2007 and the Government (Amendment) Act, 2009. The provisions of the Competition (Amendment), 2002 relating to anti-competitive agreements and abuse of dominant position were brought into force from May, 2009 and those relating to combinations from 2011.