Final Report on Penal Provisions of Company Act 2013

The Committee to review the existing framework dealing with offences under the Companies Act, 2013 and related matters has submitted its report.

- It was a 10 member committee headed by **Injeti Srinivas, Secretary, Ministry of Corporate Affairs**.
- The Committee broke down all penal provisions into **eight categories** based on the **nature of offences.**
- The Committee recommended that the existing law should **continue for serious offences, covering six categories**, whereas for lapses that are essentially **technical or procedural in nature**, mainly falling **under two categories** may be shifted to in-house adjudication process.
    - It observed that this would serve the **twin purposes** promoting of **ease of doing business** and **better corporate compliance.**
    - It would also **reduce the number of prosecutions filed** in the Special Courts, which would, in turn, facilitate **speedier disposal** of serious offences and bring serious offenders to book.

Major Recommendations

- Restructuring of Corporate Offences to **relieve Special Courts** from adjudicating routine offences.
    - **Compoundable offences**
        - Re-categorization of 16 out of the 81 compoundable offences by shifting them from the jurisdiction of special courts to an in-house E-adjudication framework.
        - The remaining 65 compoundable offences to continue under the jurisdiction of Special Courts due to their potential misuse.
    - **Non-compoundable offences**

        Status quo recommended in respect of all serious corporate offences.
    - Instituting a transparent online platform for **E-adjudication and E-publication** of orders.
- **De-clogging the National Company Law Tribunal**
    - Enlarging the **jurisdiction of the Regional Director** with enhanced pecuniary limits.
    - Vesting in the **Central Government the power** to approve the **alteration in the financial year** of a company and also **conversion of public companies into private companies**.

National Company Law Tribunal

- The National Company Law Tribunal (NCLT) is a quasi-judicial body that adjudicates issues relating to Indian companies.
- The NCLT was established under the Companies Act 2013 and was constituted on 1 June 2016 by the Government of India and is based on the recommendation of the justice Eradi committee on law relating to insolvency and winding up of companies.
- The NCLT has eleven benches, two at New Delhi (one being the principal bench) and one each at Ahmedabad, Allahabad, Bengaluru, Chandigarh, Chennai, Guwahati, Hyderabad, Kolkata and Mumbai.
- The NCLT has the power under the Companies Act to adjudicate proceedings:
    - Initiated before the Company Law Board under the previous act (the Companies Act 1956).
    - Pending before the Board for Industrial and Financial Reconstruction (BIFR), including those pending under the Sick Industrial Companies (Special Provisions) Act, 1985.
    - Pending before the Appellate Authority for Industrial and Financial Reconstruction.
    - Pertaining to claims of oppression and mismanagement of a company, winding up of companies and all other powers prescribed under the Companies Act.

Corporate compliance and corporate governance

- Re-introduction of **declaration of commencement of business** provision to better tackle the menace of shell companies.
- **Greater disclosures with respect to public deposits**, particularly in respect of transactions exempted from the definition of public deposits to prevent abuse and harming of public interest.
- Reduction in **time-limit for filing documents** related to creation, modification and satisfaction of charges.
- Stringent penal provisions for non-reporting.
- With respect to shares whose ownership remains undetermined, such shares should be transferred to the Investor Education and Protection Fund if rightful owner does not claim ownership within a year of such restrictions.
- **Non-maintenance** of registered office to trigger **de-registration process**.
- Holding of directorships beyond permissible limits to trigger disqualification of such directors.
- Imposition of a cap on independent director's remuneration in terms of percentage of income in order to prevent any material pecuniary relationship, which could impair his independence on the board of the company.

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