(h2/1500/rsg-nk)

The fines for non-filing of statutory annual filings have been significantly reduced. They have been provided more avenues to raise funds. This is also a good thing for start-ups.

One problem is of harmonising laws. There is a Companies Act; there is also a SEBI Act for the Securities and Exchanges Board of India. They overlap. An effort has been made now to remove that. The resultant ambiguities of an overlap dissuade companies from complying with relevant laws. The amendments are geared towards doing away with dual requirements, especially in the context of separate prescriptions for prospectus and the contents of the board report; the provision of prohibition on forward dealing and insider trading has been omitted since those are relevant for listed entities which are already regulated by SEBI. So, there is no need for keeping them in the Companies Act. The unlisted companies will also now be allowed to convene annual general meetings in any place in India, not necessarily at the place of their registered office.

The Bill has empowered the Centre to exempt any class of foreign companies from the applicability of registration and other requirements provided in the Act. I do not know if this is an unmixed blessing. I have a slight antipathy towards foreign companies because they often put money in and take it out. We have no control over that.

1502 hours (Shri Hukmdeo Narayan Yadav *in the Chair*)

The Bill attempts to address the provisions that were criticised on the grounds of being onerous, relaxing the restriction on number of

layers of subsidiaries as a much needed step towards giving companies greater freedom in the way they structure themselves.

This Amendment Bill will remove many ambiguities from the current law and streamline its provisions with other relevant laws. I want to mention something here. Earlier I mentioned about the Company Law Committee which was set up by the Government. Certain recommendations of the Company Law Committee have not been incorporated in the Bill. These include issues related to resident requirement of directors and compliance requirement for dormant companies.

The new restriction will prevent a company from attracting a talented individual residing outside India. The CLC recommended that the residence requirement for a foreign national should be removed but that has not been done. Under the Act of 2013, any company without transactions for the previous two years may apply to obtain the status of a dormant company. The Act of 2013 does not exempt such dormant companies from the requirement of constituting committees. The Company Law Committee suggested that the dormant companies may be exempted from constituting an audit committee as they have no business activity or employees.

Lastly I want to say that the Supreme Court upheld the constitutional validity of the National Company Law Tribunal. However the Court held certain provisions in relation to the qualification of the technical members of the NCLT and composition of the selection committee for appointment of technical members of the

NCLT and the National Company Law Appellate Tribunal as invalid. This Bill has modified those provisions to bring them in line with the Supreme Court's decision which is a good thing.

(j2/1505/rk-sk)

To end, we want good corporate governance in India because as the economy expands and is liberalised, it is not only necessary to have proper regulation but also allow companies the freedom to grow, invest and attract investment. The intention of this Bill is to improve the ease of doing business. We shall have to pass the Bill and then see what response we get from the corporate world. I hope that Shri Arjun Ram Meghwal, who is looking after the Corporate Affairs Department, will use the powers of the Department to really save people. A number of people have sunk their money in companies which did not pay back their depositors. Companies have raised money in so many fraudulent ways and so the need of the hour is to see that the common citizen of India is free of all this encumbrance. With this, I end my speech on the Bill. Thank you.

(ends)

1506 hours

SHRI BHARTRUHARI MAHTAB (CUTTACK): Thank you, Chairman, Sir. I start from where Prof. Roy ended.

In India we have seen a large number of fly-by-night companies. We have seen companies being floated to do plantation and hardly a tree has been planted, yet money has been taken and they have just evaporated. We have seen during the last five or ten years one of the major concerns of every enlightened citizen of this country was why could the Government not do something about it.

Today, we have a Minister looking after the corporate affairs who very much has his feet on the ground. Not only he has his feet on the ground, he also travels to a place, which has not been visited by any public representative during the last 70 years, and calls for a ladder so that his mobile can be connected. That made him very famous throughout the country. Anyone who looks at him says यहां तो ये लैडर मिनिस्टर हैं। Sir, you have actually not only magnified the problem of your constituency, you have also magnified the problem that the Ministry is facing in remote parts of our country.

श्री अर्जुन राम मेघवाल : माननीय सभापति जी, महताब जी मेरे अच्छे दोस्त हैं। मैं रेगिस्तान से आता हूं, इन्होंने धौलिया गांव का जिक्र किया, यह श्रीडुंगरगढ़ तहसील का गांव है। 70 साल में यहां कोई मंत्री नहीं गया। मीडिया ने एक प्रोजेक्ट लिया कि क्या इस गांव में कोई मंत्री जा सकता है। मैंने चैलेंज स्वीकार किया। मीडिया का एक चैलेंज और था कि धूप में 12 से 2 बजे के बीच ही जाना है जब टेम्परेचर 49-50 डिग्री था। मैं उस दिन गांव में गया, दो घंटे रुका, उन्होंने कहा था 12 से 2 बजे तक रुकना है। वहां सारी बातें हुई कि क्या

एमपीलैड देंगे या और क्या करेंगे। यह गांव बहुत छोटा था, ग्राम पंचायत मुख्यालय भी नहीं था। गांव वालों ने कहा कि आप इस गांव में पहली बार आए हो, आप एक काम कर दो, हमने 70 साल में कोई नर्स नहीं देखी। मैंने कहा कि यह काम तो मैं कर सकता हूं, मैंने कहा कि सीएमएचओ को फोन करो, तब उन्होंने कहा कि फोन यहां नहीं लगता है। मैंने कहा कि आप कभी फोन लगाते हो, उन्होंने कहा कि हम फोन कभी लगाते हैं, एक टिब्बा है, वहां एक पेड़ है, उस पर चढ़ते हैं। मैंने कहा कि कल कर दूंगा। वे कहने लगे कि आप हमें धोखा दे रहे हैं, अगर आप हमारे जन प्रतिनिधि हो, जैसे हम फोन करते हैं आपको करना पड़ेगा। मैंने कहा कि अगर वहां फोन लग गया तो ठीक है। मैं वहां जाकर सीएमएचओ को फोन कर रहा था। 70 साल से वहां सैन्ड ड्यून हैं, कोई गया ही नहीं और मोदी सरकार तो तीन साल से ही है।वहां 70 सालों से कोई नहीं गया, इसे आप एप्रिशियेट कीजिए। जब मैंने फोन लगाया, तो उस गांव में दूसरे दिन ही नर्स आ गयी। आप यह भी एप्रिशियेट कीजिए।

(k2/1510/rjs-ps)

SHRI BHARTRUHARI MAHTAB (CUTTACK): Hon. Chairperson, I was just mentioning that we have now a Minister of Corporate Affairs who has his feet on the ground. I was appreciating the effort made. But, I would also like to know this. Do you have a ladder in your quarter here? कॉल ड्रॉप की ज्यादा प्रॉब्लम दिल्ली में होती है।

Now, I come to the issue of The Companies (Amendment) Bill, 2016. I would mention here that 'yes' on earlier stages, during the UPA regime, this Bill came before this Parliament. This Amendment was moved in the Parliament on 16th March, 2016.

The Standing Committee deliberated with the Government and stakeholders like The Institute of Chartered Accountants of India, FICCI, ASSOCHAM, CII, etc., and with the representatives of the

Institute of Company Secretaries of India, Bombay Chamber of Commerce, Indian Merchant Chamber, Investor's Grievances Forum, The Chamber of Tax Consultants and NASSCOM, etc. The report was submitted to the Parliament on 1st December, 2016.

One curious aspect of this Companies (Amendment) Bill, 2016 is that when Dr. Moily was the Minister for Corporate Affairs, the Companies Bill, 2009 was introduced in the Lok Sabha. The Standing Committee on Finance examined it and submitted its Report on 31st August, 2010. The Ministry examined the Report and out of 178 recommendations made by the Committee, 167 were incorporated fully, six were partially accepted and a different view was taken by the Ministry on the rest five recommendations. In 2011, the revised Bill was introduced and again it was referred to the Standing Committee on Finance by this august House to look into it. The report was presented on 13th August, 2012 and out of 15 recommendations, 13 were accepted by the Government and a different view was expressed on the remaining two recommendations. Therefore, one may say that out of 193 recommendations, 180 were accepted fully. This shows the enormity of the problem that our old Companies Act of 1956 was facing. The Committee had recommended around 193 recommendations, out of which, 180 were accepted.

There have been a host of changes in the present Bill. It is because this is the third attempt of correcting the Act of 2013. This Bill seeks to simplify private placement process, remove restrictions on layers of subsidiaries and investment companies, amend Corporate

Social Responsibilities provisions to bring greater "clarity." Today, out of 470 sections of the Companies Act of 2013, 284 have come into effect since 1st April, 2014. Now, new amendments are to be effected and therefore, we have this Bill before us for consideration.

Hon. Chairperson, I would say the process of fine tuning the Companies Act of 2013 seems to have no end. It is because even today a large number of corporate bodies are still saying that there is a need to have further amendment to the amendments that have been made by the Government. Should we continue to do amendment of this Companies Act, again and again?

(l2/1515/rc/rps)

It was in 1956 when this Act was promulgated. We amended it in 2013. Now every time and every year whenever the corporate people meet, they say that there is some flaw in this Act and we need amendment. To tide over this situation, a committee was formed when this new Government came into being. They gave certain suggestions and those suggestions have been incorporated in this Bill and some suggestions have not been accepted by the Government in its wisdom. But should we go on amending the Act like this? That is the first question.

As I said earlier, more than 200 changes were incorporated over a period of five years. Now based on a Government-appointed panel's report, 100 odd amendments to the Companies Act of 2013 are under discussion. Even day before yesterday, another 48 amendments have been moved by the Minister. The aim is to make it easier for the

companies to do business including simpler laws for incorporating a company, for raising funds as also for insider trading and dealing with top executives.

It is interesting to note that even as various amendments to the Companies Act were passed in the Budget Session year before last, industries still have concerns over some provisions and now the Government has again come to us with amendments.

As I have reiterated earlier, the Government is only interested in economies and money. The social fabric of the society that keeps businesses together is being torn apart. You can see the result of the hostile attitude of the Government yourself since lending by banks is at five per cent which is a 60 year low. Some may say that it is because of demonetization but the fact today is that it is a 60 year low and it has come down to five per cent. Banks are flushed with money but people are not taking money from the banks. The economy is practically stagnant today. Jobs are being lost and yet the Government insists on living in an imaginary city where buildings are made of gold.

On the one hand, the Government violated individual privacy and on the other hand, it gives more anonymity to corporates. Corporates are legal persons. They can enter into contracts, take loans and do business. People who run these corporates are not held responsible for any loss that the company makes but the burden is distributed among the shareholders. That is how, it has been since the Mauryan Empire where such entities were also present but this corporate veil of secrecy offered by the corporates is also prone to misuse.

What has happened today is that the Kingfisher will take a loan of around Rs.7000 crore and it will not pay it back. It gets a pay off from the United Breweries of Rs.515 crore, severance package. There is something, I would say which the House should ponder over. There is something very wrong with our system if things like this are allowed to happen.

The Economic Survey this year pointed out that top ten Companies in India owe Rs.40,000 crore each to the banks. The Directors who run these Companies are living lavish lives at the cost of the Company while the corporate itself is going on many misadventures.

In April last year the Supreme Court was given an envelop by the RBI regarding big defaulters in the country. An argument was made that these names should be kept confidential since it would impact our economy. It is incredible that artificial and fictional persons have more rights in India than individuals today.

On the one hand, you have brought this Bill which removes subsidiary company caps, investment layer caps, diluting requirements to have an objective clause while on the other hand, you keep imposing Aadhar on the citizens of this country.

(m2/1520/snb-asa)

Sir, the Finance Bill, 2017 went a step ahead and allowed anonymous corporate donations to political parties. The Government is going on over-drive to give more powers to institutions that are not accountable to the public while taking away the freedom of the public.

Sir, this Bill allows some pecuniary interest in companies for independent Directors. Here I would say this because this is one of the major provisions of this amendment today which the Government is dealing with relating to appointment of independent Directors with transactions up to 10 per cent with the company. Section 149 of this Bill allows an independent Director to have 10 per cent pecuniary benefits with the company where he or she holds a position. The earlier Act did not allow any personal interest to interfere in the business. This Bill is allowing it. Not only does it allow pecuniary benefits, it also leaves it to the executive to decide the percentage of interest. This goes completely against the concept of corporates as independent entities. This will be misused by the likes of Shri Mallya to lead an even more comfortable life than they already have, while the companies continue on their misadventure. This should not be allowed at all. While India has to catch up quite a bit on its record of independence of Directors, most of the problems of the corporate sector and that of the banking sector can be traced to poor corporate governance. When corruption, nepotism and crony capitalism are eroding the foundations of our institutions in India, change in a law which determines independence of Directors, even if justified for pragmatic reasons, should not be espoused. While India largely escaped the adverse effect of 2008 melt down in the wake of the sub-prime mortgage crisis, the crisis in India which is threatening to explode may be solved in the medium and large term only through a robust model of corporate governance, both in the banking sector as well as in the corporate sector.

Sir, in the light of the Satyam scam, the Company's Act 2013 introduced new rules to improve audit quality and to punish auditors who will be found guilty of negligence or connivance with the management in acts of omission and commission by the company. Will this be effective? I would like to get an answer from the Government. For business reasons auditors have strong motivation to approve client's financial statements because an unfavourable report might lead to losing the client. The Company's Act stipulates that the auditor has to be appointed for a term of five years and they can be removed only by passing a special resolution in a shareholder's meeting and with the approval of the Government. This has reduced the risk of losing the client, yet audit partners act as an agent of the firm in securing non-audit businesses from the client and therefore, there is motivation to appease the client. This needs to be corrected.

Sir, the process of fine-tuning the Company's Act, 2013 seems to have no end, but the process to make a perfect law seems to be never ending. I would come to my last point. There are certain shortcomings in this Bill. Amongst the problematic provisions of the 2013 Company's Act which have not been redressed by the amending Bill are the provisions contained in Sections 203 which requires every company of a certain size to have at least three classes of key management personnel.

(n2/1525/ru-raj)

This has been one of the most impractical provisions of the 2013 Act requiring companies to perfunctorily designate Chief Financial

Officers and Company Secretaries in companies which have significant capital but do not have day-to-day business. There was a widespread demand that either such companies may designate the same person to look after several positions or the same person to look after several companies. However, nothing has been done to introduce amendments in this section although the definition of 'key managerial personnel' in section 2(51) has been widened.

Another significant difficulty created by the 2013 Act was the unduly restrictive set of provisions pertaining to private placements. This over ambitious scheme of regulation was a direct result of some incidents in the past which I mentioned about Satyam. One such provision requires every private placement to be routed through a separate bank account opened for this purpose and a bar on utilisation of the money until allotment. While the Bill rewrites the entire section 42, it in fact, bars the use of money until the return of allotment has been filed with the Registrar of companies. It is curious to note that the use of the money has been linked with filing of a document for which the time allowed is as much as 60 days for allotment and 15 days for filing the return. More often that not, the amount received in private placement is large and companies cannot afford to keep the amount idle even for a day. The only relief in the private placement provisions seems to be that the amount of penalty for contravention has been limited to Rs. 2 crore which was earlier seemingly extending to the entire amount raised by private placement.

Sir, with your wide experience, you know that law is as good as it is administered. The Companies Act, 2013 is a modern law for a rising India. It is important that the administrators of such a law have a mindset keeping with the spirit of such a law. Unless transformative changes are brought about in its administration, the felt purpose of such a law would be lost.

Therefore, we should address this issue effectively so that India becomes a beaconing economy of the world.

(ends)

1523 hours

SHRI JAYADEV GALLA (GUNTUR): Sir, I rise to support the Bill moved by the hon. Minister for Corporate Affairs, Shri Meghwal. Nearly 90 amendments proposed in the Bill are mainly in pursuance of the recommendations made by the Company Law Committee and based on the recommendations made by various industrial bodies, industries and professional organisations.

This House itself passed the Companies Bill in 2013 and out of 470 Sections, so far, only 284 have been notified and the remaining are relating to National Company Law Tribunal and National Company Appellate Law Tribunal. They could not probably be constituted earlier since the matter was *sub judice* but a five judge Constitutional Bench of the Supreme Court approved the constitution of NCLT and NCLAT in 2015 itself. But have these not been constituted? It is a big question mark which I wish the hon. Minister for Corporate Affairs to explain.

Coming to the Bill, some of the major amendments include providing greater flexibility in incorporating and running a company by simplifying Memorandum of Association which and doing away with Central Government approvals, etc., to simply procedures to raise capital, to rationalise penal provisions relating to auditors, improving corporate governance and remove ambiguities in CSR provisions, etc.

With your permission, I have a few points to make on the Bill and request Shri Meghwal to ponder over them and take steps accordingly.

(o2/1530/rbn/ind)

With your permission, I have a few points to make on the Bill and request Shri Meghwal ji to ponder over them and take steps accordingly.

The first one is regarding Clause 45. Clause 45 allows a relative of an Independent Director to be indebted to the company or its promoters within a limit as may be prescribed by the Central Government. But I wish to make a point here. When a relative of an Independent Director is indebted to company, the independence of such a Director would be highly suspect. Especially, when a relative of an Independent Director is indebted to promoters of a company, independence of such a Director becomes a definite casualty. Here, the Government of India may prescribe the limit, but that limit is nowhere mentioned in the Bill. I suggest, while framing subordinate legislation, the limit should be kept at a minimum level. Otherwise, it brings disrepute to the company and also hit its brand image in the market and before creditors.

Clause 45 allows some pecuniary interest in companies for Independent Directors. The Bill allows such Directors on their own to have transactions with companies where they are Independent Directors up to 10 per cent of such Independent Directors' total income or such

amount as may be prescribed. It means, in a way, we are legitimizing 'self-dealing merchants' as Independent Directors.

I apprehend that the limit of 10 per cent transactions in the hands of Independent Directors can be altered by the executive action by prescribing an altered limit. Vested interests can achieve a higher limit by influencing the executive. I feel that this would certainly weaken the independence of corporate boards. And, you are also removing an existing provision which says that an Independent Director's relative should not have been a senior employee of the company in the last three years and it may also impact independence of an Independent Director.

Secondly, I beg to differ with the CLC which says that such a small amount of income will have no bearing on the independence of the Director. This assumption, in my view, is flawed. A threshold limit of the pecuniary relationship affecting the independence of a Director cannot be objectively set, as the concept of independence is more subjective in nature. Objectively, the only manner in ensuring independence is adhering to the provisions in the Act, i.e. absolutely no monetary relationship aside from the Director's remuneration.

The next one is Clause 59. You are proposing to amend Section 185 which deals with loans to Directors, etc. I wish to submit that a holding company, irrespective of being a public or private company and without conditions imposed on the nature of its shareholding, can grant loans to its subsidiaries subject to the passing of a special resolution and the subsidiary utilising such amount for its principal

business activities. This may be a cause of concern because if the end-use of loan is still restricted to the 'principal business activities', it appears that in case of loans required by the subsidiaries for purpose other than its 'principal business activities', holding companies may have to continue the current practice of amending its objects in its Memorandum of Association to include 'grant of loans to subsidiaries', in order to have such loans granted in the 'ordinary course of business.'

Then, claim exemption under sub-section (3) (b) of the proposed to be amended Section 185, which exempts companies providing loans/guarantees/securities in the ordinary course of business, provided the specified rate of interest is charged. But again, if the MCA intended to permit such an exception, it would have been reflected in the Bill itself. Secondly, practice of amending the objects clause may prove to be risky. So, I suggest for consideration of the hon. Minister that Exemption Notification must be amended to reflect the above relaxation under Section 185 and there should not be any confusion that public companies enjoy more liberty than private companies under Exemption Notification.

The next one is regarding Clause 60. Clause 60 of the Bill seeks to amend Section 186 of the Principal Act by deleting restrictions on layers of investment companies. It also seeks to provide for aggregation of loans and investments so far made and guarantees so far provided, for the purpose of calculating the limits of loans and investments. Further, it also seeks to provide that requirement of passing a special resolution at general meeting shall not be necessary where a loan or

guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company or acquisition is made by a holding company of the securities of its wholly owned subsidiary company.

(p2/1535/rp-vb)

I agree that under the existing provisions, a company is not allowed to make investment through not more than two layers of investment companies. This Clause eases the structuring of group companies and inter-company investments.

I feel that there is a need to put a limit on the number of layers. Otherwise, I am apprehensive that this very proposed amendment facilitates rerouting of black money against which this Government waged a war. And, the second one is, you are going to create a structure where promoters can control large businesses with small holdings through a series of subsidiaries. If this is the objective of this provision, what would be the impact on corporate governance?

The next point is regarding Clause 65. It is good that the hon. Minister has removed the ceiling of 11 per cent on managerial remuneration. But, there is a condition that if a company has taken loan from a bank or if any public financial institution is subsisting or there is any default, then it has to take approval of that financial institution. If a company takes loan, say from 10 financial institutions, then it has to take approval from each one of them. And, everybody knows that no bank or financial institutions is going to agree to this. But when it comes to private companies, there is no need to take

consent of lenders even if such a private company has a running default with its lenders. So, I feel this is sheer discrimination and request the hon. Minister to relook at it once again.

Sir, one final point I would like to make is in response to rising NPAs. Hon. Minister, this is an important point to which I would just like to draw your attention. With the rising NPAs, banks are now insisting on personal guarantees or personal guarantees of the promoters for every loan taken by company. This goes against the very principle and nature of a limited liability companies. If promoters have to provide a personal guarantee for every loan that they have to take for their companies, then what is the point of having a limited liability company? That goes against this principle. So in response to this, I believe, risk taking is coming down in our country. The risk taking comes down. The dynamism of our economy depends on risk taking capability. I think, the dynamism of our economy is also at risk if personal guarantees are insisted every time. There needs to be a balance. The accountability of banks also has to be there in doing their due diligence and evaluating the loans needs to be brought into focus. What is the due diligence being done by the banks? How are they evaluating the nature of the loan before giving the loan? All these things also need to be brought into focus. The accountability of banks also needs to be established. It is not only that accountability has to be completely on the promoters who are taking the risk in the first place but the banks giving the loans also have to take some risk. I think, a balance needs to be maintained.

In conclusion, I would like to say that there is no doubt that a large portion of the Bill achieves its objective of providing clarity, unambiguity, transparency and certainty. But there are some provisions, a few of which I had mentioned, which appears to have been contradicting to the core theme of the Bill. I only wish hon. Minister will have a relook at them once again closely and avoid this Bill paving the way for rampant misuse of these provisions.

With these observations, I support the Bill. Thank you.

(ends)

1539 hours

SHRI KONDA VISHWESHWAR REDDY (CHEVELLA): Thank you, Sir, for giving me this opportunity.

Sir, at the outset, I would like to state that on behalf of the Telangana Rashtra Samithi we support this Bill. But, yes, this is a very small step in the long democratic process. While it is an important step, we are going to pass it, it may merely amount to tinkering of the existing law and great changes are required. At the end of the day, in another half-an-hour, we are going to pass this Bill. All of us are going to thump our benches loudly and cheer that the Bill is going to be passed.

I will just raise two or three points. Many more points have already been covered. There are a number of layers and subsidiaries. We should support this. The number of layers and subsidiaries were limited. Now, it is unlimited. This is very very required. I worked in a large multinational corporation, General Electric Corporation, one of the largest companies in the world. I was trying to count how many subsidiaries and layer of subsidiaries it has.

(q2/1540/rcp/pc)

I think, I stopped counting at 150, but I think there are more than 1000 subsidiaries and several layers. It is extremely required for Indian companies to grow big, to become multinational conglomerates. Sometimes, even temporary companies are formed called a Special Purpose Vehicle for a particular contract. Short duration joint ventures are formed. Country-specific companies are formed. So, I think it is

very important. It does not restrict Indian companies to grow. We support it.

My next point is regarding pecuniary interest of independent directors. I think, this restriction has been removed. This is totally not required. It is because, the concept of independent directors is that it is not the interested parties who are directors. We want a fresh thought. It may be an academician who is an independent director or it may be a scientist in that field or it may be a market engineer or a finance expert or even a social worker who brings a new thought in the company directorship. What is the need for them to own a company? It is because, the very fact of owning a company brings in conflict of interest. But the rationale here is, little bit conflict of interest is okay. But there is an American phrase which says you cannot be a little bit pregnant. Either you are pregnant or you are not pregnant. How can you have little a bit conflict of interest? Either you have conflict of interest or no conflict of interest.

I have one more point regarding removal of dealing in insider trading. Once again, unnecessarily we are treading on a dangerous area. In an age when the Prime Minister and the whole country is looking forward to give more teeth, I think we are taking away one teeth from the law makers. Right now it is only SEBI which can go after these companies that are dealing in insider trading and removal of forward dealing. We do not need relaxations. We need stricter regulations. We are discussing all this when one Mr. King of good times is actually fishing somewhere in some islands near Britain or

some other place. So, I think we need to make it stricter. While we support the entire Act, I would like to bring forth a few other issues.

In US, we have the Sarbanes-Oxley Act and the Foreign Corrupt Practices Act. These have significant teeth. Companies there are really scared not out of a moral need or ethical need. It is because of the sword hanging and because of the teeth those regulations have. I think, we need to make regulations stricter. In this case, it is mostly relaxing those regulations.

When the previous Companies Act, 2013 was addressed, there is a whole list – whether it is CII or FICCI – of disadvantages, pros and cons that were listed out. One of them is the compliant requirement which continues to be very high. It is good; it is required. But, if it is too high, it hits the ease of doing business. It can be high for large companies which have hundreds of employees and even they have the accounts and compliance departments. But for a small company, to have such stringent compliance standards will actually reduce the ease of doing business. This was actually given earlier. There is no mention of that in this Bill.

The Memorandum of Association, as per the Act, requires the company to declare the objective of formation. The Bill removes this requirement. We saw a telecom company importing apples. Earlier, we had objectives of the company and the company had to do that business. You cannot do any other business. So, we cannot do relaxations on some of these. I think, we need to increase this. I do not

want to say too much because, I think, many speakers have covered these points.

Many speakers said that we achieved great things by closing down defunct companies. This is one more thing of thumping the benches too hard for very little achievements. We had 16 lakh companies and, I think, the Ministry did a good job. They took an initiative of closing down defunct companies. Frankly, I also have a personal experience in this regard.

(r2/1545/smn/mz)

Recently, two companies belonging to my son were closed down. They were neither scam companies nor they were involved in any operations which were illegal. They were not shell companies. This is merely a part of spring cleaning. So, you get rid of unwanted things in your house. In most countries after winter, in spring, you have enough of unwanted things which you throw out or close them. So, the Ministry's initiative is good. A lot of group companies close down these unwanted companies. How many are they? Maybe, they are about 16,000 or so. They closed them down in the last six months. It is a very good initiative but let us not say that we made any impact on closing down shell companies or unauthorised operations. A lot more needs to be done. That is not the proof of the pudding. Somaiya Ji was mentioning that we closed down these many companies. By doing that, we have not closed any shell companies. Shell companies are alive, kicking well, paying all the fees and doing all the illegal operations. So, a lot more needs to be done. The real proof of the pudding is, have

the NPAs of banks reduced, has corruption reduced, has tax compliance increased, has *hawala* reduced, has under-invoicing of exports reduced and finally, has the rupee gained value in the international market? These are the real proofs of pudding. So, has our GDP increased significantly? Yes, we are making marginal progress. At this point, I would also like to make one more thing. So, entire India is not like this. Some pockets of India are doing extremely well in terms of tax compliance and other things. I would like to point out that you will be shocked to know, recently we got the data, that in the State of Telangana, got 21.7 per cent increase in its tax collections. The next is only Chattisgarh which is at 10 per cent and the rest of the country is hardly at 7-8 per cent.

Lastly, a lot more needs to be done. Not enough is being done. So, when we pass the Bill, let us not thump our benches so hardly. Let us not cheer so hardly. Let us thump little softer. Thank you Sir. We support the Bill.

(ends)

1547 hours

SHRI MD. BADARUDDOZA KHAN (MURSHIDABAD): Hon. Chairman Sir, I am thankful to you for giving me an opportunity to speak on an important Bill.

Sir, as you know that this Bill was introduced in Lok Sabha on 16th March, 2016 and referred to the Standing Committee on Finance on 12th April, 2016. Actually, the Companies Act, 2013 came into force on 1st April, 2014. Since then many companies raised their voice that they are facing difficulties with the implementation of 2013 Act. So, the then Government set up Companies Law Committee on June, 2015 to examine the issues regarding implementation of 2013 Act. The Committee submitted its report in February, 2016.

But in the meantime in 2015, the Supreme Court gave its judgement related to quasi-judicial tribunal set up under the 2013 Act as invalid.

Sir, it was the need of the time to amend some sections related to such issues.

Subsequently, the Standing Committee on Finance heard the views of the Institute of Chartered Accountants of India, FICCI, CII, ASSOCHAM and NASSCOM.

Finally, they submitted the report on 7th December, 2016. I agree with the observations made by the Standing Committee and the verdict of the Supreme Court also.

Sir, it is true that all recommendations submitted are for improving ease of doing business in India without many hurdles. The

Committee has proposed changes in 78 sections. Approximately, 50 amendments to the Rules have also been proposed. So, a record number of amendments have been proposed in this Bill. Mostly, it will help the corporates to expand their business in India. But I want to know about the small companies. The existing definition of small companies limits the scope of small companies having a turnover of rupees two crore. The limit is being increased to rupees five crore but the limit of paid up capital still remains at rupees fifty lakhs. I request the Government to review the situation.

(s2/1550/mmn-bks)

In another case relating to banking companies, I want to seek some clarifications on the provision of Sections 53 and 185. Actually, the banks are making use of Corporate Debt Restructuring (CDR) and Strategic Debt Restructuring (SDR) Schemes to convert their loan into equity. The problem is that the fair value of equity shares was less than its par value. However, the bar in the Act against issuing shares at a discount would force a banker to convert the loans at least at par value of the equity. The provisions of Section 53 are proposed to be amended to permit conversion of loans into equity at less than the par value. Please clarify this position.

Further, I want to know the provisions relating to forward dealing and insider trading to be omitted from the Companies Act, 2013. Why is such a proposal necessary? I want to know why such a proposal is necessary. Now under what Act will the insider trading be dealt with?

In addition to that I want to seek some clarifications. Dr. Kirit Somaiya, Shri Bhartruhari Mahtab and also Prof. Saugata Roy told here about some companies. Kirit Somaiya Ji told about 30 companies. He has huge information with him, including Saradha scam. I know, and also I think Dr. Kirit Somaiya also knows that Saradha Company and Rose Valley Company are under the CBI inquiry, under the CBI scanner. I am sorry to say that during interrogation, some MPs were also interrogated and one MP is still now in jail. In spite of that, I am sorry to say that the CBI is conducting its inquiry in a very, very slow pace. There is no effort to refund the money to the actual losers, the people whose money was looted. There is no effort. Then what will be done in future?

In the future also, some fake companies will be registered but not for doing any business. They will collect money and launder it to others and launder it to foreign countries also. In such a way, the companies are being registered still now in India. What do you do about that? What is the thinking of our Minister about all these ponzi and fake companies? What action are you going to take about these companies? Now it is a very serious matter in India. What kind of inquiry is being done by the CBI? The CBI is doing the inquiry. The ED is also making the inquiry by the ruling of the Supreme Court. But I am sorry to say that there is no progress in the inquiry.

The CBI is directed by the Prime Minister. Then, my question is, whether the Prime Minister has directed the CBI to go slow and not to take action and not to close their inquiry. It is a never ending process,

and finally, the public will be refunded nothing. They will suffer. So, I request the Government to take action. Also, I request Dr. Kirit Somaiya that if you have huge information, then please give it to the Minister to make an inquiry into that. Why are you speaking only here? Why are you making the statement here? You give it to the Minister and let them conduct an inquiry.

Now, you have the SFIO; you have the ED; and you have the CBI. They can make inquiry and take action. So, this is my request to the Minister that please to try to finalise this inquiry and refund the money to the losers. It is the need of the hour, and give punishment to the culprits who have taken money from them.

I am concluding my speech. I hope our Minister who is present here, will take necessary action. Thank you.

(ends)

(t2/1555/san-gg)

1555 hours

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Hon. Chairman, Sir, I thank you for giving me this opportunity to speak.

We appreciate the amendments which are being brought into the company law, particularly with regard to the set-up of Company Law Tribunals and Appellate Tribunals. It has also tried to take some initiatives to protect the interest of the investors on a large scale. Similarly, it has tried to bring in some accountability of the Directors, the auditors and the managerial persons. It has also tried to improve the corporate governance. It also wants to help in ease of doing business, particularly for the start-up companies and to simplify some of the procedures like private placement process, self-declarations. It is also doing away with separate offer letters. It also wants a register to be maintained of significant beneficiary-owners of the company.

We appreciate these positive aspects, but as Shri Bhartruhari Mahtab mentioned, a law is as good as it is administered. Therefore, merely bringing laws does not take us anywhere. The implementation of the law has to be good and monitoring has also to be done. All that we need is mostly on account of corporate governance, particularly dealing with the banking sector as well as corporate sector. That is totally lacking on professional lines as far as India is concerned. We are far behind in comparison to the advanced countries and the European countries.

Sir, I am not able to appreciate some of the clauses which have been incorporated for the simple reason that a relative of an independent director could give a loan to the company or to the promoters and its subsidiaries. It is definitely an unhealthy trend. I do now know why it has been considered. Many of the Members, who spoke before me, have already mentioned that there is no reason as to why it has to be considered. Already, there is lot of nepotism and corruption taking place and still you want to bring down the independence of independent directors. It is very unfortunate. The very logic of bringing in independent directors, as earlier speakers mentioned, is lost the moment you permit a relative of an independent director to give a loan to the company or to the promoters.

I thank the Ministry for having done a lot of consultations and formed committees and all that before bringing in this Bill, but there is one thing missing. They have involved the RBI, the SEBI, industrial bodies, ICWAI, ICAI, ICSI etc., but the real stakeholders, the investors, are totally missing. I do not think that representatives of the investors, who are the real shareholders and stakeholders, is mentioned anywhere. I do not think that any of the document shows that they have had discussions with the bodies of shareholders. It is an extremely important thing. Perhaps they can consider one thing now. As of now, India does not have a system or a committee at the highest level to protect the interests of the shareholders. Both the Ministers, who are sitting here, are learned Ministers. They may consider to have a high level committee to protect the interests of the investors. Most of them

are very small time investors and the money belongs to them. Every time, the other institutions are taking initiatives. It does not take them anywhere unless we really involve the investors and the shareholders.

Sir, I would like to ask the hon. Minister as to why they have given a big concession with regard to managerial remuneration. Earlier, beyond a stipulated limit, the proposal was supposed to come to the Government. Now, you are removing that also. I have a classical example. Here, I am not talking politics and I am not prejudiced. The Reliance Industries company exploits – I am saying this in a positive sense and not a negative sense – the oil and gas in our country. Whatever be the pricing policy, it is giving enormous profit to the company, running in lakhs of crores and crores of rupees. We all know about the house constructed by owners of Reliance Industries. I do not think that in the entire world, you have a parallel to that. They have spent crores and crores of rupees to construct that house. We do not deny it, but the point is that he has exploited the natural resources which belong to the State, to the country and to the poor people of this country. Therefore, I am of a very strong opinion that managerial remuneration beyond a stipulated limit should be with the Government because the money belongs to the people and the land belongs to the people and these are the national resources. Therefore, allowing it just like that is not required because as we see it now, one per cent of the people in India own 60 per cent of the interest by way of national wealth.