

KS-GS/2B /2.00

The House re-assembled after lunch at two of the clock,

MR. DEPUTY CHAIRMAN in the Chair

MR. DEPUTY CHAIRMAN: We will now take up the Companies (Amendment) Bill, 2017 for further consideration. Last time, the former Minister had just started, but he did not speak. In the meanwhile, the Minister had changed. At that time, it was Shri Arjun Ram Meghwal. Now, the Minister is Shri P.P. Chaudhary. No problem. You can start.

THE COMPANIES (AMENDMENT) BILL, 2017-(Contd.)

THE MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS

(SHRI P.P. CHAUDHARY): Mr. Deputy Chairman, Sir, I rise to move:

That the Bill further to amend the Companies Act, 2013, as passed by Lok Sabha, be taken into consideration.

Sir, I rise to initiate the discussion on the motion for consideration and passing of the Companies (Amendment) Bill, 2017, as passed by Lok Sabha.

Sir, the Companies Act, 2013 was notified on 29th August, 2013. It had introduced significant changes and, *inter alia*, provides for disclosure to

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stakeholders and a provision regarding accountability of directors, auditors and key managerial persons. It also provides for investors' protection. It provides for corporate governance too. All these provisions in the Companies Act of 2013 have been enforced, except two full Sections, that is, Sections 132 and 465 and, partially Section 2 (69) and Section 230 (11) and (12). Along with this, at the time of the enforcement of the Companies Act, 2013, rules had been framed. Sir, when this Act of 2013 was there, some difficulties were realized with respect to the initial experience and the working of the Act of 2013 and, to address those difficulties, the Companies (Amendment) Bill, 2015 was introduced in the Lok Sabha. It was passed by both the Houses. But, at the time of its passage, hon. Members of the Rajya Sabha had requested the Government for some more amendments in order to address the difficulties that the companies were facing. So, keeping in view this aspect, the Government constituted a Companies Law Committee, chaired by the Secretary, Ministry of Corporate Affairs, with a view to examining the need for making further amendments. An extensive consultation was conducted by this Committee. After extensive consultations, a report was submitted to the Government on 1st December, 2016, and in continuation of that, incorporating all the suggestions and

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recommendations made by that Companies Law Committee, the Companies (Amendment) Bill, 2016 was introduced in the Lok Sabha on the basis of the recommendations on the Companies Amendment Bill, 2016.

(CONTD. BY KGG/2C)

KGG/2C/2.05

SHRI P. P. CHAUDHARY (contd.): In this connection, there were amendments to 87 Sections. When this Bill was introduced in the Lok Sabha on 16th March, 2016, it was referred to the Parliamentary Standing Committee on Finance with a request to examine and report with respect to this Bill. The Report was submitted by the Standing Committee on Finance on 7th December, 2016 before both the Houses of Parliament. I extend my thanks to Chairman and Members of the Standing Committee who devoted a considerable time in preparing this Report giving some recommendations. Most of the recommendations have already been incorporated by way of official amendments. Thereafter, the Bill was passed by the Lok Sabha including the official amendments; some more Sections were incorporated by that process. 93 Sections were taken into consideration. The Lok Sabha passed this Bill along with the official amendments on 27th July, 2017. It was passed as Companies (Amendment) Bill, 2017.

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Mr. Deputy Chairman, Sir, I would like to highlight some of the objectives behind amending the Companies Act, 2013. In the 2013 Act, the present Act, some of the major objectives are with respect to compliance requirement and to relax stringent provisions under the Act of 2013, to facilitate Ease of Doing Business, and to facilitate harmonization with accounting standards and other legislations. It is also realized that some mistakes were there, some inconsistencies were there in the Act with respect to various provisions of the Act and in the definition clause. Therefore, the definitions were also harmonized keeping in view other provisions of the Act as well as keeping in view the direction of the Supreme Court with respect to NCLT & NCLAT, qualifications and selection of the members.

Sir, I would also like to point out that all these objectives are being achieved without diluting the core strength of the Act. Sir, I would also like to give an overview of key features in the Bill. The first is to strike a balance of competing interests of various stakeholders; that has also been taken into consideration. Stringent actions have been provided in the Bill for fraudulent conduct of business and default of public deposits. Besides this, greater transparency has also been provided to prevent money-laundering.

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Sir, recently we have seen the misuse of shell companies. Therefore, restrictions regarding layers of subsidies have been retained. Earlier, a number of layers were there and shell companies had been used as conduit for money-laundering and all those. So, the restrictions have already been retained, which is there in the Act of 2013.

Sir, raising of finance has also been recognized. So, the companies have been permitted to provide loans to entities, imposing some conditions. For small and one-man companies, some relaxations have been granted not only with respect to procedures and penalties but also with respect to procedural and technical issues. These have been granted not only to small companies but also for big companies. Sir, there was a provision also for managerial remunerations with the Central Government's approval. That has been dispensed with; various definitions under the definition clause were redefined removing ambiguity and inconsistencies with respect to definitions and with respect to various provisions of the Act, as well as harmonizing with SEBI and RBI Acts too.

Sir, foreign companies have also been exempted who are having insignificant transactions through electronic mode with respect to registry and compliance.

(Contd. by KLS/2D)

KLS/2D-2.10

SHRI P.P. CHAUDHARY (CONTD): Sir, regarding the appointment of auditor, because earlier for appointment of the auditor every year rectification was required, therefore, that amounts to removal and it creates a lot of inconsistency in respect of other provisions of the Act, that has also been removed and dispensed with. Some clarity was also required with respect to limited liability partnership to convert into companies, that clarity has also been provided. Sir, regarding appeals, the provision of appeal has also been provided in case of National Financial Reporting Authority to National Company Law Appellate Tribunal under Section 132 by making suitable amendments to Section 132 of the Act. About 70 years' age, earlier that provision was not there. But now relaxation has been provided that even a person who is above the 70 years of age, he can be appointed to the post of managing director, whole time director and manager with certain conditions. Sir, with these amendments *inter alia* as proposed in the Bill, I request the august House to consider and pass the Bill.

The question was proposed.

MR. DEPUTY CHAIRMAN: Now it is time for discussion. The time allotted for the Bill is two hours. I would like to inform the hon. Members that it has

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been decided not to give extra time to parties. Therefore, parties are requested to complete their speeches within the allotted time. So, the Members should restrict to their time. Now, the first speaker is hon. Shri P. Chidambaram. Congress Party has 29 minutes.

SHRI P. CHIDAMBARAM (MAHARASHTRA): Sir, broadly we are happy that the Companies Act, which was passed in 2013, is being revisited. I would have, however, liked the Minister -- hon. Finance Minister was not here when the Bill was introduced-- to have taken a little more effort to explain certain provisions of the Bill. Unless one visits the original Act, the Companies (Amendment) Bill of 2016, the recommendations of the Standing Committee and the new Bill, it is very difficult for Members to understand what had been done, what was recommended to be changed and what change was brought about first in 2016 and what change is being brought about now. But I will try my best in the short time that is available to me to try to make sense of what the Government is doing. It seems to me that the Government wants to help small and medium companies and save those companies from the rigors of Companies law. I think it is a noble objective. But the way you have gone about it will have perverse consequences. You have only one Act. That Act applies to large companies, to medium

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companies and small companies. If you make provisions in that Act, keeping in mind what you want to do only for small and medium companies, the consequence will be inevitably the relaxation that you will apply to large companies also. The only way out of that dilemma is to make a separate law for what you define as small and medium companies. In fact, my personal view is- I don't know if this is my party's view-- eventually we must have a separate law for small and medium companies and have a very comprehensive Companies Act only for large companies. Now this Amendment Bill is re-visitation of the Companies (Amendment) Bill of 2016. The author of the 2016 Bill and the author of the 2017 Bill are the same.

(Contd by 2E/SSS)

SSS-LT/2E/2.15

SHRI P. CHIDAMBARAM (CONTD.): But, I am glad that some provisions have been revisited. But, I am also unhappy that some provisions have been revisited. I think in the name of liberalization there are some provisions which I think are undesirable and will have negative consequences. But, let me begin by making one broad statement. I don't want to take all the time of my party because there are a number of examples that can be given. The sense I get is that in the case of many provisions, instead of making the

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provision in the Act, the Government has said 'as prescribed', which means 'will be made in the rules'. Now, some years ago that may have been a correct way to make laws. Modern thinking points to greater transparency in the laws, greater definition in the laws, greater certainty in the laws and I would, therefore, urge the Government to reconsider the provisions where they have virtually taken away power from Parliament and vested in the Executive and matters that have been provided in the Bill are being provided now by rules. I think, this is really a regression. I know some people will argue that some of these provisions cannot be made in the law. I disagree. I think by paying sufficient attention and sufficient time to these matters some of these conditions can be made in the law itself so that a very large degree of discretion is not vested in the Executive. I can give examples, but I won't take time to give those examples.

Sir, let me point out some very glaring inadequacies in the Bill. Firstly, the original Companies Act, 2013 had a number of wholesome provisions which were sought to be diluted in the Companies (Amendment) Bill of 2016. Some of the recommendations of the Standing Committee restored the original provisions of the 2013 Bill, but some in fact made it worse. In the 2017 Bill, I am glad that many of the provisions of the 2013 Bill have been

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restored. It only underlines the fact that there was some wisdom in the previous Government too and the previous Government did not entirely lack in wisdom and some of the provisions made in the 2013 Bill are being restored and I am grateful to the hon. Finance Minister for acknowledging that the provisions of the 2013 Bill were good provisions. Sir, I am concerned about the provision that you are making in a number of sections regarding late filing. In the original Act of 2013, penalties were imposed for late filing. After the recommendations of the Standing Committee, what you have now done is, instead of laying down the limits in the Act, power is being taken to the Executive to lay down the limits.

(Contd. by NBR/2F)

-SSS/NBR-KLG/2F/2.20

SHRI P. CHIDAMBARAM (CONTD.): This is one of the examples of the point that I made earlier. Why are the limits not being laid down in the Act itself, so that there is a greater clarity and a greater certainty of what a company shall do and what a company shall not do? There are a number of such provisions. I would urge that whatever time limits are being prescribed must be prescribed in the Act, so that there is an absolute certainty and clarity. If time-limits have to be changed, you have to come back to

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Parliament. Giving uncontrolled discretion to the executive, indeed, makes the executive look more powerful. The Secretary looks more powerful. But, by taking that power, you are actually diminishing the role of Parliament.

The second provision which I would draw attention to is: In the case of an audit, there was restriction that if there is a relative associated with company such person cannot be an auditor. I concede that the original provision was rather loosely worded. But, instead of amending that provision and making the definition tighter, what you have done is, you have deleted the definition of 'relative!' If you look at the section now, after deleting the definition of 'relative', it reads, 'the following person shall not be eligible for appointment as an auditor of a company, namely - (f) a person whose relative is a director or is in employment of company or a director or a key managerial personnel.' If you now delete that and substitute it by -- in clause (i) -- 'a person who, directly or indirectly, renders any service, referred to in section 144 of a holding company or a subsidiary company, for the purpose of this clause, the term directly or indirectly...' What are you trying to do? What are you trying to say? It is not very clear of what you are trying to say. Are you debarring a certain number of persons whose relatives are associated or are you not? I think, there must be clarity in that

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provision. I am sure, the hon. Minister has a reason why he is doing it and he will explain to us, in course of time, why he is doing it.

Sir, there is another provision that you may take loans from and give loans to director of a company. The ostensible purpose is that this will help SMEs. As I said in my opening remarks, if you want to make such a provision to help SMEs, please realize that the same provision will apply to larger companies also. So, today, the effect of this provision, unless the hon. Minister tells me why my understanding is not correct, is that in a large company also you can take loans from and give loans to directors. This, I think, is completely unacceptable. Nowhere in the world are companies allowed to take loans from and give loans to directors. In fact, severe restrictions must be placed on companies taking loans from and giving loans to directors.

(CONTD. BY USY/2G)

USY/2G/2.25

SHRI P. CHIDAMBARAM (CONTD.): The Directors occupy a fiduciary position to the shareholders of a company; and now, in fact, to the stakeholders in a company. I do not think that a company should be allowed to give loans to or take loans from Directors. There are other forms

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of ownership, like, limited liability partnership, partnership, proprietorship, etc., etc., where the rules are far more relaxed. Once you incorporate yourself as a joint stock company, I think, we must accept standards that are accepted all over the world. And, we should not -- in order to make special provisions for small and medium companies -- make a provision which will ultimately be available to large companies also.

Another provision to which I take serious objection is that the Act, as it stands, prohibited insider trading and forward dealing by companies. In the 2016 Bill, which the hon. Minister introduced, these provisions were sought to be deleted. The prohibition was sought to be deleted. The Standing Committee recommended to harmonize it with the SEBI's provisions. Now, what have you done? If the original provision is, that is, section 458 is sought to be retained, which prohibits insider trading and forward trading, then, I think, it is important that this must be harmonized with the SEBI's provisions. If you look at the original section, it provides that insider trading and forward trading will be prohibited. If that appears to be your intention, I welcome that intention. But, then, the SEBI has another set of regulations, the SEBI has another set of provisions, which deal with insider trading and forward trading. So, I think, it is important that whatever provisions you

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make those must be in harmony with the provisions of the SEBI. And, there is no reason why, while you retain the original provision on prohibition, you should not harmonize with the provisions of the SEBI.

Sir, there are some other provisions related to the private placement. I think, it has not been talked through correctly. Today, you have made a provision where any company can do a private placement. But, private placement must be an exception. Again, I realize that you are trying to do this to help small and medium companies. But, the provisions, which you make for small and medium companies, will also be available to large companies. I think, private placement by itself should be avoided. Companies must make public offers. And, if a large company can make a private placement, I think, it is not consistent with the modern concept of corporate responsibility and corporate functioning. So, I would urge the hon. Finance Minister to revisit this provision on private placement. I think, it is not a good provision. And, it is certainly, to the best of my understanding, not consistent with what is available in the rest of the world.

Lastly, Sir, I come to the provision of an Independent Director. An Independent Director must truly be independent. Now, what is being provided is that if an Independent Director has a small interest, I remember it

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is not something like not exceeding 10 per cent or so, that would not, in any way, detract from his independence and he can continue to be an Independent Director.

(Contd. by 2h — PK)

PK-SCH/2H/2.30

SHRI P. CHIDAMBARAM (CONTD.): Again, apparently, the idea in the back of your mind is to help a small and medium company. But when you do that for a small and medium company by amending the Act or by making a provision for that in the Act, the result is that even large companies will benefit. If we have an independent Director in a company which has a turnover of over thousand crores or a net worth running into several thousands crores, even a small pecuniary interest, even a small interest on that company will amount to a very large absolute interest. So, I think if you really want independent Directors on the Board, -- and it is quite difficult to find truly independent Directors-- you must ensure that their independence is preserved and advanced and not create exceptions by which their independence can be called in question. By and large, I welcome this Bill. But I would urge that the thought in your mind that small and medium companies should be benefited should have a lighter touch. When you

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make provisions in one Act that is available to us, those lighter regulations will begin to apply to large companies also, and you will face serious problems when these large companies take advantage of these provisions. We can make a list of the provisions which I think should apply to only small and medium companies. But without making such a distinction between small and medium companies and large companies, some of the provisions here will have perverse consequences. It is my duty to caution the Government, caution the hon. Finance Minister and caution this House that while we pass this Bill with laudable objectives, largely to benefit small and medium companies, we are, perhaps, creating opportunities for large companies to indulge in malfeasance.

Sir, I would, in conclusion, urge the hon. Minister to look at some of these provisions and create a separate chapter by which these provisions, where you want to make special provisions, will apply only to small and medium companies and will not apply to large companies.

Finally, Sir, I want to say that corporate governance in this country leaves much to be desired. It is, perhaps, a legacy issue. The original Companies Act of 1956 was amended piecemeal over a period of time. It took us almost 60 years to bring a new Companies Act. In the meanwhile,

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we have had numerous examples of corporate excesses, we have numerous examples of corporations' failing, corporations' failing to be properly regulated, etc. Even today, I think the regulation of corporations by the Department of Company Affairs leaves much to be desired. For a long time, thousands of companies, which did not even file returns, continue to remain on the register. The Department was either sleeping on the job or was lazy and did not even strike out these names from the register. Now, I am told some effort has been made and about a hundred thousand companies have been struck off the register. How many more remain, I do not know. Thousands of companies did not file returns and no action was taken. I sincerely hope that the administration of the Department is tightened, made stronger, more effective and more professional people are brought into the administration of companies. We cannot imagine a business world today without a joint stock company. The joint stock company is, perhaps, one of the most innovative mechanisms to mobilise capital and to start a business and create wealth. The joint stock company has gone through several transformations. We are going through one now when we are amending the 2013 Act. While we make this transformation, I think we should keep in mind that these joint stock companies must be

regulated. They must be regulated with a great degree of certainty, so that the people know what shall be done and what shall not be done.

(Contd. by PB/2J)

PB-RPM/2J/2.35

SHRI P. CHIDAMBARAM (CONTD.): While I therefore broadly welcome this Bill, I would once again urge the hon. Finance Minister to identify the special provisions that he wishes to make for small and medium companies and make a separate Chapter for those companies rather than do it in the Companies Act. Thank you, Sir.

(Ends)

MR. DEPUTY CHAIRMAN: Thank you Mr. Chidambaram. Now Shri Ajay Sancheti. BJP's time is 29 minutes. You have two speakers.

श्री अजय संचेती (महाराष्ट्र): डिप्टी चेयरमैन सर, मैं आपके सामने इस कंपनीज़ अमेंडमेंट बिल के बारे में चर्चा करने के लिए खड़ा हुआ हूँ। यह बिल वर्ष 2013 में लाया गया और समय-समय पर इसमें अमेंडमेंट तथा चेंजेज होते रहे। यह बिल स्टेंडिंग कमेटी ऑन फाइनेंस को रेफर किया गया था, जहां मुझे इसे समझने का मौका भी मिला, डेलिबरेशन्स हुए तथा इस बिल पर चर्चा भी हुई। गवर्नमेंट का जो पक्ष है, वह अधिकारियों द्वारा रखा गया। सभी पार्टीज के सदस्यों ने अपनी बात रखी और सजेशन्स दिए। जो-जो सुझाव उन्हें लगे कि ये-ये करने चाहिए, वे भी उन्होंने दिए।

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सर, सभी स्टेकहोल्डर्स को जो कॉर्पोरेट गवर्नेंस में मैटर करते हैं, चाहे वह इंस्टीट्यूट ऑफ चार्टर्ड एकाउंटेंट्स हो, इंस्टीट्यूट ऑफ कॉस्ट्स एंड वर्क्स एकाउंटेंट्स हो, इंस्टीट्यूट ऑफ कंपनी सैक्रेटरीज़ हो, फाइनेंशियल इंस्टीट्यूशन्स हों, इंडस्ट्रीज रिप्रेजेंटेटिव्स हों या उनमें काम करने वाले लोग हों, उन सभी को बुलाया गया। एक्सपर्ट्स को बुलाया गया और सभी से बातचीत हुई। जितने भी लर्नेड लोग वहां आए, उन्होंने अपनी बात रखी और अपने सुझाव दिए। मुझे बताते हुए बहुत खुशी होती है कि स्टैंडिंग कमेटी ऑन फाइनेंस ने युनेनिमसली रिक्मंड किया। जितनी भी बातें थीं, वे होती गईं और उसमें सभी पक्षों के लोग थे। सब को सुनने के बाद में unanimously it is recommended and the report was tabled in the Parliament.

सर, 'Ease of Doing Business' हो, इन्वेस्टर्स का प्रोटेक्शन हो, कंपनीज की वर्किंग स्मूथ हो, एफडीआई को बूस्ट मिले, फाइनेंशियल करप्शन कम हो, सरकार के पास कम से कम कामों के लिए जाना पड़े, तब देश में व्यापार बढ़ता है। आज तो यह स्थिति है कि छोटे से छोटे चेंजेज के लिए गवर्नमेंट दफ्तरों के चक्कर काटते रहिए और कई बार उनके एप्रूवल्स मिलने में इतना समय निकल जाता है कि उसकी सेंक्टिटी ही खत्म हो जाती है। उसे कम से कम करने के लिए इन सभी उद्देश्यों को ध्यान में रखकर यह कंपनीज अमेंडमेंट बिल लाया गया है। After all kind of deliberations in the Standing Committee, it was an experience that rising above the politics, all the Members of the Committee unanimously recommended this Bill to the Parliament.

सर, देश में जब स्ट्रक्चरल चेंजेज करने होते हैं, तो अलग-अलग जगह, अलग-अलग नियमों को या अलग-अलग बिल्स को बदलना पड़ता है और उनमें अमेंडमेंट करने पड़ते हैं। अभी फाइनेंशियल सेक्टर की जो रिस्ट्रक्चरिंग हो रही है, उसमें चाहे डिमॉनेटाइजेशन हो, इंट्रोडक्शन ऑफ जीएसटी हो, कंपनीज बिल अमेंडमेंट हो, यह सारा एक इन्क्लूसिव एफर्ट है, जिससे सिस्टम को क्लीन करने में मदद मिलेगी, व्यापार भी ग्रो होगा और इथिकल प्रैक्टिस अपनाने वालों को इंसेंटिव भी मिलेगा।

(2 K/पीएसवी पर जारी)

PSV-SKC/2K/2.40

श्री अजय संचेती (क्रमागत): जो इस सिस्टम को नहीं मानेगा, उसके लिए बहुत कड़े प्रावधान भी इस बिल में किये गये हैं।

सर, सभी सरकारों ने समय-समय पर देश में कम्पनीज के हित में काम किया है, उसके लिए जो भी नियम बनाने हैं, बिल बनाने हैं, वे काम किये हैं। लेकिन उन सभी कमियों से उसको आगे ले जाकर, इस मोदी सरकार ने इस दिशा में यह जो फाइनेंशियल सेक्टर की रिस्ट्रक्चरिंग है, उसको ध्यान में रख कर यह बिल लाया है। सर, आज समय की माँग है कि सिस्टम ट्रांसपेरेंट हो, red-tapism कम हो, गरीबों को उनका हक मिले, इसीलिए इस सरकार का स्पष्ट नजरिया है। सर, मैं जो कहने जा रहा हूँ, वह सिर्फ इस बिल से सम्बन्धित है। Either fall in line or face the consequences. This is pertinent to this Bill only.

सर, देश में अगर व्यापार ठीक चलेगा, इंडस्ट्री ग्रो होगी, तो इससे सरकार का रेवेन्यु बढ़ता है। इससे राज्यों का भी फायदा है और केन्द्र सरकार का भी फायदा है। अंत में, इस पैसे का उपयोग देश के शोषित, दलित, पीड़ित, गरीब, समाज का जो अंतिम व्यक्ति है, उसको मेन स्ट्रीम में लाने के लिए किया जाता है। इस बिल के पास होने से युवाओं को, स्टार्टअप्स को बूस्ट मिलेगा और रिस्क लेने का एपेटाइट बढ़ेगा। सर, जो विदेशी कम्पनीज़ हैं, वे यह देखती हैं कि सरकार की नीति कितनी स्पष्ट है, वहाँ के नियम कितने स्ट्रेट हैं। उनको देख कर ही वे कहती हैं कि अब हम लोग इन्वेस्ट करने के लिए तैयार हैं। जब इन्वेस्टमेंट आती है, तो उससे न सिर्फ रोजगार बढ़ता है, बल्कि देश की इकोनॉमी भी उसके साथ ग्रो करती है।

सर, सबसे बड़ी बात जो है कि छोटी-छोटी कम्पनीज़ के कम्प्लायंस करने की जो समस्या है, वह इस बिल से बहुत कम हो जायेगी। अभी former Prime Minister, sorry, Finance Minister, learned Shri Chidambaram जी ने कई सुझाव दिये कि छोटी और बड़ी कम्पनीज़ को ...(व्यवधान)....

MR. DEPUTY CHAIRMAN: So, you want him to become the Prime Minister! ...(Interruptions)...

श्री अजय संचेती: नहीं, मेरे कहने का मतलब यह नहीं था। मैं बोलते-बोलते यह बोल गया। ...(व्यवधान)...

सर, उन्होंने भी छोटी कम्पनीज़ के बारे में कहा। मेरा अपना मानना है कि इस बिल के पास होने से छोटी कम्पनीज़ के compliances इतने कम हो जायेंगे कि उनको

सरकार के पास भी कम जाना पड़ेगा और बीच में जो चार्टर्ड अकाउंटेंट्स और अन्य लोगों की मदद लगती थी, उनकी भी जरूरत काफी कम हो जायेगी, क्योंकि एक सिस्टमेटिक एप्रोच में काम करने का.. एक क्लिक पर आपके कई काम हो सकेंगे।

सर, आप सारे अखबार उठाकर देख लीजिए। जब यह बिल स्टैंडिंग कमेटी ने पास किया और उसके बाद खबर आई कि स्टैंडिंग कमेटी ने सर्वसम्मति से इसे पास किया, तो अपने आप देश में FDI में लोगों की रुचि बढ़ने लगी और लोगों ने काम करना भी शुरू कर दिया और उस दिशा में काम बढ़ा भी है। इसको अगर आप कोई प्रमाण के रूप में देखना चाहें, तो पॉपुलर चीज़ यह होती है कि इकोनॉमी कैसे ग्रो हो रही है, आप देश का सेंसेक्स देख लीजिए, इंडेक्स देख लीजिए। वह पहले क्या था और इस बिल को लाने की जब बात हुई, सिस्टम की कम्प्लीट रीस्ट्रक्चरिंग की बात हुई, उसके बाद कितने चेंजेज़ हो रहे हैं, it is rising day by day. मैं इसके लिए आदरणीय प्रधान मंत्री जी, वित्त मंत्री जी, हमारे नये वित्त राज्य मंत्री जी, मंत्रालय के तमाम अधिकारी, जिन्होंने बहुत मेहनत से इस बिल को बनाया, उन सब को बहुत-बहुत बधाई भी देता हूँ।

सर, इंडस्ट्री को बढ़ाना है, व्यापार ग्रो होना है, लेकिन इसके साथ में उसकी ethical accountability को बढ़ाना भी बहुत ज्यादा जरूरी है, छोटी-छोटी इंडस्ट्रीज़ को प्रोटेक्ट करना बहुत जरूरी है। इसलिए गलत काम करने वाले उद्योग, उनके मालिक, उनके एडवाइजर्स, सभी के लिए इसमें कुछ कड़े प्रावधान भी हैं। कभी-कभी सरकार की मंशा किसी को दंडित करने की नहीं होती है या किसी भी बिल में यह इसलिए नहीं लाया जाता है, लेकिन लोग उसका दुरुपयोग करते हैं। कई बार आप

देखेंगे कि जब कम्पनीज में डायरेक्टर्स की बात होती है कि 7 होने चाहिए या 5 होने चाहिए, तो समय के अनुसार बदलते जाते हैं। घर के आदमी हों, नौकर हो, सबको उसके अन्दर डायरेक्टर बना दिया जाता है। उसे पढ़ना-लिखना आता है या नहीं, इसे भी कोई चेक नहीं करता। इसलिए आज समय की जरूरत है कि जितने इंडिपेंडेंट डायरेक्टर्स हैं या डायरेक्टर्स बोर्ड के ऊपर भी जो हैं, वे सिर्फ तनख्वाह लेने के लिए या सिटिंग फीस लेने के लिए ही नहीं हों, बल्कि उनकी कुछ रिस्पॉसिबिलिटी भी फिक्स होनी बहुत जरूरी है। इसलिए इस बिल में उसके लिए भी कुछ प्रावधान किये गये हैं।

(2एल/वीएनके पर जारी)

VNK-HK/2L/2.45

श्री अजय संचेती (क्रमागत) : सर, पहले जितने भी ये सिस्टम्स हुआ करते थे, अगर यह इन्क्लूसिव सिस्टम नहीं है, तो बड़ा पुराना तरीका है कि सरकार कदम उठाती जाती थी और इस तरह से एक वॉल क्रिएट करती थी और व्यापारी उससे बाहर निकलने के लिए उसके अंदर एक विंडो क्रिएट कर लेता था। इस बिल के पास होने के बाद उसमें बहुत तरह से कमी आ जाएगी, ऐसा मुझे पूरा विश्वास है।

सर, मैं आंकड़ों में उलझना नहीं चाहता कि कौन-से अमेंडमेंट्स से या कौन-से सेक्शन्स से क्या फायदे होंगे, it is with all the Members, and hon. Minister will reply to this when he will reply on this Bill.

सर, मैं सभी सदस्यों से यह अपील करना चाहता हूँ कि इस बिल को उसके सभी प्रावधानों के साथ सर्वसम्मति से पास करें और इस प्रकार से इस बिल का मार्ग प्रशस्त

करें ताकि आने वाले दिनों में कंपनीज़ को सुचारु ढंग से चलने में और देश के इकोनॉमिक रिफॉर्म्स को ठीक गति में लाने में हम सबको इससे मदद मिल सके, बहुत-बहुत धन्यवाद।

(समाप्त)

MR. DEPUTY CHAIRMAN: Now, Shri Sanjay Seth, संजय जी, आपकी पार्टी का समय 9 मिनट है और आपकी पार्टी से दो स्पीकर्स हैं, so, keep it in mind. I cannot allow more time.

श्री संजय सेठ (उत्तर प्रदेश) : उपसभापति महोदय, आज कंपनीज़ के बारे में बहुत कन्फ्यूज़न्स चल रहे हैं, रोज अखबारों में कंपनियों के बारे शिकंजा कसने की बातें चल रही हैं। अभी हाल में यह बताया गया है कि नोटबंदी और जीएसटी के बाद एक लाख कंपनियां बंद हो गई हैं और तकरीबन दो लाख कंपनियां जांच के घेरे में हैं। प्रवर्तन निदेशालय और बाकी जांच एजेंसियां इन सबकी जांच कर रही हैं। इन सबसे एक आम व्यापारी को कंपनी बना कर काम करने में बहुत डर लगने लगा है। ऐसे माहौल में जो कंपनी (संशोधन) विधेयक लाया गया है, इसके पास होने के बाद इन सबको काम करने में सुगमता होगी और इसके लिए मैं सरकार को बधाई देता हूँ।

सर, इस संबंध में मैं यह कहना चाहता हूँ कि सरकार जो संशोधन लाई है, उसमें अभी कुछ और बदलाव की जरूरत है और इस संबंध में मैं कुछ सजेशन देना चाहता हूँ। इसके तकरीबन 6 नियमों में मैं बदलाव चाहता हूँ और सरकार से यह निवेदन करता हूँ कि वह इन पर ध्यान दे और इनको बिल में इन्कॉरपोरेट कराए।

इसके Clause 4 Sub-section (5) में कंपनी के नाम के अप्रूवल के बाद पहले 60 दिन का समय दिया जाता था, जिसको अब घटा कर 20 दिन कर दिया गया है। मैं यह चाहता हूँ कि इसको 60 दिन ही रखा जाए, क्योंकि 20 दिन में एक छोटे व्यापारी के लिए कागज जमा करना बहुत मुश्किल हो जाता है।

मैं दूसरा अमेंडमेंट जो चाह रहा हूँ, वह यह है कि इसके Clause 10 के अंतर्गत प्राइवेट प्लेसमेंट के द्वारा जो शेयर एलॉटमेंट मनी एक कंपनी को मिलता है, वह इस अमेंडमेंट के बाद कंपनी जब तक पीएएस-थ्री के द्वारा रिटर्न फाइल न कर दे, तब तक उस मनी को अपने काम में यूज नहीं कर सकती है, इस प्रकार से वह पूरा का पूरा धन आइडल पड़ा रहेगा। मैं यह चाहता हूँ कि इस नियम में बदलाव होना चाहिए ताकि कंपनी रिटर्न भरने से पहले भी उस धन का यूज कर सके।

सर, इसके अंदर जो एक बदलाव किया गया है और वह यह है कि DIN नंबर की जगह कोई और identity number करने की है। DIN नंबर के द्वारा कंपनी के निदेशकों की पहचान होती थी तथा कोई भी व्यक्ति DIN नंबर के द्वारा उस व्यक्ति के बारे में पूर्ण जानकारी प्राप्त कर सकता था कि वह किस-किस कंपनी में निदेशक है और किस कंपनी में उसका क्या stake है। लेकिन इस नियम में बदलाव के बाद जो नया identity number होगा, उससे एक confusion की स्थिति बनी रहेगी।

सर, independent Directors के बारे में बताने के लिए मेरे पास बहुत प्वाइंट्स हैं। बड़ी कंपनियों में independent Directors मिल जाते हैं, लेकिन छोटी कंपनियों में independent Director मिलना बहुत मुश्किल हो जाता है, क्योंकि उसके अंदर कई

शर्तें हैं कि उसका दो साल से कंपनी के साथ कोई वित्तीय संबंध न हो, उस कंपनी के डायरेक्टर से किसी प्रकार को कोई संबंध न हो, इसलिए छोटी कंपनियों में independent Directors मिल नहीं पाते। इस संबंध में हाल ही में कोर्ट ने किसी केस के संबंध में यह कह दिया कि independent Directors अपनी संपत्ति को बेच नहीं सकते हैं या अलग नहीं कर सकते हैं।

(2एम/एनकेआर-केएसके पर जारी)

NKR-KSK/2M/2.50

श्री संजय सेठ (क्रमागत) : इसलिए independent Directors के संबंध में इसमें कुछ clarity होनी चाहिए ताकि वे लोग भी छोटी कम्पनियों में आ सकें। आज इस मामले में सबको व्यावहारिक परेशानी हो रही है।

महोदय, पहले Companies Act, 2013 के Section 149 के अनुसार कम-से-कम एक महिला का कम्पनी बोर्ड में लाना compulsory था। परन्तु देखने में आता था कि ज्यादातर कम्पनीज़ में केवल Promoter या Stock Executives के पदों पर उन्हीं परिवारों के सदस्यों को नियुक्त कर लिया जाता था। मैं चाहता हूँ कि कम्पनीज़ एक्ट में ऐसा परिवर्तन लाया जाए ताकि बाहर से भी महिलाएं आकर कम्पनियों में Director बन सकें।

Companies Act का Section 135 CSR से संबंधित है। अभी जो व्यवस्था है, उसके अनुसार जहां बड़ी कम्पनियां स्थापित हैं, जहां वे व्यापार कर रही हैं, उसी लोकल एरिया में वे अपने CSR का पैसा use कर सकती हैं। आप जानते हैं कि देश की

ज्यादातर बड़ी कम्पनियां महाराष्ट्र, गुजरात या कर्णाटक जैसे राज्यों में हैं। उदाहरण के लिए Infosys या अन्य IT Companies इन्हीं राज्यों में हैं और वे सारे का सारा CSR का पैसा उसी इलाके में खर्च कर देती हैं। उत्तर प्रदेश में देश की 16 परसेंट population है, बिहार में भी काफी आबादी है, लेकिन वह पैसा इन राज्यों में नहीं आ पाता। मैं चाहता हूँ कि Companies Act में ऐसा प्रावधान होना चाहिए कि जिस स्टेट में कोई कम्पनी जितना व्यापार कर रही है, उतनी परसेंटेज में वह कम्पनी CSR का पैसा वहीं use करे, ताकि उन स्टेट्स का भी development हो सके। आज CSR का पैसा हमारी जैसी स्टेट्स में आ ही नहीं पाता है।

इन सारे बदलावों के साथ बिल में जो संशोधन लाए गए हैं, मैं उनका पूरी तरह से समर्थन करता हूँ और चाहता हूँ कि सरकार मेरे द्वारा सदन में प्रस्तुत सुझावों पर भी ध्यान दे और बिल में आवश्यक प्रावधान करे, धन्यवाद।

(समाप्त)

MR. DEPUTY CHAIRMAN: Now, Shri Vivek Gupta. Your party time is six minutes.

SHRI VIVEK GUPTA (WEST BENGAL): Sir, I thank you for giving me an opportunity to speak here today. I was just recalling the last occasion when I spoke on this Bill, and for that, Sir, I would like to refer to a document, which is the Statement of Objects and Reasons. It reads, "Amendments of the Act were carried out through the Companies (Amendment) Act, 2015, to

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address the immediate difficulties arising out of the initial experience of the working of the Act and to facilitate “Ease of Doing Business”.” During the consideration of the Companies (Amendment) Bill, 2015, in the Rajya Sabha -- this is where I come. I had also raised this issue -- views were expressed that more amendments would be required. Sir, the Companies Law Committee was, therefore, constituted consisting of representatives of various sections.

Sir, history is repeating itself. I had said this in 2015 and I am forced to repeat it today that again, this Bill is inconclusive. It is not going to address all the issues and concerns that are faced by the Indian industries or corporates or SMEs and we are again going to take the time of the Parliament and bring up another Bill within one or two years. This is not my prediction; this is the reality. I hope the hon. Minister considers this and takes some corrective action.

Sir, just now, the speaker before me said that गवर्नमेंट ऑफिस के चक्कर लगाने पड़ते हैं। I completely agree with that. But, Sir, none of the provisions of this Bill solves any of those problems. I would invite the hon. Minister, through you, Sir, to at least visit various Registrar of Companies offices. He can make surprise visits and see what the conditions are. Why is there so

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much of crowd? Why do so many Company Secretaries keep standing there, getting their issues resolved? When the entire system is computerized, when every filing is online, why people still have to go there? And, Sir, you know how the system works in India.

Sir, I do not want to repeat, but I am forced to repeat certain things. Some changes are little threatening or little frightening. Regarding removing of object clause, I would like to say that various Supreme Court judgments and Income-Tax Act, at various places, refer that a specific exemption is available only if that is mentioned in the object clause.

(Contd. by 20 – GSP)

GSP-DS/2.55/2N

SHRI VIVEK GUPTA (CONTD.): Sir, I do not know how the Government plans to harmonize these things because it will become a future problem. Sir, regarding the private placement, on the one hand, the Government speaks about removing two lakh companies, dormant companies and says that they want to get tough on money laundering, but, on the other hand, they will be making money laundering much easier if these restrictions are removed. I do not know how they propose to resolve this conflict between one arm of the Government and the other arm of the Government. Same is

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the case with forward dealing, layers of subsidiaries, etc. All this is in complete contradiction to what the Government says at other places.

Sir, an interesting aspect of this Bill, which was not mentioned by any hon. Member, and, probably, which escaped the attention of the Minister also, is 'deposit insurance'. Through this Bill, the provision for giving deposit insurance is being done away with. Sir, already, the whole nation is raising an outcry on the FRDI Bill's bail-in provisions under which my fixed deposit with the bank can be used to repay the bank's liabilities, and, now, the company deposits are also not going to be safe. Are we going to tell the people of India that they should not go in for fixed deposits with companies or banks? Sir, I think, this is a very, very serious thing and the Minister should take note of it and give a proper answer.

Sir, now I come to section 185 which is relating to loans to directors. Sir, I need not name anyone but regarding the case of a former Member of this House who is no longer in this country, the hon. Prime Minister made an announcement that a special law will be made to bring him back and bring back all the money that he has taken away. Sir, I think, section 185 will make it easier for him or persons with such intentions to not only take

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money out of the country but take money out of the company also, which is the public money.

Sir, hon. ex-Finance Minister, Shri Chidambaram ji, spoke about SME. I completely agree with him and I want to echo him that 40 per cent of the GDP is being provided by the SMEs. However, the formula 'one size fits all' or one law catering to everybody is an experiment which has already failed. Sir, when a lot of provisions of this law are so draconian that it is impossible for an SME to comply with those provisions, we would request the hon. Minister to consider this aspect. What do we expect out of small and medium companies? Should they go in for Make in India or should they end up doing compliances which is not applicable for them?

Sir, an interesting issue is that the Companies Law Committee made a lot of recommendations. Some of them have not been approved. We would like to know from the hon. Minister in his reply as to why were they not approved. Sir, let me bring to your notice one of them. Earlier, the definition of a resident of India was that he has to be resident for twelve months. Now, that definition has been done away with. Now, anyone can just fly in, become a director from day one and we would never know what connection he had with India, and, Sir, if we have to ever lay hands on him,

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he would go back to his country because the law of the land will not be applicable to him. ...(Time-bell)... Sir, I will conclude in one minute.

Sir, the new Insolvency ordinance is also a case in point. Whenever we are trying to define relatives or anything, it has been done in such a manner that no companies can bid. The word, 'corporate shareholder' appears in so many sections and it has got so much confusion. I would like the hon. Minister to provide some clarity on it and, if possible, make these amendments in this Bill itself.

Sir, last but not the least, this Bill, again, fails to address the differences with various other Government Bills, namely, the RBI Act, the SEBI Act and the Income Tax Act. Previously also, I had said it, and, today again, through you, Sir, I want to say this to the Minister. Let me take the example of the issue of depreciation. It is different in this Act and it is different in the Income Tax Act. Similarly, there are some provisions in the RBI Act, the SEBI Act or the Companies Act, which do not go with each other. Please remove such differences and give us clarity. Thank you.

(Ends)

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MR. DEPUTY CHAIRMAN: Now, Shri Harivansh. Your party's time is four minutes; I am sorry. ...(Interruptions)... I have to remind you; it is my duty.

(Followed by SK/20)