

MCM-SK/20/3.00

श्री हरिवंश (बिहार) : माननीय उपसभापति जी, कंपनी (संशोधन) विधेयक, 2016 कम्पनी अधिनियम, 2013 का मुख्यतः संशोधन है। माननीय मंत्री जी ने इस बिल के बारे में जो मकसद बताया, वह तीन महत्वपूर्ण चीजें हैं। पहला, ईज ऑफ डूइंग बिजनेस, दूसरा, कॉर्पोरेट गवर्नेंस में सुधार और तीसरा, डिफॉल्ट करने वाली कंपनियों के खिलाफ सख्त कार्यवाही। ये अच्छी चीजें हैं। साथ ही मेरी उनसे यह अर्ज होगी कि कॉर्पोरेट सोशल रिस्पॉसिबिलिटी के तहत वह एन्श्योर करें कि कंपनियां वाकई उन इलाकों में काम करें जहां उनकी यूनिट्स हैं, जो गरीब और पिछड़े इलाके हैं। इस बिल का कुल मकसद, मर्म बताया गया कि प्रमोट, ग्रोथ विद एम्प्लॉयमेंट। यह महत्वपूर्ण भी है और इसके पीछे का इतिहास बड़ा रोचक है। 1991 में इस देश की अर्थव्यवस्था की प्रणाली का स्वरूप बदला, लाइसेंस कोटा परमिट राज के पुराने माहौल से निकालने के लिए कंपनी एक्ट, 1956 में बदलाव की 1993, 1997, 2003 में कोशिश हुई, लेकिन वह सफल नहीं हो सका। अंततः 50 वर्षों बाद 2013 में कंपनी एक्ट कानून बना। अनेक स्टेकहोल्डर्स के सुझावों के बाद बेहतर कॉर्पोरेट गवर्नेंस के लिए यह कानून बना। उसकी 5 विशेषताएं बताई गईं। पहला, कंपनी संशोधन विधेयक, 2016 से मौजूदा कानून में जो अस्पष्टताएं, एम्बिग्युइटीज़ हैं, वे खत्म होंगी। दूसरा, लाइसेंस राज के दौरान सरकारी रिपोर्ट्स का स्वरूप जो जटिल और उलझा था, उसे आसान और सुविधाजनक बनाया गया। तीसरा, स्टार्टअप्स को प्रोत्साहन मिलेगा, चौथा, उद्योग बढ़ाने के अनुकूल माहौल होगा और पांचवां, कंप्लाइंस का जो तौर-तरीका, प्रबंधन का

जो तौर-तरीका था, वह आसान होगा। हम जनता दल (यू) की तरफ से इस बिल का समर्थन करते हैं, लेकिन मैं अंत में दो चीजें कहना चाहूंगा। माननीय चिदम्बरम जी बोल रहे थे, उनका ज्ञान, उनकी बातें सुनकर हमेशा अच्छा लगता है। जब उनका जवाब नेता सदन, वित्त मंत्री जी देते हैं वह भी बहुत अच्छा लगता है। उत्कृष्ट वाद-विवाद सुनने को मिलता है। सर, हमारे जैसे लोग जर्नलिस्ट हैं। मुझे याद है जब टाइम्स ऑफ इंडिया में मैं पत्रकार हिन्दी ट्रेनी बनकर 1977 में गया, तो हमारे रिसोर्स पर्सन थे खुशवंत सिंह जी, उन्होंने हम लोगों को बताया कि आप लोग जर्नलिस्ट हैं, यानी सब कुछ थोड़ा-थोड़ा जानें। तो मेरे मन के अंदर दो जिज्ञासाएं हैं, जो आपके सामने रखकर मैं अपनी बात खत्म करना चाहूंगा। इस देश में कंपनियों ने या कॉर्पोरेट घरानों ने जिस तरह से गंभीर गड़बड़ियां और वित्तीय अनियमितताएं की हैं, बैंकों के लगभग 10 लाख करोड़ से अधिक के ऋण डुबोए हैं, शेल कंपनियों ने जिस तरह से पिछले 30-40 वर्षों तक देश को लूटा, एक-एक आदमी सात सौ, आठ सौ शेल कंपनियां चला रहा था और वहां माननीय चिदम्बरम जी जैसे जानकार व्यक्ति बैठे थे, तब यह कैसे हो रहा था, मेरे जैसा जर्नलिस्ट नहीं समझ पाता। एक सांसद ने यह भी आरोप लगाया मैं रिकॉर्ड के आधार पर कह रहा हूं कि 529 शेल कंपनियां राजनेताओं ने बनाईं। क्या ऐसी चीजों पर भी यह कानून रोक लगा पाएगा, यह मैं माननीय वित्त मंत्री जी से सुनना चाहूंगा।

दूसरा, तब दुनिया में गरीबी पर अध्ययन करने वाले सबसे बड़े अध्येता जो आज माने जाते हैं Professor Thomas Piketty उन्होंने भारत की गरीबी का पिछले सौ वर्षों

का अध्ययन किया। उसमें भारत का 2014 तक का अध्ययन है। वे कहते हैं भारत सबसे अनईक्वल सोसाइटी हो गई है। यहां विषमताएं जितनी बढ़ी हैं, कहीं दुनिया में और नहीं बढ़ीं। इसमें कंपनी और कॉर्पोरेट की सबसे अधिक भूमिका रही। माननीय चिदम्बरम जी जैसे लोग लम्बे समय तक सत्ता में रहे, उनके रहते हुए गरीबी का, विषमता का यह भारत कैसे शिकार बना, मैं उम्मीद करता हूं कि अब यह स्थिति कम से कम इनके रहते नहीं बनेगी, यह आश्वासन हम चाहेंगे, धन्यवाद।

(समाप्त)

MR. DEPUTY CHAIRMAN: Thank you. You took only three minutes. This is very good.

SHRI TAPAN KUMAR SEN: Sir, you please transfer that to me.

MR. DEPUTY CHAIRMAN: You concluded your speech within the allotted time. This is very good. I congratulate you. Now, Shri A.U. Singh Deo.
..(Interruptions)..

SHRI P. CHIDAMBARAM: Sir, I want the hon. Member to know that the Finance Minister of this country is not always the Minister of Company Affairs also.

MR. DEPUTY CHAIRMAN: Okay. Now, Shri A.U. Singh Deo. Your party's time again is four minutes.

SHRI A.U. SINGH DEO (ODISHA): Sir, I will finish within that.

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Sir, the Companies (Amendment) Act, 2016 is very welcome. But does it really cover all the aspects that it needs to cover? Hon. Members have mentioned many things which need to be looked into. Sir, one curious aspect of this Companies (Amendment) Bill, 2016 is that when Dr. Moily was the Minister of 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, 6 were partially accepted and different views were taken by the Ministry on the rest 5 recommendations. In 2011, Sir, the revised Bill was introduced and it was again referred to the Standing Committee on Finance by the Lok Sabha.

(Contd. by KR/2P)

KR/2P/ASC/3.05

SHRI A.U. SINGH DEO (CONTD.): Sir, different views and different ways went on. Finally, out of 193 recommendations, 180 were fully accepted. Even so we have situations like the Economic Survey this year which pointed out that top ten companies in India owe Rs.40,000 crore each to the banks. The Directors who run these companies are leading lavish lives at the cost of the

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companies while the corporate itself has many misadventures. So, how does one correct this? That is the essence of the amendment of the proposed Companies Act. The main objective of the Bill as stated by the hon. Minister while introducing the Bill, was to facilitate the ease of doing business and investors' protection. The Bill ensures expansion and smooth functioning of the corporate. But in doing so, the investors' protection should not be at stake.

(THE VICE-CHAIRMAN, SHRI BASAWARAJ PATIL, IN THE CHAIR)

By making these amendments, the Government is ensuring conducive environment for the corporate and facilitating ease of doing business. सर, ये restrictions कुछ लोगों को कर रहे हैं और करना चाहते हैं। इसमें जो चेक्स एंड बैलेंसेज हैं, to have a proper functioning against corporate malfeasance which will have an adverse impact on the investor protection. Corporate should not end up taking undue advantage of these new provisions. The Companies Act, 2013 sets the limit on the number of intermediary companies through which investments can be made in a company. Similarly, it also limited the number of layers of subsidiaries a company can have. The amendment Bill removes these limits. जब आप restrictions को remove कर देते हैं, number of layers of subsidiaries को remove कर देते हैं, that the company can have, it

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will facilitate the Indian companies to expand and become multinationals and also enhance ability which is a good thing. However, it should be noted that it can also give a passage to the establishment of many shell and Ponzi companies. इसका चेक्स एंड बैलेंसेज कहां से आएगा? Has the Government analysed the implications of this which could also give rise to the possibility of money laundering and tax evasion? एक independent Director के विषय में बहुत बंधुओं ने बोला है। The Bill permits an independent Director to have a pecuniary relationship, up to 10 per cent of his total income, with the company. यह independent कहां रहा? जब कम्पनी उसको पैसे देती है, वह independent कहां रहा, जैसा कि मेरे पूर्व वक्ताओं ने कहा है। सर, कम्पनी के ऊपर एक्शन होता है, तो independent Director की भी प्रॉपर्टी और बैंक एकाउंट्स सब फ्रीज हो जाते हैं। इसलिए हमें यह किसी भी एंगल से independent नहीं दिखता है। जो independent रखा जाए, उनके ऊपर जो यह एक्शन होता है(समय की घंटी)... सर, मैं खत्म कर रहा हूँ। The Bill deletes the provision that provides power to SEBI to enforce the insider trading and forward dealing provisions of the Act. I want to ask the Minister what the rationale behind this is. In times when we are looking to make India corruption free and ensure transparency, this particular amendment contradicts with the Government's agenda to do so. We need to make regulations stricter. सर, आपने bell बजा दी है, इसीलिए मैं

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यही कहना चाहूंगा। मेरा एक सजेशन और है, आप उसे सुन लीजिए, मैं इसके बाद अपनी बात खत्म कर दूंगा। At present, Section 62 of the Bill requires number of compliances for issuance of shares such as preparation of offer letter, dispatch of offer letter, etc. But this is only limited to shares. I want to give a suggestion. Section 62 must replace the word shares with securities to include all forms of securities. There should also be a consideration to provide exemption from all compliances except for filing of Board resolution for wholly-owned subsidiaries when they are issuing securities to its holding company for the purpose of ease of doing business.

According to the amendment of Section 149 (3), in case of newly incorporated company, the requirement of 182 days for a resident Director will be proportionately reduced from the date of incorporation. In this regard my suggestion is: The newly incorporated companies should be given some time limit to comply with this requirement instead of having one at the time of filing incorporation papers with the Registrar of Companies. As I said, this amendment Bill has gone through rigorous passage in Lok Sabha and Rajya Sabha and it still needs to be looked into.

(Continued by 2Q)

SHRI A.U. SINGH DEO (contd.): I hope the hon. Minister would take cognizance of it.

(Ends)

THE VICE-CHAIRMAN (SHRI BASAWARAJ PATIL): Shri Tapan Kumar Sen; four minutes.

SHRI TAPAN KUMAR SEN (WEST BENGAL): Hon. Vice-Chairman, Sir, I seek your indulgence about this time-limit. This is such a voluminous Bill that even if I just mention points, it would take more than four minutes. I would not elaborate all the points keeping in mind the time-constraint. I would just make bullet points.

Firstly, I don't find anywhere in the Statement of Objects and Reasons any point about the support for small and medium industries which, I feel, need to be supported. I am not taking it for granted, as Mr. Chidambaram has assumed in his deliberations, that this clause is meant for helping the SMEs. I am not assuming that would happen even if it is there. I fully agree with Mr. Chidambaram that there must be some separate set, some relaxation, some allowance for SMEs. But at the same time, if the same relaxation and allowances are resorted to by large companies, then, practically the whole project of ease of doing business would be converted

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into ease of holding the country to ransom. This has been happening with major private corporate houses, which have created more than Rs. 11 lakh crore worth of NPAs, taking money from banks but not repaying it, and yet enjoying a very honourable status in the society! Also, their income tax dues, after all concessions, are more than four to five lakh crores of rupees a year. Despite all these things already happening, they are again being allowed this sort of liberalisation! In 2013, a comprehensive Bill was passed. Again, you are saying many provisions are needed to be liberalised! I do not think, finally, it is going to do anything good for the ease of doing business, for employment generation. It would, finally, only lead to the ease of holding the country to ransom, as is being seen at present. SMEs, in particular, are facing a decline in our country. All kinds of petty production, petty manufacturing, petty service generating units are facing a decline. There is another thing. A large number of those units, which are being shown as SMEs, are merely proxy companies of big corporate houses. That is the reality! So, in that background, this Bill creates a lot of apprehension in our minds.

Now, I would make a few points quickly in the bullet-form.

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Number one, take major private companies. Do they do business out of their own money? They take money from banks, out of public deposits, and banks supply capital to them. Now, prohibition on Insider Trading was there in the 2013 Act. When that prohibition is lifted, it means you are promoting speculation, without putting the capital into employment generating and wealth generating activities. You are making a way for the draining out of the resources. And those resources are not their own. They have taken loans from banks, ultimately to become subsequent defaulters for this reason, or that reason. You are paving the way and opening the doors for speculation; that is not going to generate employment, as you have mentioned in your Statement of Objects and Reasons. There is absolutely no rationale. I demand of the Minister that he must drop that amendment. The prohibition, the restriction, on Insider Trading must continue. I agree that SEBI provisions, regulatory provisions, must be consistent and compliant in that respect, not merely harmonising.

My second point is about exempting a class of foreign companies from the registration and compliance regime under the Act.

(CONTD. BY KGG/2R)

KGG-LT/2R/3.15

SHRI TAPAN KUMAR SEN (contd.): The foreign companies will be operating here. There is a myth—not necessarily—that they will bring the entire money. They will bring some; then they will raise money from our country. There is a stock market, there is a share market. You are exempting them from compliance regime, altogether. What is the rationale behind it? How will the national interests be served by that, excepting appeasing or pleasing the Government of their home countries? I think, this clause too should be dropped altogether.

Sir, then there is a question of putting many things under the discretionary authority of the Executive by shifting them to be governed by the rules. That undermines the authority of Parliament and it must not be there. We must put it in the legislation because once it is in the body of the Bill, that becomes much more enforceable and justiceable than when you put it in the rules. You are creating a ground for the Executive to ransacking in the name of application or exercise of the rule. It has become the order of the day! Sir, this clause must go. The things should be brought in the body of the Bill and not in the rules.

Sir, you made a lot of music about the 2013 Act saying that you have achieved a great victory by bringing the companies under the corporate

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social responsibility. As a Member of a Parliamentary Committee, I had an occasion to interact with the officials of the Department of Corporate Affairs, and when we said to them that from 2015-16, they need to monitor as to how the private companies were spending money on corporate social responsibility as per the obligation under the law, they said that they had nothing more to do than receiving a statement from them as to why they could not spend money. The matter ends there! There is no enforceability of the provision that private companies are to spend two per cent of their net profit on corporate social responsibility. A lot of noise was made saying that such a revolutionary provision was incorporated in the Companies Act. Now, Sir, we are further diluting it! You are making a provision so that the net profit can be shown less by exempting the items to be included in it so that their obligation under the corporate social responsibility...

उपसभाध्यक्ष (श्री बसावाराज पाटिल) : तपन दा, समाप्त कीजिए।

SHRI TAPAN KUMAR SEN: I am just concluding, Sir.

In two clauses, Clauses 35 & 36, you are completely making farce, a mockery, the provision of corporate social responsibility, practically withdrawing that provision altogether. This is nothing but a mockery. So, Sir, this also should altogether be changed.

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Lastly, there is another point in the Statement of Objects and Reasons on how you are going to bring in accountability. How are you going to eliminate the number of fake companies surfacing? They take money from the market and then vanish. Small investors are held to ransom. How are you going to exercise and establish a proper accountability regime? This amendment initiative does not find a mention of these.

In the name of Ease of Doing Business, you are showing a way to hold the country to ransom. This exercise must stop and this is my demand.

Thank you, Sir.

(Ends)

SHRI NARESH GUJRAL (PUNJAB): Mr. Vice-Chairman, Sir, I welcome the changes being proposed in the Companies Act. The Bill certainly will lead to Ease of Doing Business in the country, a commitment that was made by this Government when it was elected to office. Sir, the objective of every Companies Act is to ensure that the interests of all stakeholders are protected--be it shareholders, employees or the Government. Secondly, it should ensure proper corporate governance. Thirdly, it should ensure that companies are following the various laws of the land in letter and spirit.

(Contd. by KLS/2S)

KLS/2S-3.20

SHRI NARESH GUJRAL (CONTD): However, Sir, while enacting the Companies Act, it is also important to ensure that the cost of compliance does not become prohibitive especially in the case of SMEs which are the backbone of our economy. Therefore, Sir, while this Bill seeks to amend the definition of a small company from a paid up capital of Rs.5 crores to Rs.10 crores and the turnover of Rs.20 crores to Rs.100 crores, the Government should be applauded because this will help SMEs and their cost of compliance will come down substantially. However, Sir, I wish to point out that Section 203 with this Rule 8A, it is illogical. It requires every company with a paid up capital of more than Rs.5 crores to employ a whole time Company Secretary irrespective of the company's turnover. So, there are many companies-- there are eminent Chartered Accountants sitting here, lawyers sitting here-- which are made investment companies or holding companies. They don't transact any business. In a year they may have 15 or 20 transactions. But you are saying that even those companies must have a whole-time Company Secretary. I do not know what is the logic behind this. I have given my amendment and I hope the hon. Minister will look at it although I feel that the rules can be amended and this can be corrected.

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Sir, I feel that the hon. distinguished former Finance Minister has spoken about giving loans by the directors to the companies and loans from companies to directors. These are two things which must be distinguished. These are separate things. One is giving loans to a company by a director. Small and medium enterprises actually function but they are not able to get loans from banks. So they will stop functioning if you prohibit directors from giving loans. However, when a company has to give loans to a director, I agree that some kind of condition must be put there. As I understand the law, today if a loan is given by a company to a director, it is considered a deemed dividend or income in his hand. But yes we can put some limits there so that companies' monies are not misused by the directors. One last thing I would like to mention is that recently there was a Supreme Court judgment which says that in case of a fraud in a company, the properties of an independent director or his grownup and independent children also can be attached. So, this is a very strange judgment and I would say that it is really something which is causing concern to everybody because as it is it is difficult to find independent directors and this will disincentivise anybody from becoming an independent director in a company. I would call it a case of judicial overreach. As I have said, many eminent lawyers are here and I

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do hope that the Government will seriously take it up with the courts because this is something which should not be permitted because if you allow this to happen, then no independent directors will be available for companies. Thank you very much.

(Ends)

SHRI D. RAJA (TAMIL NADU): Thank you, Sir. While agreeing with many points raised by my colleague, Comrade Tapan Sen, I would like to emphasize a few points. Sir, I understand that this particular legislation is nothing but reiteration of the Government to serve the interests of the private capital and provide all possible help to private companies, big corporate companies. If the Government has a different point of view, we can well argue these points. I need not go to Thomas Piketty to show how unprecedented inequalities have emerged in our society. It is not only for India, we are witnessing such a situation across the world.

(Contd by 2T/SSS)

SSS-AKG/3.25/2T/

SHRI D. RAJA (CONTD.): Even the International Monetary Fund has admitted that the neo-liberal economic policies have led to unprecedented inequalities. It is a fact and when we pass such a Bill we should also keep in

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mind how these companies are going to respect the national objectives, the social objectives of our country to make India prosperous. India continues to be poor. The other day, one of the senior Ministers in the Government went to WTO negotiations. He admitted that even today there are more than 600 million people who are below poverty line in India and how these companies are going to help to build a new India, a prosperous India. That is where the Government should answer to the people. Sir, I would like to touch a few issues. After Panama Papers, Paradise Papers, Government came out and made an announcement that many thousands of shell companies have been deregistered or dissolved. What are these shell companies? How did they flourish in India? Which law allowed such shell companies? Now we are amending the Companies Law and we try to build new legal framework to control the companies. How is it going to work? Many things have been said about Corporate Social Responsibility. What is that Corporate Social Responsibility? How these companies really earmark funds, according to the Companies Act, two per cent of the profit? I do not understand, but nothing is happening on the ground. The other issue is, the Prime Minister himself made the promise of creating two crore jobs per year, but recently several big companies have officially announced lay-off. Now,

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my point is, what is the non-discriminatory recruitment policy these companies have? Does any company follow any law in recruitment? If at all any company follows a recruitment policy, is it non-discriminatory? Do they follow the law of the land to provide reservation to all sections, the deserving sections? These are the questions the Government will have to raise, but the Government does not speak on these matters and Government wants to help the corporate houses and private companies. Who are the defaulters? The common people in our country are honest people. The Prime Minister says that the fight against black money is a fight between honest and dishonest people. Who are the dishonest people? The Prime Minister must tell the nation who are the dishonest people, who are really creating fraud on the public sector banks. It is big corporate houses, the Directors of the corporate houses. They take money and do default. It is willful default, but the Government stands helpless to catch hold of the willful defaulters and bring them to face the law of the land. That is why we should look at the issue in a comprehensive manner. When we go for such amendments, these laws, legislations which Parliament enacts will really help the country as a whole, the society as a whole. That is what we should see. Whereas this Government is committed to serve the interest of private capital, the

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corporate houses, big business houses. If Government says, 'no, we don't serve their interest', then whose interest are you serving? That is what I am asking. What is the purpose of all these amendments and independent directors? Even Mr. Chidambaram referred to it and the pecuniary relationship of up to ten per cent. What is this? You are opening up a gate for them to do all frauds and all kinds of malpractices.

(Contd. by NBR/2U)

-SSS/NBR-SCH/2U/3.30

SHRI D. RAJA (CONTD.): That is where the Government should be cautious. When the Government brings in such serious amendments to the Act, it must be cautious, it should keep country's interest, the people's interest in mind before doing anything.

I think, when we enact legislation like this, we will really let down our people and the country. This must be kept in mind by the Government before taking up this Bill for passage by the Parliament. Thank you.

(Ends)

DR. T. SUBBARAMI REDDY (ANDHRA PRADESH): Sir, I thank you for giving me this opportunity to participate in the discussion on the Companies (Amendment) Bill, 2017. Of course, the Bill was introduced in the Lok

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Sabha on 16th March, 2016. Then, it was referred to the Standing Committee. And, now, we are taking it up for consideration.

In one way I am happy since amendments are proposed to change the definition, remove ambiguity, allow greater flexibility, simplifying Memorandum of Association, Ease of Doing Business with procedure simplified, appointment of auditors, continuation of auditors, etc. Here, I would like to say that people should not mistake that every business house or every company or every corporate house is cheating. It is not correct. If that is so, then there would not be any employment and there would not be any growth of the country. Sir, we are a 125 crore population. If 15-20 companies commit mistakes or fraud, or whatever you may call it, you cannot say that everybody is bad. Definitely, we have to support the economy. We have to contribute to the growth of economy. Therefore, this type of amendment is welcome. But, still, more amendments are required in future to remove other ambiguities.

There is a recent judgment of the Supreme Court which says that, for any liability, the independent director is also responsible and his or her family members are also responsible. It is a very dangerous thing. There is no doubt that Supreme Court is the supreme judicial authority. But, still, the

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Parliament is much more supreme. So, this amendment must take place. Otherwise, no independent director will join any company. The very philosophy of independent directors in a company will fail totally. This is very important and this should be understood by all.

Another most important thing is, banks are giving loans for companies to do business. It is their responsibility to look at security, credibility of company, safety and security of loan that it is giving. But, at the same time, they should not insist on personal guarantee of promoters. It was not there earlier. It is introduced recently because a few companies struck into problems due to over business, over trading and ultimately they have been declared as cheaters. I would not agree with it. A company which is in a bad shape is not a cheater. Due to some unavoidable circumstances, sometimes industry may fail. Take power sector for example. Thermal power sector was opened by the Government of India about 15 years ago. Then, everybody started thermal power companies by borrowing money. When they started constructing projects, suddenly, the demand for thermal power disappeared and demand for other energies like hydro and non-conventional raised. So, due to this, thermal power sector collapsed. And, all the companies which have borrowed money from banks and financial

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institutions are in a very, very bad shape. It does not mean that they have cheated. Therefore, I would like to classify people who got struck due to circumstances resulting they themselves are in trouble and also troubling banks. This is one section. The other section is willful defaulters and willfully siphoned money. But, this section is very small. So, you have to bear in mind this also and see that banks should not insist on promoters to give personal guarantees.

Lastly, some promoters are running company. A company is formed by promoters and there are also other directors. But, it is the responsibility of promoters that the company runs smoothly. Sometimes, promoters may give their personal properties as securities to banks. Therefore, there is nothing wrong if promoter also borrows money from companies and companies also give money to promoters. There is nothing wrong.

(CONTD. BY USY/2W)

USY/2W/3.35

DR. T. SUBBARAMI REDDY (CONTD.): I am happy that there is a proposal that by way of a special resolution, the Board can allow the promoters also to borrow money. This is a very welcome step.

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I must also appreciate that the provisions relating to the insider trading and the forward trading are to be omitted from the Act. The requirement of the approval of the Central Government for managerial remuneration above the prescribed limit needs to be replaced with the approval through the special resolution of the shareholders. That is a welcome step.

I would like to say that removing of the restrictions of subsidiaries and investment companies, and exempting class of foreign companies, all are welcome steps.

In conclusion, I would say that this is a united effort of every political party, of every citizen of this country to make the country's business grow, to make the economy grow and to make the employment opportunities grow. These are all inter-linked. All amendments are welcome steps. But, some more amendments are required in the near future.

(Ends)

SHRI V. VIJAYASAI REDDY (ANDHRA PRADESH): Thank you, Vice-Chairman Sir. I, on behalf of the YSR(Congress) Party and on behalf of the President of my party, Shri Y.S. Jagan Mohan Reddy, rise to support this Bill.

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In the interest of shareholders, there are two concerns and three suggestions that I would like to bring to the notice of the hon. Minister of Corporate Affairs.

My first point is with regard to remuneration to Independent Directors. Under the original Act, which was enacted in 2013, the Independent Directors could not have any pecuniary or monetary relationship with the company. Now, this Amendment Bill allows the Independent Directors to have a pecuniary interest up to 10 per cent of the income of the Independent Directors. I honestly feel that this is not in the interest of the shareholders. This could, in fact, compromise the independence of the Independent Directors.

The second concern, which I would like to bring to the notice of the hon. Minister is acceptance of deposits. If a company accepts deposits from its own members — it is not giving deposit to the Directors — according to the original Act, it must satisfy two conditions: One, relating to the security; second, relating to the repayment. Insofar as security is concerned, it should provide deposit insurance.

(MR. DEPUTY CHAIRMAN in the Chair)

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And, insofar as repayment is concerned, a declaration should be given that it has not committed any default, as far as principal and interest is concerned. This is under Section 73(2) of the Act. And, this Bill omits that requirement of providing the deposit insurance, which the former hon. Finance Minister has pointed out.

Another important issue is that it also permits the companies, which have previously defaulted, to accept the deposits as per the Amendment Bill, proposed now, if five years have passed and such earlier defaults have been addressed. The hon. Minister must rethink on this amendment.

(Contd. by 2x – PK)

PK-PSV/2X/3.40

SHRI V. VIJAYASAI REDDY (CONTD.): Sir, I have three suggestions to make. One is, reforms relating to the independent Director. Sir, the Companies Act allows the independent Directors to be appointed initially for a period of five years; he can be reappointed for another period of five years; and, all together, ten years. If a person who is a Director, who is supposed to act in a fiduciary capacity, continues to be in the company as an

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independent Director for a period of ten years, obviously, he will develop some vested interest in that. Therefore, it is not advisable in the amended Companies Act to allow an independent Director to continue for ten years.

Sir, my second suggestion is this. According to me, an independent Director will be appointed by whom? He will be appointed by the management. After all, he will be the person who is very close to the management, and it should not be the case. In fact, I sincerely feel that there has to be a statutory body insulated from the promoters or dominant promoters which can recommend the persons to be appointed as independent Directors.

MR. DEPUTY CHAIRMAN: That is a good suggestion.

SHRI V. VIJAYASAI REDDY: Sir, thirdly, and this is my last suggestion. This is about removal of independent Directors. According to the present Act, an independent Director can be removed by passing an ordinary resolution. It should not be the case. My suggestion is, it should be by way of a special resolution, and the person who moves the resolution for removal of an independent Director should not participate in the voting. So, this is my third suggestion. If these three issues are addressed, probably, this will be a very good amendment Bill. There are some lacunae, which I

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would like to point out, but since you are giving only three minutes to me, I conclude here.

MR. DEPUTY CHAIRMAN: No, no. I didn't say anything.

...(Interruptions)..

SHRI V. VIJAYASAI REDDY: Sir, in fact, three minutes have been allowed.

So, I tried to conclude in three minutes ..(Interruptions)..

MR. DEPUTY CHAIRMAN: Anyway, you made very important and valid points.

SHRI V. VIJAYASAI REDDY: Thank you very much, Sir.

MR. DEPUTY CHAIRMAN: Especially about the statutory body for independent Directors.

SHRI V. VIJAYASAI REDDY: And also about removal of independent Directors. It can't be by way of an ordinary resolution. It has to be by way of a special resolution. The person who moves the resolution cannot participate in the voting.

MR. DEPUTY CHAIRMAN: All right. Thank you.

SHRI V. VIJAYASAI REDDY: Thank you very much, Sir.

(Ends)

MR. DEPUTY CHAIRMAN: Within four minutes, you made a good speech.

SHRI V. VIJAYASAI REDDY: Thank you very much, Sir.

MR. DEPUTY CHAIRMAN: Now, Mr. Rangasayee Ramakrishna.

SHRI RANGASAYEE RAMAKRISHNA (KARNATAKA): Sir, I will take only a few minutes. This is about the corporate social responsibility provision --, the CSR provisions in the Companies Act. In the beginning, we did not have any such provision in the Companies Act. This was, almost on an experimental basis, tried in the public sector undertakings. In fact, the Committee on Public Undertakings, conducted a one full-year review of the CSR work in public sector undertakings. I was member of a group at that time. I feel that it is, again, a highly misunderstood and misapplied type of provision. Now, it has been brought into the Companies Act. By the time the Board of Directors approve this, a provision is made and the AGM takes place, the year is lost. There is no provision for carrying forward the unutilised part in the CSR provisions beyond one year. I think there should be some rethinking on whether there should be a CSR provision at all in the Companies Act. But if you want to keep it, keep it on a sound basis. Give them some more time for utilising the provision made. Otherwise, it is

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something which is usually misused or not used. This is what I wanted to say. Thank you very much.

(Ends)

MR. DEPUTY CHAIRMAN: Now, the hon. Minister.

THE MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS

(SHRI P.P. CHAUDHARY): Sir, I extend my thanks to all the Members who participated in the deliberations for passing of this Bill. I would also like to extend my thanks to the former Finance Minister, Shri P. Chidambaram, and other Members.

(Contd. by PB/2Y)

PB/2Y/3.45

SHRI P.P. CHAUDHARY (CONTD.): Sir, some very important issues were raised by the hon. Member, Shri P. Chidambaram. One was with respect to providing 'upper limit' on the fee for late filing, etc. Sir, this is related to Clause 80 of the Bill and Section 403 of the Act. Basically, the earlier provisions allowed for a period of 'up to 300 days' for filing on payment of additional fees without any prosecution. This was viewed as having led to

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increase in non-compliance by companies, especially, with respect to filing of annual returns, financial returns, etc. The changes will bring the necessary seriousness in companies in ensuring timely-filing. The original Companies Act also does not provide for any upper limit to the amount of late filing fee which can be imposed. However, Government takes due care to ensure that any prosecution faced by the genuine companies are addressed timely.

Sir, the second point was with respect to the relatives of auditors. This is related to Clause 42, Section 141(2) of the Act. Basically, the original Section in the Companies Act, 2013 is being retained. I would like to inform the hon. Member that it is being retained. The amendment proposed before its introduction in the Lok Sabha had been dropped. It was suggested basically by the stakeholders at that time, particularly, by the auditors, that disqualification on account of relative-shareholding, etc., with a company was impracticable, too stringent. The proposed original amendments were diluting the requirement which would have led to abuse. It is therefore proposed not to amend the provision and the difficulties, if any, removed by increasing the threshold of shareholding in a company through rules, if

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required. Whenever it is required, we can do it. This would ensure that the independent provisions are not diluted unnecessarily.

The next point which was raised is with respect to insider trading. This is with respect to Clauses 64 and 65, Sections 194 and 195. But I would like to inform the hon. Members that this has also been omitted. The reason being that SEBI through its regulations provides comprehensively for checking insider-trading and forward-dealing. The Companies Law Committee examined this issue in detail, and as the provisions should be appropriate only for listed companies, it will amount to duplication of provisions. So we provide it in Companies Law and, at the same time, the SEBI Regulation, Rules and Act also provide the same thing and the listed companies are being governed by the SEBI Act. In case of any inconsistency between SEBI Act and the Companies Act, then the SEBI Act will have an overriding effect with respect to this issue. That is why it is not required here.

Sir, the next point raised by the hon. Member is with respect to loans to Directors. It is related to Clause 61 of the Bill and Section 185 of the Act. The absolute ban on a Company giving loans to related entities creates problem for normal, genuine businesses also. In order to ensure that there

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are adequate safeguards, it has been included in the Amendment that a special regulation is passed because to raise the finance of the company, its working is also very necessary. So, a special resolution is required to be passed. The amount raised is used only for the purpose of principal business activities of a company. It can't be used for other purposes. Loans can't be extended to individuals or partnership firms.

(Contd. by 2z/SKC)

SKC/2Z/3.50

SHRI P.P. CHAUDHARY (contd.): So, sufficient safeguards have already been provided.

Next, a point was raised about issue of shares on private placement basis. This is with reference to clause 10 of the Bill, Section 42 of the Act. Basically, 'private placement' is a mode of raising finance. It has been an essential part of the Companies Act. It existed in the Companies Act of 1956; it also existed in the Companies Act of 2013. The proposal is for removing procedural difficulties while retaining the safeguards of the maximum number of persons a company can approach for the purpose and stringent penalty for violation, etc., has been provided. So, there is no worry on that part also.

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So far as the question of Independent Directors is concerned, it relates to Clause 46 of the Bill, Section 149 of the Act. The change is basically aimed at retaining the Independent Directors' requirement, but removing the difficulties pertaining to being at an absolute distance from a company. The provision basically is that the requirement of appointment of an Independent Director is not applicable to smaller companies; it is applicable only to large companies. So, there is no issue there. The concept of materiality with respect to Independent Directors is also accepted in SEBI regulations. The materiality of ten per cent is with respect to the income of the Independent Directors, and not the company.

Sir, a point was made by hon. Member, Shri Sanjay Seth, that the earlier provision of 60 days in the Act should be retained. I would say that the amendment also empowered the Central Government to prescribe a higher or lower period as required. Thus, in order to provide flexibility, along with ease of doing business, this provision needs to be retained without any change. This has been deliberated in the Committee. So far as Woman Directors are concerned, presently they come normally from promoters' families, but it has been suggested that women from outside should also be allowed. On this issue, I would say that Section 149 is applicable to listed

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and large public companies and it simply provides for at least one Woman Director on the Board. This would promote gender diversity and has been considered very important. The flexibility provided to a large company may be retained and no change is needed. There is no restriction on an outsider being allowed.

So far as the issue raised by hon. Member, Shri Vivek Gupta, is concerned, the definition of 'Resident Director' and the rationale of change have been questioned. The provision of a Resident Director has been revised in view of the Companies Law Committee recommendation to remove certain inconsistencies in the current year, and not in the previous year. Basically, 'the stay of 180 days' should be with respect to the financial year, and not the calendar year. In the case of the Resident Director for a newly incorporated company, the period of 180 days should apply proportionately. Therefore, these ambiguities are sought to be removed through this Amendment Bill. So, there is nothing to worry on this count. This problem has been redressed in the Bill itself.

Now, hon. Member, Shri Sanjay Seth, had also mentioned that this new kind of Identity number, which is proposed here, may create confusion. In this connection, I would like to point out that the proposed Clauses 47

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and 48 merely seek to empower the Central Government to prescribe any better identification number, if needed. So, this may be implemented after due consultation. It is difficult for small companies to get IDs. So, the provision of IDs has been made applicable only for listed and large public companies, and not for small companies.

Hon. Member, Shri Vivek Gupta, asked about the requirement of mentioning 'specific objects' and how the Bill addresses this problem. In view of the recommendations of the Parliamentary Standing Committee on Finance, the requirement of mentioning objects specifically is being retained. Earlier, it was proposed that it should be amended and they should not be required to state their specific objects. But, finally, it was decided in view of the recommendations of the Parliamentary Standing Committee that this provision should be retained. So, companies would be continuing to state their specific object. In fact, earlier, we had provided in an amendment that they are not required to state the specific object. But, finally, the original provision has been retained -- that they are required to state the specific object in the Memorandum of Assets.

(CONTD. BY HK/3A)

HK-DS/3.55/3A

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SHRI P.P. CHAUDHARY (CONTD.): Therefore, the suggestion made has already been redressed. Another point is made by Shri Vivek Gupta that deposit insurance provision is being removed. So far as the deposit part is concerned, related provisions of the Act and Rules provide for the adequate safeguards for investors; non-compliance is being made non-compoundable offence. So, stringent provisions are there. Since insurance companies have not been offering any insurance product on the companies' deposits, on the recommendation of the Companies Law Committee the provision of deposit insurance was decided to be omitted. Finally, Sir, Shri Tapan Kumar Sen raised the issue with respect to CSR. The CSR issue has also been raised earlier, but certain exceptions are there in the Act itself. With respect to investing or spending the CSR amount in other areas, it is not a mandatory requirement that CSR amount can only be spent where the industry is situated or where the company is situated. It can be spent in other places also. ...(Interruptions)...

MR. DEPUTY CHAIRMAN: His point is that companies are not spending in rural areas. ...(Interruptions)... What will you do for that? ...(Interruptions)...

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SHRI P.P. CHAUDHARY: I would like to inform that our Ministry has taken the action. We have also issued notices to all the companies which are not spending. This is a new law. This law was first enacted in 2014. Therefore, ...(Interruptions)... Just a minute. ...(Interruptions)...

SHRI TAPAN KUMAR SEN: The law does not have any provision even to ask for the explanation. Kindly read your law yourself and you are further deregulating it. ...(Interruptions)...

SHRI P.P. CHAUDHARY: Just a minute. ...(Interruptions)... Basically, we cannot mandatorily make it because ...(Interruptions)...

SHRI TAPAN KUMAR SEN: You are making it mandatory for the Public Sector Companies. ...(Interruptions)..

SHRI P.P. CHAUDHARY: Just a minute. Please listen to me. ...(Interruptions).. Initially, for a period of two or three years, we are persuading the companies and making them acquainted that this is a provision. ...(Interruptions)... And for some of the companies which could not spend their CSR amount ...(Interruptions)...

MR. DEPUTY CHAIRMAN: You cannot enforce it. ...(Interruptions)...

SHRI P.P. CHAUDHARY: No; we have issued notices and action is ...(Interruptions)... Just a minute. ...(Interruptions)... Total number of active

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companies are 11,74,000. Out of those companies, some of the companies which are covered under the CSR spending, and with respect to all those ... (Interruptions)... Just a minute. ... (Interruptions)...

SHRI JAIRAM RAMESH: Sir, CSR has become PSR. It has become Political Social Responsibility and this is the greatest danger in CSR, that is, the politicization of what the company should spend, where they should spend, particularly if you are a public sector company. I should think that this is the time for an independent audit to make sure that the original objectives of CSR are fulfilled. ... (Interruptions)...

MR. DEPUTY CHAIRMAN: Hon. Minister, you kindly examine whether you can enforce it on companies so that they spend it in rural areas also. ... (Interruptions)...

SHRI P.P. CHAUDHARY: That is why I am making it clear. If you see Section 135 of the Act, along with the Schedule attached with the Companies Act, it is specifically provided -- and requisite amendment has been made -- that it is not mandatory for the company to spend the CSR amount in the same area. Exceptions are there. If they want, they can go outside that area.

MR. DEPUTY CHAIRMAN: If they want! ... (Interruptions)...

SHRI P.P. CHAUDHARY: Hon. Member is saying that it is political. It is not so. Where they can spend it, how they can spend it and under which activity they can spend it have been provided under the Schedule. They cannot go beyond that Schedule. Apart from that, the companies which have not spent their CSR amount, we have already issued notices to 180 companies and action is being taken against those companies which have not spent the CSR amount. That is in the pipeline.

श्रीमती विप्लव ठाकुर : सर, मुझे एक मिनट दे दीजिए। ...(व्यवधान)...

SHRI P.P. CHAUDHARY: So, it is wrong to say that no action has been taken by the Government against those companies. We are taking action against those companies.

(Contd. by KSK/3B)