CHAPTER-V
AMENDMENTS IN THE COMPANIES ACT, 1956

5.1 INTRODUCTION

Company Law a very important corporate law, has undergone major transformation in the last decade. The impetus for such transformation germinated partially from the worldwide move for market oriented polices and partially by disquieting features of globalization, resulting into focused attention on need for Good Corporate Governance. The advancements in information technology and influence of faster means of communications over corporate operations have also provided impetus for such transformation. In other words, the paradigm shift witnessed in the global economy and corporate sector the world over, have cumulatively presented various issues that have triggered debate and become important factors for initiating changes in Company Law in our country and abroad.

The Companies Act, 1956 was enacted with a view to consolidate and amend the law relating to companies and certain other associations. Since its inception, the Act has been amended on various occasions to keep pace with the changing business and economic scenario, emergence of professionalism and spread of portfolio awareness, etc. In the early 1990s, a need was felt to harmonise the Companies Act with the developments taking place the world over to put in place a homogenous regulatory framework for the growth of Indian Corporate sector, and this was reflected in the Companies Bill, 1993. However, in August 1996, a
working Group was constituted which submitted its report in 1997. On the basis of this report the Companies Bill, 1997 was introduced in the Parliament which was referred to the Standing Committee. In the mean time, with a view to tailor the Companies Act to cope up with the changing corporate environment, the Government amended the Act in the year 1996, 1999, 2000, 2001 and 2002 and give effect to various provisions of the Bill of 1997, besides introduction of new provisions. Presently, a Bill to further amend the Companies Act is pending in the Parliament. A brief description of Amendment Acts are given below.

5.2 THE COMPANIES ACT, 1956

The Company Law, in India, is codified, and contained in The Companies Act, 1956. This Act extends to the whole of India, and came in to force on 1st April, 1956. The Companies Act, 1956 is 150 years old and the largest Act in India comprising of 658 Sections and 15 Schedule. In addition thereto, there are various Rules and Regulations notified by the Government under the Act. The Act has been amended from time to time in order to address the issues raised by the corporate sector and to protect the interests of the investors.

Salient Features of Companies Act, 1956

Some of the main features of the Companies Act, 1956, are as follows:

- More stringent provisions relating to promotion, formation and management of companies in order to ensure a minimum standard of good behaviour and business honesty in the promotion, formation and management of companies.
• Extensive powers to the Central Government to intervene directly in the affairs of a company in public interest.

• More rights to members to inspect documents and registers and receive reasonable information regarding the affairs of the company.

• More restrictions on appointment, reappointment, powers and remuneration of managerial personnel with a view to diffuse the concentration of wealth and economic power. For instance: (a) restriction of directorship to twenty companies and that of managing directorship and managership to two companies; (b) restriction on overall managerial remuneration to 11% and that of managing directors or managers to 5%; (c) restrictions on the acceptance of office or place of profit in the company by director; (d) restriction on issue of shares with disproportionate voting rights; and (e) restrictions on inter-company loans, etc.

• Democratization of management to reduce powers of directors, ensure greater voice of the members in management and prevent oppression of minorities. For instance, provisions have been made (a) for more powers to members in the appointment and removal of directors; (b) for more rights to minority shareholders; (c) for proportional representation in the Board which will give some representation to the minorities on the Board; (d) for appointment of two directors by Government to prevent mismanagement and oppression of minorities, etc.
• Recognition to the new institution of Government companies, i.e., companies in which the Central and/or State Governments hold at least 51%, for which special provisions have been made.

• Drastic limitations on the powers and functions of Managing Agents to prevent misuse of their position to the detriment of the interests of shareholders and the company. (This has no relevance now with the abolition of the Managing Agency from 3rd April, 1970.)


Based on the recommendations of Shastri Committee, the Companies (Amendment) Act, 1960 introduced several new provisions relating to various aspects of company management which were overlooked in the 1956 Act.

The Companies (Amendment) Act, 1963 provided for the appointment of a Companies Tribunal and constitution of the Board of Company Law Administration. It also empowered the Central Government to remove managerial personnel involved in cases of fraud, etc.
Based on the recommendations of the Vivian Bose Commission, the Companies (Amendment) Act, 1965 introduced some of the major changes, such as clear definition of the main and subsidiary objects of a company in its Memorandum of Association; strengthening the provisions relating to investigation into the affairs of the company, etc.

The Companies Act was amended twice in 1966. These amendments consisted of four sections only.

Two important changes were introduced by the Companies (Amendment) Act, 1969. The institutions of managing agents and secretaries and treasurers were abolished with effect from April 3rd, 1970. Secondly, contributions by companies to any political party or for any political purpose were prohibited.

The Companies (Amendment) Act, 1974 which came into force from February, 1975 had introduced some important and major changes in the Companies Act, 1956. The object of the Amendment Act was to inject an element of public interest in the working of the corporate sector and to achieve the socio-economic goals set before the country, which will be conducive to greater productivity.

**Salient Features of Amendment Act of 1974**

Some of the salient features of the new Companies (Amendment) Act of 1974 are as follows:

- Some of the powers which were so long exercised by the Court have now been transferred to the Company Law Board. Moreover, the Company Law
Board has been clothed with some powers of the civil court like forming of
Benches to exercise powers of the Board, enforcing attendance of witnesses
and production of documents, etc. Company Law Board benches have been
set up in metropolitan cities of Delhi, Bombay, Madras and Calcutta.

- Restrictions have been imposed on the appointment of former managing
agents or secretaries and treasurers to any office, viz., secretary, adviser,
etc., without the prior approval of the company and the Central
Government.

- Companies are now to deposit unpaid dividends in a separate account in a
scheduled bank and, if these are not claimed within 3 years, to hand over
the same to the Central Government.

- It has been made obligatory for companies to transfer a prescribed
percentage of profits not exceeding 10% to the reserves, before declaring or
paying dividends.

- A limit has been imposed on the number of companies for which statutory
audit can be taken up by an auditor and the appointment or reappointment
of auditors will be subject to such restrictions. In certain cases, appointment
of auditors has been prohibited except with the approval of the company by
special resolution.

- Qualifications of auditor appointed to audit cost accounts have been
prescribed and provisions have been made for appointment of chartered
accountants as cost auditors under certain conditions.
• Before approving the appointment or reappointment of a managing or whole-time director, the Central Government is to see that it is not against public interest and the terms and conditions are fair and reasonable.

• The Central Government has been given power to prohibit the appointment of sole selling agents in certain cases.

• Directors and their associates can no longer hold any office or place of profit with a monthly remuneration of Rs. 500 or more without sanction of the company by special resolution. If the monthly remuneration exceeds Rs. 3,000 prior consent of the company by special resolution and approval of Central Government will be necessary.

• Every company having a paid-up share capital of Rs. 25 lakhs or more is to have a whole-time secretary. Henceforth, all secretaries are to have the qualifications prescribed by the Central Government from time to time and the scope of their functions has also been widened.

• The Central Government has been given powers to appoint as many directors as thought necessary (instead of only two as before) on the Board of Directors of a company in the public interest.

• Appointment of managerial personnel of subsidiary private companies will henceforth require approval of the Central Government.

• All foreign companies having established places of business in India are to keep proper books of account which would be open to inspection by the
Registrar or any officer authorized by the Government. The affairs of their branches will also be subject to investigation, special audit, etc.

- The appointment, remuneration, etc., of managerial personnel of foreign owned companies will henceforth be subject to the approval of the Company Law Board.

The Companies (Amendment) Act of 1977 brought about certain changes in Sections 58A, 220, 293, 620 and 634A. The amended Section 58A empowered the Central Government to grant extension of time or to exempt any company in deserving cases from all or any of the provisions of Section 58A. Section 293 empowered a company to make donations for charitable purposes up to 5% of its average net profit or up to Rs. 25,000 whichever was higher. This section as amended by the Act of 1977 raised the ceiling to Rs. 50,000.

The Companies (Amendment) Act, 1985 was introduced in the Rajya Sabha in May 1985 and was later passed by both Houses of Parliament. The amending Act substituted Section 293A with a new section permitting Non-Government companies to make political contributions, directly or indirectly. In order to give effect to the recommendations of the Committee on Subordinate Legislations (Seventh Lok Sabha) that the Company Law Board should be empowered to reassess compensation on appeal from the order of amalgamation under Section 396, and that the order of amalgamation itself may provide for the
continuation of any pending legal proceeding by or against the transferee company on the lines of the existing provisions of Section 394 of the Act under which the High Court orders amalgamation, Section 396 of the Act was amended.

5.3 THE COMPANIES (AMENDMENT) ACT, 1988

The Companies (Amendment) Bill, 1987, introduced in the Rajya Sabha on 31st August 1987, proposed certain amendments in the Companies Act, 1956. In the statement of objects and reasons it was stated that the proposed amendments were found necessary in the light of the recommendations made by the Sachar Committee and the experience gained in the administration of the Act during the past few years. Another object was to plug the loopholes and lacunae which came to surface during the working of the Act, and also to streamline some of the existing provisions for better administration of the Act.

It may be noted that the Sachar Committee, a high powered Expert Committee headed by Justice Rajinder Sachar, was appointed by the Government to review the working of the Companies Act, 1956 and also the MRTP Act, 1969. The committee submitted its report in August, 1987 dealing with all aspects of the working of the 1956 Act and also covering some new ground. The report was placed before both Houses of Parliament on 30th August, 1987.

The Amendment Bill, 1987 was finally passed by the Rajya Sabha on 27th April, 1988 and later by the Lok Sabha. It received assent of the President on 24th
May, 1988 and became an Act (Act 31 of 1988) of Parliament. In the intervening period, representations had been made by the Institute of Company Secretaries of India, as well as trade and industry, with a view to remove some drafting lacunae noticed in the Bill and also pointing out some practical difficulties. Taking cognizance of these views the Government moved some of facial amendments at the time of passing the Bill and these were duly incorporated in the Amendment Act.

**Salient Features of Amendment Act of 1988**

- It was for the first time that the Companies Act provided that every public company of a certain size shall have a managing or whole-time director. The companies were also given freedom to fix the managerial remuneration on the basis of certain limits.

- Definition of Secretary brought in line with the definition of ‘Company Secretary’ in the Company Secretaries Act, 1980 and includes an individual possessing prescribed qualifications.

- The concept of company secretary in practice was introduced for the first time in the Companies Act. A practising secretary has been authorized to file declaration of compliance under Sections 33 and 149. Every listed company is required to file annual return under Section 161 which must
also be signed by a company secretary, the practicing secretary may also certify that the requirements of Schedule XIII have been complied with.

- The amended Act, among other things, also set up an independent Company Law Board to exercise such judicial and quasi-judicial functions, earlier being exercised either by the Court or the Central Government.

- It also dispensed with the requirement of getting Government approval for managerial appointments and remuneration subject to the fulfilment of certain statutory guidelines which were incorporated in the Act itself.

5.4 THE COMPANIES (AMENDMENT) ACT, 1999

The object of the Amendment Act are to provide certain measures for evolving good corporate governance, better compliance and to provide measures for investor protection and also to bring about further simplification.

Salient Features

- An Investor Education and Protection Fund proposed to be established.

- Companies freed from obtaining prior approval of Central Government for their inter-corporate investments/lending proposals.

- National Advisory Committee on Accounting Standards for companies proposed to be established.
• The Infrastructure Development Finance Company Limited recognized as one of the Public Financial Institutions.

5.5 THE COMPANIES (AMENDMENT) ACT, 2000

Salient Features

• Private Companies and Public Companies to have a minimum paid-up Capital of Rupees 1 lakh and 5 lakh, respectively. This is also applicable to existing companies.

• Change of place of registered office from the jurisdiction of one Registrar of Companies to another Registrar of Companies within the same state requires confirmation from the Regional Director.

• SEBI entrusted with powers with regard to issue and transfer of securities and non-payment of dividend by listed public companies.

• Certain measures included for protecting the interest of small deposit holders in a company.

• With a view to ensuring good corporate governance, voting through postal ballot for important items (as may be notified) were prescribed.

• The period of disbursing dividend including interim dividend reduced to 30 days from the date of declaration of dividend. The amount of dividend declared to be deposited in a separate bank account within 5 days from the date of declaration of such dividend.
• Board of director’s report to include a Directors’ Responsibility Statement to highlight the accountability of directors with a view to ensure good corporate governance.

• Private companies to be excluded in reckoning the number of companies which an auditor can audit.

• A holder of security which carries voting rights in a company to be disqualified for appointment as an auditor of the said company.

• Auditors to report ‘in thick type are in italics’ their observations which have an adverse effect on the functioning of the company.

• A public company having a paid-up share capital of 5 crore rupees or more and 1,000 or more small share holders may appoint at least one director elected by small shareholders (holding shares of nominal value of Rs. 20,000 or less) on the Board of the said company.

• No person can hold office of Director in more than 15 companies at a time.

• Every public company having paid-up capital of not less than Rs. 5 Crores shall constitute ‘Audit Committee’ of the Board.

• For the purpose of managerial remuneration the amount of depreciation to be the same as provided in Profit and Loss Account of the company.

• Companies with paid up share capital of Rs. 10 lakhs or more and which are not required to have whole time secretary in their employment required to file a Compliance Certificate from a Secretary in whole time practice with Registrar of Companies a copy of such certificate shall also be attached with Directors Report.
5.6 THE COMPANIES (AMENDMENT) ACT, 2002 AND THE COMPANIES (SECOND AMENDMENT) ACT, 2002

The object of the Amendment Act is to “facilitate or expedite revival/rehabilitation of sick companies; protection of worker’s interests and, where necessary, wind up of companies in line with the international practices”.

Salient Features

- The existing Company Law Board is proposed to be dissolved and in its place a National Company Law Tribunal (Tribunal) is to be constituted.

- Substantial enhancement in the number of members of the Tribunal. Similarly, the number of Benches would also increase.

- The Tribunal will consist of a President and Judicial and Technical Members. The maximum number of members should not exceed sixty-two. The actual number will be decided by the Central Government, as it may deem fit. The appointments will be done by the Government, by notification in the Official Gazette.

- Setting up of National Company Law Appellate Tribunal (Appellate Tribunal). Appeals against the orders of the Tribunal can be filed with the Appellate Tribunal. Further appeal against the orders of the Appellate Tribunal would lie to the Supreme Court.

- The Board for Industrial and Financial Reconstruction is to be abolished and SICA will be repealed.
• Transfer of all the powers from the BIFR to the Tribunal.

• Transfer of certain powers of the High Court to the Tribunal.

• Greater role for professionals in the administration of Company Law.

• The Amendment Act seeks to transfer powers relating to winding up, mergers and amalgamations from the Court to the Tribunal.

5.7 THE COMPANIES (AMENDMENT) ACT, 2006

The Companies (Amendment) Bill, 2006 was introduced and passed by the Parliament in May, 2006. The Bill received President’s assent on 29th May 2006. Section 4 of the Act, which proposed to insert new Sections 610B, 610C, 610D and 610E was made effective from 16th September 2006 [vide S.O.No.1529E dated 14.9.2006]. Sections 2 and 3 of the Act pertaining to Director Identification Number (DIN) have been made effective from 1st November 2006 [vide GSR 648(E) dated 19.10.2006]. The object of the Amendment Act is to facilitate a healthy growth of the Indian corporate sector under a liberalized, fast changing and highly competitive environment.

In the context of rapid developments witnessed in technology, the Ministry of Corporate Affairs (MCA) decided to enable the operations carried out by the Ministry and its field offices to be performed more efficiently and effectively through the use of contemporary information technology and computers. The MCA, on the recommendations of Department of Information Technology has
implemented an e-Governance initiative through a project names as ‘MCA21’. This project aims at providing the public, corporate entities and others an easy and secure online access to the corporate information, including filing of documents and public access to the information required to be in the public domain under the statute, at any time and from anywhere. The filing and registration of documents is a statutory requirement under the Act. At present, the Act lays down the procedures for filing of various documents in physical form and the processes associated therewith.

**Salient Features**

The provisions of the Companies Act, 1956 allow an individual to be a director of up to 15 companies at the same time and such companies can be located in the jurisdiction of any of the Registrars of Companies. There is a need of individual identity of person(s) including directors of companies. This would facilitate legal action against the directors keeping in view the possibility of fraud by companies. New Sections 266A, 266B, 266C, 266D, 266E, 266F and 266G have been inserted so as to provide for allotment of a unique Director Identification Number (DIN) to all existing directors as well as to those intending to be appointed as directors in future, for the purpose of his identification as such through electronic form and to provide for penalty for any violation in this regard.

The Amendment Act contains provisions for implementing an e-governance programme of the Ministry of Company Affairs (MCA) through a project named MCA21 programme. The major benefits that accrue due to e-filing
are the ease of interaction with all citizens and a near paperless back office
operation at MCA that would improve the level of service drastically. New
Sections 610B, 610C, 610D and 610E have been inserted so as to make provision
for electronic filing system and payment of fees through electronic form which are
essential for successful implementation of the MCA21 project.

5.8 THE COMPANIES BILL, 2009

After the recent Satyam Scam, there has been a lot of debate with regard to
the measures which need to be taken to strengthen the standards of corporate
governance in the country. The Companies Act, 1956, the bulkiest of the Indian
legislations, has always been a piece of enigma. Every major amendment to the
Act in the past had to undergo a tortuous route before becoming a part of the
statute. Somewhere in between the Government thought of replacing the entire Act
by a total new enactment.

The previous two attempts during the years 1993 and 1997 failed as on both
the occasions, the Assent of the Parliament could not be received as the Lok Sabha
was dissolved without passing the Bill. In the meantime, to meet the demands of
Industry, the Government carried out piecemeal amendments by deleting certain
provisions while altering and amending some other provisions. With the view to
review and simplify the entire Act, the Government of India constituted an expert
Committee on Company Law on 2nd December 2004 under the Chairmanship of
Dr. J.J. Irani. The expert committee presented its report to the Government on 31st
May 2005.
After several debates and discussions, the report gave way to a new Bill to replace the Act, eventually culminating in the Companies Bill, 2008. It was introduced in the Lok Sabha during October 2008. However, before the said Bill could be passed by the Parliament, the Lok Sabha was dissolved on account of the general elections in the country. This was the third time that the Companies Bill wanting to replace the Act had to meet the same fate.

The new Government without wasting any time has rechristened the said Bill as the “Companies Bill, 2009” (the Bill) and introduced the same in Lok Sabha on 3rd August 2009. As per the press release, no change has been made in the earlier Bill of 2008, except for the change in the title of the Bill with ‘2009’ being substituted in place of ‘2008’. It is hoped that the Companies Bill, 2009, on its enactment, would provide a modern legislation for growth and regulation of the corporate sector.

The Bill seeks to replace the present Companies Act, 1956 (the Act) which has undergone major amendments over 24 times during the last 5 decades. It has become necessary to replace the Act due to two main reasons. Firstly, it is the bulkiest enactment with over 700 effective sections. At the same time, there are several sections that have been deleted over the years or have been made redundant, but their serial numbers continue to appear in the Act without serving any purpose.
Secondly, the economic scenario has undergone a dramatic change in recent times while the Act has failed to keep pace with it. The need of the changing times is to provide greater self regulation by the companies coupled with strong disclosures backed by professional certification. At the same time, there has to be a strong deterrent for any failure by the companies and their officials to adhere to the law. The Bill has tried to achieve these objectives by keeping a blend of a large number of the old provisions and by adding some new innovative provisions as well.