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Cos Bill has to wait till winter

The passage of the Company Bill has to wait till November. Company affairs minister Prem Chand Gupta is hopeful that the Bill can be placed in the winter session of Parliament. Mr Gupta said, "My efforts would be to ensure that the proposed Act is not referred to the finance committee, so as to avoid delay and I hope to introduce it on the floor of house in the beginning of winter session of Parliament."

Mr Gupta said that the ministry had undertaken the exercise to comprehensively revise the Companies Act of 1956, in order to enable a simplified compact law. He said that the new law would address the changes taking place in the national and global economic scenario.

Indicating his keen desire to enact the proposed Act, Mr Gupta said that he would talk to the chairman of the finance committee, as also to the Speaker of the Lok Sabha, and would explain to them the importance of the Bill. On the issue of Clause 49, he clarified that there was no difference of opinion between the ministry and Sebi, on the number of independent directors. He remarked that the well being of the promoters and shareholders were of paramount importance.

The minister also indicated that there would be a complete overhaul of the working of official liquidation (OL). He remarked that there are 5700 cases pending with different OL's, and certain cases are pending since the last 50 years.

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INTER NATIONAL NEWS

Hony. Editor

Dr. Bindi Mehta

Professor & Chairperson
(Research & Publications)
Narsee Monjee Institute of
Management Studies
(Deemed University)

Ministry against diluting Sebi's regulatory powers

The ministry of finance has made it clear to the ministry of company affairs (MCA) that it would not like to compromise on the role of the Securities and Exchange Board of India (Sebi) as a market regulator.

This is in response to the J J Irani Committee's view that the rule making power for accessing capital from Indian markets should be vested with the central government.

The department of economic affairs (DEA) has sent this comment in response to the J J Irani committee recommendations on proposed amendment to the Company's Act. DEA is a department under the ministry of finance which governs the capital market watchdog Sebi.

The DEA note was prepared with inputs sent by the market regulator. According to sources close to development, Sebi felt that if the company law is amended to have central government as the ultimate rule making body for capital markets, it will nullify the role of Sebi in developing the capital markets.

Sebi, in its note to the DEA, has objected to any plans to amend two sections — Section 77AF and Section 55A — of the Companies Act which encompass a major part of capital market operations.

These empower the Sebi to regulate norms related to buyback of securities from the market under Section 77AF and public issue, allotment, trading of securities and payment of dividend etc under Section 55A.

These sections also govern the listing agreement clause which empowers Sebi to enforce corporate governance rules under Clause 49. Otherwise, there is no explicit law governing the role of Sebi to enforce corporate governance norms.

The J J Irani committee was set up by the ministry of company affairs to propose changes to the Companies Act.

The Sebi note to the DEA has also mentioned that the joint parliamentary committee was also in favour of Sebi being the regulator on pricing and penalising capital market issues.

Various operations at present governed by Sebi include registration of the prospectus of listed companies, specification of disclosure on issue of securities, administration and filing of accounts, notice of scheme of mergers and acquisitions, etc.

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SEBI firm on independent directors

In a rebuff to the intense lobbying by the industry, market regulator SEBI has said firm no to any extension of the deadline for India Inc to fill up half of their boardrooms with independent directors (IDs) by the end of this year.

The Securities and Exchange Board of India has asked the industry to speed up search for IDs and not to waste their precious time in trying to torpedo the Clause 49 requirement of the Listing Agreement, well-informed sources told UNI.

In its attempts to make the Indian listed companies accountable to widely-dispersed shareholders, the market watchdog wants IDs to constitute at least 50 per cent of a board if a firm has an executive chairman.

It had already suspended this enforcement in April 2005 granting more time to industry, which took the plea, that adequate number of competent IDs was difficult to find.

However, SEBI Chairman M Damodaran had warned the business leaders earlier in May that the time was "ticking" for them since violation of Clause 49 would attract heavy penalties. Apparently, the industry argument about scarcity of professionals capable of sitting on the boards did not cut much ice with the regulator.

SEBI, sources said, is also not worried over a different view, which emerged from the recommendations of the J J Irani Committee.

The Irani Committee has advised the government to let the corporate honchos manage with the boards, which have one-third of their strength through IDs. It is a different matter that the professional IDs would be difficult to find and those in circulation would be in great demand.

While the promoter holdings in India ranges from 35 and 50 per cent, it is merely eight to 10 per cent in the US. Analysts wonder in this context whether it would be advisable for India to follow the western model where the question of management perks is much more relevant given the low holdings by the promoters.

Contrary to the US, the Indian promoter with sizeable holdings in the company, which he manages as well, would be interested to enhance the shareholders' value because such a thing would be in his own interest.

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Lacklustre report on amending Sebi Act

Yet another report by an expert panel commissioned by the Securities and Exchange Board of India (Sebi) to review the Sebi Act, 1992, the very legislation that created Sebi, was released last week.

The report is important, more for what it fails to do than for what it does. Either the object of this review was never intended to be a serious one, or the mandate given to the expert committee was restricted to what Sebi had wanted it to review.

In the last quarter of 2004, Sebi had circulated a suggestion paper containing the changes Sebi would like to see in the Sebi Act (Without Contempt, dated December 20, 2004: Sebi seeks to review its governing law).

The report of the expert committee does not go anywhere further than the original suggestion paper from Sebi. A few of Sebi's suggestions have been endorsed, a few have just been sympathised with, and a bunch of others have been rejected.

In the process, several serious problems with the Sebi Act that are crying for attention have not even been dealt with.

The areas that crave for attention in the Sebi Act include the multiple jeopardy mechanism whereby the every offence can be penalised with up to three forms of civil penalty and also criminal prosecution, the sweeping powers to issue directions without even conducting any inquiry, and important terms and concepts in the Sebi Act remaining undefined, and being left to definition by

Sebi in subordinate legislation.

While these are issues under the Sebi Act, there is a whole host of issues to be dealt with under each of the regulations notified under the Sebi Act.

These include the exclusion of legal representation in enquiry proceedings (against the teeth of a Gujarat High Court holding such provisions to be unconstitutional), and drafting lacunae in the insider trading regulations that lead to severe hardship.

And, we are not even talking of specialised problems such as the last set of amendments to the take-over code, and the impracticality of the delisting guidelines.

The report does not make any incisive impact on many of these issues.

But a few recommendations that are noteworthy include an amendment to the Sebi Act to enable initiation of winding up proceedings by Sebi akin to the Reserve Bank of India Act, and a preferential payment to investors over all other debts of a market intermediary akin to the provisions of the Banking Regulation Act.

An important development is the rejection of Sebi's desire to compel lawyers to part with privileged information about their clients (yes, first principles of constitutional law were deliberated).

The committee has rejected yet another request from Sebi to have powers to directly freeze bank accounts without the supervision of a judicial magistrate.

Similarly, Sebi's request for powers to conduct search and seizure without a magistrate's oversight has also been rejected.

It is interesting that since the conferment of these powers two years ago, there is still no known case of Sebi's efforts to use these powers being thwarted due to magisterial supervision.

The committee has recommended increasing the age of members of the SAT from 62 to 65, but has also proposed to reduce the cooling-off period for Sebi's own executive directors getting elevated to the SAT from two years to one year.

The committee has not recommended an express provision that any such SAT member ought to keep away from proceedings involving files on which he was involved as an officer of Sebi.

The committee has proposed to create an appellate "review commission" within Sebi to review enquiry and adjudication orders, with appeals from orders of the commission lying before SAT i.e. one more internal layer.

In short, this is a lacklustre report. An opportunity to make an impact with the law has been lost.

(Reported by Somasekhar Sundaresan, a partner of JSA, Advocates & Solicitors. The views expressed are personal. Published in Business Standard, September 20, 2005)

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SEBI Notifies Ten Stock Exchanges For Corporatisation

The Securities and Exchange Board of India (SEBI), on being satisfied that it would be in the interest of the trade and also in public interest, has notified the Corporatisation and Demutualisation schemes of ten stock exchanges.

The stock exchanges earmarked for corporatisation and demutualisation are - Calcutta Stock Exchange (CSE), Delhi Stock Exchange (DSE), Madras Stock Exchange (MSE), Pune Stock Exchange (PSE), Cochin Stock Exchange Limited (CoSE), Madhya Pradesh Stock Exchange (MPSE), Gauhati Stock Exchange (GSE), Uttar Pradesh Stock Exchange (UPSE), Hyderabad Stock Exchange (HySE) and Bangalore Stock Exchange Limited (BgSE).

The exchanges would have to take effective steps to corporatise and demutualise within the due dates specified in their respective schemes.

SEBI has already notified the BSE (Corporatisation and Demutualisation) Scheme, 2005, vide order dated May 20. BSE has taken effective steps to comply with the various activities specified in the scheme. The emerging corporate entity, namely the Bombay Stock Exchange Limited, has commenced business and operations as successor of the BSE in terms of the scheme with effect from August 19.

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Company Law Tribunals to Come Up

All the 16 benches of the proposed National Company Law Tribunals are also to come up in 16 cities. They will all be under its jurisdiction.

While the National Company Law Appellate Tribunal will be located in New Delhi, the benches of the National Company Law Tribunals will be set up in New Delhi, Ahmedabad (Gujarat), Bangalore(Karnataka), Chennai (Tamil Nadu), Hyderabad(Andhra Pradesh), Indore(Madhya Pradesh), Jaipur(Rajasthan), Kolkata(West Bengal), Mumbai (Maharashtra), Allahabad(Uttar Pradesh) and Noida. The New Delhi bench of the National Company Law Tribunal will be the Principal Bench. The NOIDA Bench will cater to Delhi, NOIDA and the National Capital Region (NCR).

In the second phase, the benches of the National Company Law Tribunal will come up at Guwahati (Assam), Patna(Bihar), Chandigarh, Kochi(Kerala) and Cuttack(Orissa).

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Now, a site to find independent directors

Amid the mad rush in India Inc to find independent directors before the SEBI mandated deadline, Prime Database on Wednesday unveiled a website that lists names of persons who could help companies frame better strategies.

The website 'www.Primedirectors.Com' was launched by SEBI Chairman M Damodaran, who has made it clear that all companies must ensure that their boards comprise at least 50 per cent of independent directors by December 31.

The website has been sponsored by country's two leading bourses NSE and BSE, along with leading industry chamber CII, as part of the corporate governance initiative, Prime Database said in a release.

The website comes at a time when there is an urgency among companies to meet the Clause-49 of the Listing Agreement which mandates companies to appoint independent directors comprising at least 50 per cent of the board size.

Failing this, the companies will attract punitive action from regulator SEBI.

There are about 9,000 listed companies and an estimate puts the requirement for at least 30,000 independent directors by the year end.

While India Inc is facing an acute problem of finding the adequate number of independent directors, there are a army of professionals who would be eager to take up such posts.

The new website would enable professionals to enroll for the role of directors, while companies would get a data bank for choosing their directors.

The website has prescribed some entry norms like education qualification, work experience, default records among others.

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SEBI Not In Favour Of Empowering Board On Individual Directors' Appointment

The Securities and Exchange Board of India (SEBI) is not in favour of giving full authority to the board of directors or the management of companies in nominating independent directors on the board.

Addressing a summit on Corporate Governance, organised by the Confederation of Indian Industries (CII) today, SEBI Chairman Mr Damodaran said the appointment of independent directors should not be left to the company.

"If we left this to the board, it will appoint a director suited for them... As a regulator, we cannot agree with that," said Mr Damodaran.

He said SEBI was currently in the process of consultation with the industry associations and also individual firms to collect their opinions on the role of independent directors and their say in the corporate decision-making process.

"We are consulting with the industry and the companies can put their suggestions and sentiments before December 31," he said.

In this context, Mr Damodaran said that the corporate houses should create a sense of belonging among the independent directors in the day to day affairs of the companies.

The companies should bring in certain elements of sentiments about the role of independent directors before December 31, he added.

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