

Repealed by Act 1 of 1956 (para 1-4-1956) 357

THE INDIAN COMPANIES (AMENDMENT) ACT, 1951

No. LII OF 1951



An Act further to amend the Indian Companies Act, 1913

[14th September, 1951]

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Indian Companies (Amendment) Act, 1951.

2. Insertion of new section 86J in Act VII of 1913.—After section 86I of the Indian Companies Act, 1913 (hereinafter referred to as the principal Act); the following section shall be inserted, namely:—

“86J. *Restrictions on appointment, reappointment and number of directors, their remuneration, etc.*—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of, or any agreement with, any company,—

(a) any amendment in the articles or any variation in the agreement—

(i) which relates to the appointment of a managing director or the appointment or election of a director not liable to retire by rotation, or

(ii) which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of a managing director or any other director, or

(b) any increase in the number of directors provided for in the articles, except where the increase is within the maximum limits permissible under the articles as in force on the 21st day of July, 1951, or

(c) the appointment of a managing director for the first time after the 21st day of July, 1951, or the reappointment after the said date of a managing director holding office as such on that date or thereafter, if the terms of such reappointment purport to increase or have the effect of increasing, whether directly or indirectly, the remuneration that the managing director was receiving immediately before such reappointment,

shall be void unless approved by the Central Government.

(2) Where a complaint is made to the Central Government by the managing agent, managing director or any other director of a company that as a result of a change in the ownership of the shares held in the company a change in the board of directors is likely to take place which, if allowed, would affect prejudicially the affairs of the company, the Central Government may, if, after such inquiry as it thinks fit to make it is satisfied that it is just and proper so to do, by order direct that no resolution passed or action taken to effect a change in the board of directors after the date of the complaint shall

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have effect unless confirmed by the Central Government, and any such order shall have effect notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of the company.

(3) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company."

3. Insertion of new section 87AA in Act VII of 1913.—After section 87A of the principal Act, the following section shall be inserted, namely:—

"87AA. *Restrictions on extension of term of office of managing agents.*—In the case of a company managed by a managing agent, any amendment in the articles of, or any variation in any agreement with, the company which purports to extend, or has the effect of extending, the term of office of a managing agent holding office as such on the 21st day of July, 1951, shall, notwithstanding anything to the contrary contained in any other provision of this Act or in the articles or agreement, be void unless approved by the Central Government:

Provided that nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company."

4. Amendment of section 87B, Act VII of 1913.—After the proviso to clause (c) of section 87B of the principal Act, the following further proviso shall be inserted, namely:—

"Provided further that in the case of a public company managed by a managing agent, a transfer of his office by the managing agent shall be void unless the approval of the Central Government is also obtained."

5. Insertion of new section 87BB in Act VII of 1913.—After section 87B of the principal Act, the following section shall be inserted, namely:—

"87BB. *Restrictions on change in the constitution of a managing agent.*—(1) Notwithstanding anything contained in any other provision of this Act, in the case of a public company managed by a managing agent which is a firm or a company, no change in the constitution of the managing agent shall have effect unless approved by the Central Government, and every such firm or company shall cease to be entitled to act as such managing agent from the date of such change until the approval of the Central Government is obtained.

*Explanation I.*—Subject to the exceptions contained in *Explanation II*, a change in the constitution of a managing agent takes place in any of the following circumstances, namely:—

(a) where the managing agent is a firm, by a change among the partners of the firm, whether caused by the retirement or replacement of any of the partners or by the introduction of a new partner, as the case may be,

(b) where the managing agent is a company, by a change among the board of directors, or managers thereof, whether caused by the retirement or replacement of any director or manager or by the introduction of a new director or manager, as the case may be, or by a change in the registered ownership of shares in the company,

(c) where the managing agent is a private company, by the conversion thereof into a public company.

*Explanation II.*—No change in the constitution of a managing agent shall be deemed to have taken place in any of the following circumstances, namely:—

(a) where the managing agent is a firm, by a change among the partners of the firm caused by the death or retirement by efflux of time of a partner,

(b) where the managing agent is a company, by a change among the board of directors or managers caused by the death or retirement by efflux of time of any of them, or a change caused by the death of any shareholder of the managing agency company.

(2) Notwithstanding anything contained in sub-section (1), where the change in the constitution of the managing agent, which is a public company the shares whereof are for the time being dealt in or quoted on the principal stock exchanges of India, is due to a change in the registered ownership of the shares held therein, nothing contained in that sub-section shall apply to the managing agent unless the Central Government, by notification in the Official Gazette, otherwise directs, and any such notification may provide that with effect from such date as may be specified therein every such managing agent shall cease to be entitled to act as such until the approval of the Central Government is obtained to the change:

Provided that no such notification shall be issued unless the Central Government is of opinion that the change is of such a nature that it has affected or is likely to affect prejudicially the affairs of the company which is being managed by the managing agent."

**6. Insertion of new section 87CC in Act VII of 1913.**—After section 87C of the principal Act, the following section shall be inserted, namely:—

"87CC. *Restrictions on amendment of articles or agreement relating to appointment or remuneration of managing agents, etc.*—(1) Notwithstanding anything to the contrary contained in any other provision of this Act or in the articles of, or agreement with, any company,—

(a) the appointment of a managing agent for the company for the first time after the 21st day of July, 1951, and

(b) in the case of a company managed by a managing agent,—

(i) any amendment in the articles of, or any variation in any agreement with, the company which relates to the appointment of the managing agent or which purports to increase or has the effect of increasing, whether directly or indirectly, the remuneration of the managing agent, managing director or any other director, or

(ii) the reappointment after the 21st day of July, 1951, of a managing agent holding office as such on that date or the appointment of a new managing agent in place of the managing agent holding office as such on that date or thereafter,

shall be void unless approved by the Central Government.

(2) Nothing contained in this section shall apply to a private company unless it is a subsidiary company of a public company."

7. Insertion of new sections 153C and 153D in Act VII of 1913.—In Part IV of the principal Act, before section 154, the following heading and sections shall be inserted, namely:—

*“Alternative remedy to winding up in cases of mismanagement or oppression.*

153C. Power of court to act when company acts in a prejudicial manner or oppresses any part of its members.—(1) Without prejudice to any other action that may be taken, whether in pursuance of this Act or any other law for the time being in force, any member of a company who complains that the affairs of the company are being conducted—

(a) in a manner prejudicial to the interests of the company, or

(b) in a manner oppressive to some part of the members (including himself),

may make an application to the court for an order under this section.

(2) An application under sub-section (1) may also be made by the Central Government if it is satisfied that the affairs of the company are being conducted as aforesaid.

(3) No application under sub-section (1) shall be made by any member, unless—

(a) in the case of a company having a share capital, the member complaining—

(i) has obtained the consent in writing of not less than one hundred in number of the members of the company or not less than one-tenth in number of the members, whichever is less, or

(ii) holds not less than one-tenth of the issued share capital of the company upon which all calls and other sums due have been paid; and

(b) in the case of a company not having a share capital, the member complaining has obtained the consent in writing of not less than one-fifth in number of the members, and where there are several persons having the same interest in any such application and the condition specified in clause (a) or clause (b) of this sub-section is satisfied with reference to one or more of such persons, any one or more of them may, with the permission of the court, make the application on behalf of, or for the benefit of, all persons so interested, and the provisions of rule 8 of Order I of the First Schedule to the Code of Civil Procedure, 1908 (Act V of 1908), shall apply to any such application as it applies to any suit within the meaning of that rule.

(4) If on any such application the court is of opinion—

(a) that the company's affairs are being conducted as aforesaid, and

(b) that to wind up the company would unfairly and materially prejudice the interests of the company or any part of its members, but otherwise the facts would justify the making of a winding-up order on the ground that it is just and equitable that the company should be wound up,

the court may, with a view to bringing to an end the matters complained of, make such order in relation thereto as it thinks fit.

(5) Without prejudice to the generality of the powers vested in a court under sub-section (4), any order made under that sub-section may provide for—

(a) the regulation of the conduct of the company's affairs in future;

(b) the purchase of the shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of shares or interests by the company being a company having a share capital, for the reduction accordingly of the company's capital or otherwise;

(d) the termination of any agreement, howsoever arrived at, between the company and its manager, managing agent, managing director or any of its other directors;

(e) the termination or revision of any agreement entered into between the company and any person other than any of the persons referred to in clause (d), provided that no such agreement shall be terminated or revised except after due notice to the party concerned and, in the case of the revision of any such agreement, after obtaining the consent of the party concerned thereto;

(f) the setting aside of any transfer, delivery of goods, payment, execution or other act relating to property made or done by or against the company within three months before the date of the application under sub-section (1), which would, if made or done by or against an individual, be deemed in his insolvency to be a fraudulent preference.

(6) Where an order under this section makes any alteration in, or addition to, the memorandum or articles of any company, then, notwithstanding anything contained in any other provision of this Act, but subject to the provisions of the order, the company concerned shall not have power without the leave of the court to make any further alteration in, or addition to, the memorandum or articles inconsistent with the provisions of the order, but subject to the foregoing provisions of this sub-section the alterations or additions made by the order shall have the same effect as if duly made by a resolution of the company, and the provisions of this Act shall apply to the memorandum or articles as so altered or added to accordingly.

(7) A certified copy of every order under this section altering or adding to, or giving leave to alter or add to, the memorandum or articles of any company shall, within fifteen days after the making thereof, be delivered by the company to the registrar for registration, and if a company makes default in complying with the provisions of

this sub-section, the company and every officer of the company who is in default shall be punishable with fine which may extend to five thousand rupees.

(8) It shall be lawful for the court upon the application of any petitioner or of any respondent to a petition under this section and upon such terms as to the court appears just and equitable, to make any such interim order as it thinks fit for regulating the conduct of the affairs of the company pending the making of a final order in relation to the application.

(9) Where any manager, managing agent, managing director or any other director or any other person who has not been impleaded as a respondent to any application under this section applies to be made a party thereto, the court shall, if it is satisfied that his presence before the court is necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in the application, direct that the name of any such person be added to the application.

(10) In any case in which the court makes an order terminating any agreement between the company and its manager, managing agent or managing director or any of its other directors, as the case may be, the court may, if it appears to it that the manager, managing agent, managing director or other director, as the case may be, has misapplied or retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company, compel him to repay or restore the money or property or any part thereof respectively with interest at such rate as the court thinks just, or to contribute such sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the court thinks just, and the provisions of sections 235 and 236 of this Act shall apply as they apply to a company in the course of being wound up.

*Explanation.*—For the purposes of this section, any material change after the 21st day of July, 1951, in the control of a company, or in the case of a company having a managing agent in the composition of the managing agent which is a firm or in the control of the managing agent which is a company, may be deemed by the court to be a fact which would justify the making of a winding-up order on the ground that it would be just and equitable that the company should be wound up:

Provided that the court is satisfied that by reason of the change the interests of the company or any part of its members are or are likely to be unfairly and materially prejudiced.

153D. *Effect of termination of managing agency agreement, etc.*—

(1) Where by virtue of an order made under sub-section (5) of section 153C an agreement between a company and its manager, managing agent, managing director or other director, as the case may be, is terminated or any other agreement is terminated or revised,—

(a) the order shall not give rise to any claim on the part of the manager, managing agent, managing director or other director, as the case may be, for damages or for compensation for loss of

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office or otherwise, whether the claim is made in pursuance of the agreement or otherwise,

(b) the order shall not give rise to any claim on the part of any other person for damages or for compensation for the termination or revision of any other agreement, and

(c) no manager, managing agent, managing director or other director or any associate of such managing agent shall, without the leave of the court, be appointed or reappointed or be entitled to act as the manager, managing agent, managing director or director of the company for a period of five years from the date of the order.

(2) If any person acts as the managing agent or manager of a company in contravention of the provisions of this section, such person, and in the case of a company each of its directors, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both.

(3) No court shall grant leave under this section unless notice of the application has been served on the Central Government and the Central Government has been given an opportunity of being heard in the matter.

*Explanation.*—In this section, the expression 'associate of a managing agent' means—

(a) any firm of which the managing agent is a partner;

(b) any partner of the managing agent;

(c) any private company in which the managing agent or any partner of the managing agent or any officer of the managing agent is a member, director, managing agent or manager;

(d) in the case of a managing agent which is a company, any subsidiary company of the managing agent and any director, managing agent or manager of the managing agent or any subsidiary company of the managing agent;

(e) where the managing agent is a private company, any director or any member thereof;

(f) any company of which the managing agent, whether alone or together with any partner of the managing agent, and where the managing agent is a company, any director of the managing agent, is entitled to exercise, or control the exercise of, one-quarter or more of the voting power at any general meeting."

8. Insertion of new section 289B in Act VII of 1913.—After section 289A of the principal Act, the following section shall be inserted, namely:—

"289B. *Power of Central Government to appoint advisory commission and to make rules in respect of certain matters.*—(1) For the purpose of advising it in relation to any matter arising out of section 86J, section 87AA, clause (c) of section 87B, section 87BB or section 87CC, the Central Government may constitute a commission consisting of not more than three persons with suitable qualifications and appoint one of them to be the chairman thereof.

(2) It shall be the duty of the commission to inquire into and advise the Central Government on all applications for approval made to the Central Government under any of the sections referred to in sub-section (1) and on all other matters which may be referred to it by the Central Government under any of the said sections.

(3) Every application for approval made to the Central Government under any of the sections referred to in sub-section (1) shall be in such form as may be prescribed.

(4) Before any application for approval is made to the Central Government, there shall be issued by or on behalf of the company a general notice to the members indicating the nature of the approval sought, and such notice shall be published once in the principal Indian language of the State in which the registered office of the company is situate in a newspaper circulating in that State, and once in English in a newspaper similarly circulating, and copies of the publication duly certified by the company shall be attached to the application for approval:

Provided that nothing in this sub-section shall apply to a private company which is not the managing agent of a public company.

(5) For the purpose of making any inquiry under this section the commission may—

(a) require the production before it of any books or other documents in the possession, custody or control of the company relating to any matter under inquiry;

(b) call for any further information or explanation if the commission is of opinion that such information or explanation is necessary in order that the books or other documents produced before it may afford full particulars of the matter to which they purport to relate;

(c) with such assistants as it thinks necessary, inspect any books or other documents so produced and make copies thereof or take extracts therefrom;

(d) require any manager, managing agent, managing director or any other director or other officer of the company or any shareholder or any other person who, in the opinion of the commission, is likely to furnish information with respect to the affairs of the company relating to any matter under inquiry, to appear before it, and examine such person on oath or require him to furnish such information as may be required and administer an oath accordingly to the person for the purpose.

(6) If any person refuses or neglects to produce any book or other document in his possession or custody which he is required to produce under this section or to answer any question put to him relating to any matter under inquiry, he shall be punishable with imprisonment for a term which may extend to two years and shall also be liable to fine.

(7) No suit or other legal proceeding shall lie against the Central Government, the commission or any member of the commission in respect of anything which is in good faith done or intended to be done in pursuance of this section or the sections referred to in sub-section (1) or of any rules or orders made thereunder."



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9. **Repeal of Ordinance III of 1951.**—(1) The Indian Companies (Amendment) Ordinance, 1951 (III of 1951) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.