

THE COMPANIES (AMENDMENT) ACT, 1963

No. 53 OF 1963

[30th December, 1963.]

An Act further to amend the Companies Act, 1956.

Be it enacted by Parliament in the Fourteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Companies (Amendment) Act, 1963. Short title
and com-
mencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

1 of 1956. 2. In section 2 of the Companies Act, 1956 (hereinafter referred to as the principal Act),— Amend-
ment of
section 2.

(a) after clause (10), the following clause shall be inserted, namely:—

(10A) "Company Law Board" means the Board of Company Law Administration constituted under section 10E;

(b) after clause (49), the following clause shall be inserted, namely:—

(49A) "Tribunal" means the Tribunal constituted under section 10A;

¹The provisions of this Act except Section 8 come into force from 1-1-1964; vide Notification No. S.O. 3607, dated 31-12-1963, Gazette of India, Extraordinary, Pt. II, Sec. 3(ii), p. 899.

457
Section 8 comes into force from 1-12-1964; vide Notifn
No. S.O. 2988, dt. 1-9-1964, Gaz. of India, Ex.,
Pt. II, Sec. 3 (ii), p. 771

Insertion
of new sec-
tions after
Section 10
in Part I

3. After section 10 of the principal Act, the following sections shall be inserted in Part I, namely:—

Constitu-
tion of
Tribunal.

'10A. (1) The Central Government may, by notification in the Official Gazette, constitute a Tribunal consisting of as many members as it thinks fit, to exercise and discharge—

(a) the powers and functions conferred on such Tribunal by or under this Act;

(b) all or any of the powers and functions conferred on the Court by or under section 155, section 203 in so far as it relates to the granting of leave under that section, section 240, and sections 397 to 407, which the Central Government may, from time to time, by notification in the Official Gazette, specify:

Provided that where any powers and functions are or become exercisable by the Tribunal by virtue of this section, the Court shall not exercise those powers and functions and any reference to the Court in any of the sections, powers and functions of the Court whereunder have been conferred on the Tribunal, shall be construed as a reference to the Tribunal.

(2) The members of the Tribunal shall be persons who have, in the opinion of the Central Government, adequate knowledge of, and experience in,—

(a) law, or

(b) matters of accountancy, or

(c) administration or management of companies and law relating thereto.

(3) The Central Government shall appoint one of the members of the Tribunal having knowledge of, and experience in law, who—

(a) is or has been a Judge of a High Court, or

(b) is qualified for appointment as Judge of a High Court,

to be the chairman of the Tribunal.

(4) The chairman and other members of the Tribunal shall receive from the Central Government such remuneration, and shall be governed by such conditions of service, as the Central Government may determine:

Provided that the remuneration of the chairman or any other member shall not be varied to his disadvantage after his appointment.

(5) Nothing in this section shall derogate from the powers and functions of the Court in relation to any proceeding pending before the Court immediately before such powers and functions are or become exercisable by the Tribunal by virtue of this section and the Court shall dispose of such proceeding accordingly.

(6) The provisions of this Act shall apply in relation to the enforcement of any order of the Tribunal as if such order were an order of the Court under this Act.

Explanation.—In this section, “Court” means the Court as defined in sub-clause (a) of clause (11) of section 2 and, where the powers and functions have been conferred expressly by any section on a Judge of a High Court, includes such Judge.

10B. (1) The powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the chairman of the Tribunal from among the members thereof. Procedure
of
Tribunal.

(2) Every such Bench shall consist of such number of members, not being less than two, as the Central Government may, by rules made under this Act, determine and at least one of such members shall be a person having knowledge of, and experience in, law.

(3) If during the course of any proceedings, any member of the Tribunal is for any reason unable to perform his functions or relinquishes his membership of the Tribunal, the Central Government may appoint another member in his place in accordance with the provisions of this Act and upon his joining the Tribunal the proceedings shall be continued as if he had been on the Tribunal from the commencement of the proceedings.

(4) In case of difference of opinion among the members of a Bench, the opinion of the majority shall prevail and orders of the Bench shall be expressed in terms of the views of the majority:

Provided that if the members of the Bench are equally divided in opinion on any point, they shall prepare a statement on the point and refer the same to the chairman of the Tribunal for the hearing of such point by one or more of the other members of the Tribunal and such point shall be decided according to the opinion of the majority of the members of the Tribunal who have heard it, including those who first heard it.

(5) Subject to the provisions of this Act and the rules made thereunder, the Tribunal shall have power to regulate its own procedure and the procedure of Benches thereof in all matters arising out of the exercise of its powers and the discharge of its functions, including the places at which the Benches shall hold their sittings.

Powers of
Tribunal.

10C. (1) The Tribunal shall have the powers which are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:—

(a) discovery and inspection of documents or other material objects producible as evidence,

(b) enforcing the attendance of witnesses and requiring the deposit of their expenses,

(c) compelling the production of documents or other material objects producible as evidence and impounding the same,

(d) examining witnesses on oath,

(e) granting adjournments,

(f) reception of evidence taken on affidavit,

(g) issuing commissions for the examination of witnesses, and summoning and examining *suo motu* any person whose evidence appears to the Tribunal to be material.

(2) Where the Tribunal has reason to believe that any place is used for the deposit or custody of any document or thing

which may be material for the purposes of any proceeding before it, the Tribunal may by its warrant authorise and direct any police officer not below the rank of a sub-inspector—

(a) to enter that place with such assistance as may be required,

(b) to search the same in the manner specified in the warrant,

(c) to take possession of any documents or things therein found and to prepare a list of the same and to dispose them of in accordance with the provisions hereinafter contained.

(3) When in the execution of a search warrant under sub-section (2) any documents or things for which search is made are found, such documents or things, together with the list of the same, shall immediately be taken before the Tribunal.

5 of 1898.

(4) The provisions of the Code of Criminal Procedure, 1898, shall, so far as may be, apply to a search directed, and a search warrant issued, under sub-section (2) as they apply to a search and a search warrant under section 98 of that Code.

45 of 1860.

(5) The Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXXV of the Code of Criminal Procedure, 1898, and every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and for the purpose of section 196 of that Code.

10D: (1) An appeal shall lie to the High Court having jurisdiction in relation to the place at which the registered office of the company concerned is situate, only on questions of law arising,— Appeals against decisions, etc. of the Tribunal.

(a) in cases against managerial personnel falling under Chapter IVA of Part VI, out of any finding of the Tribunal under section 388D; and

(b) in cases not falling under that Chapter, out of any decision, finding or order of the Tribunal.

(2) Every such appeal shall be heard by a Bench of not less than two Judges of the High Court.

(3) Every such appeal shall be filed within a period of sixty days from the date of communication to the appellant of the decision, finding or order of the Tribunal:

Provided that the appeal may be admitted after the expiry of the aforesaid period if the appellant satisfies the High Court that he had sufficient cause for not preferring the appeal within that period.

Insertion of
new Part
IA after
Part I.

4. In the principal Act, after Part I, the following Part and section shall be inserted, namely:—

'PART IA

BOARD OF COMPANY LAW ADMINISTRATION

Constitu-
tion of
Board of
Company
Law Ad-
ministra-
tion.

10E. (1) As soon as may be after the commencement of the Companies (Amendment) Act, 1963, the Central Government shall, by notification in the Official Gazette, constitute a Board to be called the Board of Company Law Administration to exercise and discharge such powers and functions conferred on the Central Government by or under this Act or any other law as may be delegated to it by that Government.

(2) The Company Law Board shall consist of such number of members, not exceeding five, as the Central Government deems fit, to be appointed by that Government by notification in the Official Gazette.

(3) One of the members shall be appointed by the Central Government to be the chairman of the Company Law Board.

(4) No act done by the Company Law Board shall be called in question on the ground only of any defect in the constitution of, or the existence of any vacancy in, the Company Law Board.

(5) The procedure of the Company Law Board shall be such as may be prescribed.

(6) In the exercise of its powers and discharge of its functions, the Company Law Board shall be subject to the control of the Central Government.

5. In section 81 of the principal Act,—

Amend-
ment of
section 81.

(a) for the proviso to sub-section (3), the following proviso shall be substituted, namely:—

“Provided that the terms of issue of such debentures or the terms of such loans include a term providing for such option and such term—

(a) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by that Government in this behalf; and

(b) in the case of debentures or loans other than debentures issued to, or loans obtained from, the Government or any institution specified by the Central Government in this behalf, has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.”;

(b) after sub-section (3), the following sub-sections shall be inserted, namely:—

“(4) Notwithstanding anything contained in the foregoing provisions of this section, where any debentures have been issued to, or loans have been obtained from, the Government by a company, whether such debentures have been issued or loans have been obtained before or after the commencement of the Companies (Amendment) Act, 1963, the Central Government may, if in its opinion it is necessary in the public interest so to do, by order, direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term providing for an option for such conversion.

(5) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances, that is to say, the financial

position of the company, the terms of issue of the debentures or the terms of the loans, as the case may be, the rate of interest payable on the debentures or the loans, the capital of the company, its loan liabilities, its reserves, its profits during the preceding five years and the current market price of the shares in the company.

(6) A copy of every order proposed to be issued by the Central Government under sub-section (4) shall be laid in draft before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions.

(7) If the terms and conditions of such conversion are not acceptable to the company, the company may, within thirty days from the date of communication to it of such order or within such further time as may be granted by the Court, prefer an appeal to the Court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government under sub-section (4) shall be final and conclusive."

Amend-
ment of
section 153.

6. In section 153 of the principal Act, the words "or be receivable by the Registrar" shall be omitted.

Insertion
of new
sections
after
section
153.

7. After section 153 of the principal Act, the following sections shall be inserted, namely:—

Appoint-
ment of
public
trustee.

"153A. The Central Government may, by notification in the Official Gazette, appoint a person as public trustee to discharge the functions and to exercise the rights and powers conferred on him by or under this Act.

Declara-
tion as to
shares and
debentures
held in
trust.

153B. (1) Notwithstanding anything contained in section 153, where any shares in, or debentures of, a company are held in trust by any person (hereinafter referred to as the trustee), the trustee shall, within such time and in such form as may be prescribed, make a declaration to the public trustee.

(2) A copy of the declaration made under sub-section (1) shall be sent by the trustee to the company concerned, within twenty-one days, after the declaration ^{has} been sent to the public trustee.

(3) (a) If a trustee fails to make a declaration as required by this section, he shall be punishable with fine which may extend to five thousand rupees and in the case of a continuing failure, with a further fine which may extend to one hundred rupees for every day during which the failure continues.

(b) If a trustee makes in a declaration aforesaid any statement which is false and which he knows or believes to be false or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to two years and also with fine.

(4) The provisions of this section and section 187B shall not apply in relation to a trust—

(a) where the trust is not created by instrument in writing; or

(b) even if the trust is created by instrument in writing, where the trust money invested in shares in, or debentures of, a company—

(i) does not exceed one lakh of rupees, or

(ii) exceeds one lakh of rupees but does not exceed either five lakhs of rupees or twenty-five per cent. of the paid-up share capital of the company, whichever is less.”.

8. After section 187A of the principal Act, the following section shall be inserted, namely:—

Insertion
of new section after
section 187A.

“187B. (1) Save as otherwise provided in section 153B but notwithstanding anything contained in any other provisions of this Act or any other law or any contract, memorandum or articles, where any shares in a company are held in trust by a person (hereinafter referred to as trustee), the rights and powers (including the right to vote by proxy) exercisable at any meeting of the company or at any meeting of any class of members of the company by the trustee as a member of the company shall—

Exercise
of voting
rights in
respect of
shares
held in
trust.

(a) cease to be exercisable by the trustee as such member, and

(b) become exercisable by the public trustee.

(2) The public trustee may, instead of himself attending the meeting, and exercising the rights and powers, as aforesaid, appoint as his proxy an officer of Government or the trustee himself to attend such meeting and to exercise such rights and powers in accordance with the directions of the public trustee:

Provided that where the trustee is appointed by the public trustee as his proxy, the trustee shall be entitled, notwithstanding anything contained in any other provisions of this Act, to exercise such rights and powers in the same manner as he would have been but for the provisions of this section.

(3) The public trustee may abstain from exercising the rights and powers conferred on him by this section if in his opinion the objects of the trust or the interests of the beneficiaries of the trust are not likely to be adversely affected by such abstention.

(4) If for any reason the trustee considers that the public trustee should not abstain from exercising the rights and powers conferred on him by this section and the exercise of such rights and powers is necessary in order to safeguard the objects of the trust or the interests of the beneficiaries of the trust, he may by writing communicate his views in this behalf to the public trustee but the public trustee may in his discretion either accept such views or reject the same.

(5) No suit, prosecution or other legal proceeding shall lie against the public trustee at the instance of the trustee or any person on his behalf or any other person on the ground that the public trustee has abstained from exercising the rights and powers conferred on him by this section.

(6) In order to enable the public trustee to exercise the rights and powers aforesaid, the public trustee shall also be entitled to receive and inspect all books and papers under this Act, which a member is entitled to receive and inspect."

Insertion
of new
Chapter
and sec-
tions in
Part VI.

9. In the principal Act, in Part VI, after Chapter IV, the following Chapter and sections shall be inserted, namely:—

"CHAPTER IVA.—POWERS OF CENTRAL GOVERNMENT TO REMOVE
MANAGERIAL PERSONNEL FROM OFFICE ON THE RECOMMENDATION OF
THE TRIBUNAL.

388B. (1) Where in the opinion of the Central Government there are circumstances suggesting—

Reference
to Tribunal
of cases
against
managerial
personnel

(a) that any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law, or breach of trust; or

(b) that the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices; or

(c) that a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) that the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other persons or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest,

the Central Government may state a case against the person aforesaid and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a finding as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(2) Every case under sub-section (1) shall be stated in the form of an application which shall be presented to the Tribunal or such officer thereof as it may appoint in this behalf.

(3) The person against whom a case is referred to the Tribunal under this section shall be joined as a respondent to the application.

(4) Every such application—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purpose of the inquiry, and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

(5) The Tribunal may at any stage of the proceedings allow the Central Government to alter or amend the application in such manner and on such terms as may be just, and all such alterations or amendments shall be made as may be necessary for the purpose of determining the real questions in the inquiry.

Interim
order by
Tribunal.

388C. (1) Where during the pendency of a case before the Tribunal it appears necessary to the Tribunal so to do in the interest of the members or creditors of the company or in the public interest, the Tribunal may on the application of the Central Government or on its own motion, by an order—

(a) direct that the respondent shall not discharge any of the duties of his office until further orders of the Tribunal, and

(b) appoint a suitable person in place of the respondent to discharge the duties of the office held by the respondent subject to such terms and conditions as the Tribunal may specify in the order.

(2) Every person appointed under clause (b) of subsection (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Findings
of the
Tribunal.

388D. At the conclusion of the hearing of the case, the Tribunal shall record its findings stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

Power of
Central
Govern-
ment to
remove
managerial
personnel
on the
basis of
Tribunal's
findings.

388E. (1) Notwithstanding any other provision contained in this Act, the Central Government may, by order, remove from office any director, or any other person concerned in the conduct and management of the affairs, of a company, against whom there is a finding of the Tribunal under this Chapter or a decision of a High Court thereon:

Provided that where a firm or a body corporate is concerned in the conduct and management of the affairs of a company as its managing agent or secretaries and treasurers, and the finding of the Tribunal or the decision of a High Court is against any partner in such firm, or any director of, or any person holding a general power of attorney from, such body

corporate, the Central Government may also remove from the office of managing agent or secretaries and treasurers, such firm or body corporate.

(2) No order under this section shall be made against any person unless he has been given a reasonable opportunity to show cause against the same:

Provided that no matter shall be raised by such person before the Central Government if such matter has been decided by the Tribunal or the High Court.

(3) The person against whom an order of removal from office is made under this section shall not hold the office of a director or any other office connected with the conduct and management of the affairs of any company during a period of five years from the date of the order of removal:

Provided that the Central Government may, with the previous concurrence of the Tribunal, permit such person to hold any such office before the expiry of the said period of five years.

(4) Notwithstanding anything contained in any other provision of this Act, or any other law or any contract, memorandum or articles, on the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, that person shall not be entitled to, or be paid, any compensation for the loss or termination of office.

(5) On the removal of a person from the office of a director or, as the case may be, any other office connected with the conduct and management of the affairs of the company, the company may, with the previous approval of the Central Government, appoint another person to that office in accordance with the provisions of this Act."

10. In section 397 of the principal Act—

(a) in sub-section (1), for the words "are being conducted", the words "are being conducted in a manner prejudicial to public interest or" shall be substituted;

(b) in sub-section (2), in clause (a), for the words "are being conducted", the words "are being conducted in a manner prejudicial to public interest or" shall be substituted.

Amend-
ment of
section 397.

Amendment
of Section
398.

11. In sub-section (1) of section 398 of the principal Act—

(a) in clause (a), for the words “are being conducted”, the words “are being conducted in a manner prejudicial to public interest or” shall be substituted;

(b) in clause (b), for the words “will be conducted”, the words “will be conducted in a manner prejudicial to public interest or” shall be substituted.

Amendment
of section
408.

12. In sub-section (1) of section 408—

(a) after the words “if the Central Government”, the words “of its own motion or” shall be inserted;

(b) after the words “interests of the company”, the words “or to public interest” shall be inserted.

Insertion
of new
section
after
section 635.

13. After section 635 of the principal Act, the following section shall be inserted, namely:—

“635A. No suit, prosecution or other legal proceeding shall lie against officers of Government for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made hereunder.”

Protection
of acts
done in
good faith.

Amend-
ment of
section
637.

14. For sub-sections (1) and (2) of section 637 of the principal Act, the following sub-sections shall be substituted, namely:—

“(1) The Central Government may, by notification in the Official Gazette and subject to such conditions, restrictions and limitations as may be specified therein, delegate—

(a) any of its powers or functions under this Act (other than the power to appoint a person as public trustee under section 153A and the power to make rules) to the Company Law Board;

(b) any of its powers or functions under this Act, other than those specified in sub-section (2), to such other authority or such officer as may be specified in the notification.

(2) The powers and functions which cannot be delegated under clause (b) of sub-section (1) are those conferred by or mentioned in the following provisions of this Act, namely, sections 10, 81, 89(4), 211(3) and (4), 212, 213, 235,

237, 239, 241, 242, 243, 244, 245, 247, 248, 249, 250, 259, 268, 269, 274(2), 295, 300, 310, 311, 324, 326, 328, 329, 332, 343, 345, 346, 347 (2), 349, 352, 369, 372, 396, 399 (4) and (5), 401, 408, 409, 410, 411 (b), 448, 609, 613, 620, 638, 641 and 642.

(2A) The provisions of this Act shall apply in relation to the Company Law Board as they apply in relation to the Central Government in respect of any matter in relation to which the powers and functions of the Central Government have been delegated to the Company Law Board."
