

THE COMPANIES (AMENDMENT) ACT, 1985

No. 35 OF 1985

[24th May, 1985.]

An Act further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Thirty-sixth Year of the Republic of India as follows:—

1. This Act may be called the Companies (Amendment) Act, 1985.

Short title.

1 of 1956.

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), for section 293A, the following shall be substituted, namely:—

Substitution of new section for section 293A.

“Political contributions

293A. (1) Notwithstanding anything contained in any other provision of this Act,—

Prohibitions and restrictions regarding political contributions.

(a) no Government company; and

(b) no other company which has been in existence for less than three financial years,

shall contribute any amount or amounts, directly or indirectly,—

(i) to any political party; or

(ii) for any political purpose to any person.

(2) A company, not being a company referred to in clause (a) or clause (b) of sub-section (1), may contribute any amount or amounts, directly or indirectly,—

(a) to any political party, or

(b) for any political purpose to any person:

Provided that the amount or, as the case may be, the aggregate of the amounts which may be so contributed by a company in any financial year shall not exceed five per cent. of its average net profits determined in accordance with the provisions of sections 349 and 350 during the three immediately preceding financial years.

Explanation.—Where a portion of a financial year of the company falls before the commencement of the Companies (Amendment) Act, 1985, and a portion falls after such commencement, the latter portion

shall be deemed to be a financial year within the meaning, and for the purposes, of this sub-section:

Provided further that no such contribution shall be made by a company unless a resolution authorising the making of such contribution is passed at a meeting of the Board of Directors and such resolution shall, subject to the other provisions of this section, be deemed to be justification in law for the making and the acceptance of the contribution authorised by it.

(3) Without prejudice to the generality of the provisions of sub-sections (1) and (2),—

(a) a donation or subscription or payment caused to be given by a company on its behalf or on its account to a person who, to its knowledge, is carrying on any activity which, at the time at which such donation or subscription or payment was given or made, can reasonably be regarded as likely to effect public support for a political party shall also be deemed to be contribution of the amount of such donation, subscription or payment to such person for a political purpose;

(b) the amount of expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed,—

(i) where such publication is by or on behalf of a political party, to be a contribution of such amount to such political party, and

(ii) where such publication is not by or on behalf of but for the advantage of a political party, to be a contribution for a political purpose to the person publishing it.

(4) Every company shall disclose in its profit and loss account any amount or amounts contributed by it to any political party or for any political purpose to any person during the financial year to which that account relates, giving particulars of the total amount contributed and the name of the party or person to which or to whom such amount has been contributed.

(5) If a company makes any contribution in contravention of the provisions of this section,—

(a) the company shall be punishable with fine which may extend to three times the amount so contributed; and

(b) every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.”

3. In section 396 of the principal Act,—

(a) in sub-section (2), for the words “The order aforesaid may”, the words “The order aforesaid may provide for the continuation by or against the transferee company of any legal proceedings pending by or against any transferor company and may also” shall be substituted;

(b) in sub-section (3), for the words "as may be prescribed", the words "as may be prescribed and every such assessment shall be published in the Official Gazette" shall be substituted;

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

"(3A) Any person aggrieved by any assessment of compensation made by the prescribed authority under sub-section (3) may, within thirty days from the date of publication of such assessment in the Official Gazette, prefer an appeal to the Company Law Board and thereupon the assessment of the compensation shall be made by the Company Law Board.";

(d) in sub-section (4),—

(i) in clause (a), the word "and", occurring at the end, shall be omitted;

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

"(aa) the time for preferring an appeal under sub-section (3A) has expired, or where any such appeal has been preferred, the appeal has been finally disposed of; and".

4. In section 529 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted at the end, namely:—

"Provided that the security of every secured creditor shall be deemed to be subject to a *pari passu* charge in favour of the workmen to the extent of the workmen's portion therein, and, where a secured creditor, instead of relinquishing his security and proving his debt, opts to realise his security,—

(a) the liquidator shall be entitled to represent the workmen and enforce such charge;

(b) any amount realised by the liquidator by way of enforcement of such charge shall be applied rateably for the discharge of workmen's dues; and

(c) so much of the debt due to such secured creditor as could not be realised by him by virtue of the foregoing provisions of this proviso or the amount of the workmen's portion in his security, whichever is less, shall rank *pari passu* with the workmen's dues for the purposes of section 529A.";

(b) in sub-section (2),—

(i) in the proviso, for the words "pay the expenses", the words "pay his portion of the expenses" shall be substituted;

(ii) after the proviso, the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this proviso, the portion of expenses incurred by the liquidator for the preservation of a security which the secured creditor shall be

Amend-
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section
529.

liable to pay shall be the whole of the expenses less an amount which bears to such expenses the same proportion as the workmen's portion in relation to the security bears to the value of the security.”;

(c) after sub-section (2), the following sub-section shall be inserted, namely:—

‘(3) For the purposes of this section, section 529A and section 530,—

(a) “workmen”, in relation to a company, means the employees of the company, being workmen within the meaning of the Industrial Disputes Act, 1947;

14 of 1947.

(b) “workmen's dues”, in relation to a company, means the aggregate of the following sums due from the company to its workmen, namely:—

(i) all wages or salary including wages payable for time or piece work and salary earned wholly or in part by way of commission of any workman, in respect of services rendered to the company and any compensation payable to any workman under any of the provisions of the Industrial Disputes Act, 1947;

14 of 1947

(ii) all accrued holiday remuneration becoming payable to any workman, or in the case of his death to any other person in his right, on the termination of his employment before, or by the effect of, the winding up order or resolution;

(iii) unless the company is being wound up voluntarily merely for the purposes of reconstruction or of amalgamation with another company, or unless the company has, at the commencement of the winding up, under such a contract with insurers as is mentioned in section 14 of the Workmen's Compensation Act, 1923, rights capable of being transferred to and vested in the workman, all amounts due in respect of any compensation or liability for compensation under the said Act in respect of the death or disablement of any workman of the company;

8 of 1923.

(iv) all sums due to any workman from a provident fund, a pension fund, a gratuity fund or any other fund for the welfare of the workmen, maintained by the company;

(c) “workmen's portion”, in relation to the security of any secured creditor of a company, means the amount which bears to the value of the security the same proportion as the amount of the workmen's dues bears to the aggregate of—

(i) the amount of workmen's dues; and

(ii) the amounts of the debts due to the secured creditors.

Illustration

The value of the security of a secured creditor of a company is Rs. 1,00,000. The total amount of the workmen's dues is Rs. 1,00,000. The amount of the debts due from the company to its secured creditors is Rs. 3,00,000. The aggregate of the amount of workmen's dues and of the amounts of debts due to secured creditors is Rs. 4,00,000. The workmen's portion of the security is, therefore, one-fourth of the value of the security, that is Rs. 25,000.

5. After section 529 of the principal Act, the following section shall be inserted, namely:—

Insertion
of new
section
529A.

“529A. (1) Notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, in the winding up of a company,—

Over-
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(a) workmen's dues; and

(b) debts due to secured creditors to the extent such debts rank under clause (c) of the proviso to sub-section (1) of section 529 *pari passu* with such dues.

shall be paid in priority to all other debts.

(2) The debts payable under clause (a) and clause (b) of sub-section (1) shall be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions.”

6. In section 530 of the principal Act,—

(a) in sub-section (1),—

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section
530.

(i) in the opening portion, for the words “there shall be paid”, the words, figures and letter “subject to the provisions of section 529A, there shall be paid” shall be substituted;

(ii) in clause (b), the words, figures and letter “and any compensation payable to any workman under any of the provisions of Chapter VA of the Industrial Disputes Act, 1947” shall be omitted;

(b) in sub-section (2), the proviso shall be omitted;

(c) in sub-section (3),—

(i) in clause (b), the word “and” occurring at the end shall be omitted;

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

“(bb) the expression “employee” does not include a workman; and’