

Company Law Committee bats for de criminalising 46 penal provisions

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Submits report to Finance Minister Sitharaman

The 11-member Company Law Committee (CLC), set up in September 2019, has made a case for softening the blow on India Inc as regards 46 penal provisions under the existing company law.

Changes have been recommended to the 46 penal provisions so as to remove criminality or to restrict punishment to only fine, or to allow rectification of defaults through alternative methods, the CLC report showed.

Injeti Srinivas, Secretary, Corporate Affairs Ministry, who chaired the Panel, submitted the report to the Finance Minister Nirmala Sitharaman here on Monday.

This, if implemented, is expected to lead to further de-clogging of the criminal justice system in the country. Indications are that the government will move a amendment Bill for this purpose in the ongoing Winter Session of Parliament.

It may be recalled that the CLC was set up after the furore over jail term for Corporate Social Responsibility (CSR) violations. The government had however later diluted the provision that prescribed jail term for CSR provisions.

The report recommended re-categorising 23 offences out of the 66 remaining compoundable offences under the Companies Act, to be dealt with in the in-house adjudication framework wherein these defaults would be subject to a penalty levied by an adjudicating officer. In addition, the quantum of penalties recommended is lower than the quantum of fines presently provided in the Act.

The report is focused on bringing slew of changes to company law as part of efforts to further decriminalize the provisions and take more measures to provide further Ease of Living for Corporates in the country.

For this report, the Panel has adopted a principle based approach to further remove criminality, in case of defaults which can be determined objectively, and which otherwise, lack the element of fraud or do not involve larger public interest.

The Panel has also called for omitting, altogether, seven compoundable offences; limiting punishment for 11 compoundable offences to only fine by removing provision for imprisonment and recommending that 5 offences be dealt under alternative frameworks. It has also suggested reducing the quantum of penalties in respect of 6 provisions, which were

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shifted to the in-house adjudication framework through the recently passed Companies (Amendment) Act, 2019;

It has suggested retention of status-quo in case of the non-compoundable offences.

The CLC has now come up with as many as 12 recommendations as part of providing Ease of Living for law abiding corporates. The recommendations include power to exclude certain class of companies from the definition of 'listed company', mainly for listing of debt securities, in consultation with SEBI; Clarifying the trial court's jurisdiction on the basis of place of commission of offence under Section 452, for wrongful withholding of property of a company by its officers/employees; Including the provisions of Part IXA (Producer Companies) of the Companies Act, 1956 in the Companies Act, 2013.

The CLC has also proposed benches of the National Company Law Appellate Tribunal; provisions for allowing payment of adequate remuneration to non-executive directors in case of inadequacy of profits, by aligning the same with the provisions for remuneration to executive directors in such cases; Relaxing provisions related to imposition of higher additional fees under third proviso to Section 403(1); Extending applicability of Section 446B (lower penalties for small companies and one person companies) to all provisions which attract monetary penalties and extending the benefit to producer companies and start-ups also.

The recommendations also include excluding certain companies/bodies corporate from applicability of Section 89 (declaration of beneficial interest in shares) and Chapter XXII (companies incorporated outside India); reducing timelines so as to speed up rights issues under Section 62; Extending exemptions from filing of certain resolutions to certain classes of non-banking financial companies under Section 117 in consultation with RBI; Providing power to enhance the thresholds which trigger applicability of Corporate Social Responsibility provisions; Non-levy of penalties for delay in filing the annual returns and financial statements in certain cases.

WIDER CONSULTATION

The CLC has also highlighted certain areas that require wider consultation and need to be taken up in due course at a later stage.

These include providing for appeal against the orders of the Regional Directors before the NCLT after due examination; Exempting certain private placement requirements for Qualified Institutional Placements (QIPs) after due consultation with SEBI; Reviewing provisions on disqualification of directors after due consultation and examination; and reviewing provisions in respect of debarment of audit firms after due consultation and examination.