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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed
as a separate compilation

LOK SABHA

The following Bill was introduced in Lok Sabha on the 24th November, 1977. —

BILL No. 134 of 1977

A Bill further to amend the Companies Act, 1956.

Be it enacted by Parliament in the Twenty-eighth Year of the Republic of India as follows.—

1. This Act may be called the Companies (Amendment) Act, 1977

Short
title

1 of 1956

2. In the Companies Act, 1956 (hereinafter referred to as the principal Act), in section 10E, in sub-section (4D), for the words and figures "Chapter XXXV of the Code of Criminal Procedure, 1898", the words and figures "Chapter XXVI of the Code of Criminal Procedure, 1973" shall be substituted.

5 of 1898

2 of 1974.

Amend-
ment of
section
10E.

3. In section 58A of the principal Act, after sub-section (7), but before the *Explanation*, the following sub-section shall be inserted, namely:—

Amend-
ment of
section
58A.

"(8) The Central Government may, if it considers it necessary for avoiding any hardship or for any other just and sufficient reason, by order, issued either prospectively or retrospectively from a date not earlier than the commencement of the Companies (Amendment) Act, 1974, grant extension of time to a company or class of companies to comply with, or exempt any company or class of companies from, all or any of the provisions of this section either generally or for any specified period subject to such conditions as may be specified in the order:

41 of 1974

Provided that no order under this sub-section shall be issued in relation to a class of companies except after consultation with the Reserve Bank of India".

Amend-
ment of
section
108H.

4. In section 108H of the principal Act, the words, figures, letters and brackets 'and, any reference in section 108A, 108B and 108C to "same management" shall be construed as a reference to "same management" as defined in clause (g) of section 2 of the Monopolies and Restrictive Trade Practices Act, 1969' shall be inserted at the end.

54 of 1969.

Amend-
ment of
section
220.

5. In section 220 of the principal Act,—

(i) in sub-section (1), after the words "balance sheet and the profit and loss account were so laid", the words ", or where the annual general meeting of a company for any year has not been held, there shall be filed with the Registrar within thirty days from the latest day on or before which that meeting should have been held in accordance with the provisions of this Act," shall be inserted;

(ii) in sub-section (2), after the words "does not adopt the balance sheet", the words ", or, if the annual general meeting of a company for any year has not been held," shall be inserted.

Amend-
ment of
section
293.

6 In section 293 of the principal Act, in sub-section (1), in clause (e), for the words "twenty-five thousand rupees", the words "fifty thousand rupees" shall be substituted

Amend-
ment of
section
620.

7 In section 620 of the principal Act, for sub-section (2), the following sub-section shall be substituted and shall be deemed to have been substituted with effect from the 1st day of February, 1975, namely:—

"(2) A copy of every notification proposed to be issued under sub-section (1), 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, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses."

Insertion
of new
section
634A

8. After section 634 of the principal Act, the following section shall be inserted, namely —

Enforce-
ment of
orders of
Company
Law
Board.

"634A. Any order made by the Company Law Board under section 17, section 18, section 19, section 79, section 141 or section 186 may be enforced by that Board in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for that Board to send, in the case of its inability to execute such order, to the Court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the person concerned voluntarily resides, or carries on business or personally works for gain."

9. In section 635 of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely —

Amend-
ment of
section
635.

"(4) Where any order made by the Company Law Board under section 17, section 18, section 19, section 79 or section 186 is required to be enforced by a Court, a certified copy of the order shall be produced to the proper officer of the Court required to enforce the order and the provisions of sub-sections (2) and (3) shall, as far as may be, apply to every such order in the same manner and to the same extent as they apply to an order made by a Court."

STATEMENT OF OBJECTS AND REASONS

In the Companies Act, 1956, section 58A relating to acceptance of deposits was inserted by the Companies (Amendment) Act, 1974, which came into force on the 1st February, 1975. Prior to the coming into force of this section, acceptance of deposits by companies was regulated by the directions issued by the Reserve Bank of India under Chapter IIIB of the Reserve Bank of India Act, 1934. Clause (a) of sub-section (3) of section 58A provides that every deposit accepted by a company at any time before the commencement of the said amendment Act of 1974, shall, if it is not renewed by a company in accordance with the provisions of that section, be repaid in accordance with the terms of such deposit. Clause (c) of that sub-section provides that any deposit received by a company in contravention of the aforesaid directions of the Reserve Bank shall be repaid in full on or before 1st April, 1975. Sub-section (5) of that section provides for penalty for the contravention of the provisions of the section. A review of the cases of contraventions shows that sometimes they are due to circumstances beyond the control of the companies, namely, strikes, riots, power-cuts, recession, etc. Sub-section (7) of section 58A empowers the Central Government to give total exemption to a company from the provisions of the section after consulting the Reserve Bank of India. There is, however, no power to grant partial relaxation like extension of time in deserving cases for the repayment of deposits. A study group constituted by the Reserve Bank of India under the chairmanship of Shri James S. Raj recommended that section 58A of the Act may be suitably amended to grant extension of time to comply with or to exempt any company from the provisions of that section. It is proposed to accept this recommendation and amend section 58A suitably.

In the *State of Bombay v Bandan Ram Bhandari* [AIR (1961) S.C. 186], the question arose as to whether the company and its officers are liable to be prosecuted under the 1913 Act for not laying the balance-sheet and the profit and loss account before the company in annual general meeting where the annual general meeting of the company was not held. In that case, the Supreme Court took the view that a person charged with an offence could not rely on his own default as a defence to the charge. If he was responsible for not calling the annual general meeting, he could not be heard to say in his defence to the charge that as the annual general meeting was not held, the balance-sheet and profit and loss account could not be laid before the company in annual general meeting. A different view has, however, been taken on the point by Supreme Court in the case of *State of Andhra Pradesh v Andhra Pradesh Provincial Potteries Ltd* [AIR (1973) S.C. 2429].

Persons in charge of the management of some of the companies some times omit to convene the annual general meeting of the company and by such omission keep the shareholders as well as the creditors of the company in the dark about the affairs of the company and its financial condition. Further, by such omission, they also evade the necessity of filing

the balance-sheet and the profit and loss account with the Registrar of Companies. When a document is filed with the Registrar of Companies, it is open to any shareholder or creditor to inspect such document and to obtain a copy thereof. In the circumstances, it is absolutely essential that even where the annual general meeting of the company has not been held, the balance-sheet and profit and loss account should be filed with the Registrar of Companies to enable the shareholders and other persons to find out, from inspection of the said documents, the affairs of the company and its financial condition. The Bill seeks to amend section 220 to achieve the said object.

Under section 293 of the Companies Act, 1956, a company is empowered to make donations for charitable purposes up to five per cent. of its average net profits during the preceding three years or up to Rs 25,000, whichever is greater. The ceiling of Rs 25,000 was fixed long ago and it is felt that in the present context, the said ceiling should be raised to Rs. 50,000. The Bill seeks to amend section 293.

Section 620 of the Companies Act, 1956, empowers the Central Government to modify, by notification, any of the provisions of the Act in its application to a particular Government company or to Government companies in general. Every notification proposing to make such modification is required to be placed, in draft, before each House of Parliament for a period of not less than 30 days while it is in session. Since the said period of 30 days cannot, sometimes, be completed in one session, it is necessary to amend the section to permit the period of 30 days to be completed in one session or in two or more successive sessions. The Bill seeks to amend section 620 to achieve the said object.

Other amendments included in the Bill are of a consequential or formal nature.

NEW DELHI;

SHANTI BHUSHAN

The 14th November, 1977

AVTAR SINGH RIKHY,

Secretary

