

Seventeenth Loksabha

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Title: Combined discussion on Statutory Resolution regarding Disapproval of Companies (Amendment) Second Ordinance, 2019 (No. 6 of 2019) and passing of Companies (Amendment) Bill, 2019 (Statutory Resolution-Negatived and Government Bill- Passed).

**माननीय सभापति :** ऑनरेबल मेम्बर्स, आइटम नं. 22 और 23 पर एक साथ चर्चा की जाएगी । श्री अधीर रंजन चौधरी ।

**SHRI ADHIR RANJAN CHOWDHURY (BAHARAMPUR):** I beg to move:

“That this House disapproves of the Companies (Amendment) Second Ordinance, 2019 (No. 6 of 2019) promulgated by the President on 21 February, 2019.”

**माननीय सभापति:** माननीय मंत्री जी प्रस्ताव करें कि विधेयक पर चर्चा की जाए ।

**THE MINISTER OF FINANCE AND MINISTER OF CORPORATE AFFAIRS (SHRIMATI NIRMALA SITHARAMAN):** Sorry, would you say that in English please! I did not hear it.

**HON. CHAIRPERSON:** This is really very interesting!

**SHRIMATI NIRMALA SITHARAMAN:** Sorry, suddenly you are speaking in Hindi, I did not expect. I do understand Hindi.

**HON. CHAIRPERSON:** Thank you.

You can move the Bill for consideration and also make opening remarks.

**SHRIMATI NIRMALA SITHARAMAN:** Alright, Sir.

I beg to move:

“That the Bill further to amend the Companies Act, 2013, be taken into consideration.”

Thank you very much, Sir, for permitting me to give the salient features of the Bill on the basis of which I would like to take the inputs from the hon. Members. As I have said at the time of introduction itself, Sir, this Bill actually took force in 2013 itself.

In August 2013, when this Bill was first time passed under the Companies Act, as it was called Companies Act, very significant changes relating to disclosures to stakeholders, accountability of directors, auditors, key managerial personnel, investors’ protection, and corporate governance, were all part of the Bill.

Now, post-2013, after consultations with a lot of stakeholders, very many different views came on the Bill. I remember also being a part of the stakeholders’ consultations at that time in 2014, as soon as the Government was formed, being a junior Minister in the Finance Ministry, under the eminent Minister, Shri Arun Jaitley.

At that time, after all the consultations in 2015, 22 amendments were carried out in May, 2015 in the Companies Act. Still, there were several voices saying the Act is not all that very perfect and could we again take up a lot more amendments? So, this Act itself is getting



evolved further and further and subsequently, 93 further amendments were made through the Companies (Amendment) Act in 2017. So, literally, from 2013 to 2019, you see that various changes of evolution have passed and the 2017 amendments were in pursuance of the recommendations made by the Companies Law Committee which was constituted by the Government and was chaired by the Secretary, Ministry of Corporate Affairs. After all that was over, again, because ease of doing business had really caught the imagination of a lot of people, there was a need for changing a bit more of the Companies Act.

Again, in July, 2018, a Committee was constituted under the chairmanship of the Secretary, Ministry of Corporate Affairs to review the existing framework for dealing with offences under the Companies Act, 2013. The Committee undertook a detailed study of all the penal provisions and other relevant provisions and submitted a report in August 2018. Now, post-August 2018, after consideration by the Cabinet, it was considered absolutely urgent and important to pluck the critical gaps in the existing Companies Act, even though, it was amended subsequently in 2015 and 2017, and also to facilitate ease of doing business and to strengthen the corporate compliance management system.

As the House was not in session, an Ordinance was passed in November 2018 and about 31 provisions were changed during that time. Again, there is a legislative process which was undertaken in December, 2018. There were considerations in the Cabinet and by 4<sup>th</sup> of January, 2019, the Lok Sabha considered the Bill with the amendments and then passed it. Then the Bill was taken to the Rajya Sabha where it was listed for three continuous days, but unfortunately, because the House was

adjourned *sine die*, it could not be taken up. Since it could not be taken up at that time, there was a need for us to rush through an Ordinance because we did not want to have any gap in terms of the inputs for the amendments which have been taken up and it was necessary to keep the continuity. So, a second Ordinance was brought in this year. The first Ordinance was brought in November 2018. Then, the President promulgated the Ordinance on 21<sup>st</sup> February, 2019.

Now, all these changes are driven more from the ground, driven more by the stakeholders and also driven more from the point of view of those who are probably gaming the system and are not really allowing the jurisprudence to take full play or even the in-house mechanisms which can give you solution to take play. So, the point of view of ease of doing business underlines this fact. There was a necessity to make sure two things because of pendency of cases in NCLT as well as very many ambiguous areas, grey areas leading to different interpretation. Everything which went through the Ordinance had to be given legislative support through the Bill. The amendments which were notified after the Ordinance was issued had to become a part of the Act itself.

That is that reason why the Bill is now being brought. But even as it is brought with all those very same amendments which were introduced through the Ordinance and which were notified, we are also bringing in additional amendments and that is what I want to underline. Thirty-one amendments were taken through the Ordinance and those 31 are now getting legislative support because we are adding those to this amendment Bill. Besides, 12 new amendments are being brought in and altogether 43 amendments will go through if we pass this Bill today.

The 31 amendments which were brought to the Companies Act 2013 were notified after the Ordinance was issued. Now those 31 amendments are part of this Bill; together with it, 12 new are also being added. All of them together are aimed at two main things: where compoundable offences resulted from smaller or minor offences which were not all that serious or critical, we want to make them non-compoundable and, where there was a need to make the entire framework simplified, we are bringing those details only.

I will give a picture of what existed before the Ordinance: 134 provisions existed of which 81 were compoundable offences; 35 were non-compoundable and in-house levy of penalties; those for which provisions existed for ROC level officers to deal with were 18; and all put together, 134. Post the Ordinance and the replacement Bill, there will only be 65 compoundable offences. Therefore, it is going to be not rigorous on those who are doing smaller omissions or commissions. Non-compoundable offences will be 35; in-house levy which will subject to penalties will only be 18 and 16 put together. I would not get into the details of the specific amendment points at this stage, but as the Members have been given a copy of it, if there is anything which emerges through the discussions, I will certainly take it point by point and reply during my reply stage. This being one of the very important Bills for ease of doing business, I would like to hear the views of all the Members.

**HON. CHAIRPERSON:** Motions moved:

“That this House disapproves of the Companies (Amendment) Second Ordinance, 2019 (No. 6 of 2019) promulgated by the President on 21 February, 2019”.

“That the Bill further to amend the Companies Act, 2013, be taken into consideration.”

**HON. CHAIRPERSON :** All Members are requested to confine to the time because we have the Private Members’ Business also. The first speaker is Shri Adhir Ranjan Chowdhury.

**SHRI PINAKI MISRA (PURI):** Hon. Chairperson, Sir, let us not try to pass it in a hurry. This is a very important Bill. We can take it up on Monday. ...(*Interruptions*)

**HON. CHAIRPERSON:** Let us start the discussion.

... (*Interruptions*)

**SHRIMATI NIRMALA SITHARAMAN:** Whilst I take hon. Member Shri Pinaki Misra’s input, I clearly explained even at the stage of introduction as to why it is urgent for us to consider this Bill. While I respect the view that more time given will be better for us, I would like to inform that this Ordinance will end on 31<sup>st</sup> of this month. We have passed the Ordinance three times over, and even yesterday I mentioned in response to Prof. Sougata Ray that the best practice which the House now propagates is get everything through the Bill, and not through the Ordinance. We don’t want the Ordinance. Three times we sat with the Ordinance. Since it is an Ordinance which will expire at the end of this month, I seek the indulgence of all the Members for a conversation on it.

**SHRI ADHIR RANJAN CHOWDHURY:** Hon. Chairperson, Sir, I rise to oppose the way the Ordinance has been invoked because there was no emergency situation which had warranted the promulgation of an Ordinance. I take strong exception to the invocation of Ordinance. It appears that the Government is going to be Ordinance-addicted.

In the 16<sup>th</sup> Lok Sabha, only 47 Bills have been scrutinised by the Standing Committees. In the 17<sup>th</sup> Lok Sabha, there has not been even a single instance where a Bill has been sent to a Standing Committee but again till the 7<sup>th</sup> August, the House Session has been extended without taking the entire Opposition into confidence. It appears as if the Government is in a hurry to pass legislation after legislation. We can easily say that the Government is heading towards, 'One nation, one Session'.

We are deprived of exercising our rights and discharging our responsibilities. We have been deprived from having the opportunity of questioning the Government by way of Question Hour. I think, this is simply antithetical to the democratic norms of our country.

You are absolutely right that this Bill has been undergoing scores of amendments, amendments, and amendments. I do not want spell out the details because you have also expressed your helplessness, that you are being constrained for time. So, I would simply restrict myself to two or three important issues.

First of all, the key amendment I have observed is the re-categorisation of certain offences which are in the category of compounding offences to an in-house adjudication framework, wherein defaults would be subject to the penalty levied by an adjudicating officer; instituting a transparent and technology-driven in-house adjudication mechanism on an online platform and publication of the orders on the website; de-clogging the National Company Law Tribunal by introducing certain amendments and enhancing the role of the regional director; tackling the larger issue of “shell companies”, enhancing accountability with respect to filing documents related to charges, non-maintenance of registered office, etc.

The Corporate Affairs Secretary had been entrusted with examination of suggestions that had been put forward before you. I think, there is no cogent argument at my disposal to oppose the legislative document but again I am opposing the way the Ordinance has been promulgated.

First of all, I want to know this from the hon. Minister: Do you have any unambiguous definition of what is called “shell company”? Please do not put out an amorphous depiction; rather, we would like to have an unambiguous definition of what is called “shell company” because they have been wreaking havoc in our country for the last few years.

It is a well-established fact that the existence of black money creates imbalances in the economy, finances terror and money laundering, etc., puts the honest at a disadvantage, deprives the State of the much-needed revenues, and ultimately adversely affects the poor of the country. One of the ways of siphoning off money and accumulation

of black money is through “shell companies” which is a menace for the Indian economic system.

The Special Investigation Team on Black Money, enactment of the Black Money (Foreign Income and Assets) and Imposition of Tax Act, 2015, the Income Declaration Scheme, 2016, the Benami Transactions (Prohibition) Amendment Act, 2016, and the demonetisation scheme – you have applied all kinds of weaponry to get black money restricted but I think still black money is being siphoned off through “shell companies” and you need to be extra careful about it.

In its war against black money and fake notes in the economy, the Government brought in demonetisation of high denomination currency but still we are in the dark when it comes to how much sum has been unearthed by way of demonetisation. It has not been reflected in your Budget also.

Simultaneously, the Ministry of Corporate Affairs notified sections 248 to 252 of the Companies Act. Section 248 of the Act provides that a dormant company, that has not obtained dormant status under section 455 of the Act, can be struck off from the records of the ROC by filing application in prescribed manner. The Act provided defunct companies with an opportunity to voluntarily apply for striking off their names from the records of the ROC. I do not know how many companies have applied for striking off their names. The hon. Minister would be in a better position to tell this.

The Ministry of Corporate Affairs also exercised its powers under sections 164 and 167 of the Act to disqualify Directors of defaulting



companies that had failed to file annual returns for the past three years. Section 164 of the Companies Act, 2013, corresponds to section 271 of the Companies Act, 1956 that did not take private companies in its ambit, while section 164 is inclusive of both private and public companies. Though this step, taken by the Ministry of Corporate Affairs, was much in conflict due to its retrospective effect, I would request the hon. Minister to clarify this point.

Insofar as shell company is concerned, I would say that the Government's own accounts sometimes show that lakhs of shell companies have been taken off. We do not know how many actually have been existing till now. The task force has suggested some possible parameters to define if a company has been set up to launder money or exploit regulatory arbitrage. There is no legal framework by which we can say that this is a shell company. Generally, shell companies exist only on paper and are often used by fraudsters for carrying out their illegal activities. Against this backdrop, the Government should work hard on putting in place a proper definition for shell companies.

Sir, I would also like to draw the attention of the hon. Minister to another issue of Corporate Social Responsibility. I will be very brief in my deliberation. The concept of Corporate Social Responsibility for firms and businesses has undergone a radical change since its early days and has evolved from a mere slogan to the present-day situation where it is considered no longer a fashion but as the part and parcel of a company's functioning to be socially responsible. I would like to know whether the corporate entities are discharging their responsibilities as prescribed by law.



Fear that the companies would find their way to avoid shelling out money for CSR activities has appeared to be well founded. A survey by an accountancy firm KPMG found that 52 of the country's largest 100 companies failed to spend the required two per cent last year. A smaller proportion has gone further allegedly cheating the system. I am saying this because I come from a backward district, which has been included in the list of Aspirational Districts of the country. If CSR fund is distributed in a rational manner, at least one aspirational district should get some financial assistance which could help the district to augment its financial position.

In the case of procedures, such as, where a company wishes to convert from a private entity to public or *vice versa*, section 14, sub-section 1, and where a company wishes to follow a different financial year, section 2, sub-section 41, the amendment proposes that they should directly approach the Central Government rather than the *quasi-judicial* bodies such as the NCLT. While de-clogging the NCLT is a priority, this approach is reminiscent of the Licence Raj culture which used to exist in the country. It fits into the Government's pattern of centralisation of power, and significantly increases the chances of misuse and corruption.

Instead the Government's energies can be focussed on expanding the NCLT and investing in increasing its efficiency which will eventually lead to de-clogging the system.

Madam, yes, you are striving hard to promote your rankings for 'Ease of Doing Business'. However, by distorting the facts and by going through uncharted routes, which is not practiced by other countries, you should not try to promote your rankings. It is because the provision for declaration of commencement of business originally existed in the Act,

which was later omitted. The Government has now re-introduced it for the sake of improving its rankings in the 'Ease of Doing Business' Index. While the Ease of Doing Business rankings may have improved, they cannot be viewed as an economic report card. The investment rate was approximately 38 per cent of the GDP in 2011; however, it came down to around 27 per cent in 2018. The leap in rankings is a myth because the fiscal deficit is growing; banks are grappling with the twin balance-sheet problem; and major regulatory and audit lapses remain. Despite regulations, the number of inactive registered companies remain high.

With these words, I conclude.

**श्री पी. पी. चौधरी(पाली) :** माननीय सभापति जी, मैं इस बिल को सपोर्ट करने के लिए खड़ा हुआ हूँ ।

सभापति जी, वर्ष 2013 में जो कंपनी लॉ एक्ट आया, वह कंपनी लॉ एक्ट बहुत ही कॉम्प्रिहेंसिव था, इसमें कोई दो राय नहीं है । पहली बार दो इश्यूज़ को एड्रेस किया गया था । एक इश्यू था - डिस्क्लोज़र और दूसरा - अकाउंटेबिलिटी । ये दोनों एस्पैक्ट्स बहुत लंबे समय से मिसिंग थे । Disclosure to whom? To stakeholders. उनको पता होना चाहिए कि कंपनी में क्या हो रहा है, इसके लिए सारे प्रावधान किए गए थे ।

दूसरी बात थी, जो एक लंबे समय से महसूस की जा रही थी, कि अकाउंटेबिलिटी का आभाव है । हम कई बार देखते हैं कि कंपनी में गड़बड़ होती है, क्योंकि उसकी अकाउंटेबिलिटी फिक्सड नहीं होती है । इनवैस्टर

प्रोटेक्शन और कॉर्पोरेट गवर्नेंस के लिए इसमें चाहे डायरेक्टर्स हों, चाहे ऑडिटर्स हों, चाहे की-मैनेजेरियल पर्सन्स हों, इन सबमें जब अकाउंटेबिलिटी आएगी और डिस्क्लोज़र का मामला होगा, तब कॉर्पोरेट गवर्नेंस का यह सिस्टम सही बैठेगा ।

जब वर्ष 2013 का एक्ट बना, जब इसमें प्रैक्टिकल यूटिलिटी आई, दो वर्षों के भीतर यह महसूस किया गया कि इस एक्ट में काफी नई चीज़ें आई हैं, इनफॉर्मिटीज़ हैं, और इसमें प्रावधान होना चाहिए, उसकी वर्किंग बड़ी डिफिकल्ट हुई । मोदी गवर्नमेंट के आते ही यह महसूस किया गया और जब यह देखा गया कि वेरियस स्टैकहोल्डर्स को इसकी एप्लीकेशन में कठिनाई आ रही है तो वर्ष 2015 में पहली बार इसमें अमेंडमेंट बिल लाया गया । इसके बाद वह बिल पास हुआ और उसके कुछ दिनों के बाद यह महसूस किया गया कि इसमें करीब 93 अमेंडमेंट्स, नंबर 93-97 हो सकता है, वर्ष 2013 के इतने अमेंडमेंट्स फिर वर्ष 2017 में करने पड़े ।

मैं मानता हूं कि जब भी कोई नया एक्ट आता है, उसकी वर्किंग, जिस समय उसे लेकर आते हैं, हो सकता है कि उतनी विज़्युलाइज़ न हुई हो, लेकिन 2013 के एक्ट में 2015 और 2017 में ड्रास्टिक अमेंडमेंट्स करने पड़े, तब जाकर वर्किंग हो सकी । वर्ष 2017 के बाद में फिर यह महसूस हुआ कि कुछ और अमेंडमेंट्स करने की ज़रूरत पड़ेगी ।

इसके लिए कंपनी लॉ कमेटी सेक्रेट्री की चेयरमैनशिप में कॉर्पोरेट अफेयर्स में बैठी और उनको यह मैन्डेट दिया गया कि इस पूरे विषय को रिव्यू किया जाए । जो इसके एग्ज़िस्टिंग फ्रेमवर्क हैं, उस एग्ज़िस्टिंग फ्रेमवर्क में दो इश्यूज़ को देखा जाए, क्योंकि कई बार यह महसूस किया गया है अगर हम चाहते हैं कि ईज़ ऑफ़ डूइंग बिज़नेस हो, अगर उसका डेटरनेंट इफेक्ट ज़्यादा होगा, जहां ज़रूरत नहीं है, उन ऑफेंसेज़ का, जहां छोटी-छोटी बात हैं, जहां बिलकुल माइनर इश्यूज़ हैं, जहां फाइन से काम चल सकता है, वहां पनिशमेंट क्यों दी जाए?

2013 के एक्ट में इस तरह का प्रावधान था । कमेटी को मंडेट था कि वर्ष 2013 के एक्ट में जो ऑफेंसेज़ हैं, उन सबको री-विजिट किया जाए, उनको देखा

जाए, उनको कैटेग्राइज्ड किया जाए और उनके रिलेटेड मैटर को भी देखा जाए । कमेटी ने री-कैटेग्राइजेशन ऑफ ऑफिन्सेज पर अपनी रिपोर्ट और रिकमेंडेशन दी । जैसा कि अभी माननीय मंत्री जी ने बताया कि इस तरह के कितने केसेज थे जो कम्पाउंडेबल और नॉन कम्पाउंडेबल की कैटेगरी में थे । मैं उस पर डिटेल में नहीं जाना चाहता, लेकिन मैं यह बताना चाहूंगा कि जो कम्पाउंडेबल केसेज थे, उनके लिए सिविल लायबेलिटीज जो हैं, वे इम्पोज करने के ऐसे-ऐसे ऑफिन्सेज थे, जो प्रोसीजरल लैप्स के थे, टैक्नीकल लैप्स के थे । अब सवाल यह है कि प्रोसीजरल लैप्स और टैक्नीकल लैप्स के लिए अगर आप पनिशमेंट प्रोवाइड कर देंगे तो हम ईज ऑफ डूइंग बिजनेस कैसे अचीव करेंगे ।

सभापति महोदय, दूसरी चीज जो छोटे-छोटे ऑफिन्सेज हैं, वे एनसीएलटी में जाते थे । एनसीएलटी कोर्ट में हजारों केसेज, जहां पर 11 लाख 75 हजार कंपनीज इंडिया में रजिस्टर्ड हैं, अब छोटे-छोटे केसेज लेकर एनसीएलटी में जाएंगे तो वहां पर बहुत बोझ हो जाएगा और उन केसेज को डिस्पोज ऑफ करने में बहुत टाइम लगेगा । मैं माननीय मंत्री जी को धन्यवाद दूंगा कि आप यह बिल लेकर आए हैं और इसमें इन हाउस एडजुडिकेशन प्रोवाइड किया है । जो केसेज डिपार्टमेंट लेवल पर, गवर्नमेंट लेवल पर सेटल हो सकते हैं, जो छोटे-छोटे फाइन से संबंधित केसेज हैं, उनके लिए सालों तक इंतजार न करना पड़े, उसके लिए जो इनहाउस मैकेनिज्म इस बिल के द्वारा जेनरेट किया गया है, वह बहुत ही एप्रिशिएट करने लायक है । यही कारण है कि मोदी सरकार के कार्यकाल के दौरान ईज ऑफ डूइंग बिजनेस में भारत की जो रैंकिंग बढ़ी है, उसका कारण यही है कि लगातार चाहे आईबीसी हों, चाहे कंपनी लॉ अमेंडमेंट में हों, बाहर के लोगों को पूरा का पूरा विश्वास पैदा हुआ है जो यहां आकर अपना पैसा लगाते हैं । कंपनी लॉ कमेटी की रिपोर्ट जब एग्जामिन हुई तो उसमें सारे के सारे ऑफिन्सेज को न्यूट्रलाइज नहीं कर दिया गया, बल्कि जो सीरियस ऑफिन्सेज थे, उनको नहीं छोड़ा गया । ऐसा नहीं है कि किसी कंपनी में कोई फ्रॉड करें और फ्रॉड के बाद उस पर फाइन इम्पोज कर दें । उनको इन्टैक्ट रखा गया है । जो सीरियस ऑफिन्सेज हैं, उन पर the existing rigours of law will continue और जो लैप्स और टैक्नीकल और प्रोसीजरल ऑफिन्सेज हैं, वे इन हाउस में शिफ्ट किए गए हैं,

बाकी जो सीरियस ऑफेंसेज हैं, जो स्टैचुअरी बॉडी में हैं, वे वहां जाएंगे। कम्पाउंडेबल ऑफेंसेज, जो सिविल राँग हैं, उनको फाइन के द्वारा सेटल करने का प्रावधान किया गया है। इससे दो सबसे बड़े फायदे हुए हैं। एक तो ईज ऑफ डूइंग बिजनेस और दूसरा कॉरपोरेट कम्प्लायंस। इससे कम्प्लायंस बहुत ईजी हो गई है और फास्ट हो गई है। जो केस इन हाउस मैकेनिज्म में 2 दिनों में तय हो सकता है, वह दो साल तक एनसीएलटी या कोर्ट ऑफ लॉ में या फिर स्पेशल कोर्ट में डिसाइड नहीं हो पाता। इसलिए यह एक बहुत बड़ा स्टेप लिया गया है। इससे कम से कम जो स्पेशल कोर्ट हैं, वे लिटिगेशन से डी-क्लॉग होंगे, उन पर लिटिगेशन का भार कम होगा। केसेज जल्दी डिसाइड होंगे और नम्बर ऑफ केसेज वहां कम जाएंगे। इसका पर्पज है 'To facilitate speedy disposal of cases'. इससे ड्यूअल पर्पज सॉल्व होंगे। एक तो डिपार्टमेंट में वे केसेज जल्दी डिस्पोज ऑफ होंगे और एनसीएलटी में भार कम होने से और स्पेशल कोर्ट में उनका लोड कम होने से एनसीएलटी में भी केसेज का डिस्पोजल और सीरियस फ्रॉड केसेज पर ज्यादा ध्यान दिया जाएगा। उन पर कॉन्सन्ट्रेंट और फोकस ज्यादा होगा। उन केसेज का मेरिट वाइज डिसीजन होना ही ठीक रहेगा। जैसे सैक्शन 447 के केसेज हैं, कॉरपोरेट फ्रॉड के केसेज हैं, उनमें कोई बदलाव इस बिल में नहीं किया गया है।

माननीय सभापति जी, मैं यह भी बताना चाहूंगा कि कम्पाउन्डेबल ऑफेंसेज को सिविल नेचर का करके फाइन, पैनेल्टी और इन हाउस मैकेनिज्म किया गया, इसका कितना फर्क पड़ा। आप देखेंगे कि एनसीएलटी और स्पेशल कोर्ट्स पर जो 60 प्रतिशत लोड था, वह इस तरह के केसेज की वजह से था। इससे लगभग 40 हजार केसेज कम होंगे। मुझे नहीं पता, हो सकता है कि गवर्नमेंट ने सही निर्णय लिया हो, लेकिन मैं माननीय मंत्री जी से क्लैरिफिकेशन चाहूंगा कि बिल लाने से पहले के जो पेंडिंग केसेज हैं, उन केसेज को भी अगर इन हाउस मैकेनिज्म में ट्रांसफर कर लें तो एनसीएलटी पर अननेसरी लोड कम हो जाएगा और केसेज जल्दी डिसाइड होंगे।

महोदय, मैं यह भी बताना चाहूंगा कि जब एनसीएलटी की बात आती है, क्योंकि आईबीसी में टाइम लिमिट दिया हुआ है, उसमें अगर ये केसेस भी होते

तो वे डील नहीं हो पाते क्योंकि एनपीए के केसेस भी हैं। अब ये केसेस गवर्नमेंट को ट्रांसफर होने से आम जन और कम्पनीज़ को, जिनका वहां लिटिगेशन है, फायदा होगा। क्योंकि छोटे-छोटे केसेस हैं, जैसे change of financial year, non-filing of financial statement, change of public company to private company को आरओसी इफेक्टिवली डील कर सकता है। गवर्नमेंट का ऑब्जेक्टिव इस बिल से साफ लगता है, बहुत क्लीयर है to plug the regulatory gap. जो वर्ष 2013 के एक्ट में रह गए हैं and to give fair justice. इससे यह भी फायदा होगा। कोर्पोरेट गवर्नेन्स एंड कम्प्लायंस स्टैंडर्ड इससे ठीक हो जाएंगे। एगज़म्पलरी पनिशमेंट सीरियस ऑफेंसेस के लिए रखा गया है।

सर, जहां तक एनफोर्समेंट ऑफ कम्प्लायंस मैनेजमेंट की बात है, अभी अधीर रंजन जी ने सेल कम्पनी की भी बात की है। सेक्शन 10ए नया इनसर्ट हुआ है, क्योंकि पहले अधीर रंजन जी की कांग्रेस की सरकार के टाइम, यूपीए के टाइम में लम्बे समय तक शैल कम्पनी, जिसके बारे में ये कहते हैं, शैल कम्पनी का नाम तब शुरू हुआ। यह जो पौधा है, उनके टाइम से लगा और लम्बे समय तक यह चलता रहा। वर्ष 2014 में पहली बार प्रधान मंत्री मोदी जी के नेतृत्व में इन शैल कम्पनियों का सफाया होना शुरू हुआ। लगभग 3 लाख 50 हजार कम्पनीज़ को स्ट्रक ऑफ किया गया, क्योंकि आप लोगों ने इनको रूथलेसली, बिना सोचे समझे रजिस्टर किया था। उन कम्पनीज़ का कोई एड्रेस या अता-पता नहीं था। उन कम्पनीज़ के शेयर होल्डर्स की पेमेंट जमा नहीं थी। ये कम्पनियां क्या करती थीं? इन कम्पनियों का काम मनी लान्ड्रिंग का था, ड्रग व Terror फंडिंग का, इल्लिगल एक्टिविटीज़ का काम था। इसकी पूरी सफाई का काम पहली बार, इस देश के आजाद होने के बाद से आज तक अगर किसी ने डिस्मिशन लिया तो प्रधान मंत्री मोदी जी ने लिया। इससे बहुत विश्वास पैदा हुआ, क्योंकि प्रधान मंत्री जी चाहते हैं कि कोर्पोरेट स्ट्रक्चर्स ट्रांसपेरेंसी के साथ काम करें, वे इसका मिसयूज़ न करें। जिस परपज़ के लिए यह बना है, उस परपज़ से ही वे चलें। सेक्शन 10 A में जो आया है, मैं बताना चाहता हूं कि डिमोनेटाइजेशन के पहले और बाद में कुछ कम्पनियां ऐसी थीं जिन्होंने हजारों करोड़ रुपये, 2300 करोड़ रुपये से लेकर 3700 करोड़ रुपये तक इन कम्पनियों



में जमा करवाए और निकलवाए हैं । जहां तक शैल कम्पनियों की बात है, हम नहीं कह रहे हैं कि सभी 3 लाख 50 हजार कम्पनियां शैल कम्पनीज़ हैं । ये कम्पनीज़ नॉन-कम्पलायंस कम्पनियां हैं, सैक्शन 248 की कम्पलायंस नहीं करने वाली हैं । लेकिन इनमें बोगस कम्पनियां भी हैं, जिनका कोई बिजनेस नहीं होता है और हम शैल कम्पनी या होलो कम्पनी कहते हैं । ऐसी कम्पनियों ने काम किया और इनको स्ट्रक ऑफ करके, इनके बैंक अकाउंट सीज़ किए गए । इनकी प्रोपर्टी की जहां तक बात है । I do not know whether the Government has taken the decision or not but I would like to request the Government to take the decision with respect to the disposal of property and all proceeds from shell companies should be deposited in the Consolidated Fund of India. सर, मैं यह भी बताना चाहूंगा कि इसमें सैक्शन 10ए इंट्रोड्यूस किया गया है ...(*Interruptions*)

**HON. CHAIRPERSON :** Please try to wind up now.

**SHRI P. P. CHAUDHARY :** Sir, I am the first speaker from my party. I will conclude. It is a very important Bill. It relates to the ease of doing business. I will not take much time because two other Members from my party are also there to speak.

**HON. CHAIRPERSON:** The Government wants to pass the Bill today and that is why I am saying.

**SHRI P. P. CHAUDHARY :** Sir, I will refer to only two to three clauses of the Bill. The first is about insertion of Section 10(A). This talks about the intent and objective of the Government. The spirit behind this is that as soon as one opens a company one has to declare that the subscriber has paid their shareholding. At the same the registered office is also required to be shown.

Thus, the registered office can be inspected by Registrar of Companies and can be checked whether that registered office is existing or not but in the coming years, geo-tagging can also be done to find out whether the registered office is there or not.

There are many other Sections in the Bill. There are about 11,75,000 companies. I would request the hon. Minister to regulate these companies and see whether their affairs are conducted in accordance with the law or not, whether they are filing their returns on time or not, and whether there is any fraudulent activity or not. Here, induction of artificial intelligence is very essential in these days. It is the need of the hour.

Under the provisions of Section 248, we can only find out, by MCA-21, whether companies have filed their Annual Reports for two consecutive years. If they have failed to do so, then they can be struck off but we can also get some information from them. Apart from the Ordinance, two or three more Sections have been added in this Bill with respect to NAFRA and CSR as they are very essential.

यह फाइनेंशियल ऑडिट के लिए बहुत जरूरी था, क्योंकि पहले उसमें इनकी जो वर्किंग थी, वह पूरी का पूरी सेन्ट्रलाइज्ड थी। लेकिन मैं इस बात के लिए माननीय मंत्री जी को धन्यवाद दूंगा कि उन्होंने इसकी फंक्शनिंग को डिसेन्ट्रलाइज्ड किया है, डिवीजन और उसकी एग्जिक्यूटिव बाडीज़ के द्वारा उसकी फंक्शनिंग को आगे बढ़ा रहे हैं।... (व्यवधान) और डायरेक्टरशिप के लिए। आप देखिए कि पहले कितनी कंपनियों के डायरेक्टर बन जाते थे, पता ही नहीं चलता था। लेकिन अब सीलिंग फिक्स कर दी गई है। उसके तहत जो सीलिंग है, उसके सैक्शन 164 और 165 में सीलिंग फिक्स कर दी गई है, अगर उस सीलिंग से एक्सीड करते हैं, तो वह डिस्कॉलिफाइड हो जाता है। यह जो



प्रोविज़न लाया गया है, यह बहुत ही अच्छा प्रोविज़न है । यह सब कुछ जो एनसीएलटी का है...(व्यवधान) महोदय, मेरा बस एक अंतिम बिंदु इकोनॉमिक रिफार्म के बारे में है ।

महोदय, मैं यह बताना चाहता हूँ कि इस सेन्चुरी का बिगैस्ट इकोनॉमिक रिफार्म है, वह इन्सॉल्वेन्सी एंड बैंक्रप्सी कोड है, जिसे प्रधान मंत्री मोदी जी लाए हैं । आप देखिए कि पहले एक समय था, हमारा पूरा फाइनेंशियल ईको सिस्टम था । जो क्रेडिटर्स होते थे, वे डेब्टर्स के पीछे भागते थे, लेकिन आज उलटा हुआ है । आज जो डेब्टर्स हैं, वे पैसा जमा करना चाहते हैं । उनको पता है कि अगर उनके पांच लाख रुपये भी ड्यू हो गये या कोई एनसीएलटी में गया, तो मेरी जो इंडस्ट्री या यूनिट है, वह रिजोल्यूशन में आ सकती है । इस तरह का एट्मॉस्फियर होने से, डेब्टर एंड इफ्केट होने से सबसे बड़ा फायदा यह हुआ है कि आज चाहे डायरेक्ट इम्पैक्ट हो, चाहे इन्डायरेक्ट इम्पैक्ट हो, बैंकों के करीब तीन लाख करोड़ रुपये आए हैं । जब यूपीए का समय था, देश आज़ाद होने से वर्ष 2006 तक बैंकों ने 18 लाख करोड़ रुपये इंडस्ट्रीज को उस समय दिए थे । लेकिन वर्ष 2006 से 2013 के बीच में इन्होंने 58 लाख करोड़ रुपये तक बांटा है । इन लोगों ने पाप किया था, लेकिन सफ़ाई करने और उसे भुगतने का काम मोदी जी कर रहे हैं । एनसीएलटी की वजह से जो सिक इंडस्ट्रीज़ हैं, जो एनपीए है, उनके पैसों की रिकवरी हो रही है और जिन गरीब आदमियों और आम जनों का पैसा बैंकों में लगा था, वह बैंकों को वापस मिल रहा है । इसलिए, मैं इस बिल का सपोर्ट करता हूँ ।

**SHRI A. RAJA (NILGIRIS):** Sir, I thank you very much for giving me this opportunity to comment upon the Bill. Definitely, I will not force you to ring the bell.

When the Bill is being moved for consideration, I remember the World Bank Report which has rated 109 countries in carrying out

business. According to the assessment that has been done by the World Bank, India has been ranked at 77. Some of the factors which culminated the World Bank Report are starting business, enforcing contracts, paying taxes, resolving insolvency and other factors. What is the rank of India in all these factors? I am referring to the World Bank Report of the last financial year. In starting of business, the rank of India is 137; in enforcing contracts, it is 163; in paying taxes, it is 121 and in resolving insolvency, it is 108.

Sir, I hope the Minister has come up with this Bill with a good intention. The amendments and the Sections of the Bill are intended to satisfy the requirements and reach the exalted position of the World Bank rating in future.

I think, all these parameters, which have been enunciated in the World Bank Report, must be kept in the mind of the Government. Through these amendments, let us jointly fulfil the World Bank factors and achieve them.

I carefully perused the Bill. I can understand the intention of the Government. I hope positively that the intention has to be achieved in a perspective manner. I think, two things are contemplated in this Bill. I may be correct or not; if not, Madam may please correct me. First, ease of doing business by the companies; and secondly, to curb the shell companies.

These are the prime elements you want to address besides all other issues. So, the intention of the Government is good. I am not having apprehensions but some small reservations as to how we are going to achieve it. The hon. Minister is very fond of Tamil couplets and Tamil literature. The end which has been cited in the Bill is okay. Yes, we have

to achieve it but what about the means? The Tamil literature always says that the end is not important. The most important thing is how to reach the means. I think this couplet is known to the hon. Minister:

*“Eendraal Pasikaanpaan Aayinunj Cheyyarka  
Saandrora Pazhikkum Vinai”*

I am worrying about how we are going to reach the means.

Sir, if I recall my memory, when the Bill was introduced in the Parliament in 2013, I think, that was referred to the Finance Committee which recommended the Corporate Social Responsibility Fund. I will come to this point later on.

Thereafter, a Committee was set up under the Chairmanship of the Secretary of the Department. That Committee gave more than 25 or 50 recommendations. I do not know if it is correct. I think, this Bill has culminated out of those recommendations. The motto of the Bill is, maybe, to curb the shell companies, and also to de-clog the NCLT.

As far as the shell companies are concerned, your intention is very clear. There are, no doubt, very good provisions. But still, I am having a small doubt.

Sir, I will read the insertion of new Section 10A, and the amendment of Section 12 in the Bill. Section 10A (1) says:

“(a) a declaration is filed by a director within a period of one hundred and eighty days of the date of incorporation of the

company in such form and verified in such manner as may be prescribed, with the Registrar that every subscriber to the memorandum has paid the value of the shares agreed to be taken by him on the date of making of such declaration”

This is regarding the self-declaration.

Coming to Section 12, the principle Act, you are adding one more sub-section: “(9) If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations...”

The term “reasonable cause” is a little bit tricky term. The intention of the Minister may be good. I am not doubting the intention of the Government. But when you are drafting the law, you are saying – “If the Registrar has reasonable cause to believe that the company is not carrying on any business or operations”. Why are you giving all the powers to an individual? There is already an excessive delegation of power in the Bill. I will come to this point later if the time permits. But my only question is this. When you are giving absolute and total power to the Registrar, a single man who is sitting across the country somewhere like Chennai, Mumbai or Hyderabad, how is he going to exercise his power? This is very important. That is why I suggest, at least, in future, instead of Registrar, there must be some body which has to have a collective decision. The decision must be just and fair.

Now, I will come to the other point regarding de-clogging of NCLT. I feel, there is an excessive delegation of power. More role of the Government may lead to arbitrary decision. I welcome the measures taken to simplify the Penal Sections. As you introduced the in-house

procedure mechanisms, I also welcome that. But still, there are some apprehensions that remedial measures should be taken.

Sir, finally penalty is viewed as a means to deter the Companies violating the law. But the five-fold increase cannot be justified. Please look into it.

As regards CSR fund, if the fund is not spent, you want to create a special account to fulfil your dream. But why are you creating more and more accounts? Instead of opening more and more accounts, I would like to suggest that all the unspent money can be shifted to the Prime Minister's Relief Fund where there is a demand. This may be considered. With these words, I conclude.

**PROF. SOUGATA RAY (DUM DUM):** Mr. Chairman, Sir, I rise to speak on the Companies (Amendment) Bill, 2019. I am happy to speak on this Bill because I was here in the House and spoke when young Sachin Pilot introduced the comprehensive Company Law. That was very significant in the matter of investor protection and corporate governance. It also introduced the concept of Corporate Social Responsibility and included it in the law. But the unfortunate part is that after the present Government came to power in 2014, they made repeated amendments to the law. There were 22 amendments in 2015, then there was a large number of amendments in 2017 and again the present Bill has come with 36 Clauses, including a lot of amendments. It seems that the companies are not satisfied with any law that you bring. So, they bring pressure on the Government to change the law. The Government formed a Committee headed by Shri Injeti Srinivas,

Corporate Affairs Secretary and that Committee submitted a Report. The present Bill is an outcome of the Report of that Committee headed by Shri Injeti Srinivas. But it defies logic as to what is the urgency about these changes in the Company Law that two Ordinances had to be brought. I have not found any urgency in this Bill that immediately something is going to happen, suddenly 'ease of doing business' will become better, and so on and so forth. The rule by Ordinance is something which we all oppose.

But as far as the Bill is concerned, I do not find myself at variance with the Bill or its provision or its Clauses. I am opposed to the Government's policy on many matters like selling the family silver, disinvesting CPSUs to get Rs. 1,05,000 crore, divesting Air India to private parties etc. I am against all this. I am against the policy of the Government which has led to NPAs amounting to Rs. 11 lakh crore which will never be recovered. But when the Government comes in for small cosmetic changes, I have no objection to the Bill.

Let me say that 'corporates' or 'company' has become a bad word in the country, Why? First, we had the case of Satyam Computers which inflated the share values and it involved a famous chartered accountancy company to inflate the share values. Then came the ponzi companies. All these companies like Sharadha, Rose Valley etc. were formed. The Government did not look into it. There is an organisation called Serious Fraud Investigation Office (SFIO) under the Ministry of Corporate Affairs. What was the SFIO doing when all these ponzi companies sprang up and started doing business? They did nothing; later we found out in the Finance Committee that they instituted some action very late. Thirdly, at the time of demonetisation the shell companies sprang up in a big way. Monies were transferred and cash became legitimate white

money through these shell companies. So far, not enough has been done to do away with this menace of shell companies; only one step has been taken and that step is that the Registrar of Companies can visit an office and if there is no existence of an office, he may close that company. That is the simple power given to the Registrar of Companies.

Sir, if you are aware, we have an office of the Registrar of Companies in Kolkata in Nizam Palace. That is a place where, people know, that money has to be paid to register a company.

The Registrar of Companies' offices are all dens of corruption. Nothing has been done to remove corruption from these places. But as I said, the Bill has certain good points in the sense that it seeks the changes that are expected to lead to greater compliance by corporates, de-clogging of the special courts, de-clogging of the NCLT and effective enforcement. At present, around 60 per cent of the 40,000 odd cases pending in courts pertain to sections dealing with procedural lapses that are proposed to be shifted to in-house adjudication mechanism thereby incentivizing compliance by corporates. As a result of the amendments brought in, in future, the compounding cases load on NCLT will also come down significantly. NCLT is bogged down by insolvency and bankruptcy court cases. There are huge things like selling Essar Steel to ArcelorMittal. All these big things are happening there. So, these small things should be taken out of NCLT. That is why, I support the Bill.

An analysis of data available demonstrates that most of the cases initiated or pending relate to procedural lapses such as non-filing of financial statements and non-filing of annual returns etc. If such violations are re-categorized and allowed to be adjudicated through payment of monetary penalties, the burden on special courts should be



drastically reduced. So, that part of the Bill is all right. I think that the Minister's intentions are good and as Mr. Raja pointed out her end is good, but she is adopting the means of repeatedly resorting to Ordinances, by bringing in Ordinances and law for favour of the corporates. The Budget and Economic Survey say that the Government depends on private sector spending and on the beautiful corporates for our economic development. In this country, the corporates have never played a major role in building up infrastructure. It was left to the Government to do the same. So, today also, the corporates are neither beautiful nor good. So, the Minister should at least keep them under control. With these words, I conclude.

**SHRIMATI VANGA GEETHA VISWANATH (KAKINADA):** Hon. Chairman Sir, thank you for giving me this opportunity to speak on the Companies (Amendment) Bill, 2019 on behalf of YSR Congress Party.

The recommendations made by the Committee were examined by the Government and it was noted that the changes in the Companies Act, 2013 suggested by the said Committee would fill critical gaps in the corporate governance and compliance framework as enshrined in the said Act while simultaneously extending greater ease of doing business to law abiding corporates. Accordingly, it was proposed to amend certain provisions of the Companies Act, 2013.

The amendment seeks to tighten corporate social responsibility compliance and reduce the load of cases on National Company Law Tribunal. The proposed legislation is to facilitate to address difficulties



faced by stakeholders and ease of doing business in order to promote growth and employment.

The reality of India's corporate sector is private companies constituting roughly 90 per cent of the total number of incorporated companies. The provision of Section 29 is now being extended to all companies, public and private. The Government may now, therefore, mandate dematerialization for shares of private companies too and all shareholders of all private companies shall have to come within the system of getting their holdings dematerialized.

The concept of undesirable persons managing companies was there in sections 388B and 388E of the companies Act, 1956.

### **15.00 hrs**

These Sections were dropped by the J.J. Irani Committee. Similar provisions are perhaps making a comeback by insertion of Sections 241 to 243 of the Act. This insertion seems to be a reaction to the recent spate of corporate scandals, particularly in the financial sector.

In the interest of transparency and fairness, guiding principles for determination of penalties have been introduced, which should help the companies to a large extent. It is hoped to have a sea change in the provisions of the Act after the enactment of the law, which, in turn, shall bring about a change in the way of corporate world's works. The amended Act may also hopefully raise the gear of governance, and not only bring Indian Company Law in tune with global standards but also ensure ease of doing business without any hurdles.

Besides this, certain routine functions from the National Company Law Tribunal (NCLT) would be transferred to the Central Government. These include dealing with applications of change of the financial year and conversion from public to private companies.

Apart from that, under the amended law, non-maintenance of registered office and non-reporting of commencement of business would be the grounds for striking off the name of a company from a register.

Among others, breach of ceiling on directorship would be a ground for disqualification of a Director.

There would also be stringent provisions with reduced timelines for creation and modification of charges under the Companies Law.

Sir, the amendments are aimed at filling critical gaps in the Corporate Governance and Compliance Framework as well as simultaneously extend greater ease of doing business to law-abiding corporates.

With these few words, I conclude. Thank you.

**SHRI PINAKI MISRA (PURI):** Hon. Chairman, Sir, the Companies Act, 2013, which superseded the Companies Act, 1956, was passed in 2013. I was privy to its passing; and let me tell you straightaway with a very heavy heart that it was one of the more embarrassing episodes of my life that I was party to the passage of that Bill in 2013 because in retrospect, it has

turned out to be one of most disastrous pieces of legislation that this country has seen in a very long time.

The fact that it was a brand new Bill and the fact that the Parliament, both the Houses, rubberstamped an Act, which had been put up by the bureaucracy without any application of mind and which has had disastrous consequences thereafter -- it was also sent to the Standing Committee where again, unfortunately, not enough attention was paid -- many of these provisions, over a period of time, have proved to be absolutely disastrous.

**HON. CHAIRPERSON :** It was done after a detailed discussion and scrutiny by the Standing Committee!

**SHRI PINAKI MISRA :** You are absolutely right. But I do not know how did it pass muster and we managed to not see through the myriad problems that this has had; and as a result of which extensive amendments were brought in 2015, extensive amendments were brought in 2017 and again extensive amendments have come now in 2019.

My very dear friend Mr. Arun Jaitley and I, in fact, shared many laughs during the amendments of 2015 and 2017 when he was the Finance Minister here and he was piloting them as to the incongruity of the drafting, as to many absurd clauses, which were in it. Therefore, as I said, right at the threshold, I am deeply embarrassed that I was privy to the passing of this Bill in 2013.

My only grievance to this Government, I think, in bringing this Amendment Bill now, is that it does not go far enough. Otherwise,

everything that they do to amend this Bill is unexceptionable. There is no question about it. You can find no fault with any amendments.

In fact, the key problems in the Companies Act, 2013 runs into some 10 pages here, which is abbreviated. Therefore, I say, if you let me speak, I would probably speak till the end of the day and I still would not be able to enumerate various problems. Because I have appeared in the NCLT week in and week out, I am on the Board of several companies, each time, we come up with some of these problems, we wonder how Parliament passed this.

Mr. Chairman, Sir, since time is limited, may I only suggest some of the very urgent improvements that this Act requires, which will facilitate ease of doing business? Section 185 and Section 186 have very many restrictive conditions whereby promoters are not able to bring their own funds into their own organisations.

In a time of such liquidity crunch in this country, as we are going through the moment, we should be immediately easing it out. I urge the hon. Minister to look into this immediately. If I cannot bring money into my own company, then what am I doing business for?

Secondly, there is no capping at all on the penal provisions in regard to non-filing of forms in this Act. Many of these are small MSMEs. There are small companies. These oversights are often discovered after years and there are day-to-day penalties. These penalties often end-up in lakhs, which means, the entire net worth of these companies is going to be wiped out. Therefore, there should be

caps on all penalties. Make them salutary for the large companies but, at least, for the smaller companies, for God's sake, cap them.

The third thing is that the provision for merger, etc., of course, in this Companies Act has been absolutely disastrous. Therefore, now, the attempt to declog the NCLT is more than a welcome measure by the hon. Finance Minister. As far as the issues of CSR funding are concerned, of course, there is no question that it is a salutary thing. I would also request the hon. Finance Minister – since she is also wearing the hat of the Finance Minister as well as the Corporate Affairs – that the Corporate Tax at 25 per cent on turnover of less than Rs. 400 crore, frankly, perhaps, might need a rethink. You are, really, encouraging companies to not expand by keeping their turnover under Rs. 400 crore or split up their turnover; and therefore, engender some kind of subterfuge. Perhaps, the time has come to give 25 per cent corporate tax across the board. There is always much greater tax compliance when the tax rate falls. There is no doubt about it. You will get more than make up. This is one of the things that I want to bring to your knowledge. It is because doing away with the angel tax, you will find in the long run, will have very good repercussions.

I just want to make a couple of very quick points. Kindly remove the discretionary powers of the Regional Directors and the ROCs to impose penalties for late filing. You kindly stipulate the fines. Let the fines be on paper and then whoever defaults pays up but do not leave it to their discretion because this is, definitely, engendering corruption. I can tell you at the cutting-edge level when I am dealing with it as a member of many Boards of Directors.

The other thing, I would also suggest, is that the Act does not at all differentiate between large and MSME companies. The dynamics in the eco-systems of large and MSME companies are completely different. You are going to kill MSME companies which are the bedrock and the backbone of this country. The majority of employment in this country is not given by the large corporates. I think, Mr. Roy has a serious cavil against them. I am not quite one with him on the seriousness of his cavil against large companies. I certainly feel that MSME is, really, a sector which gives very large employment. They are the ones who are feeling the real pinch of this Companies Act.

So, the hon. Finance Minister must look into many many provisions in the Companies Act which are proving very very burdensome and really pinching the MSMEs which need some kind of succour from you. I do not have the time here in this House. Perhaps, I will address a letter to you along with all the other annexures given to me by many well-meaning people to bring it to your attention. I have no doubt and I can forecast this that within the next foreseeable future or, perhaps, even in the Winter Session, we will have yet another Amendment Bill to this Companies Act. That is the nature of the Bill that we had passed in 2013.

Thank you very much, Mr. Chairman.

**SHRIMATI SUPRIYA SADANAND SULE (BARAMATI):** Sir, I stand here in support of the Companies (Amendment) Bill. There are just a few clarifications that I would like to ask the hon. Minister. She, in her introduction, extensively talked about India doing better and better in 'ease of doing business'. The whole idea of getting this

Ordinance was to make sure that we do better; there is more wealth and job creation in the country; and the economy improves.

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**15.09 hrs** (Shrimati Meenakashi Lekhi *in the Chair*)

I know your arm's length from the Economic Survey but I believe it is still a part of the Finance Ministry and obviously the person, who is the editor, is somebody nominated by you. I have four pointed questions to you by way of clarification. Is there a conclusion in it? It says: "While economic uncertainty stemming from uncontrollable factors remains beyond the control of policy makers, they can control economic policy uncertainty. Reducing economic policy uncertainty is critical because both domestic investment and foreign investments are strongly deterred by increase in domestic policy uncertainty."

There is one small point which says, prospects of export growth remain weak for 2019-20 if *status quo* is maintained. However, reorientation of economic policies is targeted. It is more so because of the China-US trade tensions and how it is going to affect us.

My concern is this. The reason for this whole rush of bringing the several Ordinances is for ease of doing business, as you mentioned. We do not see any drastic improvement in the economy. In the area that I represent, Pune District, there are huge investments in motor vehicles and productions. In the last three quarters, unfortunately, we have not done particularly well. The same *Economic Survey* says that during five quarters, consistently, our economy has not been able to do well. So, our real concerns are on what legislations do we really need to bring in. I fully respect and appreciate your whole intention of cleaning up the



system. But I think we need to bring in more things together to make it a robust economy for job and wealth creation for people. I think, that really should be our agenda.

I would seek just four quick clarifications. You have talked about shell companies. The Government takes great pride in saying that over two lakh companies have been shut. We have no clarity on what kind of companies they were. First of all, there was no ruling about shutting them before. So, by what intervention or under what rule, did you do them then and how is it going to change now? Were these companies just like benami companies or shell companies? What kind of companies were they? There is really no clarity. It makes a great statement that we have shut down two lakh companies. What really is the outcome if it? What difference has it made? What kind of black money is generated? You may kindly clarify about that.

The other point is this. You have created the NFRA. I could stand corrected, but this was something that the UPA Government had brought in 2013. As Prof. Sougata Ray mentioned earlier, both CSR and NFRA are babies of the UPA and we take great pride in them. I think, Shri Pinaki Misra does not like it. But, I guesst, everybody has a right to have difference of opinion and that is the beauty of our democracy.

I am very proud that we did bring in CSR because I do see good interventions done through CSR. But I have a feeling that there is one small problem in CSR. You are controlling them even further now. I remember, during the Question Hour, the MoS (Finance) had replied about it that we have CSR in companies but it can be used for districts which are distressed or for programmes like that. For example, in the



State where I come from, they are used for malnutrition programmes and other programmes. But even the localised people who have given their lands for generations and years also need it. It could be in schools; it could be in healthcare projects. If you tighten the noose so much and if it is only going to be for people in power to be used for their flagship programme I think it is a little bit of injustice done to the local people who have contributed to that company. You may reconsider it or see a way and show more faith in people doing business. I do not think anybody doing business in India is actually just robbing. There are few bad apples. That does not mean the whole basket is bad. So, in CSR, how can we find a way where even locals get some benefits? We are happy if other districts which need money or programmes did it. I do not think anybody has an objection to that. But I think we need to re-look into that.

The same thing is there about NFRA. Prof. Sougata Ray talked about it. Take, for example, Satyam and IL&FS. For six years, NFRA is lying with the Government. Justice delayed is justice denied. NPAs have gone over Rs. 15 lakh crore. My pointed question is this. By bringing in this Bill now which is so late – it is better late than never – will there be some retrospective action taken on several companies which have already duped this country? There were a lot of allegations on the accountants at that time. What actions are we going to take? I would like to quote the hon. Home Minister. The other day, during the discussion on UAPA Bill, he said, it is not just the organisations; there are even people who destroy. When you brought in the anti-terrorism Bill, that was the thinking of the Government that was made out. When there is the whole organisation – be it a benami company or be it a CSR or be it even a company like Satyam or IL&FS or whoever it is – will

there be a pointed action even on directors or will it just be the organisation which will get affected?

My last point is this. Regarding amendment to Section 212, you have talked about staff. In SFIO, you are already struggling to get people. You are giving a job from a Director to a Deputy Director and I have noticed that a lot of policing is happening in all these. We did it even in the UAPA Bill.

By doing this, are they sensitised and aware of how the legislation works? So, if a Director is aware but you give it to a Deputy Director, would there be misuse of harassment? Or have you found a programme? It is because even in SFIO, you still have not been able to manage sensitisation of implementation. So, I am sure your intention is very noble but I hope the implementation does not become harassment because people doing business in India does not make them bad people. There are a lot of good business houses which do good CSR and good work in this country. So, I just urge the hon. Government that to do 'Ease of Business,' let us not just penalise people for doing business. We must make sure business is generated, jobs are created and wealth is created not only for the top of the pyramid but also for the bottom of the pyramid.

**श्री मनोज कोटक (मुम्बई उत्तर-पूर्व):** माननीय सभापति जी, आपने मुझे कंपनी संशोधन बिल, 2019 पर बोलने का मौका दिया, इसके लिए मैं आपका आभारी हूँ। सरकार कंपनी संशोधन बिल, 2019 लाई है, इसमें सरकार ने अलग क्षेत्रों में काम करने वाले लोगों के प्रति अपनी प्रतिबद्धता दिखाई है। मैं

इस बिल के समर्थन में बोल रहा हूं। ईज़ ऑफ़ डुइंग बिजनेस, ट्रांसपेरेंसी और एकाउंटिबिलिटी, ये तीन फीचर्स बिल में प्रस्तुत किए गए हैं।

ईज़ ऑफ़ डुइंग बिजनेस, जैसा कि आप जानते हैं कि बिल में सरकार ने इंट्रोड्यूज किया है, कम्पाउंडेबल ऑफेंसिज़ की संख्या कम कर दी गई। मुझे लगता है कि जब हम अलग वातावरण की ओर जा रहे हैं, देश में छोटे व्यापारियों और ट्रेडर्स को अच्छे नजरिए से देखा जाने लगा है, सारे लीगल एस्पेक्ट्स को देखते हुए और भी गुंजाइश है।

आप जानते हैं कि कई भारतीय कंपनियां मल्टीनेशनल कंपनियों की सब्सिडरी बनकर काम करती हैं। काम करते समय उनके रिटर्न ईयर, एकाउंटिंग ईयर को अगर जनवरी से दिसंबर करना है, हमारे यहां एकाउंटिंग ईयर मार्च तक है, इसके लिए पहले उन्हें एनसीएलटी में जाना पड़ता था। इस बिल में प्रावधान है कि अब कंपनियों का यह निर्णय सरकार के पास रहेगा, एनसीएलटी में जाने की जरूरत नहीं पड़ेगी। ईज़ ऑफ़ डुइंग बिजनेस के आर्टिकल में किसी कंपनी को चेंज करना है तो उसके अंदर हर बार एनसीएलटी के दरवाजे खटखटाने पड़ते थे, लेकिन अब ईज़ ऑफ़ डुइंग बिजनेस के लिए अब दरवाजे सरकार के होंगे।

जब हम ट्रांसपेरेंसी की बात करते हैं, यहां शैल कंपनियों की बात चली। ऐसा महसूस किया गया वर्ष 2004 से 2014 तक की सरकारों में शैल कंपनियों की बहुत भरमार थी। इस भरमार के कारण ट्रांसपेरेंसी पर नकेल कसने के लिए यह सरकार प्रतिबद्धता से न केवल अमेंडमेंट्स लाई बल्कि अमेंडमेंट्स के बाद बिल में प्रावधान भी किया है जिसके कारण देश में शैल कंपनियों की संख्या घटी है। इस बिल के द्वारा एड्रेस या अन्य प्रोवीजन्स के कारण अब शैल कंपनियों पर काम भी हो रहा है।

मैं सरकार का अभिनंदन एकाउंटिबिलिटी के मामले में भी करूंगा। मैं इस सदन में नये सदस्य के रूप में आया हूं, सीएसआर एक्टिविटी का मुद्दा उठा, मैंने पिछले एक महीने में दो बार सीएसआर पर माननीय मंत्री जी को जवाब देते हुए सुना। उन्होंने जवाब में कहा कि सीएसआर की एकाउंटिबिलिटी, जो

कंपनियों के ऊपर डाली गई है, मैं सीएसआर में लोगों की मदद करने के लिए और देश में कंट्रीब्यूशन करने के लिए इन कंपनियों का प्रावधान किया गया है। पहले की सरकारों के समय पोलिटिकल कंट्रीब्यूशन होता था, लेकिन अब जनभागीदारी का कंट्रीब्यूशन है।

सरकार ने कंपनियों पर जिम्मेदारी डाली है कि जिसने जिस क्षेत्र में काम करना है, उसमें अपने आप कंट्रीब्यूशन करना है। मैं इस बिल का प्रावधान पढ़ता हूँ -

“ Any amount remained unspent under Section 5 pursuant to any on-going project fulfilling such condition as may be prescribed undertaken by a company in pursuance of its corporate social responsibility policy shall be transferred by the company within the period of 30 days from the end of the financial year in special account.”

यह जो प्रोविजन किया गया है, यह कंपनियों को जवाबदेह बनाता है कि यदि आप सीएसआर फंड के पैसे इस्तेमाल नहीं करेंगे, तो आपको यह पैसा 30 दिन के अंदर एकाउंटिंग ईयर के बाद ट्रांसफर करना होगा। मुझे लगता है कि यह सरकार की सबसे बड़ी उपलब्धि है। यहां के सांसदों ने जो प्रश्न उपस्थित किए थे तो माननीय मंत्री जी ने इस पर जवाब देते वक्त कहा था कि हम कंपनी एक्ट में इसका संशोधन लाएंगे। सरकार अपनी मंशा के अनुसार इसमें संशोधन लाई है और यह संशोधन बताता है कि अगर कापोरेट कंपनियां अपने-आप खर्च नहीं करेंगी तो उनको ट्रांसफर करने की जिम्मेदारी होगी।

मैं आर्थिक राजधानी से आता हूँ। मैं आपके माध्यम से इस बिल के अंदर, एक छोटे से प्रोविजन के ऊपर कहना चाहता हूँ कि जब हम स्टार्टअप या एमएसएमई कंपनियों को प्रोत्साहित करने की बात करते हैं, जब उनके शेयर्स डीमैट करने होते हैं, एक करोड़ रुपये से कम वाली कंपनियों को थोड़ी छूट दी

जाए । सरकार इसके लिए प्रयत्न करे, ऐसी मैं आपके माध्यम से गुजारिश करता हूँ ।

**SHRI JAYADEV GALLA (GUNTUR):** Madam, I thank you for giving me this opportunity to speak on the Companies (Amendment) Bill, the objective of which is to facilitate and promote the ease of doing business and to improve corporate governance.

First, I would like to come to Clause 2 of the Bill, which proposes to amend section 2(41) which deals with change of the financial year. If you look at the 1956 Act, it was open to the company to determine any period as their financial year depending upon the various aspects of the company, such as holding companies incorporated outside India, etc. The 2013 Act took away this leverage given to the companies by introducing the concept of a uniform financial year. Now, the proposed amendment is asking companies to submit applications to the Central Government. I do not know how this is going to help or smoothen the affairs of a company. So, I would like the hon. Minister to explain this, please.

Secondly, I understand a proposal is making rounds in the Ministry to make calendar year as the financial year. I am not in favour of this. Since the change of the financial year means change in book keeping, HR practices, accounting software and taxation system, which involve costs running into crores of rupees for companies, and it would be extremely difficult for them to incur that type of expenditure, given the present circumstances. So, maybe, we can look at this when the economy is doing better. But at the present time, when most of the

companies are already stressed out, this may not be the right timing for that, is my suggestion.

The next point I would like to make is that it appears that the Bill is re-instating section 149 of the 1956 Act. Of course, it was applicable only to public companies. Now you are putting restriction on every company having share capital not to commence its business or to get borrowings unless the Directors file declaration within 180 days. If the Directors fail, the Registrar will strike off the name of the company. I feel that this is a bit harsh and the period prescribed also is a bit less. So, I request you to please consider increasing this period to one year rather than 180 days.

The next point I wish to point out is relating to anomalies between SEBI regulations for governing the listed companies on the one hand and the provisions of the Companies Act on the other hand. In the name of governance, provisions of the Companies Act are being undermined. For example, the recent amendments to the Listing Regulation provide that the Chairman and Managing Director in a listed company should not be related to each other. So, I would request the hon. Minister of Corporate Affairs to please look into this. While the SEBI says one thing, the Companies Act says something else.

The next point is, while the Companies Act provides for an ordinary resolution for payment of remuneration to the Managing Director up to five per cent but under the Listing Agreement, payment of remuneration of above 2.5 per cent of profits of the company should be approved through a special resolution, and the promoters, being interested, are not allowed to vote. So, I would request you to please look into this contradiction as well.

With regard to related party transactions, in the normal course and an arm's length pricing basis, no approval is needed under the Companies Act. But under the listing provisions, special resolution needs to be passed if the transaction is a material related party transaction and 10 per cent of the turnover is considered a material related party transaction. So, this is one more contradiction.

Finally, there is no doubt that all the provisions are meant for furthering good corporate governance. But if you look at them in the Indian perspective, where majority of the businesses are family-owned, these provisions may create some hurdles. Even our listed companies, I think about 80 per cent, are family-managed companies. This is not only in India but actually world over this happens to be the case. But in our country, it is even more so.

Some of the provisions, especially when it comes to family having succession plans and generational changes taking place, make it more difficult for that to happen. I think that would not be good for the companies, for the economy and for the country. I also urge you to please look into the contradictions between the Companies Act and the SEBI-Listing Agreement.

With these few comments, I support the Bill. Thank you very much for this opportunity.

**DR. SHRIKANT EKNATH SHINDE (KALYAN):** Thank you, Madam, Chairperson, for giving me an opportunity to talk on this very important Bill, which is the Companies (Amendment) Bill, 2019.



It is a matter of great pride that this Government, led by the hon. Prime Minister, Shri Narendra Modi, has worked effectively towards reducing the policy paralysis and stagnation of economy during the UPA Government which was plagued with uncertainty and the investments were not flowing which led to a sluggish growth and adverse impact on economy.

Our Government has taken several steps to create an environment conducive for business and investment which has resulted in high FDI inflows and a number of foreign companies setting up their units in India. We have also recorded a jump of 23 positions from 100 in 2017 to 77 in 2018 in the Ease of Doing Business Index, 2018. We were at 142<sup>nd</sup> position in the year 2014 which shows that how effectively this Government has worked for the economic development of our country and improved its ranking.

This amendment Bill has been brought after considering the recommendations of the Committee to Review Offences under the Chairmanship of Shri Srinivas with a mandate to review penal provisions under Companies Act 2013 and recommended restructuring of corporate offences to relieve special courts from adjudicating routine offences and reducing the load on National Company Law Tribunal (NCLT).

Recategorization of 16 out of 81 offences, which are in the category of compoundable offences to an in-house adjudication framework, wherein defaults would be subject to the penalty levied by an adjudicating officer, has been done. These offences include issuance of shares at a discount and failure to file annual return.

The Act states that a company may not commence business unless it files a declaration within 180 days of incorporation, confirming that every subscriber to the Memorandum of the company has paid the value of shares agreed to be taken by him and files a verification of its registered office address with the Registrar of Companies within 30 days of incorporation. If a company fails to comply with these provisions and is found not to be carrying out any business, the name of the company would be removed from the Register.

Under the Act, change in period of financial year for a company associated with a foreign company has to be approved by the NCLT. Similarly, any alteration in the incorporation document of a public company which has the effect of converting it to a private company, has to be approved by the Tribunal. Under the amendment Act, these powers have been transferred to the Central Government. I think this will help in checking money laundering as well as taking care of the shell companies. I think there are 2.5 lakh shell companies against which action has been taken by the Central Government.

The law mandates that firms with a networth of at least Rs.500 crore or revenue of Rs.1000 crore or net profit of Rs.5 crore should spend at least 2 per cent of their net profit on Corporate Social Responsibility (CSR). Any failure in this regard should be explained in the annual financial statement.

Madam, I would like to give a few suggestions on CSR. It was a very important and progressive concept for socio economic development brought under Companies Act and the amendment Bill has also sought to further amend Section 135 to deal with unspent funds. Corporate

Social Responsibility is a good method to allow us, the Members of Parliament, to carry out different infrastructure activities. ...  
(Interruptions)

**HON. CHAIRPERSON :** Hon. Members, if the House agrees, we can defer the time of Private Members' Business till the passing of the Companies (Amendment) Bill.

**श्री अर्जुन राम मेघवाल:** इस बिल को पास होने तक समय बढ़ा दिया जाए, उसके बाद प्राइवेट मैम्बर्स बिल ले लिया जाए ।

**माननीय सभापति:** क्या सभी सदस्य सहमत हैं?

**अनेक माननीय सदस्य:** जी हां ।

**डॉ. निशिकांत दुबे (गोड्डा):** मैडम, प्रत्येक शुक्रवार को इसी तरह की समस्या पैदा होती है । मेरा सरकार और चेयर, दोनों से यह आग्रह है कि उस दिन यदि बिल पास कराना हो तो लंच ऑवर नहीं लिया जाए, क्योंकि यह मेंबर्स का हक है और बार-बार ऐसा न हो ।

**श्री अर्जुन राम मेघवाल:** मैडम, डॉ. निशिकांत दुबे जी का सुझाव ठीक है, आगे इस पर विचार किया जा सकता है ।

**माननीय सभापति :** निशिकांत दुबे जी, माननीय संसदीय कार्य मंत्री जी ने आपकी बात सुन ली है और आपकी बात रिकॉर्ड पर आ गई है ।

Dr. Shinde, your time is over. Please conclude now.

**DR. SHRIKANT EKNATH SHINDE (KALYAN):** I think, the changes are expected to lead to a greater compliance by corporates, de-clogging of the special courts, de-clogging of the NCLT and effective enforcement. At present, around 60 per cent of the 40,000 odd cases

pending in courts pertain to sections dealing with procedural lapses that are proposed to be shifted to in-house adjudication mechanism, thereby incentivising compliance by corporates.

As a result of the amendments brought in, in future, the compounding cases load on NCLT will also come down significantly. The existing cases will be withdrawn from special courts by bringing out an amnesty scheme as there are inherent benefits in prescribing civil liabilities for procedural lapses instead of undertaking a criminal trial.

**15.31 hrs**

(Hon. Speaker *in the Chair*)

Now, I would like to come to the issue of diversion of funds by companies under CSR. CSR was a very important and progressive concept for socio-economic development brought under Companies Act and the Amendment Bill has also sought to further amend Section 135 to deal with unspent funds. Corporate social responsibility is a good method to allow development of many infrastructure related works, but it is found that few corporates start their own NGOs and divert the funds meant for CSR to those NGOs to carry out the works specified under Schedule VII. I would urge the hon. Minister that following reforms should be brought under CSR. The economic threshold for companies to implement CSR should be lowered to bring more companies under its ambit. A penal provision should be introduced for companies who divert their CSR funds to their own NGOs to violate their obligations for tax avoidance purposes.

The spending under CSR does not get tax exemptions. Thus, corporates prefer to take up limited activities, such as Prime Minister Relief Fund under Schedule VII which attracts tax exemption. Hence,

there is a need to bring changes to tax laws to incentivise companies for promoting and spending their CSR funds judiciously.

This Bill will ensure more accountability and better enforcement to strengthen the corporate governance norms and compliance management in corporate sector.

With these suggestions, I support the Bill and request the hon. Minister to take the CSR issue seriously. Thank you.

**श्री रितेश पाण्डेय (अम्बेडकर नगर):** धन्यवाद, अध्यक्ष जी ।

अध्यक्ष जी, मैं इस बिल के समर्थन में बोलने के लिए खड़ा हुआ हूँ । कंपनीज अमेंडमेंट बिल, 2019 में डीमैटेरियलाइजेशन का जो क्लॉज-7 है, पहले सिर्फ लिस्टेड कंपनीज को इस क्लॉज में लिया जाता था, लेकिन अब क्लॉज-29 में सभी कंपनीज, चाहे वे प्राइवेट कंपनीज हों या पब्लिक कंपनीज हों, दोनों को ही इसके अंतर्गत ले लिया गया है । भले ही दूरगामी दृष्टि से यह एक अच्छी व्यवस्था दी जा रही है, लेकिन मेरा मानना है कि अभी बहुत ही छोटे टाइम-स्पैन में इन कंपनीज, जो प्राइवेट कंपनीज इसमें लिस्ट की जा रही हैं, के ऊपर भारी समस्या आएगी । मेरा आपके माध्यम से आदरणीय मंत्री जी से यह निवेदन है कि इस क्लॉज को फॉलो करने के लिए जो भारी-भरकम समस्या प्राइवेट कंपनीज पर आएगी, उसमें कोई रियायत दी जाए ।

मैंडेटरी और स्ट्रॉंगर प्रॉविजन्स फॉर सीएसआर की हम सराहना करते हैं । गरीबों तक पैसा जरूर जाना चाहिए । अगर आप देखेंगे तो पाएंगे कि वैसे इस देश में बहुत ज्यादा धन है, लेकिन बहुत कम लोग चैरिटी करते हैं । सीएसआर के बारे में क्लॉज-21 में जो प्रावधान किया गया है, मेरे हिसाब से यह एक हद तक उचित है । लेकिन क्लॉज-33 में अनफिट एंड इम्प्रॉपर पर्सन्स नाॅट टू मैनेज दि

कंपनीज के प्रॉविजन को देखा जाए तो सरकार ने इसमें कुछ सख्त रुख अपनाया है । इसमें सरकार ने एनसीएलटी के सामने यह बात मूव की है कि किसी मैनेजर को, कुछ ग्राउण्ड्स के ऊपर, जिनको बहुत ही वेगली वर्ड किया हुआ है, अनफिट डिक्लेयर किया जा सकता है । अगर सरकार किसी मैनेजर को अनफिट डिक्लेयर कर देती है तो वह पांच साल तक किसी भी कंपनी में काम नहीं कर सकता है ।

मान्यवर, यह एक हद तक बहुत बड़ी नाइंसाफी लगती है, क्योंकि जो इस बिल को इम्प्लिमेंट करेंगे, उनको यह एक बहुत बड़ा हथियार मिल जाएगा । इसके माध्यम से किसी को टारगेट करके उसको अनफिट घोषित कर दिया जाएगा और वह व्यक्ति पांच साल तक किसी दूसरे बिजनेस का आगे क्रियान्वयन नहीं कर सकेगा । इस पर भी संज्ञान लेने की जरूरत है और सरकार को इस पॉइंट पर जरूर सोचने की जरूरत है, क्योंकि कहीं न कहीं यह इंडिविजुअल्स के लिए बहुत बड़ी समस्या साबित हो सकती है ।

मैं इन्हीं बातों के साथ आपको धन्यवाद देता हूं । मैं इस बिल का पुरजोर समर्थन करता हूं ।

**SHRI SAPTAGIRI SANKAR ULAKA (KORAPUT):** Mr. Speaker, Sir, thank you for giving me this opportunity to speak on the Bill.

I rise to speak on the Companies (Amendment) Bill, 2019. Firstly I would like to say that when we talk of the CSR I am reminded of Shri Sachin Pilot who introduced this. We are really proud of the CSR concept. Coming from an aspirational district, I can understand that the CSR amount being spent is really useful for the periphery development. This is something which we are really proud of.

Of course, there had been drawbacks in the Bill and a lot of amendments have been brought in. But the main reason why we have the amendment is to improve the ease of doing business. If we go by the World Bank Report, now we are 77, improved from 100. But if we go a bit deeper there are two aspects in this. In the case of protecting minority interests, we were ranked four, but now we are ranked seven. We are degrading their interests. As regards paying taxes, we were ranked 119, but now we are ranked 121. Due to demonetisation, incorrect GST and various tax flaws, people are affected and MSMEs are virtually destroyed in the country.

I asked a pointed question, which was answered by the hon. Minister regarding the KBK region in Odisha. Out of 5,000 and odd MSMEs, 2,000 had been closed may be due to demonetisation. So, when we say that this is to improve the ease of doing business, I would like to say that this is more in pen and paper, but when it comes to the people who actually run the MSMEs and small companies, there is no ease of doing business. We are virtually creating hurdles by having multiple taxes. When we talk of GST, a normal Mumbai-based firm makes 13 tax payments in a year, spends 78 hours on this and coughs about 52 per cent of its profit. This is no simple GST and this is becoming more and more complicated.

We are talking about Foreign Institutional Investors coming to India. In July itself, I think, they have coughed up about one billion dollar. So, they are moving out instead of coming here.

Coming to 30-Share Sensex, which has risen to 1.75 per cent in May, now is corrected by four per cent. So, there is something wrong with the way we are moving the amendment, the Bills and the



Ordinances, which is not certainly reflected in the market. ...  
(*Interruptions*)

Let me come to the Bill. Some recommendations have been made here. There is a provision for in-house adjudication for minor offences. It used to be through a civil process, but now it is through an in-house adjudication. This can be taken for a ride by some people. They will treat it as cost of doing business and will take it for granted. They will say, 'Ok, let me pay this much money and do it.' So, the fear factor will not be there.

The reliability of technology-driven in-house adjudication mechanism is also questionable. We remember that when the GST was introduced, how many technological hiccups we have witnessed. The websites were crashing almost everyday. The same problem is there even now, but we are talking of technology-driven solutions.

Despite the regulation, the number of inactive registered companies continues to remain high. There is nothing that is happening to control this factor.

All the Bills are moving the power to the Central Government. What are we trying to do? We want to move everything from the State and from different Tribunals to the Central Government. We want to move everything to the Central Government. This is something which we need to check.

India's corporate sector consists 90 per cent of private companies. The provision under section 29 has now been extended to all the companies, private and public. This is nothing but demonetisation phase II and this will affect all the private companies.

So, with this I would say though I support the Bill, let us reconsider it by sending it to the Standing Committee. Thank you.

**THE MINISTER OF FINANCE AND MINISTER OF CORPORATE AFFAIRS (SHRIMATI NIRMALA SITHARAMAN):** Thank you, Hon. Speaker, Sir. I also thank all the Members who participated in the discussion on the Companies (Amendment) Bill, 2019.

Sir, to make sure that we do not lose sight of the larger picture, I will start with the observation made by senior Member, Prof. Saugata Roy. He said that in 2013, a very comprehensive Bill was passed which made him and others proud and it was the Companies Act, 2013 which we are constantly amending.

I would like to benefit from the observations made by Shri Pinaki Misra. In 2013, the Companies Act was duly passed in this House. I do not want to undermine the effort of this House in passing the Act. It is well agreed by both outside and inside the House and I take refuge in the words of Shri Pinaki Mishra that it is '2013 Companies Act'. I am not sure how it got passed. It was passed, but it threw itself to repeated demands for amendment. Now, this government is bringing in the amendments and earlier also it was done for two times between 2014 and 2019.

We are not driven by the Treasury Benches. Amendments are not the fancy of the Government. In fact, it was more driven by the demands of the stakeholders of the companies, auditors, cost accountants, registrars etc. All of them were having equal problem to execute and comply with the Act. As a result, when the Government is constantly being told that the Act does not live up to the legislative intent, there is a need for us to respond and come up with the amendments.

Therefore, it is not right to comment that the Act which was passed in 2013 was comprehensive enough and ask us as to why we want to bring the amendments. I am sorry that I will have to underline this point that amendments are not just being brought in *suo motu*. They are being brought in because there is a demand to address the people's inconvenience. Of course, the ease of doing business factor is there. It is very dear to this Government and we want to make sure that we attend to ease of doing business.

We are attending to it, not on the norms which we have got for ourselves. Ease of doing business is for those companies which are facing the ground difficulties and they are not the big companies alone. In fact, small and medium companies are the ones for whom several measures have been taken by this Government.

Therefore, this set of amendments is having both the amendments which had been passed through the Ordinance and also the additional amendments. They are all for ease of doing business for small, medium and large companies and also any other companies which are being troubled because of the Companies Act, 2013.

Surely, the credit goes to the Government of 2013 which thought of having the Companies Act. But after considering all the things like

Committees etc., it has been found that the Act is wanting. Therefore, we are going ahead with the amendments.

Several speakers have spoken on different aspects of it. I do respect the concerns expressed by Dr. Nishikant Dubey that we should not cut the time of the Private Members' business. So, instead of going into the larger picture, which I definitely wanted to give in great detail, I will contend my reply so that I do not encroach upon the time allotted for the private Members.

I will just respond to the questions which many of the Members have raised. It is not that I am reducing my job but I will be specific to save some time.

Shri Adhir Ranjan Chowdhury raised a lot of questions. Firstly, he started by saying: "I dislike the approach of going through the Ordinance". It was also repeated by Prof. Saugata Roy. Yes, I agree with them.

We do not want Ordinance. We certainly do not want to live with Ordinances only, and this attempt to get it into a Bill and with a sense of urgency, please appreciate, is only because the Ordinance's life is getting over by the end of this month, and unless I get this through now through the legislation, we are just going to have to live with Ordinances for which you will hate me. I do not want the system of continuing with Ordinances. Please consider passing this Bill because we want to legislate on it. This is the first response.

The shell company is something on which many Members have spoken. What actually is the definition of a shell company? Which one becomes a shell company? Shrimati Supriya, you also referred to it. It is

not a fig of anybody's imagination, which talks about shell companies. Yes, the expression 'shell company' is not used in the law or in the rules. But what are shell companies actually; which are they; and why do we take pride in saying that we have actually brought down quite a number of shell companies?

Nearly, four lakh inactive companies have been de-registered by us. What does this mean? It means that four lakh companies that were totally inactive not just for one or two years, but several years, and I would say probably even for more than five years they have remained inactive. Now, the provision that we are bringing in through the amendment by saying that 'declaration before the commencement of business' itself is an attempt to restore something, which was there before the 2013 law, but in 2015 for some odd reason it was removed. We are restoring it, and together with non-maintenance of registers and non-maintenance of a registered office, all these put together may loosely be defined as shell companies. If you did not have a proper registered office or if you did not declare the business with which you wanted to commence your business, then you become a shell company. Nearly, four lakh such companies in the last few years have really been identified and de-registered. This is on the shell company issue.

Now, we insist and through the amendment we are saying that non-maintenance of a registered office shall be made one of the stated grounds for striking off any company. So, physical registration of a registered company's address has now become absolutely necessary so that you do not run the risk of being defined as a shell company.

CSR again is something on which many Members were concerned. I will take a few extra minutes on talking about the CSR.

There was this question asked as to why CSR funds cannot be used locally. Shrimati Supriya asked me this question. There is nothing under the rule, which stops the use of CSR fund for local requirements. In fact, the Government has nothing to do with it because it is now all very clearly stated that it is the company's board, which takes a decision on it. Actually, the way in which the funds have to be spent has been defined. There are 11 or 12 such clauses under which they can use it. Those are the ways in which the companies can spend their CSR money.

Broadly, which are the companies, which can come under this question of CSR. They are the ones which have at least Rs. 5 crore of profits or they are the ones who have Rs. 1,000 crore of turnover or those which have Rs. 500 crore net worth. Let me take this opportunity to say that India is probably the first country to make CSR a mandatory requirement by putting it into the Company Law itself. So, this is something that we need to recognize. The 2013 legislation itself talked about it. So, Yes, credit goes to you for having imagined that CSR will have to be put into it, but the way in which it got defined had to be finetuned over and over again and that is what we have done.

Now, what we are trying to suggest, through the amendments, is that if you have already started for a plan and prior to execution you have started spending some preparatory expenditure on the CSR, very well. It is great!

But if the companies have not really started commencing the expenditure itself, never mind, they will be given a window. The first year in which the companies probably start making a decision and just started spending the money initially, they will be given that one year

plus three years in which they will have to steadily start spending the money for which they have already said that they have decided to spend the money on some account – CSR or some particular project – in which they want to spend the money. So, within three years, after the year in which the decision is taken, they have to give us a picture of where the money has been spent, i.e. 2 per cent of their total profit.

In case it does not happen, they will have to move their money into an escrow account. For the projects which are on-going, they get this time as a grace. But if they have not spent at all, if they have not really had a cause to talk about decisions on CSR, if they have not even identified the projects, if they have not even initiated the prior planning expenditure, within six months, the money should be put into a common account which can be spent, I think it was hon. Member, Raja ji, who suggested that it be spent through the Prime Minister's Relief Fund. Let that happen. We have in fact thought of it. Thank you for the suggestion. We have actually thought of it. If the companies have not even thought of starting to spend the money, let it go to anything for that matter but it will go to a common account. If the company has started something, identified something, we have given a one-plus-three-year window through which they can do it.

**SHRI PINAKI MISRA :** I would suggest that it should go to the Armed Forces Relief Fund.

**SHRI GAURAV GOGOI (KALIABOR):** It should go to the Consolidated Fund of India.

**SHRIMATI NIRMALA SITHARAMAN:** No, it can go to the Consolidated Fund of India or some scheme. But there is a scheme of things under which the companies take a decision. So, it has now got to



be put into the account so that the company will apportion that amount for a common cause and it cannot sit and wait for continuously taking a decision leaving us with an impression that the Companies Act, particularly, the CSR related aspects are interpreted as, “You have to comply or else you can just give an explanation”. It is a regime – they comply or explain; do not comply, also explain. That is the not the regime that the CSR policy in the Companies Act, 2013 has.

The intent of the Companies Act, 2013 with regard to CSR was not ‘do or don’t but give an explanation and get out of it’. No! Just explanation does not do. They have to show it in their activity. If they have not spent it, they put it into an account from where it can be spent or if they have started spending, they show us within one plus three years that they have really been through with the process of decision making and they have started the spending. So, we have come to, at least, specifying details of it rather than leaving the company to say, “Well, it is only explanation, I can give it at any time”.

**माननीय अध्यक्ष:** माननीय मंत्री जी, सब लोग संतुष्ट हैं ।

**SHRIMATI NIRMALA SITHARAMAN:** Dhanyawad ji. I will go over to the point Shri Adhir Ranjan Chowdhury asked, “What is the reason for including private companies under Section 164 of the Act”?

It was a considered decision that non-compliance of the provisions of non-filing of financial statement, annual returns, non-payment of deposits and debentures etc. should result into some kind of disqualification for becoming directors in any kind of company including private companies for relevant five years. This was done so that we bring in good corporate practices and nothing more than that.

Shri Raja mentioned about the fear that there could be a discretionary element because once the Registrar or an individual is allowed to take a call without, let us say, a matrix of predetermined fines, it could lead to corrupt practices. Point well taken. But all actions taken by the Registrar are expected to be and shall be in pursuance of the rules through the MCA 21 system, after due process of law and giving adequate opportunity for the companies themselves and their Directors to respond to the notices. So, the discretionary element is actually gotten over by the fact that they have to do the three-stage process. And because of that, we do not expect that an individual or the Registrar of Companies would indulge in any kind of a personalised discretionary step.

**SHRI A. RAJA:** The phrase used is, 'If the Registrar has reasonable cause to believe'. So, the belief is attached to the person not to the body.

**SHRIMATI NIRMALA SITHARAMAN:** Absolutely. But after that reasonable belief, that person himself does not respond to the steps that have to be taken. It goes through a process. And the process thereof takes care of what you had suggested that instead of an individual there could be a group, which can be an institutionalised framework. It was your suggestion. But that is taken care of by the fact that it goes through the process.

Shri Pinaki Misra then referred to a point that the amendment on higher additional fees has to be brought about in the Amendment Act of 2017 to bring about greater discipline in filing of Annual Returns and Statements. The Bill already actually provides for a lesser penalty for smaller companies. So, it is not blind to the size of the company. It actually takes care of that one. Also, there are more lenient provisions

for small companies and one-person companies. Therefore, the concern that he expressed, which is right, for the MSMEs is definitely kept in mind.

Again, going back to Supriya Ji, she asked as to which were the companies which were struck off. The companies which did not file Annual Returns and Financial Statements for two years or more, or did not apply for dormant status but existed without main activities were the ones to get struck off by the Registrar after following, again, a due process. It was not as if it was done overnight. Under Section 248, rules were made and followed.

Again, on NFRA she had questions. We are very committed to keep that institution strong. This is something on which you rightly wanted to take credit saying that it is a part of the 2013 Act. Yes, very well, but it did remain and go through some kind of a teething trouble. But we are ensuring that it has the strength to function. Simultaneously, we wanted it to ...(*Interruptions*)

**SHRIMATI SUPRIYA SADANAND SULE** : Would it be retrospective also in the NFRA?

**SHRIMATI NIRMAL SITHARAMAN:** At the moment we are not thinking in terms of a retrospective thing. But, of course, it will now simultaneously start initiating action against the auditors and other professionals, if there is misconduct. That is because we realise that many of the troubles of companies can be avoided if only timely action is taken by the concerned professionals who advise. If they fail to and if there is concrete evidence to prove that they have been failing in their duty, there will be action, whether it is individuals or companies.

Jayadev Galla Ji had also questions.

**THE MINISTER OF STATE IN THE MINISTRY OF FINANCE AND MINISTER OF STATE IN THE MINISTRY OF CORPORATE AFFAIRS (SHRI ANURAG SINGH THAKUR):** If a Member is not present, reply need not be given.

**SHRIMATI NIRMALA SITHARAMAN:** He is here.

**माननीय अध्यक्ष :** माननीय मंत्री जी, जो माननीय सदस्य सदन में मौजूद नहीं हैं, उनके द्वारा उठाए गए प्रश्नों का जवाब न दें ।

**श्रीमती निर्मला सीतारमण :** सर, वे यहां हैं ।

Galla Ji, I wonder if my MoS is against my answering your questions!

### **16.00 hrs**

You were questioning on the change of the accounting year for companies. The proposed amendment that we are bringing in is for companies which are present in India and also which are present abroad. In case, the companies present in India want to align the financial accounting year with group companies or holding companies, it is company specific, and therefore, we thought that they should approach the Central Government. It is not an excuse to gather more power to the Centre but it is company specific requirement and it is not blanket change for everybody. The spirit with which you said, maybe, in today's situation it would be too much for them to take that expenditure. Well, it is company specific and it is up to them to decide. If they want it, they

can take it and if they do not want it, we are not forcing them. There is nothing which is being contemplated about bringing one financial year for anybody.

I will finally come to the last two hon. Members, Sir. Shri Manoj Kotak Ji said, “Can there be some relaxation to companies having less than one crore capital? Can they be exempted from dematerialisation requirement?” The proposed amendment which is here on board is only an enabling provision to empower the Central Government to prescribe classes of unlisted companies. The suggestion made by the hon. MP, therefore, shall be kept in view. But even the enabling provision that has been made now will take years for it to even find its cascading effect on companies at the ground level.

Lastly, I would like to reply to the question raised by Shri Ritesh Pandey Ji. Is he here or shall I save time not replying him? I think, he is not here. His question was about the fit and proper position of the companies’ definition.

Sir, therefore, I would like to underline that the proposed amendments are largely for ease of doing business. Most of the proposed amendments are those which have already come into force through the Ordinance because notifications were issued. The proposed amendments, other than those which have come through the notification, are the ones which are largely being brought in for bringing in a better governance framework and also to look at the welfare of small and medium enterprises, about which quite a few Members mentioned. It

will be reducing the burden on them, compounding offences being reduced to non-compounding offences, so that those who have done small omissions or commissions of compliance will be treated with kid gloves. So, in the larger picture, we are looking at a Companies Act which will be far more friendlier for companies to keep in mind and comply rather than worry about the implementation of it.

I would seek all Members' cooperation in having this Companies (Amendment) Bill, 2019 passed so that we get out of the Ordinance kind of a situation into a legislative situation. If the words of Dr. Pinaki Mishra have got to be taken, more inputs to come, letters from you are welcome, as you suggested. And if there is a need in order to bring in better ease of doing business, we are willing to bring in any other amendment which will fundamentally change the spirit with which we can work.

Thank you very much for giving me the opportunity.

**SHRI ADHIR RANJAN CHOWDHURY:** Sir, I observe that our hon. Finance Minister is pursuing a carrot and stick policy. Persons who follow and abide by rules will be rewarded and those who do not will be put into difficulty. And they have to bind their pockets. The Government in this amendment will also be able to move against management persons on the grounds of not conducting and managing the business of a company on sound business principles. That is point number one.

The second point is this. If a person is declared not fit and proper by the Tribunal, he would not be able to hold the office of a Director and

other managerial posts.

अध्यक्ष महोदय, मुझे लगता है कि इसमें ग्रीवान्स रिड्रेसल का एक मैकेनिज्म होना चाहिए, क्योंकि अगर किसी को गलत तरीके से निकाला जाए, तो इसमें एक गलत मैसेज भी जाएगा। इसलिए एक ग्रेवान्स रिड्रेसल मैकेनिज्म होना चाहिए। मैं खासकर जिस मुद्दे को उठाना चाहता हूँ, वह है सीएसआर, उसे मैंने पहले भी उठाया है। सीएसआर एक दूसरे किस्म का टैग है, ऐसा नहीं सोचना चाहिए। आपने कहा है कि इसका अकाउंट मेन्टेन करने जा रहे हैं। हम गरीब एमपी इस सीएसआर का फंड मांग रहे हैं, आप कहती हैं कि मैं प्राइम मिनिस्टर फंड को दे दूंगी। हम यह जानना चाहते हैं कि हर साल कितने सीएसआर फंड मोबिलाइज होते हैं? आप कितने सीएसआर फंड सालाना मोबिलाइज कर पाते हैं, कितने सीएसआर फंड अनस्पैंड रह जाते हैं? यह देखा जाता है कि सीएसआर फंड, मतलब भूख से बचने के लिए, पावर्टी से बचने के लिए सिर्फ 6 फीसदी इस्तेमाल होता है। सीएसआर फंड की प्रायरिटी तय करें और यह ऐसा न हो, जहाँ उनकी इंडस्ट्री है, वह उसके आस-पास होगा। जहाँ जरूरत है, वहाँ इसको इनवेस्ट करना चाहिए। आप सालाना कितना सीएसआर फंड का इस्तेमाल रोजगार के लिए करते हैं और इसमें कितना अनस्पैंड रह जाता है, यह जानकारी देने से हम खुश होंगे। मैंने पहले भी आपको कहा कि हिन्दुस्तान में 115 ऐस्पिरेशनल डिस्ट्रिक्ट्स हैं, जो आपने आइडेंटिफाई किए हैं। क्यों नहीं यह सीएसआर फंड गरीब जिलों में बाँटा जाए। इसमें मेरा जिला मुर्शिदाबाद डिस्ट्रिक्ट भी है। हम ये दो-तीन बातें आपके सामने रखना चाहते हैं।

**माननीय अध्यक्ष :** आप संकल्प के बारे में बताइये।

**श्री अधीर रंजन चौधरी :** हमारा जो स्टेच्युटेरी रिजॉल्यूशन है, मैं इसको विद्वान् करना चाहता हूँ। ये जनहित की बात करते हैं, इसलिए मैं चाहता हूँ कि यह वापस लिया जाए।

**संसदीय कार्य मंत्री; कोयला मंत्री तथा खान मंत्री (श्री प्रहलाद जोशी):** अधीर रंजन जी, हम जब भी जनहित की बात करते हैं, कभी-कभी आपको मालूम



होता है कि यह प्रॉब्लम है ।

**माननीय अध्यक्ष :** क्या सभा की यह इच्छा है कि श्री अधीर रंजन चौधरी द्वारा प्रस्तुत सांविधिक संकल्प को वापस लिया जाए?

सांविधिक संकल्प को सभा की अनुमति से वापस लिया गया ।

**माननीय अध्यक्ष :** निशिकान्त जी, आप पूछिए ।

**डॉ. निशिकांत दुबे (गोड्डा):** अध्यक्ष जी, केवल दो-तीन चीजें थीं, जो मुझे लगा कि बतानी हैं । यह जो सीएसआर फंड है, यह किसी यूपीए सरकार का इनिशिएटिव नहीं है, यह सीएसआर हमारा इनिशिएटिव है । श्री भर्तृहरि महताब साहब, मैं, श्री अनुराग सिंह ठाकुर, श्री यशवंत सिन्हा और श्री गुरुदास दासगुप्ता...(व्यवधान) स्टैंडिंग कमेटी ने चार बार इस बिल को लौटाया । इसी कारण यह सीएसआर बना था । मेरा छोटा सा क्वेश्चन है कि अभी बजट में माननीय मंत्री जी ने एक लेगेसी डिस्प्यूट मेकेनिज़्म बनाया है । उसका कारण यह है कि हमारे यहाँ इनकम टैक्स एक्ट है, सीबीईसी एक्ट है, अभी हम जो बिल पास कर रहे हैं- कम्पनी एक्ट है, जो आरबीआई की डेफिनेशन है, सेबी की डेफिनेशन है, हमने इंसाँल्वेंसी एंड बैंकरप्सी कोड किया है, इन सभी की डेफिनेशन्स अलग-अलग हैं, चीजों के बारे में कि व्यक्ति कौन होगा, डिपोजिटर कौन होगा, कम्पनी कौन सी होगी? मेरा आपके माध्यम से सरकार से आग्रह है कि क्या इस तरह की लेगेसी डिस्प्यूट, क्योंकि पिनाकी मिश्रा साहब बैठे हुए हैं, कोर्ट में हमेशा इसी डेफिनेशन पर ही लड़ाई होती है, क्या सारे एक्ट्स की एक तरह से कम से कम डेफिनेशन सही करने के लिए फाइनेंसमिनिस्ट्री कोई कमेटी बनाएगी? यह मेरा आपके माध्यम से सरकार से आग्रह है ।

**माननीय अध्यक्ष :** पी.पी. चौधरी जी, आप क्लेरिफिकेशन पूछा करो ।

**SHRI P. P. CHAUDHARY :** Hon. Speaker, Sir, my only question is with respect to CSR fund. I want to know whether the Government

intends to go for the audit of CSR fund.

**श्रीमती मीनाक्षी लेखी (नई दिल्ली):** अध्यक्ष जी, इसी से जुड़ा हुआ प्रश्न है कि बहुत सारी कम्पनीज में प्रैक्टिस देखी गई है कि वह सीएसआर फंड को अपने ही किसी परिवार की फाउंडेशन में ट्रांसफर कर देती है और खर्च नहीं करती है तो उसकी भी ऑडिटिंग होनी चाहिए ।

**माननीय अध्यक्ष :** माननीय सदस्यों के सीएसआर की माननीय मंत्री जी को बहुत चिन्ता है । इसलिए माननीय मंत्री जी ने आपको सर्कुलर भी भेजा है ।

**श्रीमती निर्मला सीतारमण:** हाँ जी ।

**माननीय अध्यक्ष :** ठीक है ।

प्रश्न यह है:

“कि कम्पनी अधिनियम, 2013 का और संशोधन करने वाले विधेयक पर विचार किया जाए ।”

**प्रस्ताव स्वीकृत हुआ ।**

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**माननीय अध्यक्ष :** अब सभा विधेयक पर खंडवार विचार करेगी ।

**खंड 2 से 44**

**माननीय अध्यक्ष :** प्रश्न यह है :

“कि खंड 2 से 44 विधेयक का अंग बने ।”

**प्रस्ताव स्वीकृत हुआ ।**

खंड 2 से 44 विधेयक में जोड़ दिए गए ।

खण्ड 1, अधिनियमन सूत्र और विधेयक का पूरा नाम विधेयक में जोड़ दिए गए

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**SHRIMATI NIRMALA SITHARAMAN:** I beg to move:

“That the Bill be passed.”

**माननीय अध्यक्ष :** प्रश्न यह है:

“कि विधेयक पारित किया जाए ।”

प्रस्ताव स्वीकृत हुआ ।

**माननीय अध्यक्ष :** अब गैर-सरकारी विधेयक के प्रस्ताव शुरू होने वाले हैं । मैं माननीय सदस्यों को बताना चाहता हूँ कि जो जीरो ऑवर में लिस्टेड नाम हैं, केवल उन्हीं माननीय सदस्यों को 6 बजे के बाद बोलने का मौका दिया जाएगा । अनलिस्टेड जीरो ऑवर आज नहीं होगा ।

श्री हिबी इडन ।

आप अपने दोनों प्रस्ताव एक साथ बोल दीजिएगा ।

**16.11 hrs**

(Shri N.K. Premachandran *in the Chair*)