Title: Discussion on the Companies (Second Amendment) Bill,1999.(Bill Passed)

MR. SPEAKER: The House shall now take up Item No.15 of today's List of Business. The time allotted for its discussion is four hours.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

Sir, I am grateful to you for having permitted me to introduce the Companies (Second Amendment) Bill, 2000.

Sir, in the year 1996 an expert Committee had been appointed by the Government of India which prepared a comprehensive report and suggested several changes to be brought about to the Indian Companies Act. On the basis of the report, in 1997 a comprehensive Bill running into several hundred clauses had been introduced in the House and thereafter since it was felt that a discussion on the entire Bill or legislating on the entire Bill in one go may not be very simple, therefore, in the year 1999 − on several aspects which had been suggested − the Government of India had proclaimed an Ordinance which was subsequently accepted by the House as a Bill. Several amendments to the Companies Law had been introduced. 1999 amendment deals with several important aspects such as provision for sweat equity in favour of employees, a provision for buy-back of shares has simplified nomination facility to the legal heirs and representatives of deceased shareholder, enforcement of standard accounting practices and the most important, setting up of an Investor Education Fund. Those amendments, which were incorporated in the Bill, have since been a part of the Act and have been functioning to the fullest of satisfaction. On the basis of several other suggestions which had been made, a Bill was introduced in the year 1999 to bring about several other amendments into the Companies Act.

A reference was made to the Standing Committee, which has since examined the matter at length, and this House also has had the benefit of a detailed report of the Standing Committee. In brief, some of the provisions which have been introduced by virtue of these amendments include the following: There is re-definition of some phrases which have been done in the new proposed amendment. For instance, the word 'dividend' now also includes interim dividend because in some cases interim dividend is declared by the companies. A mandatory provision has been made that dividend is now required to be paid to the share-holders within 30 days instead of 42 days. The Standing Committee has given a recommendation which I commend to this House for acceptance. As far as interim dividend is concerned, that has to be paid within a lesser period of five days from the declaration to the share-holder itself.

Another amendment relates to laying down of criteria for minimum capital for any company to be registered under the Companies Act. For Private Limited company the limit is Rs.1 lakh and for Public Limited Company, the limit is Rs.5 lakh. This provision has been introduced in order to ensure that there is a certain basic minimum capital in each company so that fly by night operator, who without any reasonable share capital register companies and dupe investors, are discouraged.

There is yet another provision, that even when the registered office of a company is located within a State and it is to be transferred from that State within the geographical limits of that State, an approval of the Regional Director is required. Earlier, such an approval was required only when there was an inter-State transfer of the office of the company.

Sir, it has been felt that provisions relating to some private companies to be deemed as public companies with passage of time and the experience of corporate governance, seem to have become somewhat redundant and, therefore, there has been a suggestion to delete those provisions. Similarly, there were several provisions in the Companies Act dealing with managing agents, etc. which have not been implemented and which have become irrelevant, the suggestion is that those provisions which have now become irrelevant to the commercial world may also be deleted. Similarly, powers with regard to market regulations, which were earlier within the ambit of the Companies Law, have since been transferred to SEBI. So, all the market regulatory functions under the Companies Act are also proposed to be deleted because there is a separate legislation which confers jurisdiction upon the SEBI to deal with this.

With regard to investor protection, several important changes have been suggested in this Act. For instances, clause 19 seeks to amend Section 58(A) of the principal Act. Under this provision, the Company Law Board has been given special responsibility in relation to the interest of the small depositors. Every company which defaults in repayments to the small depositors shall within 60 days give an intimation to the Company Law Board. After that, the Company Law Board, after enquiring into it will pass appropriate order either on the basis of this information or on the basis of its own *suo motu* motion within 30 days of the intimation with regard to the payment. There is deterrent on companies which do not return the moneys to the small depositors. Now, they shall not be permitted to take any further deposits if they defaulted in complying with the orders of the Board in repayment of the moneys to the small depositors.

Several offences under the Companies Act provided for penalty. The penalty amounts on account of inflation and on account of the falling value of the currency itself have become inadequate. Therefore, across the Board most of the offences are now punishable with penalty amounts which have almost been increased ten times over and above the earlier amount.

There are several provisions with regard to ensuring corporate democracy. Clause 75 seeks to amend Section 192(A) of the principal Act. Earlier under the Companies Act the voting is essentially either by the shareholders of the company who are present or by proxy. For the first time, a provision for postal ballot has been introduced. The Standing Committee has suggested that the phrase `postal ballot' be re-defined as also to include the new technologies which are available, namely, electronic voting. That is to say, that the shareholders who would neither attend the meeting of the company nor are represented through the proxy but are sitting in their own offices or houses at far flung places can exercise that right by a postal ballot which will also include electronic voting. The Government strongly commend that this suggestion also requires to be accepted.

Sir, there are several other provisions with regard to payment of dividend which I have already mentioned. It is under Clause 88 of the Act. There are further provisions with regard to inspection of the books of accounts of the company which have been made. In fact, Clause 95 which deals with Section 217 is also a new Chapter in corporate governance. For the first time, in the Companies Act, the annual report of the Broad shall also include the Director's Responsibility Statement. Now, this Director's Responsibility Statement

shall be in relation to the accounts which the Director approves. So, the Directors will no longer be allowed to take a plea that they have, without applying themselves, signed on those accounts and so they are not responsible for any inaccuracies in the accounts. Therefore, each Director will be responsible. There are standard accounting practices which have been made applicable and each Director has to make responsibility statement that he has personally perused the accounts and that he is satisfied with the accounts that he has signed. This is intended to bring an element of responsibility and transparency into corporate governance.

Sir, as I have already mentioned, certain obsolete provisions have now been deleted. There is also a provision in Section 102 and Section 103 under which some of the comments of sub-auditors have to be highlighted. There is a provision which has been made in regard to those comments.

Sir, there was a provision which was suggested in Clause 122 with regard to representation of some minority shareholders on the Board of each company. Two kinds of views on the subject had been expressed. One is that on optional basis, an option can be given to these companies that in case a procedure be laid down and if the companies exercise the option with regard to the representation of one minority director of small shareholders, this provision, in the first instance, is not to be mandatory. Under this amendment, it is optional in the first instance itself.

There are several other responsibilities. In case companies have not filed their annual return, the consequences will come upon the companies and upon the directors of the companies if they are directors of one company which has defaulted. They can be directors of the defaulting company and continue to run several other companies. There is now some responsibility which will be attached to them with regard to other companies in which also they are directors.

The maximum number of companies in which a person can be a director has been reduced from 20 to 15.

Clause 134 is an important provision which has been introduced with regard to the constitution by the Board of an Audit Committee. This Audit Committee is expected to independently audit the accounts of the companies. The Board is bound by the report of the Audit Committee. Certain amount of power and autonomy has been given to the Audit Committee. In case the Board disagrees with the observations of the Audit Committee, the entire matter is required to be placed before the general body of the company. There is also a provision that companies beyond a certain threshold limit of Rs.10 lakh should have a whole time Secretary of the company.

These are several amendments which have been suggested to the Companies Act. I may add a word to what I have started with. The original suggestion was to comprehensively amend the entire Act. But, since the Standing Committee has gone into it in stages, in 1999 the first part of the amendments has already been legislated. The second part has been debated at considerable length. The Government has taken a conscious view after going through each of these provisions and the report of the Standing Committee.

I, therefore, with the amendments which are proposed, commend to this hon. House that the Companies (Second Amendment) Bill be accepted.

MR. SPEAKER: Motion moved:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

SHRI SHIVRAJ V. PATIL (LATUR): Mr. Speaker Sir, the Companies Act, 1956, is a very bulky and complicated legislation. In the years gone by, many amendments have been introduced to the original Act. Yet, the Act has not become really small, simple, easy to understand, and easy to implement. Therefore, it has become very necessary that the entire legislation is examined very carefully and the Act is amended.

What should be done to make this law more acceptable? It should become less bulky. The amendments which have been introduced by the Government have reduced the number of sections. It should become less complicated and more simple to understand and implement. It should provide facilities to those who want to establish companies, run companies and contribute to the development of the economy.

We are living in an era when these companies would be required to compete with the companies in other countries. The law should facilitate, encourage and help our companies to be able to compete with them. There are interests of the investors to be protected and they should be protected. I must say that the second amendment tries to protect the interests of investors, the small share holders and the depositors to a very great extent. If something more could be done, it would be very useful.

This law should help modernisation - modernisation in management, modernisation in technology adoption and utilisation and also in developing technologies. The companies should be able to contribute towards the development of technologies. In other countries, development of technologies is the responsibility of private industries.

Whereas in India, this responsibility is shouldered only by the Union Government. So, this law should have some provisions which should really help these companies to contribute towards the funds which can be utilised towards the development of technologies. This law should also help our companies to join the mainstream in the world. Now, these are the objectives which have to be achieved. Unfortunately, many of these objectives have not yet

been touched upon and the law has not been amended in a manner to see that these objectives are achieved.

Now, what does the Companies (Second) Amendment Bill intends to do and has done? It was explained by the hon. Minister. It tries to remove the redundancies which are there in the law. It enhances the punishment. In some cases, the punishment is enhanced by ten times. It tries to increase the responsibility of the officers working in the companies. It tries to enhance the responsibility of the directors, creates and establishes a new concept of Audit Committee so that auditing of the company can be done in a different and more responsible manner. It protects the small shareholders and depositors and increases the responsibility of the directors. I must say that these provisions are salutary provisions. They can be accepted and incorporated in the law.

While commenting on the amending Bill, it may not be easy for anybody to agree with all the proposals as they have been submitted to this House. There would be nuances and different ideas and views on different clauses. We shall have to examine these different clauses.

Now, as regards the concept of defunct companies, we have a number of companies registered but these companies are not working. If the paid-up capital of a private company is expected to be increased to Rs.1 lakh and the paid-up capital of a public company is expected to be increased by Rs.5 lakhs within the stipulated time and if that is not done, then the companies which have not done so would be declared as defunct companies. This would certainly help in administering the companies law in a better fashion and will help us. This is provided in Clause 3.

I will go to the Securities and Exchange Board of India and the Central Government as provided in Clause 16. Clause 16 reads like this:

> "(a) in case of listed public companies;
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> (b) in case of those public companies which purport to be listed, be administered by the Securities and Exchange Board of India; and
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> (c) in any other case, be administered by the Central Government."

Now, the responsibility is shared by these two organisations − the Central Companies Board and the SEBI. I must say that these two organisations have not done their job in the manner in which they should have.

The SEBI says that it is not in a position to protect the interests of the shareholders because of many reasons. This aspect has to be very carefully examined. It says that there are many other laws which are creating difficulties in seeing that the interests of the small shareholders, depositors and the investors are protected. If this is not done, if it is not given any authority or the teeth and if it is left as it is , the purpose of amending the law will not be fully met. That is why, it has become necessary not only to examine the existing Companies Act but also it would be necessary to examine many other laws and many other policies also to see that these two organisations are helped to function in a proper manner. I am making this point because we have found that those who are working in the SEBI sometimes are feeling helpless, throwing their hands up and saying that it has not been possible for them to fulfil their duties because of some laws and policies. This aspect has to be examined if we really want to strengthen our corporate activities.

In clause 19, the small depositors' interests are protected. Clause 19 (a) reads like this:

> "The intimation under sub-clause 1 shall be given within 60 days from the date of default."

It has to be examined whether we can reduce the period from 60 days to 45 days. Or, it has to be examined whether this time should be increased. According to some, this time is not enough. According to others, this time is more than what is required. So, this aspect should be very carefully examined.

Clause 75, provides for voting by ballot. The hon. Minister did make a reference to it. But I am afraid that this clause is likely to be misused. We know that voting can be done by ballot in some elections and how the voting takes place. A person goes a round, collects the ballots, puts the mark on them and then deposits them with the authority which can use that kind of a voting. In my opinion, this is likely to create many difficulties. The proxy voting in general elections will create difficulties and the voting by a ballot in taking the decisions in companies will create problems. These are two things. Here I would say that it is very strangely worded. You can have a look at the exact words which are used in clause 192A (1):

> "Notwithstanding anything contained in the foregoing provisions of this Act, a listed public company may, and in the case of resolutions relating to such business as the Central Government may, by notification,

declare to be conducted only by postal ballot, shall get any resolution passed by means of a postal ballot, instead of transacting the business in a general meeting of the company."

It is saying that it will be done only by a postal ballot. There is a kind of business, which will be given, which will be mentioned, and it has to be conducted only by a ballot. This kind of a provision is not going to help the companies to perform their duties as they should. It may reduce the time taken for taking the decisions. It may reduce expenses of holding the General Body meetings and yet it would create many other problems.

So, this aspect has to be very carefully examined. Why are we adopting this out-dated method of voting by ballot? The Minister himself said that electronic voting system should be adopted. Why do we not adopt that system? Now, we have the equipment and systems which can be used to reduce the time taken for taking the decision or reduce the expenditure involved in it to see that this is not done. This provision is likely to create many problems and it is likely to give more authority to those people who want to manipulate the activities of the companies in the manner they want to. It is not going to help the company, but it is going to help some of the manipulators in the company. So, this has to be very carefully examined.

Then, clause 88 of the Bill says:

"Where a dividend has been declared by a company but has not been paid, or the warrnt in respect thereof has not been posted, within thirty days from the date of declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to 3 yearsâ€¦"

Now, the dividend has to be given within 30 days. I am told that this would create problems. The company's board has to clear the declaration of the dividend and they take more than 30 days to declare the dividend. Then, if it is so, instead of giving 30 days, we can give them 45 days as the time limit, so that there is no unnessary litigations and hazzles involved.

Now, I come to the Directors' Responsibility Statement. I think, this is a salutory provision and this has to be there. But there is one idea which is put forth with respect to this provision and that idea is: are you going to treat the part-time directors at par with the full-time directors? Now, the part-time directors are generally persons who advise the companies. They do not participate in day-to-day management and the administration of the company. If you hold the part-time directors also responsible at par with the full-time directors, it may create difficulties. Sometimes, they may say that they would not be in a position to accept the responsibility as part-time directors. So, this provision also has to be very carefully looked into.

Then, I come to clause 122 of the Bill to which a reference has been made by the hon. Minister and it relates to the directors elected by small shareholders. I think, originally this provision was not there in the Bill and this provision was included at the instance of the Standing Committee. Now, we are told that at the first instance this would not be necessary. I do not understand as to what is meant by 'first instance'. What does the Minister want to convey to this House by this? I fail to understand it.

It says that it shall have at least one Director elected by such small shareholders in the manner as may be prescribed. There are many small shareholders. They are entitled to attend the general meetings. If they want to create problems, they can create problems in the general meetings also. If there is a Board of Directors, it is not one or two Directors who will be sitting there and taking decisions. At least, one Director has to be there who represents the small shareholders. If one Director is there, I do not know what kind of problem that Director is likely to create while sitting in the Board. Why has the Government been saying now that, at the first instance, it may not be necessary? I have not understood what is meant by the hon. Minister. Will he be kind enough to explain it so that I can make my comments on that? What do you mean by that?

SHRI ARUN JAITLEY: Sir, I will first correct the facts. This provision was there in the Bill, as proposed. It may not be very accurate to suggest that it was not there. In fact, the Standing Committee had some doubt because of the debate involved in this subject. In their suggestions, the Standing Committee, in the first instance, said: "The requirement of at least one Director for small shareholders should be deleted. Thereafter, at that time, the suggestion made was:

"Since it could be experimented, therefore, you may or may

not amend Clause 122 to incorporate the suggestion of the

Government."

The Standing Committee reluctantly agreed. Thereafter the matter was considered at length by the Government again in view of various representations. It discussed the whole scheme. Should it be made mandatory for every company to have it or should it be made optional in the first instance? So, there is an official amendment which we have circulated. It says that the words 'shall have at least' may be substituted by the words 'may have'. That is what I meant. Then, I said, 'in the first instance' because this has not been experimented anywhere else in the world. This is a new concept which is being suggested. There has been a debate within our own system − within our own Standing Committee. Therefore, we make it optional in the first instance. Let us see if it works at some places. Then, in future, we will decide what to do about it.

SHRI SHIVRAJ V. PATIL : Does the company decide it?

SHRI ARUN JAITLEY: In the first instance, it is optional.

SHRI SHIVRAJ V. PATIL : I fail to understand its implications very clearly. Now, if the company wants to have it, they can have it. If they do not want to have it, they may not have it.

SHRI ARUN JAITLEY: The AGM can decide it.

SHRI SHIVRAJ V. PATIL : The General Body will decide it. But why has it been left to them? If there is a Board of Directors of 10 Directors or 20 Directors and if one Director, representing a small shareholder, is there, what kind of difficulty is he going to cause to them? Are we not going to protect the interests of the small shareholders? Now, any decision taken by the Board of Directors will be binding on the company. Probably, it is optional.

SHRI ARUN JAITLEY: We will be starting this whole concept.

SHRI SHIVRAJ V. PATIL : He may change it later on.

SHRI ARUN JAITLEY: No, I am not saying it. It is for the House to decide it.

SHRI SHIVRAJ V. PATIL : That is right. You may come with a proposal for the House to change that also. Now, we are saying: "Why have you done this thing? What was the compulsion for you to change your stand? Why did you come to this conclusion that the small shareholders' interests have to be protected?"

You felt that the interests of the small shareholders had to be protected. That is why you provided in the law this provision. It went to the Standing Committee. The Standing Committee wanted to delete this thing and you insisted: "You accept this thing. Later on, you have changed it." Why? What is the force? Why are you changing your stand on this point? We would like to understand it.

Here, the entire law is meant to protect the investor. We, as a Government and as a nation, have a responsibility to provide facilities to those who wanted to establish companies and want to contribute towards the development of our economy. All facilities should be given to them. But, at the same time, we, as a Government, have a responsibility to protect the interests of those people who are small people and whose voice may not be heard.

Otherwise their interest would not be protected and it is for this reason that the Minister or the Government came to the conclusion that it should be done. When the Committee suggested that it should be deleted, he insisted that it should not be done and now he comes to the House saying that it should be deleted. It can be "shall" or it can be "may". Why this? What is the intention? What is the purpose? What is the implication of it?

I can understand some people creating problem from inside also. I do not say that there are no persons who would not create problems from inside. But there are people also who would not protect the interests of the small shareholders. What do we do with that? Is it not our responsibility? Is it not our duty to protect the interests of small shareholders also? There are two interests. They have to be balanced. The Government has to do the balancing act. The Government has come to the House with a Bill and go to the people wih Bill, with the Act, which will really balance these two interests?

I do not think now this is achieved. It looks very doubtful and fishy as to why this provision has followed this route? Under whose pressure? Are we applying the principles or are we succumbing to the pressures?

We are living in a democracy and the opinion of the people should be respected. At the same time, if he himself has come to that conclusion initially, it should not be given up simply because there is a pressure. SEBI says that it is not in a position to protect the interests of the small shareholders. The Company Law Board is having so many things on hand and is not in a position to protect the interests of the small shareholders.

We have instances in our country where the interests of the small shareholders were not protected. Small people,

selling their houses and their lands, have purchased the shares and they have gone down the drain. They have not received anything in return. Who will protect their interests? If he is not protected by law, if SEBI is not in a position to protect, if the Company's Board is not in a position to protect and if they are not in a position to have a recourse to the court of law, who will protect?

So, in my opinion, this was a salutary provision and I think it should not have been deleted from the Act and no amendment should have been introduced in its place. It would not be good. I can understand the difficulties. It is not that there are no difficulties and there is no logic behind saying that let us not have the Director representing those people who want to create problems for the company. I can understand that. But at the same time, it cannot be forgotten that the interest of the small shareholders has to be protected and if we do not protect the interest of the small shareholder, we have not done our duty.

DR. NITISH SENGUPTA (CONTAI): Sir, there was a particular provision in the Companies Act which referred to the possibility of proportional representation. But it has not been tried at all, all these years. I just want to draw the attention of the hon. Minister to the fact that this also may not be tried at all. If the Government really wants, that should be made a kind of mandatory for companies. Although how the directors will be elected, what kind of lobby will be working and whether it will be more in preach than observance, that I do not know. But I wanted to feel the experience of Section 165 or something like that which was there in the Companies Act.

SHRI SHIVRAJ V. PATIL : This proportional representation and all those things will complicate the matter and so probably it was not accepted. But here we are suggesting and the Government had suggested that, at least, one representative of the small shareholders should be the director of the Board. If we are giving it up, I do not think, it is good.

There was a suggestion that the representative of the workers should be sitting in the Board. The representatives of the workers have refused to go to the Board. Why? They say, "if I go there and I am there only one person sitting in the Board, I am not in a position to influence the decision and the decision taken with my presence in the Board becomes binding and my position becomes very vulnerable." Some people would not like to go there alone without any assistance, without any support and cooperation.

That is a case as far as the representatives of the workers in the Board are concerned. Here is a question of the representatives of the small shareholders. Why should we not do it? I would request the hon. Minister to pay attention to this aspect. Please do not press for your own amendment. You can withdraw your amendment also. It is not necessary for you to do it. Now, if your Cabinet had approved the Bill initially and if your Cabinet and you were inclined to suggest to the Standing Committee not to ask this provision to be deleted, at this last moment I would ask you and your Cabinet not to press for the deletion of this provision, which is salutary. One person is not going to make any difference. I am repeating that I do understand that the mischief can be played and yet the responsibility to protect the small shareholders is more onerous than seeing that the mischief is not played by a single representative of the small shareholders sitting in the Board.

I come to audit. This is the last point that I will be making. I would say that the Audit Committee is also a salutary provision. In Parliament we are not in a position to examine the Budget which is presented to us. In the Companies also, the Audit Reports are not carefully examined by the members sitting in the Board or the shareholders also. There has to be a body of experts who understand auditing, who understand the financial matters and all those things, and they shall have to go into all these details, and then they shall have to suggest to the Board as to what should not be accepted, what should not accepted, and then the decision should be taken.

But having said this, I would like to say that what is it we are doing by this Bill. Clause 134(a)(iii) reads:

> "The recommendation of the Audit Committee on any matter relating to financial management including Audit Report shall be binding on the Board. "

You are making the recommendation of the child binding on the parent. You are making the recommendation of the Audit Committee binding on the Board, which creates the Audit Committee. Now, supposing we say in Parliament that the recommendations of the Standing Committee will be binding on the Government, will you accept it? You would say that the Standing Committee is a part of the Parliament and yet, the recommendations have a persuasive value but not a mandatory nature. Now, here you are saying that the Report given by the Audit Committee will be binding.

I would explain as to why this was suggested at the time when the Standing Committees were established in Parliament in 1993. They were saying that anything and everything which is suggested by the Standing Committee should be binding on the Government. One of the gentlemen got up and said that it would be difficult to approach all the Members sitting in Parliament and get a particular kind of recommendation made by them but it would be

easier to convince 45 Members of the Standing Committee and get that decision binding on the Government. The same thing can be applicable to Audit Committee also. It would be difficult for anybody who wants to manipulate and to approach all the Directors sitting in the Board but it will not be that difficult to approach few of these members and get the report on something fishy is going on in that company. So, my request is that it should be made clear by our law that the recommendations have to be respected, they should have a mandatory nature but they should not be mandatory and they should not, in all cases, be binding on them. Some thing of that nature should be there. Otherwise, this provision is likely to be misused. We have public and financial institutions in which there are Boards and there are Directors who would be sitting.

And they say that three members of this body will decide how much of money should be given to a company and that would be binding on the Board. What will be the implication of it? If there are three members sitting and if you have one member your friend, other member his friend and the third member his friend, what will be the implication? I am not doubting the bonafides of all. Let us not doubt anybody's *bona fides.* Yet, the human nature is such that there are some people who can do it. While making the law, we shall have to visualise the implications of it. We shall have to see that by providing something which, according to him is good, will be used in such a fashion that exactly opposite result will emanate from it. That is why, my submission to this House and to the Minister is that this binding nature of the report of the Audit Committee would create problems and it has to be looked into and done away with.

Well, I do not think anything more is necessary for me to say on this point. This Bill is good. It will be supported. But the details of it have to be very carefully examined. Lot of time has passed since the time when we are thinking of modifying the existing Companies Act and to make it as good as the Companies Act in other countries are, and capable of meeting the requirements of the present times. I would request the Government that no time should be wasted; no delay should be allowed and a comprehensive Bill to amend the Companies law should be introduced and should be got passed.

श्री किरीट ्सोमै्या (मुम्बई उत्तर पूर्व) : अध्यक्ष महोद्य, महाभारत में हमने अभिमन्यु और उसके चक्रव्यूह के ्बारे में पढ़ा था, ्सुना था। माननीय श्िवराज पाटिल जी ने जै्सा अ्भी कहा कि कम्प्रीहैन्स्िव ब्िल जल्दी आना चाहिए, ्सन् 1906 ्से इस कम्प्रीहैन्स्िव ब्िल की ्बात चल रही है। अ्भिमन्यु चक्रव्यूह के ्सात घेरे में फं्सा था। मुझे लगता है कि अरुण जी की ्भी ्वही स्थिति है। ्वे अ्भी पहला घेरा पार करके दू्सरे घेरे में प्र्वेश कर रहे हैं। ्यह उनका अच्छा प्र्यत्न है इ्सलिए मैं उनका ्समर्थन करता हूं और जितनी जल्दी हो ्सके, जै्सा अ्भी पाटिल जी ने कहा कि ्वह कम्प्रीहैन्स्िव ब्िल ्सदन के ्सामने ले आ्यें, मैं ऐ्सी शुभेच्छा ्या शुभकामना करता हूं।

अध्यक्ष महोद्य, माननीय श्िवराज पाटिल जी ने ्स्मॉल इन््वेस्ट्र्स की जो ्बात कही है, उ्सी ्से मैं अपनी ्बात प्रार्ंभ करता हूं। ्वै्से मैं चार्टर्ड एकाउंटेंट हूं। इ्सके ्साथ-्साथ ्स्मॉल इन््वेस्ट्र्स की मुम्बई में इन््वेस्ट्र्स ग्रीव्ंस फोरम नाम की ्संस्था है जो ्सेबी की रिकोग्नाइज्ड ्संस्था है, मैं उ्सका अध्यक्ष ्भी हूं। ्स्मॉल इन््वेस्ट्र्स के प्र्श्नों के लिए हम लग्भग आठ ्साल ्से ्संघ्ार्ष करते आ्ये हैं। ्यह एक अच्छा प्रार्ंभ है। अ्ब कम ्से कम ्स्मॉल इन््वेस्ट्र्स की ्बात ्बोर्ड में कहने के लिए हमें थो्ड़ा मौका मिलेगा। लेकिन ्साथ-्साथ श्री ्सेनगुप्ता जी और श्िवराज पाटिल जी ने जो ्बात कही, उ्स शंका का ्भी इ्समें ्स्थान है। अगर प्र्वेश मिल ग्या तो ्स्मॉल इन््वेस्ट्र्स ज़रूर अपनी ्बातें ्वहां रख पा्यें गे लेकिन उनको प्र्वेश मिलना ्या न मिलना, ्यह ्भी कम्पनी के जो प्रोमोट्र्स हैं, मालिक हैं, उनकी मर्जी पर नि्र्भर होगा। अर्थात् ्यह एक अच्छी शुरुआत है। स्टैंडिंग कमेटी ने ्सोच-्समझकर निर्ण्य लि्या होगा। ्सरकार इ्समें थो्ड़ा प्र्वेश करने का प्र्यत्न कर रही है लेकिन इ्स्से कितना ज़्यादा हम कर पा्यें गे ्या कितना ज़्यादा ्यह प्रो्विजन ्सफल होगा, अगर आप मुझे इन््वेस्ट्र्स की ्भा्वना ्से पूछें गे तो इ्समें शंका का ्स्थान है क्योंकि जै्सा इन्होंने कहा कि प्र्वेश देना ्या न देना, ्यह प्रोमोट्र्स, ऑन्र्स के ऊ्पर नि्र्भर है। उनको ज़्ब लगेगा कि ्स्मॉल इन््वेस्ट्र्स का प्रतिनिधि मेरा है तो मंज़ूर करेगा और उनको लगेगा कि ्यह कोई ्संघ्ार्ष करने ्वाला होगा तो इ्स प्रो्विजन का इम्पलीमैंट नहीं करेगा। But let us begin somewhere.

1710 hours (Mr. Deputy-Speaker *in the Chair*)

इ्सलिए मैं इनका ्समर्थन करता हूं - something is better than nothing. आज तक कुछ ्भी नहीं था। मैं मंत्री महोद्य ्से कहना चाहूंगा कि देना ्बैंक में ्यह प्रो्वीजन है। ्वह कौन ्से ्सैक््शन के अन्तर्गत है, आप चैक कीजिए। लेकिन Dena Bank is a Nationalised Bank. There is a provision. ्वहां पर ्स्मॉल इन््वैस्ट्र्स का प्रतिनिधि मेरा मित्र है जो चुना ग्या है। ्वह कि्स प्रकार का प्रो्वीजन है, मैं नहीं जानता। It exists somewhere; we have to exploit it. आप अगर इ्स दि्शा में आगे जाएंगे, अगर कोई ब्िजन्स हाउ्सेस और इंडस्ट्रि्यल ऐ्सोसि्एशन की ्बात करता है, गुड ग्वर्नें्स की ्बात करता है तो एक ओर उनको गुड ग्वर्नें्स के नाते ्सरकार की ओर ्से ्सभी प्रकार की ्सहूलि्यत चाहिए, but they do not want to be accountable to the society. अधिकार ्सब चाहिए लेकिन रि्स्पौंसि्बिलिटी ्से ्वे डर रहे हैं। इ्स व्ि्य में ्बहुत ्सी जगहों पर चर्चा हुई है। कि्सी को लगता है कि मेरा कम्पीटीटर आकर ्बैठ जाएगा। When you are talking about good governance then why are you afraid of your competitors? When you want all the authority, powers and all the facilities through the Government or the financial institutions, what sort of financial institution do you want?

इ्सलिए इ्स व्ि्य में ज़्यादा न जाते हुए मैं एक ्बात ज़रूर कहूंगा कि अरुण जी ने हिम्मत करके ्यह प्रो्वीजन कि्या है। देखिए ्साल, दो ्साल में इ्समें क्या अनुभ्व होता है। अन्यथा अरुण जी, आप ्भी मंत्री रहने ्वाले हैं, ्सदन ्भी पांच ्साल रहने ्वाला है। गीते जी तो प्र्स्ताव ्भी लाए हैं। â€¦ (व्यवधान)

उपाध्यक्ष महोद्य : अ्भी तो चार ्साल ्बचे हैं।

श्री किरीट ्सोमै्या : ्यह व्ि्य ्वास्त्व में इ्स्से डा्यरैक्टली ्संबंधित नहीं है लेकिन इ्स व्ि्य के ऊ्पर आज ्बहुत गंभीर चर्चा ्समाज में चल रही है, जि्सकी तरफ मैं ध््यान आकर्ि्त करना चाहूंगा, that is, takeover code. That may not be directly linked with it i.e. फाईनें्स मिनि्स्ट्री और कम्पनी अफे्यर्स मिनि्स्ट्री। ्सेबी कहती है कि कम्पनी अफे्यर्स का अधिकार नहीं है, कम्पनी अफे्यर्स कहती है कि हमारे अधिकार में है। There is some confusion, whatever it is. But one thing I would like to mention here टेक ओ्वर ्बोर्ड की ज़्यादा डिटेल में न जाते हुए हमें ्यह ध््यान में रखना प्ड़ेगा जै्से

अगर एक डायरैक्टर से डरने की बात हो रही है तो टेक ओवर कोड में जो प्रोवीजनल मैनेज्ड कम्पनीज़ हैं, उनको जब कोई प्राइवेट बिजन्स हाउस, whether it is an Indian businesshouse or foreign institution, वह पूरा अपने कब्जे में लेने का प्रयत्न करता है, उस समय कम्पनी की क्या स्थिति है। If it is a professional management, it means it is the Company Affairs, Government official in a situation heading in a major State, Government financial institution, किसी का 5 प्रतिशत, 6 प्रतिशत, 3 प्रतिशत शेयर है and there is no coordinating body. उस समय कोई बिजन्स हाउस आता है, 15 प्रतिशत शेयर ऐक्वायर करता है, ऐनाउंस करता है, टेक ओवर का और 2 प्रतिशत तक का भी उसे मिल गया तो he can grab the Company, he can run away. What is the provision? There is no provision. I approach the Department of Company Affairs, I approach the SEBI. When there is no provision, what will happen to Bombay Electric Suburban Company, what will happen to ITC, what will happen to HPC and what will happen to ICICI? उनका क्या होगा। कल आप यूनिट ट्रस्ट ऑफ इंडिया को इन्डीपैंडैंट करेंगे, उसे कोई ग्रैब कर लेगा तो what will happen. गवर्नमैंट का किसी का एक साथ इतना शेयर नहीं है। इसलिए मैं सरकार का ध्यान आकर्षित करना चाहता हूं कि यह विधेयक सरकार को गंभीरता से लेना चाहिए।

एक बहुत अच्छा प्रोवीजन ट्रांसफर ऑफ शेयर्स, अनपेड डिवीडैंड, जो कम्पनी के डायरैक्ट डिफॉल्ट्र्स हैं, क्रिमिनल रिकार्ड है या नॉन पेमैंट ऑफ डिपॉज़िट के बारे में आया है लेकिन हिन्दी मैं कहते हैं कि हाथी निकल गया और दुम रह गई। 1996 में यह बिल लाने का प्रयत्न हुआ। उस समय a number of vanishing companies were entering in the market.

1994-95, 1995-96 में 3500 कम्पनियों ने मार्केट में प्रवेश किया, उनको कोई रोकने वाला नहीं था, रजिस्ट्रार ऑफ कम्पनीज एक्ट्स दि काउण्टर उनको सर्टिफिकेट देता था। अगर आप राशन कार्ड लेने जाते हैं तो उसके लिए आपको 10 प्रकार की चीजें चाहिए, लेकिन अगर आपको पब्लिक लिमिटेड कम्पनी फार्म करनी है तो आप आफिस जाइये, उसका हजार दो हजार रुपये का फायदा करा दो You can go to the office. और गांव में, देश में जो छोटा इन्वेस्टर है You get the incorporation certificate. और फिर गवर्नमेंट के सिक्के का उपयोग करके इतना सारा पैसा इकट्ठा किया जाता था, 3500 कम्पनीज ने 10 हजार करोड़ रुपया इकट्ठा किया। मैं आगे कहने वाला हूं, मैं आंकड़े आपके सामने रखने वाला हूं कि वह 10 हजार करोड़ रुपया इकट्ठा हुआ, उसमें 3500 कम्पनीज में से मुम्बई स्टाक एक्सचेंज ने 997 कम्पनियों को जैड कैटेगरी में डाल दिया है। They said this company whether exists or does not exist, we do not know. उन्होंने पैसा कहां से निकाला, कहां खर्च किया, पता नहीं। पैसा एक काम के लिए मांगा और दूसरी कम्पनी में, सब्सीडियरी, होल्डिंग कम्पनी या बाकी जगह पर भर दिया और आज हम यह एक्ट लेकर आ रहे हैं, पार्लियामेंट में रिप्लाई आया है। when we contacted, when we approached various Ministries, they came out with the list. यहां पर फिर आप यह तरमीम कर रहे हैं, यह प्रोवीजन क्यों कर रहे हैं कि इस प्रकार कम्पनियां भाग जाती हैं, ट्रांसफर नहीं करती हैं, रजिस्टर्ड आफिस चेंज कर लेती हैं। The number of vanishing companies is only 80 and the total amount collected is only Rs. 240 crore. Then, why are you making this provision here? माननीय शिवराज पाटिल जी ने ठीक कहा है कि सेबी कहती है कि हम छोटे इन्वेस्ट्र्स का रक्षण नहीं कर सकते। डिपार्टमेंट ऑफ कम्पनीज एफेयर की मैं क्या बात बताऊं। यहां पर यह कहा गया है कि कम्पनी लॉ बोर्ड वाले कह रहे हैं कि because nobody wants to accept the responsibility. और लीगल प्रोवीजन क्या क्रिएट करने जा रहे हैं कि 30 दिन के अन्दर सी.एल.बी. को रिप्लाई देना पड़ेगा, सी.एल.बी. को एक्शन लेना पड़ेगा। सी.एल.बी. के पूरे हिन्दुस्तान में सिर्फ चार ब्रांचेज हैं, वह जबलपुर, जमशेदपुर और त्रिपुरा में रहने वाले छोटे इन्वेस्ट्र्स There are only four Benches, only regional Benches. और सी.एल.बी. में कम्पलेंट फाइल करते हैं तो वहां से जवाब नहीं आता है। How can he approach the CLB? हम धूल झोंकना चाहतेहैं। 42 दिन का प्रावधान 30 दिन कर दिया, The Department of Company Affairs does not have any machinery. I am not blaming as such. They do not have the machinery. They do not have the Budget. They do not have the finance. Then, what kind of an Act are we bringing over here? यहां पर सी.एल.बी. के वाइस प्रेसीडेंट ने कहा है Now, I would like to quote:

> "CLB Vice-Chairman, S. Balasubramanian pointing out several inconsistencies and anomalies in the various provisions of the Bill introduced in the Lok Sabha last session said companies as well as the CLB would face practical difficulties implementing the changes sought to be brought in through the amendments."

Shri Balasubramanian felt that CLB would face problems passing orders on default in payment of small depositors money within 30 days as is required under the proposed section 58AA. It is not possible to pass orders within 30 days of intimation. उपाध्यक्ष महोदय, यह कहें न कहें, सी.एल.बी. की हालत इतनी दयनीय है कि कितनी ही एन.बी.एफ.सी. ने डिफाल्ट किया, उसमें एक सिंगल एन.बी.एफ.सी. का पैसा सरकार वापस नहीं दिला पाई है। सरकार का मेरा तात्पर्य मैं कोई अरुण जी को नहीं कहता हूं। उन्होने तो अभी कुछ दिन पहले चार्ज लिया है। सरकार पहले यू.एफ. की रही, उसके पहले कांग्रेस की रही, I am talking of the system. Not a single investor has got back a single paise. हम क्या निर्माण करने जा रहे हैं। हम बात कर रहे हैं कि यह जो एमेंडमेंट आया है, यह स्माल इन्वेस्ट्र्स के लिए लाये हैं, हम इसकी बात कर रहे हैं और इससे स्माल इन्वेस्टर का कितना भला होगा। यह हो सकता है, अगर माननीय मंत्री जी इस विधेयक को गम्भीरता से लेकर he has got that capacity; he can do it. स्माल इन्वैस्ट्र्स की उनके प्रति आशा है। वे एक अपेक्षा की दृष्टि से आपकी तरफ देख रहे हैं कि आप यह कर सकते हो, लेकिन किस प्रकार से करोगे। डिपाजिट की बात हुई है कि डिपाजिट का डिफाल्ट होता है, डिपाजिट का इण्टरैस्ट नहीं मिलता। हम अभी एक नया प्रोवीजन लेकर आ गये, अभी तक प्रोवीजन था या नहीं था, पता नहीं? गरवारे और किर्लोस्कर से लेकर इतनी कम्पनियों ने इन्वैस्ट्र्स का डिपाजिट का पैसा वापस नहीं किया, डिबेंचर्स का पेमेंट वापस नहीं देते हैं, इंटरैस्ट नहीं देते हैं तो कितने डायरैक्ट्र्स को आपने सजा दी है?

कितने इंवेस्ट्र्स को न्याय मिला, कितने इंवेस्ट्र्स को पैसा वापस दिया गया? मैंने सीएलबी से, डिपार्टमेंट ऑफ कंपनी अफेयर्स एंड फाइनेंस मिनिस्ट्री से एक स्टेटमेंट मांगा था कि कितनी एनबीएफसी डीफॉल्ट हुई? जो उन्होंने स्टेटमेंट दिया, वह स्टेटमेंट लम्बा-चौड़ा है, See how these people replied! अलग-अलग कैटेगरीज हैं। पहली कैटेगरी में जो रिप्लाई दिया गया, उसमें 97 कंपनीज हैं। The number of complaints received is 3,535 and the total amount involved is Rs.8.24 crore. इस प्रकार से अगर हम इसे देखेंगे कि इसमें खुद अपने आपको फंसा रहे हैं। यह रिप्लाई क्या है? कितना एमाउंट फंसा है? यानि 97 कंपनीज बंद हो गई हैं, भाग गई हैं। कितना एमाउंट डूबा? जितनी कंप्लेंट्स इनको मिली थी, जितनी इंडिविजुअल कंपलेंट्स इनको मिली थी, उनमें 8.24 करोड़ रुपया इंवाल्व है। एक्चुअली टोटल पैसा जो इकट्ठा किया गया, वह तभी खत्म हो गया। But these people are not deriding that reply. 97 कंपनीज ने ऑफिशिअली कबूल किया है कि उनका एमाउंट 1300 करोड़ रुपये से ज्यादा है लेकिन डिपार्टमेंट ने 8.24 करोड़ रुपया बताया है और फिर प्रोवीजन लेकर आते हैं। मैं माननीय मंत्री जी से इतना ही कहना चाहूंगा कि आप एक अच्छा प्रयत्न कर रहे हैं, वह चाहे इंटेरिम डिविडेंड हो, डिपॉजिट हो, इंटरेस्ट पेमेंट

हो या ट्रांसफर ऑफ शेयर्स हो।

SHRI ARUN JAITLEY: Sir, I fully share the sentiments of the hon. Member. Section 58AA has been introduced precisely keeping in view what the hon. Member has in his mind. Under this provision, he is right when he says that how do we expect small investor to travel to all parts of the country and then say that his Rs.5,000 is stuck and he is spending Rs.25,000 to recover it back. Therefore, in the first instance, now the obligation is on the company that the company must inform the Company Law Board what its defaults of all small depositors are. A provision has also been put giving the time limit that this intimation must come within sixty days of the default. The CLB will act within thirty days. The maximum extension that the CLB can get for acting is an additional period of thirty days. So, even for condonation of the delay for not having acted in thirty days, the CLB has an outer limit of sixty days under this Act.

The hon. Member said how does the small investor travel. It has been further provided that it is not necessary for the small depositor to be present at the time of the hearing. A simple postcard is enough. Then, there is a provision for penalties on the company which defaults. If a company does not repay him back, it cannot raise any further deposit from the market. Further, if it accepts loans from banks or financial institutions, all those moneys are first going to be utilised for repayment to the small depositors, rather than for any other business of the company, and if it still does not pay, the penalty amount is extended and then there is a provision for punishment up to three years to the officer of the company who is responsible.

श्री किरीट सोमैया : माननीय मंत्री जी जो एक अच्छा कार्य करने जा रहे हैं, इसीलिए मैं उनकी प्रशंसा और समर्थन कर रहा हूं लेकिन साथ में मैं उनका ध्यान आकर्षित करना चाहता हूं कि हम फील्ड में काम करते हैं। हम आपको फीड-बैक दे रहे हैं कि पोस्ट कार्ड कंपनी लॉ बोर्ड को लिखा जाता है लेकिन उसका कॉगनिजेंस नहीं लिया जाता है। Because they do not have the machinery, they do not have that much staff. That is why I am requesting you to provide something.. आपको पता है कि मेरे से ज्यादा लार्ज स्केल आपने प्रोवीजन किया है कि अनपेड डिविडेंड जो कंपनी के पास 7-8 साल से बचा रहता है, किसी सरकार ने उसमें दखल नहीं दी है, आपने दखल दिया है लेकिन आठ साल बैंक में कंपनी का अनपेड डिविडेंड लॉक-अप में है। It is a total waste. आज तक कितना पैसा अनपेड डिविडेंड का कितनी बैंकों में मिला, उसका क्या हुआ जो कंपनी ने रखा है या जो डूब गया। इन सबकी किसी के पास जानकारी नहीं है। At least you have taken cognisance of it. It can be Rs.10,000 crore, it can be Rs.2,000 crore. Nobody knows it. That is why I am supporting you.

SHRI ARUN JAITLEY: For the entire money which is the unpaid dividend or the unpaid interest of depositors, now there will be a Fund created, which is the Investor Education Fund, and it will entirely go away from the company into that Fund. So, that Fund is intended to be created. Perhaps there is an independent Trust.

श्री किरीट सोमैया : वह आप कर रहे हैं, इसलिए मैं आपको बधाई देता हूं कि कम से कम उसके कारण इंवेस्टर्स अवेयरनैस एजुकेशन प्रोटैक्टिव मैजर्स आप ले पाएंगे।

MR. DEPUTY-SPEAKER: Shri Kirit Somaiya, the hon. Minister is going on replying to all those points that you are raising. Now, a comprehensive provision is already made for all your points. I request you to make it short, as we have to pass this Bill.

श्री किरीट सोमैया : महोदय, मैं खाली छोटे-छोटे तीन बिन्दु कह कर अपनी बात समाप्त करूंगा। आपने जो प्रोविजन के बारे में बताया है, सीएलबी के आर्डर्स को कोई इम्प्लीमेंट नहीं करता है तो आरबीआई आगे एक्शन ले सकती है। मैं आपकी जानकारी के लिए बताना चाहता हूं कि अभी तक कोई भी कम्पनी के डायरेक्टर को आरबीआई एक्शन के अंतर्गत सजा नहीं हुई है। How can you frame that the action can be expedited? कम्पनी सीएलबी आर्डर पास करती है कि आप दो साल में पैसा दो, लेकिन वह देता नहीं है। आरबीआई कहती है कि हमारे पास कोई मशीनरी नहीं है। That is one more point. Another point is that there is a multiplicity of regulators to protect the interest of the small investors. इस दृष्टि से मैं यह कहना चाहूंगा कि सेबी, आईओसी, डीसी, सीएलबी, आरबीआई, स्टेट गवर्नमेंट और सीबीआई है। There are several multiplicity of agents. अब उस दृष्टि से भी कुछ करने का प्रयत्न करेंगे तो काफी अच्छा होगा कि इन्वेस्टर्स किसी प्रकार से किसी भी प्रकार की कम्प्लेंट के लिए सिर्फ एक एजेंसी को लिख दें। That Government agency can act as a nodal agency and can pass on the complaint.

महोदय, मैं अंत में एक छोटा सा सुझाव मंत्री जी को देना चाहूंगा। आप बहुत कुछ कर रहे हैं, हमारे जो चार्टर्ड एकाउंटेंट इंस्टीट्यूशंस हैं उन्होंने आपको कुछ सुझाव भेजे हैं। स्टैंडिंग कमेटी के विभिन्न सदस्यों से आपकी चर्चा हुई है। आप जो दो प्रोविजन करने जा रहे हैं, In 1970 both the Government and Parliament have brought the chartered accountants under a limit or ceiling. कोई भी एक चार्टर्ड एकाउंटेंट 20 से ज्यादा कम्पनी का ऑडिट नहीं कर सकता, लेकिन उस समय पर एक दूसरा प्रोविजन आया था कि प्राइवेट लिमिटेड कम्पनी का टर्नओवर बहुत ज्यादा है। That will be treated as a deemed public limited company. उसका भी इस सीलिंग में समावेश होगा। अभी आप एक प्रोविजन के द्वारा डीम्ड लिमिटेड कम्पनी को निकाल रहे हैं। Once again that will become a private limited company. उसके कारण कौन-कौन सी कम्पनी प्राइवेट लिमिटेड बन सकती है। Godrej will become a private limited company because Godrej is both a private limited company and also due to this deemed company's provision. फिर उसी के साथ में कोकाकोला है। That is a private limited company. Enron is a private limited company. मेरी प्रार्थना इतनी है कि हम इन्हें ज्यादा से ज्यादा अच्छी तरह से मोनिटर कर पाएं। आप एक चार्टर्ड एकाउंटेंट की 20 की सीलिंग कायम रखें, लेकिन प्राइवेट लिमिटेड कम्पनी भी उस सीलिंग में इनक्लुड है। आप जिसे निकालना चाहते हो, उसे न निकाल कर वैसे का वैसा रखें। आपने एक दूसरा छोटा सा प्रोविजन भी कहा है- At one place, you have made some changes in the definition of an officer. The change that you have made is here. I do not know what was the intention of the Department in doing so. आपने मैनेजिंग एजेंट और उसका

डेफिनि्शन ्बदलते ्सम्य, chartered accountants will become or will be treated as officers now under the new definition. मुझे ऐसा लगता है कि चार्टर्ड एकाउंटेंट इनडिपेंडेंट रहेगा तो ्सभी को फा्यदा होगा। अगर उ्से कम्पनी के आफि्सर के ्रूप में ला्या जाएगा तो उ्सकी इनडिपेंड्ें्स को थो्ड़ा धक्का पहुंच ्सकता है।

मैं आप्से कहना चाहता हूं कि आप एक अच्छी दि्शा में पहुंच रहे हैं। हम आप्से ्बहुत आ्शा रखते हैं कि आप जल्दी ्से जल्दी एक कॉम्प्रीहें्सि्व ्बिल लाकर ्सोल इन् वे्स्ट्र्स की रक्षा के लिए और प्र्यत्न करेंगे।

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SHRI RUPCHAND PAL (HOOGLY): Mr. Deputy-Speaker, Sir, my first observation on the Bill is that it is too little and too late because things are not going to improve.

DR. NITISH SENGUPTA (CONTAI): It is better late than never.

SHRI RUPCHAND PAL : It may be so. Things are not gong to improve − say it in the case of better corporate governance, better corporate democracy, more transparency and disclosure be it in respect of prospectus or balance sheet, more accountability, more deterrence in the matter of anti-investor activities. My apprehension is that things are not going to improve at all.

Sir, as you know, since the market economy was introduced in 1992 till today, the people of this country have lost an amount ranging from Rs. 35,000 crore to Rs. 38,000 crore. That is the rough estimate made by an independent authority. Of this, only the plantation companies alone accounted for above Rs. 15,000 crore. This Government has neither done anything nor does it intend to do anything. I am making a reference to the reply given by the hon. Minister. It says that out of 142 vanishing companies, prosecutions have been initiated against 93 companies and no prosecutions have been initiated against 37 companies. The question was : "What about the money lost by the common people of this country?" The reply was : "The Department has constituted some task force to identify the vanishing companies and the vanishing companies could not be traced. So, money could not be given back." This is the state of affairs.

Sir, investors are suffering in India. There are about 19 million investors in the country. The number is less than that in China although China opted for reforms in the share market only three or four years back and our stock market is about 125 years old. The protection that we provide to the investors is really in a very distressing condition. People have become totally disenchanted and the small investors, who are considered to be the pillars of the Indian stock market, have lost confidence. This piece of legislation is never going to restore the confidence of the small investors, and even of medium and short-term investors, in the share market. Investors have lost money in several ways. They have lost it through erosion of prices in the secondary market and through siphoning off company funds. We know that in this very House, we had discussed about some very important companies and how the promoters had siphoned off company funds, made them sick and to just avoid repayment of the money, they had managed to refer it to the BIFR. There was bad management of the companies. There is no legal system in this country to protect the investors' interest as it is there in some developed countries, for example, the United States. The Minister may now say that I have referred to China and now I am referring to the US. But what is good should be considered as good. In the U.S., such an exemplary compensation is given that it acts as a deterrence, and the fly-by-night companies and others cannot escape. They have to pay money back. They are punished in such a manner that they have to pay back the money. But things are not going to improve here by this limited piece of legislation.

Again, several things are being said currently. It is also said that the small investors will be able to sell and buy their shares in the current situation in the demat form - I am speaking about the current situation − but the small investors can neither sell nor buy their shares; they are shunning the depositories. Only seven stock exchanges out of 23 have such arrangements. Depository is a costly affair and the custodial charges are there. The Registrar of Companies − this needs to be seriously considered − who is handling share transfer through conventional physical form is resorting to delaying tactics and the victims are the small investors.

The concept of corporate governance is there in Sir Cadbury Committee Report and several other Committees' Reports. We have discussed it in the House and also in the Committee, but we are nowhere near to the minimum concept of corporate governance.

Coming to the Directors' responsibility, if the repayment of the deposit or dividend has not been made, then even the director of the defaulting company should be held responsible. Even today, the nominee directors are not at all held responsible, leave alone the other directors. Do you know what is happening? The companies are working in the manner they want them to be, without caring for the Company Law Board and SEBI. I had once asked the SEBI Chairman, "Do you consider yourself to be adequately equipped with the authority and power?" He frankly admitted, "SEBI is a toothless body". Even in the case of the prospectus, when it was said that they should examine the prospectus before the initial offering was made, SEBI said that it was not its job, and that it was the job of the

merchant banker. Now, it is good that the Government is ready to take up that responsibility. How far this is going to serve the purpose, I do not know.

The CLB is a *quasi-judicial* body. What punishment have they meted out to those offenders who have looted common people's money during the last eight years? When the market was opened in 1992 as a result of the then Congress Government wanting a market economy, there was *laissez-faire*, and there was no controlling or regulatory body. We know as to what happened in the securities scam. In the securities scam case, the JPC recommended certain things, but till today, this Government has not acted on them. There was a unanimous recommendation by the same JPC on Securities Scam that companies should have to perform such and such things; such and such should be the minimum criteria to be observed by them etc.

Coming to the provision of small investors' representatives on the Board, my esteemed senior colleague, Shri Shivraj Patil, mentioned that it was there earlier. But as far as I could understand from the Press reports, the industrial houses and the industrialists had put pressure on the Government that it should not be there. Now, they have made it optional, not mandatory. It should be there to protect the small investors. This minimum provision should be there that they should have some sort of representation on the Board of Directors.

Sir, now I will come to clause 58 (a) (9). There is a sort of expression give in this clause, that is, the 'CLB can get an appropriate order'. What is an 'appropriate order'? It should be that the payment would have to be made. Clause 58 (a) (9) is not using that expression. The Minister may kindly explain as to what an appropriate order is.

Coming to the delegation of powers from the Department of Company Affairs to the Company Law Board, and to the SEBI, is okay. But how far SEBI will be able to perform this role, I am not sure about it.

Coming to the provision about the Audit Committee to be set up by the Board, and particularly, its observations to be incorporated in the report itself so that the shareholders can have their democratic right of perusing it, it is okay. But there is a serious development that is taking place. The independence of the audit system as such is being diluted. There are so many reports on the erosion of the independence of the audit system, and I am giving only one reference. There was a court judgment about the malpractices in the ICWA examinations. The Government is sitting over the report of the Inquiry Team on alleged malpractices in the declaration of June/December 1998 examination results by ICWA. The directives of the Department of Company Affairs are being thrown to the winds by very important people, by their own people. Even after the court judgment, if the malpractices in the examination results are allowed, then the independence of the audit system gets diluted.

The independence of the audit system is being diluted. The format has not been prepared and still the Government is saying that in a liberalised atmosphere we shall go in for the international standard of accounting. No one is going to believe such things.

Sir, my next point is about mergers and amalgamations. The points such as, what does the Government propose to do in case of takeovers that are hostile or otherwise; or, what would the SEBI do in case of takeovers, are being widely discussed. But my point is this. How is the interest of the small investors going to be protected in case of hostile takeovers or normal takeovers? How is this piece of legislation going to take care of this development that is taking place in the country? This is one grey area that is helping the unscrupulous operators of the different companies to accumulate wealth at the cost of the nation and at the cost of the investors.

Sir, my next point is about the inter-corporate investments. The Government, in this piece of legislation, has not proposed anything concrete to take care of this particular area and things are deteriorating day by day.

My next point is about the conflicting powers of various institutions. What is the responsibility of the Company Law Board? What is the responsibility of the SEBI? What is the responsibility of the RBI? These responsibilities should be very clearly and categorically mentioned. There are cases where the SEBI says that it is the duty of the Company Law Board and the Company Law Board says that they are powerless and RBI can only do it. There are cases about prosecution, punishment, penalties and such other things.

Sir, my next point is about falsification of accounts. After the changes made in the Money Laundering Bill and with the introduction of the new FEMA, falsification of accounts is a very serious problem. We may go on speaking about corporate governance, about transparency and about disclosures, but this falsification of accounts is a very big menace. After the introduction of the new FEMA, there are always two to three sets of balance sheets. One is for income tax, one is for prospectus and one is for other purposes. I would like to know as to how this piece of legislation is going to improve the situation.

Sir, I have one suggestion to make. Why should the interest of the small investors not be insured? Insurance of the interest of the small investors is one of the measures that could give some protection to the small investors as a

whole.

Sir, there were some recommendations made by the Dhanuka Committee. They made very valid suggestions in regard to the division of jobs and exclusive powers given to SEBI and others. The hon. Minister may just share his information about the recommendations made by the Dhanuka Committee.

Sir, my next point is about deletions made. We are repeatedly being told that any company where there is a Government share of more than 25 per cent it is not to be considered a private company. In the matter of disinvestment the Government is repeatedly saying that in case of banks even if the shareholding is brought down from 51 per cent to 33 per cent, it does not matter. In case of the insurance sector 26 per cent shareholding is enough to control it because nothing can be done without the permission of the Government. The hon. Minister may kindly clarify section 43(a). I would like to know if the Government would have the same kind of control with 26 per cent of shares as it would have with 51 per cent of shares or not.

Then there is this Indian company concept in the case of insurance also. What is an Indian company? How can a foreign company have an Indian partner? It was stated - Indian company 'as defined in the Companies Act'. In the current scenario where foreign companies are coming into the country and having Indian partners with a larger share, matters relating to takeover, behind-the-scenes operations, having full control, and all such things should be explained by the Government.

In the current situation in which the investor's confidence is at a low ebb, a comprehensive statutory codification is necessary. A blend of statutory codification with self-regulation is essential. A new concept has come up of not only corporate governance but corporate ethics. Will this piece of legislation be able to ensure that the companies act more ethically? Unethical practices like taking money from banks but not repaying, promising high dividends to investors but not paying them, are going on. After a point of time such companies vanish from the scene. An independent study has stated that between 1992 and 2000, no less than Rs.35,000 crore to Rs.38,000 crore of investors' money has been lost this way.

Postal ballot is a good idea, but the Government has to see as to how things can be improved. Coming to disqualification of Directors, is there any limit on how many Directors can be there in a company? I asked a Director of a company as to how he is able to remember all those things. Some of them said that they did not need to remember things and all that they need to do was to put their signatures. It has to be seen as to how the Directors of defaulting companies can be debarred. Responsibility should be fixed on the Directors of such companies. I would suggest that Directors of those companies who defaulted on payments should be punished. Such companies should not be given financial assistance by any financial institution till they repay the loans taken. I started with the observation that it is too little and too late. Hundreds and thousands of people of this country have lost huge amounts of their hard-earned money.

There is hardly any transparency in the capital markets. There is hardly any control exercised over them. Reforms do not mean that there should be no control. Even in a liberalised atmosphere we find control over loans taken by companies from financial institutions. The Government should apply its mind to this very serious situation. The capital market currently looks like a paradise of the foreign institutional investors who are operating as speculators. Only a handful of scrips relating to the fields of information, communication and entertainment, and consumer goods are doing well. It is a dismal picture otherwise. The capital market has neither the depth nor the breadth. If anyone is responsible for this, it is the policy of the Government. In the name of reforms the Government has opened up economy without imposing any control. The people are at the receiving end. They are losing.

They have lost faith and confidence. This piece of legislation is not going to restore confidence among the people because there is a total lack of confidence.

I would rather suggest that by bringing a comprehensive Bill please try to protect not only the small investors but all other investors who want to contribute to the nation-building process in their own way. There should be more transparency and more accountability. There should be a Government which applies its mind about the operations taking place not only in the capital market but inside the companies also.

डॉ. ्संज्य पास्वान (न्वादा) : आदरणीय उपाध्यक्ष महोद्य, कंपनीज अमेण्डमेंट ब्रिल में जो अमेण्डमेंट आ रहा है, उ्सके ्समर्थन में ्बोलने के लिए मैं ख्ड़ा हुआ हूं।

्सब्से पहले मैं कहना चाहूंगा कि ्बचपन में ज्ब हम लोग कंपनी के ्बारे में ्सुना करते थे तो मन में ्भय होता था क्योंकि ईस्ट इंड्या कंपनी ने हमारे द्ेश में आकर हमें गुलाम ्बनाया था तो उ्स्से ्भय होता था कि कंपनी क्या चीज़ होती है। ्बाद में ज्ब कुछ ्ब्ड़े हुए तो लोगों ने कहा कि क्सी व्यक्ति के ्बारे में जानना है तो उ्सकी कंपनी देखो। A man is known by his company. मन में ्भावना ्बदली कि कंपनी कुछ और है और ज्ब कंपनी ्बाग में लोगों ने कंपनी के ्बारे में कहा तो मन में अच्छा लगा। आज मुझे ्यह कहने में फख्र हो रहा है कि द्ेश की जो ्भी कंपन्यिां हैं, दुन्यिा में जो ्भी द्ेश हैं, Today a country is known by the companies, as to what they possess in regard to their dimensions, size and corporate outlay. आज ्सारी दुन्यिा में

कंपीटीशन का दौर चल रहा है।

1753 बजे (अध्यक्ष महोदय पीठासीन हुए)

पूरी दुनिया का परिदृश्य बदल रहा है। इसके कारण हमारे देश की कंपनियां जो बहुत दिनों से इस बात की लालसा में थीं कार्पोरेट हैड्ज में कि जो कुछ आमूल-चूल परिवर्तन होने हैं, वह हों, बुनियादी बदलाव हो, अर्थव्यवस्था बदले, यह मांग बहुत दिनों से चल रही थी कि इसमें अमेण्डमेंट होने चाहिए। मंत्री जी इस बिल को लाए हैं, भले ही यह कंप्रिहेन्सिव न हो मगर उसके बावजूद भी जो आंतरिक सुधार इससे होने वाले हैं, निश्चित रूप से इससे भारतीय कार्पोरेट लाभान्वित होने वाला है। मैं कहना चाहूंगा खासकर जो ई.एस.ओ.पी. है, यह स्कीम लाकर इन्होंने जो कर्मचारी बंधु हैं, जो वर्किंग फोर्स है, उसके लिए जो ऑप्शन होता है, आज विप्रो और इनफोसिस के इंप्लॉइज़ लाखों की संख्या में हैं और वे कंपनियां फ्लरिश कर रही हैं। हमारी जो गवर्नमेंट सैक्टर की कंपनियां हैं जो लगभग बंद होने के कगार पर हैं, अगर उसमें इंप्लॉइज की भागीदारी बनाई जाए तो निश्चित रूप से जो ई.एस.ओ.पी. की न्यी स्कीम आ रही है इसके माध्यम से हम लाभान्वित होंगे और जो कंपनियां सिक हो रही हैं, बी.आई.एफ.आर. में जा रही हैं, उसमें मौका मिलेगा कि अधिक से अधिक कर्मचारियों को उसमें शामिल करके उन कंपनियों को ठीक से चलाया जा सके। इसलिए हम चाहते हैं कि ई.एस.ओ.पी. को ठीक से डिफाइन किया जाए और इसका फायदा अधिक कंपनियों को मिले। मंत्री महोदय ने इसका प्रयास किया है और हम उसकी सराहना करते हैं।

अध्यक्ष महोदय, एक अच्छी बात हमारे शिवराज पाटील जी ने कही कि विदेशी कंपनियों के लिए प्रावधान किया गया है कि टैक्नोलॉजी के लिए, स्किल्ड डैवलपमेंट के लिए और जो अन्य सामाजिक क्षेत्र हैं, उसमें क्या भूमिका होनी चाहिए, उसका कन्सैप्ट दिया गया है -- कार्पोरेट सोशल रैस्पॉन्स।

अध्यक्ष महोदय, यहां के कंपनी एक्ट में, कंपनी क्लॉज में सोश्यल रेस्पांसिबिलिटी का क्लॉज नहीं है। हम चाहते हैं वह आना चाहिए। भले ही इस संशोधन के माध्यम से नहीं हो, लेकिन बाद में जो संशोधन आने वाले हों, उनमें निश्चिततौर पर कॉरपोरेट सोश्यल रेस्पांसिबिलिटी का प्रॉविजन आना चाहिए। हमारा जो इतना बड़ा समाज है, हम चाहते हैं कि इस युग में कंपनी के आर्थिक लाभ का फायदा कुछ राज्यों को इलाकों, कुछ खास लोगों, कुछ मैट्रोपोलिटन क्षेत्रों को ही हो रहा है। ऐसा न होकर हम चाहते हैं कि इसका लाभ देश के समाज के हर वर्ग को मिले। इस कोआपरेट स्फीयर में समाज के हर वर्ग के आदमी को फायदा मिले, जिसमें महिलाएं, किसान, नव्युवक, छात्र, मजदूर आदि सभी आते हैं। उन सब को इसका कुछ न कुछ लाभ मिले। इसलिए हम चाहते हैं कि कोआपरेटिव सोश्यल रेस्पांसिबिलटी के क्लॉज को एक कॉम्प्रीहेन्सिव बिल लाकर यह प्रावधान अनिवार्य रूप से रखा जाए।

अध्यक्ष महोदय, तीसरी बात आज जो जी.डी.आर. और ए.डी.आर. की आती है, ग्लोबल डिपोजीटरी रिसीट की बात आती है, अमेरिकन डिपॉजिटरी रिसीट की बात आती है, इसी ढंग से हम चाहते हैं कि इंडिया डिपाजिटरी रिसीट की बात भी होनी चाहिए ताकि जो विदेशी कंपनियां कैपीटल मार्केट में आना चाह रही हों उनको परमीशन मिल सके। इसलिए हम आपके माध्यम से कहना चाहते हैं इसमें कुछ प्रावधान लाए गए हैं लेकिन और भी पुख्ता बनाने के लिए, समाजोन्मुख बनाने के लिए, सोसायटी के ओरिएंटेशन के लिए, जो कुछ बाधाएं हैं उन्हें दूर किया जाए और इस एक्ट का आम लोगों को लाभ मिले, इस बात का ध्यान रखना चाहिए।

अध्यक्ष महोदय, चौथी बात यह है कि जो डीमेट फॉर्म कंपल्सरी किया गया है, वह भी बहुत अच्छा किया गया है। यह आवश्यक था। इससे काफी लाभ मिलेगा। नहीं, तो एप्लीकेशन में इतनी सारी इन्फर्मेशन मांगी जाती थी जिससे काफी परेशानी होती थी। इसलिए कुछ कंपनियों के लिए डीमेट फॉर्म अनिवार्य कर दिया गया है। यह बहुत अच्छा किया गया है। इससे इन्वेस्टर को काफी फायदा होगा और निश्चित तौर से उसकी भागीदारी बढ़ेगी। हम आशावान हैं कि जहां पहले कुछ नहीं था वहां अब बोर्ड में एक डायरैक्टर बन रहा है, तो निश्चित रूप से जिस वर्ग को अभी तक कोई प्रतिनिधित्व प्राप्त नहीं था, उस वर्ग को थोड़ा ही सही, कुछ प्रतिनिधित्व तो प्राप्त हो रहा है। इससे छोटे इन्वेस्टर वर्ग को लाभ मिलेगा।

अध्यक्ष महोदय, इस अमेंडमेंट के जरिये जो पॉवर सेबी को दी गई हैं, वह बहुत अच्छा किया गया है। यह जमाना कन्वर्जन्स का है। एकरूपता का जमाना है। इसमें कन्वर्जन के बारे में जो कहा कहा है, उसका मैं स्वागत करता हूं। इससे सेबी की जो शिकायत थी, वह निश्चित तौर से दूर होगी। इसका मैं तहेदिल से स्वागत करता हूं।

अध्यक्ष महोदय, इसमें डिबेंचर ट्रस्टी की बात कही गई है। निश्चितरूप से यह आम जनता के भले की बात है। मैं इसका स्वागत करता हूं। डिबेंचर में आम लोगों का विश्वास है और भारत में शेयर के बजाय डिबेंचर में निवेश करने वाला बहुत बड़ा वर्ग है। गरीब लोग अपनी रकम पर एक एश्योर्ड और एक खास परसेंटेज में ब्याज कमाना चाहते हैं। इसलिए भारत में डिबेन्चर के निवेशकों का एक बहुत बड़ा वर्ग है। इसलिए मंत्री महोदय ने डिबेंटर ट्रस्टी बनाने का बहुत अच्छा प्रयास किया है। आज इन्वेस्टर को अपनी रिटर्न्स की सिक्योरिटी चाहिए। इसलिए डिबेंचर का जो ट्रस्टी बनाकर उनके हितों का संरक्षण किया गया है यह स्वागत योग्य है। इससे भारत का जो छोटी बचत करने वाला है, उसको लाभ मिलेगा।

अध्यक्ष महोदय, मंत्री महोदय ने ट्रांसपेरेंसी की भी बात कही है। ऑडिट कमेटी और बोर्ड में यदि कोई डिफरेंस होगा, तो उसे शेयर होल्डर के सामने लाया जाएगा। इस अमेंडमेंट के माध्यम से यह बहुत बड़ा काम किया गया है। यह इस बात का प्रतीक है मंत्री महोदय पारदर्शिता लाने के लिए कितने चिन्तित हैं और इससे यह भी स्पट हो जाता है कि वे कंपनियों में ट्रांसपेरेंसी लाना चाहते हैं।

अध्यक्ष महोदय, यह जो इतना बड़ा बिल था, इसके तमाम ऐसे प्रावीजन थे जो कभी काम ही नहीं आते थे, जो बेकार क्लॉज थे, उनको हटा कर, इकट्ठा कर के, क्लाज को, सैक्शन्स को, शेड्यूल्ड को कम किया गया है, जितने इफैक्टिव प्रॉवीजन्स थे, जितने रैलेवेंट थे, उनको रहने दिया गया है और बाकी को डिलीट किया गया है, इसका हम स्वागत करते हैं। यह निश्चित रूप से सराहनीय कदम है। अन्त में मैं समाज के प्रति जो कंपनियों का रोल है वह समाजोन्मुखी कैसे हो, इसके लिए मैं बार-बार कहूंगा कि कारपोरेट सोश्यल रेस्पांसिबिलिटी जो दुनिया की बड़ी-बड़ी कंपनियों के क्लाजेज में है, उसको यहां भी लाया जाए। हम चाहते हैं सी.एस.आर. का जो कंसैप्ट है, वह भारत की कंपनियों में लागू किया जाए और यहां की कंपनियों को समाज निर्माण में, देश निर्माण में कैसे लगाया जाए, इसके बारे में चिन्ता करना मंत्री महोदय का काम होना चाहिए।

सरकार को चिन्ता है, इसका हमें विश्वास है। इस अमैंडमैंट के बाद भी और अमैंडमैट्स आयेंगे, कम्प्रीहैन्सिव अमैंडमैंट्स आयेंगे, उसमें निश्चित तौर से इस बात को स्थान दिया जायेगा। इस तरह जो कम्पनियां भारत में प्रमुख रोल अदा करने वाली हैं, उनके माध्यम से भारतीय अर्थव्यवस्था को, भारतीय समाज को लाभ मिलेगा, ऐसा मेरा विश्वास है। मैं इस अमैंडमैंट का समर्थन करता हूं और यह बिल पास हो, ऐसा कहकर मैं अपनी बात समाप्त करता हूं।

1800 hours

DR. B.B. RAMAIAH (ELURU): Hon. Speaker, Sir, the Companies (Second Amendment) Bill is mainly intended to provide certain measures for evolving good corporate governance, to provide measures for investor protection and to make certain important changes in the Companies Act which could not be done when it was enacted in 1997.

Whatever major items the hon. Minister mentioned in his introductory speech, were covered by other hon. Members here. One of the items is amendment to Section 205 and Section 205A, which is about interim dividend. It is a good suggestion. Interim dividend is to be protected like any other dividend. It cannot be reduced. That is more important. Once they declare dividend, that has to be protected and implemented. They should take care of that aspect. At a later stage, they should not be allowed to say that they would reduce it.

The next thing is that they want to modify '42 days' as '30 days'. Hon. Member Shri Shivraj Patil also mentioned about it. I feel that it should be kept as 42 days so that reasonable time is given to them to take all measures necessary. They have to take care of implementation and distribution also. These may take some more time. I feel that even 42 days is not enough and it should be 45 days. So, I feel that the existing thing should not be disturbed and it should be kept as it is. The only thing is that the interim dividend has to be made compulsory and it should not be reduced at a later date. It is a very important one and we should be able to take proper care of this.

The next one is about Clause 7, which is about insertion of new section 17A. It provides for a change of place within a State. After going through the whole Bill, I feel that it is not really making any difference when it is going to be within a State. When it is going to be within the State, this experiment need not be made on a trial basis; and the existing system itself would provide sufficient protection. So, having a change within the State is not necessary. Therefore, you may take this into consideration when you are doing it finally.

The other amendment is in Clause 75, which is insertion of new section 192A. Some hon. Members have already said about ballot. I feel that electronic system is working properly here and we have so many other protections. So, I think, postal ballot need not be made compulsory. It is this provision which leads to so many other conditions. They mentioned the period as 30 days within which postal ballots have to be sent. I feel that postal delays would take place depending on whether a place is remote or otherwise. So, it has to be taken into consideration.

Another thing is that it is mentioned that notice will be sent by registered post. It will cost you substantial amount of money.

MR. SPEAKER: Just a minute, Shri Ramaiah. It is already 6 o'clock. There are three more speakers. If the House agrees we can extend the time till the completion of this business.

SHRI PRIYA RANJAN DASMUNSI (RAIGANJ): Sir, there are no speakers from our party. If there are only two or three more speakers, we can sit and dispose it of today itself.

MR. SPEAKER: Thank you. You are more liberal today.

SHRI PRIYA RANJAN DASMUNSI : Sir, I am always. In the liberal economy, everything is to be liberal.

DR. B.B. RAMAIAH : About this registered post, I think, it is going to take substantial amount. The number of shareholders has gone up to nearly lakhs and it is going to be very expensive. So, shall we make a slight modification here? We can say that it will be sent to those who are interested or those who opt for giving a postal ballot provision. Something like this should be there. If we do this, we will be able to save substantial amount. I only request the hon. Minister to take care of this small provision.

The next thing on which we should take a re-look is the powers that have been given to SEBI. All the time, SEBI is saying that it does not have enough teeth to operate and have control.

Now the Company Law Board says that you want to give more powers to SEBI and they should operate it. If we want the SEBI to take up this responsibility, they should be given enough machinery so that the listed companies are not made to run from pillar to post and from Company Law Board to SEBI. We should make it clear as to who is going to operate, who has got the power and how they should be operated. I would request the hon. Minister to make it very clear. If you want the SEBI to take care of all these things, make it very clear that SEBI is the final authority and they should not be again going to the Company Law Board.

Clause 102 talks about Audit. Several hon. Members have already mentioned about the Audit Committee. The Audit Committee made it very clear that only outside Directors should become member of the Committee. As the bill say, it is going to be mandatory for the Board to accept whatever the Audit Committee says. They have to simply take into consideration whatever the Committee says. I think we should not make it compulsory. But they should take that into consideration. They should give all the responsibility and they should honour it as far as possible. A full time Director should also be there in the Audit Committee so that he can also make proper decisions at the time of the audit committee meets. Now, the Audit Committee does not have a full time Director and no responsible person is there. They will be able to make their own comments and the Board has to accept it. I think we should be able to make some changes in the provisions of the Audit Committee. It also says that General Body has to take into consideration any case, any resolution and anything that is coming to it. It is the final authority. No matter what is

going to happen.

Presently, a person can be Director of the Board in 20 companies. I am happy that it has been reduced to 15 companies. It is quite good. It is quite reasonable. Small depositors protection clause is very clear. The penalties that we have put here are very severe. I think, at this juncture it should be moderate and could be increased step by step. If some representations come to you, then probably you can increase it step by step later on.

I am very happy that you are talking about small depositors. We should also give protection to small depositors. If the small depositors are not able to get the refund in time, they should be able to come back to you. I hope the concerns of the small depositors will be taken into consideration.

Regarding take-over, I would like to know whether SEBI is going to take full responsibility for the take-overs in view of the multi-nationals coming into our country. What type of protection are you going to give to these people? What type of regulations are you going to make? Since they have a huge money, take-over would be much easier for them.

Now, I will come to buy back shares. We should make some clauses very clear. We should make clear the provisions regarding buy back shares as far as possible. On the auditors side, I would suggest that you can put a limit on the number of debentures or shares which the Auditor can hold in a company. Just because somebody is holding debentures or shares in a company, he should not be prohibited from auditing.

The limit of Rs. 5 lakh prescribed for the public companies is not enough. The minimum should be Rs. 10 lakh. It is because the value of the rupee is coming down so much. It should be Rs. 10 lakh to see to it that an individual who does not have enough money is not registered. Otherwise, many small companies have registered themselves with small amounts and they are raising money from the public also. The Public is not able to understand their financial and management capacities. So, we have to take that into consideration. It is said that small shareholders should be represented by a Director in the Board. I do not know whether it would be of much use for small shareholders because they are already represented in the General Body.

Worker Directors are not willing to come, as Shri Shivraj Patil has mentioned, because they have a commitment. Once they are in the Board, they have to oblige others. Being outsiders, they have more right to fight and they can make more representations. I feel that is not an important thing. Their Directorship in the company is not very important. What is being mentioned is also very clear. If we can consider some of these things, it is good. Of course, it is not going to be final. It is only a second amendment Bill and we are going to have a final amendment Bill which is going to take care of some of the items which are not covered in this.

Somebody has suggested about the insurance for small share-holders. I think it is very good. If this is done, it will cover a number of problems. Today, insurance is not going to help anybody, if he is in difficulty because bulk insurance has been taken. If you can make it, it would become much easier for the companies to operate and they will also be more effective.

I appreciate the hon. Minister taking up this issue. I hope he will be able to bring the third amendment Bill also which will be the final Bill and which will take care of all that is required for the protection of small shareholders and for better management of companies. With these few words, I thank you very much.

SHRI G.M. BANATWALLA (PONNANI): Mr. Speaker, Sir, at the outset, I record my protest and objection at the procedure adopted by the Government with respect to the amendment of our Company Law. It is very fortunate that, Mr. Speaker, Sir, you yourself are in the Chair. Please consider this situation.

A comprehensive Bill was introduced in the other House. It is pending there. The government picked up certain provisions of that Bill, incorporated them in an Ordinance and promulgated the Ordinance. Now, the comprehensive Bill, which was introduced, had been referred to the Departmentally related Standing Committee. By doing so, they have presented the Standing Committee with a strange situation as the clauses which had to be considered had already come into force. This is rather unfortunate. The matter has gone further. The Government again picked up certain more clauses from the comprehensive Bill, and incorporated them into the Companies (Second Amendment) Bill which is now before us.

Now, Sir, we have this situation; a comprehensive Bill is before the other House. At the same time, a Companies (Second Amendment) Bill is before us. Such anomalies must be avoided. What was the defence of the Government? The Government said that certain provisions of the comprehensive Bill must come into force at once so that benefit can be obtained. It is a good point but look at the situation. The Departmentally related Standing Committee has cleared the comprehensive bill and the report of the Standing Committee has also been laid on the Table of the Lok Sabha on 27th July, 2000. Similarly, the report of the Standing Committee on the second

amendment Bill has also been cleared and laid on the Table of the House on the 27th July, 2000.

So, when both the Bills − the comprehensive Bill and the amendment Bill that you have brought − have already been cleared by the Standing Committee and the reports have already been given, then the preference ought to have been given to the comprehensive Bill rather than this amendment Bill. We have this very strange situation. We are today considering the Companies Second (Amendment) Bill in direct contravention of what is stated in the Statement of Objects and Reasons appended to this Bill. The statement of aims and objects of the Bill says:

> "The process of examination (examination of the comprehensive Bill), however, is not yet over and is still to take some more time. The passing of this Bill is likely to be delayed further."

But Sir, this is not today's position. The comprehensive Bill has already been cleared. So, why is the priority to amendment Bill rather than the comprehensive Bill without being told as to what is the Government attitude with respect to the comprehensive Bill?

Mr. Speaker, Sir, I must say, with due respect, that you must take cognisance of such playful attitude to the legislative procedure. It is now for the Speaker himself, for the Rules Committee, and for the House to consider whether when a particular Bill is before a Standing Committee or a Select Committee, it is appropriate, proper, fair, and just for the Government to pick up certain clauses, formulate an amendment Bill, and rush it through either by an ordinance or an amendment Bill Sir, this is an unhappy situation that has come up. We must deliberate upon this so that we are not faced with this situation that the Members go on asking for a comprehensive Bill and the comprehensive Bill is already there, cleared by the Standing Committee and yet in preference to that the Government comes up with a Bill in which certain provisions of the comprehensive Bill have been picked up and formulated as an amendment Bill.

Mr. Speaker, Sir, with that protest with respect to the Parliamentary procedure, I proceed with the provisions of the Bill. The objectives of the Bill are three-fold. First, to secure better corporate governance, second, to secure transparency in the working of companies, and third to secure better compliance with the provisions of the Act. These are welcome objectives and it is heartening to find that the Government is alive to the needs as are reflected in the objectives of the Bill. The Government needs to be complimented in that particular respect.

Sir, there are, however, several deficiencies and defects, if I may say, with respect to the Bill that is there. In general, the sincerity of the Government for the various objectives as I have presented is a welcome thing and deserves full congratulations and compliments. However, there are serious defects in the Bill.

Sir, I take up the question of powers that have been given to the different authorities. There are concurrent powers given to different authorities. Now, I can give so many examples. But these concurrent powers that will be exercised by different authorities will create chaos and confusion.

Take clause 16. Clause 16 says that the administration of the provisions of certain sections will be with the Board which is called Securities Exchange Board of India, SEBI. What are these sections, the administration of which now goes to SEBI? I will take up just a few sections to give certain examples.

Section 60 of the principal Act says that a copy of the prospectus has to be delivered to the Registrar. There is no provision whatsoever either in the principal Act or in this amending Bill that a copy of the prospectus is also to be delivered to the SEBI. Yet, the SEBI is required to administer this section also. These are certain facts which are to be taken into consideration.

Take section 211 of the principal Act. It deals with the form and content of the balance sheet and the profit and loss account. Section 227 makes the compliance of this provision of section 211 about the balance sheet and the profit and loss account the responsibility of the auditors. Here, the responsibility is also placed for administration concurrently upon the SEBI. What would be the position in case the two authorities differ with respect to the compliance of the provisions of section 211 with respect to the balance sheet and the profit and loss account? If the auditors say one thing and the SEBI says another thing and if the Act says that both are responsible for the administration of this particular section, then we have a confusing situation.

Similarly, in the case of inspection of books of accounts, the authority rests with the Registrar of Companies and with such officers of the Central Government as may be authorised. Here, by an amendment in the present Bill, the authority also rests with the SEBI. We, therefore, have concurrent powers. I do not want to say that SEBI should not have the responsibility to administer. That is not my point. The only point that I am emphasizing here is that this sort of concurrent powers resting with different authorities may create confusion and difficulties with respect to the implementation of the various provisions.

We have clause 3 which deals with the requirements of minimum paid up capital. A private company must have a

minimum paid up capital of Rs.1 lakh and a public company is required to have Rs.5 lakh of minimum paid up capital. This requirement is imposed with retrospective effect. It would have been better if this requirement had been for the new companies. But, even when we take the question of retrospective effect, I do not have any serious objection. There are certain points that have to be considered here. If an existing public company is not in a position to acquire the minimum paid up capital of Rs.5 lakh during a period of two years after the commencement of the Act, its name will be struck off the register.

Here, an option should be given to this public company stating that instead of the name being struck off from the register, the public company may exercise the option to be treated as a private company. Now, this option may exist as a result of certain other provisions of the Act but then to avoid the difficulties, the option ought to have been included in Clause 3. There are also companies that are limited by guarantee and not having share capital. Their position is also to be taken into consideration.

Now, two years time is given after the commencement of this Act for the companies to comply with the requirement of minimum capital. What would be the status of these companies during this interval of two years? It should have been clarified rather than left it to a mere guess work. It should have been clarified that during the period of these two years granted to the companies, in order to acquire the minimum paid-up capital, their status would be the same and should be considered the same as they were at the commencement of the Act.

Sir, in the case of directors, it is a welcome provision that no person can hold the office of directors in more than 15 companies at a time but even this figure of 15 is rather large. I have an amendment to say that the maximum number should not be more than seven. Then, how are the shareholders and others to know whether a particular person who has presented himself to be appointed as a director is or is not a director in 15 or more companies? Therefore, certain provisions should have been there to take care of it, for example, requiring that a director to give an affidavit to the effect that he is not a director in 15 or more companies. There is also Clause 122 about the appointment of a director to represent the small shareholders. The point has already been made and I emphasise that this particular provision given in the Bill must remain. I emphasise that and I appeal to the hon. Minister not to move an amendment which makes it optional. This is throwing away the interests of the small shareholders. The point has already made very clearly and therefore, I will not speak more about this particular point. But let there be no dilution of this particular fact that the interests of the small shareholders be represented in the Board of Directors through the provision that there shall be a director representing them. Sir, small shareholders must be given the voice to represent on the Board of Directors and I see no practical difficulties in having this provision of the Bill come into force.

There are questions about the postal ballot. There is a need for postal ballot. I am happy that it is coming up from the Government. It gives transparency with respect to working and various points. But the items for which the postal ballot shall be necessary must be mentioned in the Bill itself. It has been relegated to the field of delegated legislation.

On the one hand, if you are assuring that the Bill is coming in order to have transparency and, on the other hand, you relegate important areas to delegated legislation or rules made under the law, it is not a happy situation. If I am not wrong, there was a Committee that goes by the name "Birla Committee." This Birla Committee has already mentioned certain businesses, the resolutions regarding which shall be transacted by a postal ballot. Those items of business should have been included in the Bill itself, in the relevant clause itself. It is not a happy method of legislation to depend upon excessive delegated legislation.

The second point in the matter of postal ballot is that the value of shares should be given due weightage for the purpose of passing any resolution. Right now, the Company Law allows a poll to be taken when demanded. Therefore, the shareholders with the requisite voting clout can put up their point of view. The same thing should be there in the case of postal ballot also.

The third point that I make is that there will be need for elaborate rules with respect to postal ballot. Perhaps that goes in the field of delegated legislation. But let us not go the way the United States has gone today. Let our postal ballot, counting of etc. go well. I wish the Government well in that particular matter.

We are talking about electronic methods of voting also. It is a happy and welcome point. But then let us remember that the electronic voting method is also subject to manipulations and great care will have to be taken with respect to it.

A good concern and a welcome concern has been shown to the protection of the interests of the small depositors. However, in thinking of the interests of the small depositors, we need not unnecessarily make such a discrimination which does not really go in favour of the small depositors. For example, when a company makes default in payment, then default is a default whether it is with respect to small depositors or others. The intimation of the default both in

respect of the small depositors and the others must go to the Company Law Board. There is nothing wrong in it. The intimation can go to the Board. When it comes to taking up loans from the bank for working capital needs, the small depositors must be paid first. That point is well taken. But then having other unnecessary provisions is a different matter. So, in the case of default, that default has to be communicated to the Company Law Board both in respect of the small depositors as also the other depositors. But in the case of payment of money obtained as a loan for working capital needs from the banks, preference may be given to the small depositors. Here, a practical question may arise. A company may go to a bank for a loan for working capital needs. Supposing the bank does not agree to such an utilisation of funds, namely, that the deposits are to be paid, then what would be the situation? The point to be considered is: "Will the company get dried up of raising the loan needed for working capital?"

Sir, in the case of auditor's adverse comments, what does the clause say? The relevant clause says: "that observations and comments of the auditors which have any adverse effect on the functioning of the company should be given in bold letters or in italics." This is a long way of going through which would create problems. It says that not all the adverse comments of the auditors are to be put in bold letters, but the directors will sit in order to pick and choose as to which of the adverse comments are such that would have an effect on the functioning of the company and then, as per their choice, those comments may be highlighted. I think, all the adverse comments of the auditors should have been taken up for being given in bold letters.

There is a welcome provision about the auditors. But it is provided that a private company shall be excluded in reckoning the number of companies an auditor can audit. I feel that this exclusion should not be there. Otherwise, there will be concentration of audit work with certain large audit firms. This is a very unhappy situation. Then, Section 224 (1) (b) has two distinct restrictions. The first restriction is that it forbids those with a full-time employment from being appointed as auditors. The second restriction is that it restricts a person from being appointed as auditor of more than one specified company. But in the case of private companies, both these restrictions are removed. This is rather unfair and the restriction on a person with a full-time employment ought not to have been there. The private companies are being exempted from the restriction with respect to the number of companies that an auditor can have. It will lead to a concentration of audit work with certain companies.

Sir, there are several other points that have to be considered. But in deference to your restlessness, I would conclude by saying that the whole Bill needs a relook in spite of the fact that it has been cleared by the Standing Committee. There are certain amendments for which I have given notices. Then, there are certain other amendments for which I could not give notices. But then the fact remains that the Bill is highly deficient and defective in various respects.

श्री हरीभाऊ शंकर महाले (मालेगांव) : अध्यक्ष महोदय, देश के विकास के लिये कम्पनी का बहुत बड़ा योगदान होता है। कम्पनी में शेयर होल्डर होती है। उसमें पढ़े लिखे लोग होते हैं तथा अन्यान्य विभाग भी आते हैं। इस विधेयक के बारे में बहुत कुछ सोचा गया है।

लेकिन ऐसा पहली बार किया है कि जहां कोई प्राइवेट कम्पनी या पब्लिक कम्पनी उपधारा (3) उपधारा (4) में विनिर्दिट रीति से अपनी समादत्त पूंजी को बढ़ाने में असफल रहती है वहां ऐसी कम्पनी धारा 560 के अर्थांतर्गत निक्रिय कम्पनी समझी जायेगी और उसका नाम रजिस्ट्रार द्वारा रजिस्टर से काट दिया जायेगा। कई कम्पनी पहले-पहले ज्यादा सुविधा लेती हैं और कई कम्पनी ऐसा सोचती हैं कि बंद होने से उन्हें ज्यादा लाभ मिलता है। मैं मुम्बई में देखता हूं, वहां से संसद सदस्य हैं, कई कम्पनी वाले पहले-पहले सब तरह के लाभ सरकार से, शेयर होल्डर्स आदि से लेते हैं और यह कम्पनी कैसे बिगड़ जायेगी, कैसे बंद हो जायेगी, ऐसा कम्पनी के लोग सोचते हैं और इसमें भी उन्हें ज्यादा से ज्यादा फायदा होता है। इसलिए इस बारे में भी मंत्री महोदय को सोचना चाहिए, यही मेरी विनती है।

DR. NITISH SENGUPTA (CONTAI): Sir, I thank you very much. First of all, let me congratulate the hon. Minister and the faceless civil servants who have been responsible for bringing forward this long overdue Amending Bill. We are present on an historic occasion when the sun is setting on the old Indian Companies Act, 1956. Hopefully, by tomorrow morning, the sun will rise on the Companies Act, 2000. Or more appropriately, looking at the very modernising features which have been introduced, I venture to suggest that it should be re-christened as the Corporate Governance Act, 2000 consistent with the current reality all over the world and also in India.

I support many of the salutary provisions. I think, one of the things which was omitted by all the speakers is the fact that in 1970, the managing agency was abolished. As you know, one-third of the old Act dealt with the managing agency. Today, up till now, technically, all sections remain, although they were repealed - cluttering the number situation in the Companies Act. I thank the Minister for bringing out a new Act with re-numbering of the sections which may create some problems initially for lawyers, accountants and corporate people but will eventually be very helpful.

I have only two more points to add. One is that when you are bringing postal ballot, why do you also not try to rationalise it? Let me say that telephone conferences, meetings or video conferences and very often Board meetings in the West are held through video or through telephone. Our laws do not permit it. I think, we should permit that sort of thing.

The other point is about Audit. I support that proposal of the Audit Committee which is consistent with the Cadbury

Committee and the new provisions of corporate governance. I support my colleagues who mentioned earlier that this should not be binding on the Board of Directors because the Board of Directors have a complete authority over total management of the companies under the Companies Act. That cannot really be taken away by the Report of the Audit Committee. So, it should be given due consideration.

With these words, I wholeheartedly support this Bill and recommend that the House should pass it as quickly as possible.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I am extremely grateful to the hon. Members of the House who have expressed themselves at length on various provisions of the proposed Amending Bill. Several very valuable suggestions have been made. I take up the suggestion made by Dr. Nitish Sengupta. This is really a new law for corporate governance. The object of this law is corporate governance in the context of the modern economy − transparency in the functioning of the companies and the protection of investor's interests as such.

This Bill is really an offshoot of the comprehensive or the mother Bill as was suggested three years ago, the first instalment of which we legislated last year; the second we are in the process of doing. And since a question has been raised by Shri Banatwala as to what happens to the comprehensive Bill, let me assure the hon. Member that as far as the comprehensive Bill is concerned, a very large number of its provisions have already been legislated. A very large number of its provisions are being legislated presently. One exclusive aspect is really relating to the jurisdiction of the Company Law Board. One of the reasons why it was held back for some period was -- because of the question which Shri Banatwala himself raised -- that there is in some areas of corporate governance a multiplicity of authority.

My friend Shri Kirit Somaiya also raised this question as to the small investors having to go from pillar to post, there are some powers in relation to some companies which go to the BIFR, there are some powers in relation to adjudication of disputes which are before the Company Law Board, there are some powers in relation to small depositors which are before the Company Law Board and there are also some powers relating to corporate insolvency which are with the High Courts. Therefore, a view had been expressed in addition to the suggestions which have already been made that this multiplicity of different forums, on which various corporate related legal issues and issues of rights of depositors, investors, shareholders are settled, should it remain different forums or is a comprehensive view possible on that.

The Government had constituted a Committee on the subject headed by Justice Eradi which has already submitted its report. The very valuable suggestions made by the Committee are being considered. So, one significant aspect or the crucial aspect in the comprehensive Bill which remains will be harmoniously dealt with when we deal with that along with the recommendations of the Justice Eradi Committee and very soon hopefully even those aspects will one day see the light of the day and that day will not be very far off.

Several issues have been raised and very valuable suggestions have been given. Some provisions have been considered very salutary and with regard to some others, some suggestions have been made.

I think, Shri Shivraj Patil, with all his experience, made a valuable suggestion that in addition to this law, we also require a modernisation of the entire corporate governance of the corporate structure and its management. I take this suggestion and I would inform the hon. Member that today, when we raise this threshold limit for registration of private companies to a Rs. 1 lakh capital and the public companies to a Rs.5 lakh capital, one of the reasons was that we want the excess baggage which has been registered with the companies and which are defunct companies, not doing any business, really there ought to be some disincentive for them to go out because they are only blocking the space.

A large number of them do not even file annual returns. There is an onerous responsibility and a large manpower required in order to take penal action against them. So, the Government in this regard had initiated the Company Law Settlement Scheme this year. The Company Law Settlement Scheme was that for all companies which are really defunct which have not been really filing returns, we give them an option with a certain penalty amount, should do so now. The second limb of the scheme is today in operation wherein a fast track exit rule has already been provided to them. That is to say, that if you are not doing any business, instead of merely being an excess baggage in the office of the registrar of companies, you apply for deregistration of companies and within a period of 37 days, we deregister you. The corpus collected from that, of course, goes into the Consolidated Fund of India and we are making an endeavour to get back some grant for that purpose so that the entire function of the ROC offices in relation to the reduced burden could really be computerised and you could have filing of returns inspection of balancesheets, inspection in relation to the documents of the company, the whole exercise itself could be on line. That really is a process which is separately on, in relation to the modernisation of the very functioning of the companies itself.

A very important question has been raised relating to exercise of ballot by a postal ballot. Let me elaborate upon this. Normally, the voting in the company takes place at the Annual General Meetings of the company or the Extraordinary General Meetings of the company. The traditional methods of voting are either you be present in person or you exercise your vote through a proxy. Now, in large public companies, it is not possible for shareholders to travel across the length and breadth of the country to be present in person only with regard to voting because the amount they spend in the process of attending those AGMs itself may be much more than the amount of dividend which they are realising.

Therefore, the practice, which Shri Patil fears, that people go around collecting proxies has been a practice which is in vogue.

It is precisely to do away with that practice, it has been suggested that there could be certain spheres of corporate governance in which a larger participation is required, which the Government could notify from time to time those spheres of corporate governance and those resolutions where voting would be by postal ballot. Electronic voting has been suggested by the Standing Committee - we accept that suggestion - and electronic voting should be included within the definition of `postal ballot'. So, postal ballot will enable a shareholder to say, "I cannot be present at the AGM of the Company. I am not prepared to cut my hands off and give my right to vote to somebody else as a proxy holder. I shall, by post, sitting in my house, register my ballot and the obligation is in the company to provide him with the resolution and all the facilities for exercising the right of postal ballot." Therefore, as far as postal ballot is concerned, it is a step which we have taken in the right direction, in order to have a more participatory involvement of the shareholders in certain crucial decisions which will be taken at the AGM or the EGM of the Company.

A suggestion was made whether 30 days' period for payment of dividend would be inadequate, and, therefore, some Director, maybe a professional Director itself, may be held responsible if the Company does not pay. If we analyse clause 88, we have consciously used the word, "whoever knowingly delays". So, there is an element of *mens rea*, there is an element of criminal intention, you know that you are supposed to have the dividend paying to the shareholder within 30 days. In fact, the Standing Committee has gone a step further and said, "for interim dividend, do not even wait for 30 days, make it `within five days'." Once the company is declaring an interim dividend, the company knows that it has to pay to every shareholder, and therefore, make it five days that it must reach. Somebody, for reasons beyond his control if it cannot be paid because of a postal delay, he would not be liable. But if somebody knowingly and consciously delays the payment of dividend and involves himself into such an act, which goes to hurt the interest of the shareholder, it is only such Director who would be held responsible. So, the entire responsibility is prefaced by consciously using the word, `knowingly', as far as this section is concerned.

Directors' responsibility statement is a concept of corporate governance which applies to all Directors. The object is that now there are standing accounting norms. Shri Rupchand Pal was right when he said that in the matter of accounting of the companies, let nothing be done, which hurts the interest of the system or the shareholders or the depositors as far as the company is concerned. Now, internationally acceptable accounting standards have been evolved over a period of years. Now, these accounting standards are known to the Company. Those who consciously choose even as professionals to become the Directors of the Company are aware of these accounting standards and when they lend their weight to the management of the Company, and when they lend their signature to the Balance Sheet of the Company, they must be fully conscious that all those standards have been complied with, and there is no jugglery which is being played against the interest of somebody. Therefore, it would not be proper to say that some Directors should be held responsible and some Directors merely because they belong to particular vocations should be exempted from this provision. This provision has been applied to all the Directors as far as the Company is concerned.

A question was raised with regard to clause 22. Let me assure you that there are no pressures on the Government, there are no pressures on Parliament, and there are no pressures on the Standing Committees, everybody is heard and thereafter, an objective viewpoint even in evolving a concept is made.

1854 hours (Mr. Deputy-Speaker *in the Chair*)

When the Standing Committee, in its wisdom, felt that presently there is no need for it, it was a part of the debate, there is no pressure on the Standing Committee. When the Government got back the recommendations of the Standing Committee, its own views in the final recommendations, the Government reconsidered the matter. While we reconsidered the matter, we are fully conscious of the protection of the interest of the small shareholder. In fact, a large number of provisions, particularly the tight provisions with regard to payment of dividend in time, payment to the small depositors, return of their money, virtually blacklisting companies for collecting money, which do not take care of the small depositors - these are the tight provisions which have been made in the interest of the small shareholders. The small shareholders also will have a right in the case of mismanagement under section 397 of the

Companies Act to take action for mismanagement of the Company, for oppression of the interest of the small shareholders. Similarly, other provisions have been tightened to ensure transparency and the interest as far as the small shareholders are concerned.

There are two views which have been coming on this particular suggestion. This has not been experimented anywhere. Also the Standing Committee's initial view was that at present there was no need to do it.

The Government had felt in its *bona fide* we could try this. Should this, therefore, in the first instance, be made a mandatory provision or an optional provision? There will be several instances. Shri Shivraj V. Patil was very fair to say this can be misused. This can also be used in the interest of a shareholder. A good representative of a small shareholder will certainly voice concern. This was the argument in favour of retaining this proviso. There was also a fear that it would be used for corporate rivalry; it would be used for extracting other favours. Therefore, let us prescribe a procedure in which, in the first instance, we make it optional for the companies to experiment this. After we have seen some initial evidence of this, the Parliament, in its wisdom, would always be ready to make amendments because corporate governance is not an issue which comes to a standstill with the passage of one Act. This procedure will go on and on. Finally, several improvements have to be made. The Legislature is fully alive to what is happening as far as the system is concerned. Therefore, even making it optional after considering all views including the suggestions of the Members of the Standing Committee, the original views of the Government, views of the industry, views of the depositors, we thought it is best, in the first instance, to start it as an experiment rather than a mandatory obligation.

Sir, a comment has been made with regard to the powers of the Audit Committee. Several Members have expressed the view that Audit Committee really ought not to be binding on the Board. Let me just clarify. The Audit Committee performs a very important function. It goes into the entire accounting systems of the company and it gives its suggestions. Those suggestions are not given with the intention of finding fault or destroying the management structure of the company but where the company's accounting procedures have altered, where questions are raised in the larger interest because today you have, in corporate governance, very tight accounting standards, we give those suggestions. Therefore, we have suggested that adverse remarks of the Audit Committee should not be brushed below the carpet. They must be put in bold print. They must be put in italics so that anybody among the shareholders, when the comments of the Audit Committee are there in the Annual Report of the company, is in a position to appreciate those comments. But there is a crucial distinction. The Audit Committee is not a super Board. The Audit Committee performs an independent function. It is appointed by the Board of the company. Its recommendations cannot be brushed aside by the Board. Its recommendations will be binding on the Board. In case it suggests these are the accounting changes which have to be made, the Board is bound by it. However, they are not binding on the company. This is a very subtle distinction. The company, in this case, is the Annual General meeting of the company. So, if the Audit Committee makes a suggestion, the Board will ordinarily accept it. But the Board should not say, I ignore everything that the Audit Committee has said. If the Board wants to disagree, the shareholders of the company will be informed. In corporate democracy, eventually, it is the shareholders of the company who matters.

Shri Banatwalla, it will be rightly informed in bold print and italics that this is what the Audit Committee has said about the accounting management; the Board has disagreed; and the final decision will have to be taken by the shareholders at the AGM. In fact, this will be corporate governance and corporate democracy at its best. Therefore, it may be binding on the Board but the company, in its AGM, will still have a power, authority to take a different decision. It is, therefore, to make sure of this.

Let me give a practical illustration. There may be something that the Board itself has done which the honest Audit Committee may like to indict. The Board may say I reject it. But ultimately, the accountability will have to be to the shareholders. Therefore, this is a very important provision which has been made keeping al those facts in mind.

SHRI SHIVRAJ V. PATIL (LATUR): The provision is in clause 138A. The recommendations of the Audit Committee on any matter relating to financial management including the Audit Report financial management and Audit Report shall be binding on the Board. Now, if the Audit Committee gives a report which is adverse to the company, it is all right. But supposing Audit Committee does give a report which favours certain others, what happens? There is a scope for manipulation.

SHRI ARUN JAITLEY : I am very grateful to the hon. Member. Clause 8 and Clause 9 of Section 292A may be read harmoniously. The recommendation of the Audit Committee on any matter relating to the financial management, including the Audit Report, shall be binding on the Board. The Board will say, I accept it; these are the three shortcomings, I will comply with it. But the Board may say, I disagree it. Or alternatively, some Member has the extreme situation that you say, the Audit Committee and the Board are acting in collusion. What then protects the interest of the company?

19.00 hrs.

Clause (9) comes in. The Chairman of the Audit Committee shall attend the AGM of the Company to provide any clarifications on matters relating to audit because that is where the accounts have to be finally approved. Therefore, there is a provision emanating from corporate governance and corporate democracy that whether it is adverse or collusive, ultimately we leave it to the wisdom of the company at its best, that is, the shareholders who will go into all these questions.

Shri Kirit Somaiya has raised very vital issues relating to the interests of the small investors. He has been in the forefront of the whole movement leading to protect the interests of the small investors. I agree with him and also when Shri Rupchand Pal said that some companies have vanished. In fact, we ourselves have been candid to place the details of the vanishing companies. It is not that we are not concerned about it. As we have expanded in the area of liberalisation, as we permitted companies to raise capital from the market and as the number of the companies has been increasing, even the malpractices and misdemeanours have come to light, how small shareholders and small depositors have been duped.

With regard to the depositors in the NDFCs where a very large number have lost money, which Shri Kirit Somaiya has repeatedly raised in this House, the hon. Finance Minister has already announced that he was coming out with a specific legislation to deal with those NDFCs and to protect the interests of the depositors in the NDFCs.

As far as the other areas are concerned, he rightly said that today the CLB has four regional branches. In fact, we have already announced it that the Chennai Branch is a regular Branch, a Bench of the CLB itself. Obviously the Eradi Committee -- whose recommendations are being processed − which is only a recommendation at this stage − has in fact suggested that for all issues relating to corporate justice from BIFR to CLB to High Court jurisdiction, there should be a national Company Law Tribunal. That is also the last limb of the comprehensive Bill which remains.

Now, once we evolve such a situation there will be a very wide institution. Obviously, we will require the staff, the Benches for this institution which has to operate, because we are vesting a lot of authority as far as this institution is concerned. As I said in the intervention, Clause 88(a) has been amended and the amendment today is that a company has an obligation to inform the CLB that it has become a defaulter. After informing the Board the company also has an obligation after the Board directs, within a timeframe to pay the amount. It is restrained from raising further deposits. Its first obligation even about advances from institutions is to pay the depositors and there is a criminal penalty up to three years of imprisonment, if it defies the orders. Now, this kind of comprehensive provisions are being brought in so that there may be a deterrent as far as the actions are concerned.

As far as the provisions relating to the Chartered Accountants are concerned, in the original Act there was a prohibition, there was a cap that the maximum number of audits one could undertake was 20. That cap was there essentially on the ground that it was the maximum he could do and he could concentrate on that cap of 20. Today when we take out the private limited companies out of this, ultimately, it is an additional facility to the profession of Chartered Accountants that we are giving that one could originally do only 20, but today he could do 20 plus private limited companies. Those companies may be large, those companies may be small. In fact, in a world of liberalisation this is a cap which is being diluted.

Now, I do not expect the suggestion that merely because the cap is removed this will then amount that a Chartered Accountant who on the basis of his ability will do the audits, there will be a concentration of work. Ultimately, it is for the client company whose audit has to be undertaken to decide. If somebody is awfully busy he does not go to him, the company goes to somebody else. Should we be liberalising these provisions or tightening the provisions in the regime today, it is an issue which this hon. House in this Bill has to consider and I would commend to this House that today it is an additional facility which has been granted as far as the Chartered Accountants are concerned.

Shri Rupchand Pal wanted to know as to what are the appropriate orders that the CLB has been empowered to pass. The CLB is a quasi-judicial authority which has been vested with all the powers. And in order to make sure that the interests of justice are met, when judicial or quasi-judicial authorities are created, you do not narrow their power by defining or illustrative or enumerative cases that these are the only powers they could exercise. You use larger phrases so that there is a lot of play with the joints available wherever the interests of justice can be met; those are the appropriate orders. The appropriate orders will be those which will reach out to wherever injustice is found.

The word `appropriate orders' has been consciously used so as not to limit jurisdictions by just having an enumerative case of five or six orders that the Company Law Board can pass. Since we are vesting it with a large amount of authority, we expect that the authority also is exercised keeping all these factors in mind.

There are several other issues, which have been raised by the hon. Members. We are in the process of updating our company law. We are making it in tune with the changing times in our economy in addition to corporate governance.

There are several very good suggestions, which have been made. This is not the last time that the company law is being updated. As Dr. Nitish Sengupta said, `the sun is setting'. But when the sun sets somewhere, it rises somewhere else. It is an on-going procedure and, therefore, the process of evolution of the company law will go on. Newer concepts of corporate governance will be borne everyday and certainly a large number of the suggestions which have been made will be borne by the Government at any given point of time. But the principle object behind each of these is transparency, corporate governance and also accountability of those who hold the public money in trust in order to run it. This Bill is motivated with this intention. That is why, it has been approved by the Standing Committee comprising of all political parties.

So, I would commend to this august House, with the official amendments which we have circulated, that this Bill be accepted.

(ends)

SHRI RUPCHAND PAL (HOOGLY): I have mentioned two specific issues. One is the need to have insurance coverage of the deposits of small investors and depositors.

The Second is about the irregularities in the Institute of Costs and Works Accounts where serious irregularities and malpractices have taken place in respect of holding up examinations of the Institute. The Company Law Board has also given directives, but they have been ignored.

SHRI ARUN JAITLEY: I am quite certain that with the opening up of the insurance sector, additional facilities being available, and also on the kind of deterrent on non-payment which we have imposed, the market forces will certainly compel a large number of companies to adopt a safer route, which is the insurance route.

As far as your questions with regard to independence of the audit agencies are concerned, we have made a beginning. In fact, some of the suggestions were: are you making the Audit Committee too powerful? We are making it powerful to a reasonable extent, not to override the shareholders, but to have an authority visible with the Board because we want the body to be autonomous and powerful so that it is able to speak out wherever there are irregularities. We bear all these reports in mind, and, therefore, we come out with a formulation, which makes the legislation viable.

SHRI P.H. PANDIYAN (TIRUNELVELI): I want to get a clarification from the hon. Minister. Section 58 (a) is intended to safeguard the interests of the small depositors. I would like to know whether there is enough sufficient manpower or infrastructure to comply with that within a specified limit. Section 58 (a) (a) has to be treated as a cognisable offence, this is notwithstanding the provisions of 621 and 624. What is the answer of the hon. Minister? Can we treat it as a cognisable offence?

SHRI ARUN JAITLEY: In fact, not only have we increased penalties, we have made it cognisable in the Act itself. The offences under this Act have been made cognisable bearing this in mind.

Secondly, let me at the cost of repetition say this, we have brought into this additional powers of the Company Law Board, as I indicated in the matter of corporate governance, protecting the shareholders since there are other legislations which are at work. The Company Law Board or whatever shape it takes in future, because we have the recommendations of the Justice Eradi Committee also with us; we have the NBFCs which are also intending to the legislation in process which is intending to vest it with power, certainly this institution will not only have to be strengthened in terms of staff, it will have to be strengthened even in terms of Benches. Therefore, we are trying to create a system where there will be a lot more power with this institution, which is intended in some of the proposed legislations.

Therefore, I bow to the point made by hon. Shri Pandian. Perhaps it may not be sufficient because you are giving it so much power and you are expected to dispose it off within 30 days. But we will have to strengthen that structure.

SHRI KHARABELA SWAIN (BALASORE): Sir, my clarification is with regard to the postal ballot. Lots of shareholders are involved in a company. Will it be practically possible to send the postal ballots to these lots of people? That is what I want to be clarified.

SHRI ARUN JAITLEY: Sir, may I say that a phrase we occasionally use in the context of corporate management is 'oligarchy' − rule by a few − and one of the points made is, it is rule by a few because the average shareholder is indifferent. It is only some shareholders who attend and there are some whose votes are collected, and, therefore,

with 15 per cent or 20 per cent, you can really rule the AGM. Precisely, keeping this in mind, a system is being introduced - at least an effort is made − that you send the postal ballots to all the shareholders, even if there are 5,000 or 20,000 shareholders, and at least make an effort to get their responses. I am conscious of our system where there may be some default, but it is certainly going to be an improvement on the current system which we have, where the only avenue available to a shareholder is that either he attends or gives it to somebody else to vote for him.

MR. DEPUTY-SPEAKER: Now, the question is:

"That the Bill further to amend the Companies Act, 1956, be taken into consideration."

The motion was adopted.

MR. DEPUTY-SPEAKER: The House will now take up Clause-by-Clause consideration of the Bill.

Clause 2 Amendment of Section 2

Amendments made:

Page 1, *for* line 8, *substituteâ€"*

"(a) clause (1) shall be re-numbered as clause (1A) thereof and

before the clause as so re-numbered, the following clause shall be

inserted, namely:--

'(1) "abridged prospectus" means a memorandum

containing such salient features of a prospectus as

may be prescribed;';

(aa) clauses (3) and (4) shall be omitted." (3)

Page 1, *after line 8,* insertâ€"

"(ab) after clause (12), the following clauses shall be inserted,

namely:-

'(12A) "Depository" as the same meaning as in

the depositories Act, 1996;

(12B) "derivative" has the same meaning as in

clause (aa) of section 2 of the Securities Contracts

(Regulation) Act, 1956;'."

(4)

Page 1, *after* line 10, insertâ€"

"(ba) after clause (15), the following clause shall be inserted,

namely:--

'(15A) "employees stock option" means the option

given to the whole-time directors, officers or employees

of a company, which gives such directors, officers

or employees the benefit or right to purchase or subscribe at a future date, the securities offered by the company at a pre-determined price;.';

(bb) after clause (19), the following clauses shall be inserted, namely:--

'(19A) "hybrid" means any security which has the character of more than one type of security, including their derivatives;

(19B) "information memorandum" means a process undertaken prior to the filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited, and the price and the terms of issue for such securities is assessed, by means of a notice, circular, advertisement or document;';

(bc) after clause (23), the following clause shall be inserted, namely:--

'(23A) "listed public companies" means a public company which has any of its securities listed in any recognised stock exchange;'.".

(5)

Page 1, *after* line 15, *insertâ€"*

"(da) after clause (31), the following clause shall be inserted, namely:--

'(31A) "option in securities" has the same meaning as in clause (d) of section 2 of the Securities Contracts (Regulation) Act, 1956;'.".

(6)

Page 1, *after* line 16, *insertâ€"*

"(ea) after clause (45A), the following clause shall be inserted, namely:--

'(45AA) "securities" means securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, and includes hybrids;'.

(eb) after clause (46), the following clause shall be inserted,

namely:--

'(46A) "share with differential rights" means a share

that is issued with differential rights in accordance with

the provisions of section 86;'.".

(7)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That Clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Clause 3 Amendment of Section 3

Amendments made:

Page 2, line 22, *for* "Companies (Second Amendment) Act, 1999",

Substitute "Companies (Amendment) Act, 2000.". (8)

Page 2, line 26, *for* "Companies (Second Amendment) Act, 1999",

Substitute "Companies (Amendment) Act, 2000.".

(9)

Page 2, *after* line 33, *insertâ€"*

"(6) A company registered under section 25 before or after

the commencement of Companies (Amendment) Act, 2000

shall not be required to have minimum paid-up capital speci-

fied in this section.".

(10)

(Shri Arun Jaitley)

SHRI G.M. BANATWALLA (PONNANI): Sir, I beg to move:

Page 2, line 28,--

a*dd* at the endâ€"

"or convert itself as a private company if the number of

its members is below fifty"

(48)

Page 2, lines 29 and 30,--

f*or* "fails to enhance its paid-up capital in the manner

specified in"

substitute "fails to comply with the provisions of"

(49)

Page 2, *after* line 33,--

Insert "Provided that where a defunct company has

secured creditors, the name of the defunct company

concerned shall be deemed to be on the register for

the limited purpose of enabling its secured creditors

to enforce their security."

(50)

MR. DEPUTY-SPEAKER: I shall now put amendments Nos. 48, 49 and 50, moved by Shri G.M. Banatwalla to clause 3, to the vote of the House.

The amendments were put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That Clause 3, as amended, stand part of the Bill."

The motion was adopted.

Clause 3, as amended, was added to the Bill.

Clauses 4 to 6 were added to the Bill.

Clause 7 Insertion of new Section 17A

Amendment made:

Page 3, *for* lines 5 and 6, *substituteâ€"*

Change of "17A. (1) No company shall change the place

registered of its registered office from one place to another

office with- within a State unless such change is confirmed

in a State by the Regional Director.

(2) The company shall make an application

in the prescribed form to the Regional Director for confirmation under sub-section (1).

(3) The confirmation referred to in sub-section (1), shall be communicated to the company within four weeks from the date of receipt of application for such change.

*Explanation.â€"*For the purposes of this section, it is hereby declared that the provisions of this section shall apply only to the companies which change the registered office from the jurisdiction of another Registrar of Companies within the same State.

(4) The company shall file, with the Registrar a certified copy of the confirmation by the Regional Director for change of its registered office under this section, within two months from the date of confirmation, together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand within one month from the date of filing of such document.

(5) The certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and confirmation have been complied with the henceforth the memorandum as altered shall be the memorandum of the company.".

(11)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is;

"That Clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Clauses 8 to 11 were added to the Bill.

Clause 12 Amendment of Section 43A

Amendment made:

Page 3, *for* lines 21 to 24, *substitute*--

'Amendment of 12. In section 43-A of the principal Act,--

section 43A

a. after sub-section (2), the following sub-section shall be inserted, namely:-

"(2A) Where a public company referred to in sub-section (2) becomes a private company on or after the commencement of the Companies (Amendment) Act, 2000, such company shall inform the Registrar that it has become a private company and thereupon the Registrar shall substitute the word 'private company' for the word 'public company' in the name of the company upon the register and shall also make the necessary alterations in the certificate of incorporation issued to the company and in its memorandum of association within four weeks from the date of application made by the company.".

b. after sub-section (10), the following sub-section shall be inserted, namely:--

"(11) Nothing contained in this section, except sub-section (2A), shall apply on and after the commencement of the Companies (Amendment) Act, 2000".'. (12)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is :

"That clause 12, as amended, stand part of the Bill."

The motion was adopted.

Clause 12, as amended, was added to the Bill.

Clauses 13 to 15 were added to the Bill.

Clause 16 Insertion of new section 55 A

Amendment made:

Page 3, *for* lines 36 to 42, *substitute*-

Powers of "55A. The provisions contained in sections 55 to 58, 59 to 81,

Securities and 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122,

Exchange 206, 206A and 207, so far as they relate to issue and transfer

Board of India of securities and non-payment of dividend shall,--

a. in case of listed public companies;

b. in case of those public companies which intend to get their securities listed on any recognized stock exchange in India,

be administered by the Securities and Exchange Board of India; and

c. in any other case, be administered by the Central Government.

Explanation.-For removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of ir-redeemable preference shares shall be exercised by the Central Government, Company Law Board or the Registrar of Companies, as the case may be.". (13)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is :

"That clause 16, as amended, stand part of the Bill."

The motion was adopted.

Clause 16, as amended, was added to the Bill.

Clauses 17 and 18 were added to the Bill.

Clause 19 Insertion of new sections 58AA and 58AAA

Amendments made:

Page 4, *after* line 18, *insert*--

"*Explanation.*- For removal of doubts, it is hereby declared that the intimation under this section shall be given on monthly basis.". (14)

Page 5, *for* lines 35 to 41, *substitute*-

'*Explanation.*-For the purposes of this section, "a small depositor" means a depositor who has deposited in a financial year a sum not exceeding twenty thousand rupees in a company and includes his successors, nominees and legal representatives.

Default in 58AAA. (1) Notwithstanding anything contained in sections

acceptance 621 and 624, every offence connected with or arising out of

of refund of acceptance of deposits sunder section 58A or section 58AA

deposits to shall be cognizable offence under the Code of Criminal

be Procedure, 1973.

Cognizable. 2 of 1974.

(2) No court shall take cognizance of any offence under sub-section (1) except on a complaint made by the Central Government or any officer authorised by it in this behalf.'. (15)

(Shri Arun Jaitley)

SHRI G.M. BANATWALLA (PONNANI): Sir, I beg to move the following amendments to Clause 19:

Page 4, line 11, -

omit "from small depositors," (51)

Page 4, line 17, -

omit "small" (52)

Page 4, line 20, -

omit "small" (53)

Page 4, line 27, -

omit "small" (54)

Page 4, line 30, -

omit "small" (55)

Page 4, line 31, -

omit "small" (56)

Page 4, line 34, -

omit "small" (57)

Page 5, line 2, -

omit "small" (58)

Page 5, line 5, -

omit "small" (59)

Page 5, line 7, -

omit "small" (60)

Page 5, line 9, -

omit "small" (61)

Page 5, line 17, -

omit "small" (62)

MR. DEPUTY-SPEAKER: I shall now put amendment numbers 51 to 62 moved by Shri G.M. Banatwalla to the vote of the House.

The amendments were put and negatived.

MR. DEPUTY-SPEAKER: The question is :

"That clause 19, as amended, stand part of the Bill."

The motion was adopted.

Clause 19, as amended, was added to the Bill.

Clauses 20 and 21 were added to the Bill.

Motion Re: Suspension Under Rule 80(i)

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move :

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 16 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved.".

MR. DEPUTY-SPEAKER: The question is :

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 16 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved.".

The motion was adopted.

New Clause 21A

Amendment made:

Page 5, *after* line 45, *insert*-- New Clause 21A

Insertion of "21A. After section 60 of the principal Act, the following section

new sections shall be inserted, namely:-

60A and 60B.

'60A. (1) Any public financial institution, public sector bank or

Shelf scheduled bank whose main object is financing shall file a shelf

Prospectus. prospectus.

> (2) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.
>
> (3) A company filing a shelf prospectus shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government, prior to making of a second or subsequent offer of securities under the shelf prospectus.
>
> (4) An information memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus :
>
> Provided that where an update of information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus.
>
> *Explanation,*- For the purpose of this section, -

a. "financing" means making loans to or subscribing in the capital of, a private industrial enterprise engaged in infrastructural financing or, such other company as the Central Government may notify in this behalf;

b. "shelf prospectus" means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Information 60B. (1) A public company making an issue of securities may

memorandum circulate information memorandum to the public prior to filing

of a prospectus.

(2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.

(3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.

(4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.

Explanation,- For the purposes of sub-sections (2), (3) and (4), "red-herring prospectus" means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

(5) Every variation as made and highlighted in accordance with sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.

(6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock-invest, the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post-dated cheques or stockinvest before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of subscription paid.

(7) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.

(8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing the offer or opportunity for cancelling the post-dated cheques or stock invest or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund or return of its post-dated cheques or stock-invest or subscription moneys or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen per cent from the date of encashment till payment of realisation.

(9) Upon the closing of the offer of securities, a final prospectus stating therein the total capital raised, whether by way of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only'.". (16)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is :

"That new clause 21A be added to the Bill."

The motion was adopted.

New clause 21A was added to the Bill.

Clause 22 was added to the Bill.

Clause 23 Amendment of section 63

Amendment made:

Page 5, *after* line 52, *insert*,--

"Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956.".

(17)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 23, as amended, stand part of the Bill."

The motion was adopted.

Clause 23, as amended, was added to the Bill.

Clause 24 was added to the Bill.

Motion Re: Suspension under Rule 80(i)

SHRI ARUN JAITLEY: Sir, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 18 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

MR. DEPUTY-SPEAKER: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 18 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 24A

Amendment made:

Page 6, *after* line 11, *insert*-- New clause 24A.

"24A. After section 68A of the principal Act, the following section shall be inserted, namely:--

"68B. Notwithstanding anything contained in any other provisions of this Act, every listed public

company, making initial public offer of any security

for a sum of rupees ten crores or more, shall issue

the same only in dematerialised form by complying

with the requisite provisions of the Depositories

Act, 1996 and the regulations made

thereunder.". . (18)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That new clause 24A be added to the Bill."

The motion was adopted.

New clause 24A was added to the Bill.

Clauses 25 to 35 were added to the Bill.

Motion Re : Suspension under Rule 80(i)

SHRI ARUN JAITLEY: Sir, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 19 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

MR. DEPUTY-SPEAKER: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 19 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 35A

Amendment made:

Page 6, *after* line 42, *insert*,-- New clause 35A.

35A. For section 86 of the principal Act, the following section shall be substituted, namely:--

"86. The share capital of a company limited by shares shall be of two kinds only, namely:--

a. equity share capital-

i. with voting rights; or

ii. with differential rights as to dividend, voting or otherwise in accordance with such rules and subject to such conditions as may be prescribed;

(b) preference share capital."' (19)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That new clause 35A be added to the Bill."

The motion was adopted.

New clause 35A was added to the Bill.

- - -

Motion Re : Suspension under Rule 80(i)

SHRI ARUN JAITLEY: Sir, I beg to move:

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 20 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

MR. DEPUTY-SPEAKER: The question is:

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 20 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 35B

Amendment made:

Page 6, *after* line 42, *insert*,-- New clause 35B.

35B. Section 88 of the principal Act shall be omitted.'. (20)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That new clause 35B be added to the Bill."

The motion was adopted.

New clause 35B was added to the Bill.

Clauses 36 to 43 were added to the Bill.

(I3/1925/sh-har)

Motion Re: Suspension of Rule 80 (i)

SHRI ARUN JAITLEY: Sir, I beg to move:

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clauses to which it relates, in its application to Government amendment No. 21 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

MR. DEPUTY-SPEAKER: The question is:

> "That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clauses to which it relates, in its application to Government amendment No. 21 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 43A

Amendment made:

Page 7, *after* line 23, *insert*,-- New clause 43A

'Insertion of 43A. After section 117 of the principal Act, the following

new sections sections shall be inserted, namely:--

117A, 117B

and 117C.

Debenture "117A (1) A trust deed for securing any issue of debentures

trust deed shall be in such form and shall be executed with in such

period as may be prescribed.

(2) A copy of the trust deed shall be open to inspection to any member or debenture holder of the company and he shall also be entitled to obtain copies of such trust deed on payment of such sum as may be prescribed.

(3) If a copy of the trust deed is not made available for inspection or is not given to any member or debenture holder, the company and every officer of the company who is in a default, shall be punishable, for each offence, with fine which may extend to five hundred rupees for every day during which the offence continues.

Appointment of 117B. (1) No company shall issue a prospectus or a letter of

debenture offer to the public for subscription of its debentures, unless

trustees and the company has, before such issue, appointed one or more

duties of debenture trustees for such debentures and the company has,

debenture on the face of the prospectus or the letter of offer, stated

trustees. that the debenture trustee or trustees have given their consent to the company to be so appointed:

Provided that no person shall be appointed as a debenture trustee, if he--

a. beneficially holds shares in the company;

b. is beneficially entitled to moneys which are to be paid by the company to the debenture trustee;

c. has entered into any guarantee in respect of principal debts secured by the debentures or interest thereon.

(2) Subject to the provisions of this Act, the functions of the debenture trustees shall generally be to protect the interest of holders of debentures (including the creation of securities within the stipulated time) and to redress the grievances of holders of debentures effectively.

(3) In particular, and without prejudice to the generality of the foregoing functions, a debenture trustee may take such other steps as he may deem fit--

a. to ensure that the assets of the company issuing debentures and each of the guarantors are sufficient to discharge the principal amount at all times;

b. to satisfy himself that the prospectus or the letter of offer does not contain any matter which is inconsistent with the terms of the debentures or with the trust deed;

c. to ensure that the company does not commit any breach of covenants and provisions of the trust deed;

d. to take such reasonable steps to remedy any breach of the covenants of the trust deed or the terms of issue of debentures;

e. to take steps to call a meeting of holders of debentures as and when such meeting is required to be held.

(4) Where at any time the debenture trustee comes to a conclusion that the assets of the company are insufficient or are likely to become insufficient to discharge the principal amount as and when it becomes due, the debenture trustee may file a petition before the Company Law Board and the Company Law Board may, after hearing the company and any other person interested in the matter, by an order, impose such restrictions on the incurring of any further liabilities as the Company Law Board thinks necessary in the interests of holders of the debentures.

Liability of company to create security and debenture redemption reserve. 117C. (1) Where a company issues debentures after the commencement of this Act, it shall create a debenture redemption reserve for the redemption of such debentures, to which adequate amounts shall be credited, from out of its profits every year until such debentures are redeemed.

(2) The amounts credited to the debenture redemption reserve shall not be utilised by the company except for the purpose aforesaid.

(3) The company referred to in sub-section (1) shall pay interest and redeem the debentures in accordance with the terms and conditions of their issue.

(4) Where a company fails to redeem the debentures on the date of maturity, the Company Law Board may, on the application of ay or all the holders of debentures shall, after hearing the parties concerned, direct, by order, the company to redeem the debentures forthwith by the payment of principal and interest due thereon.

(5) If default is made in complying with the order of the Company Law Board under sub-section (4), every officer of the company who is in default, shall be punishable with imprisonment which may extend to three years and shall also be liable to a fine of not less than five hundred rupees for every day during which such default continues.".' (21)

(Shri Arun Jaitely)

MR. DEPUTY-SPEAKER: The question is:

"That New Clause 43A be added to the Bill."

The motion was adopted.

New Clause 43A was added to the Bill.

Clauses 44 to 57 were added to the Bill.

Clause 58 Amendment of section 148

Amendment made:

Page 8, line 29, *for* "Companies (Second Amendment) Act, 1999",

substitute "Companies (Amendment) Act, 2000". (22)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 58, as amended, stand part of the Bill."

The motion was adopted.

Clause 58, as amended, was added to the Bill.

Clause 59 Amendment of section 149

Amendment made:

Page 8, line 33, *for* "Companies (Second Amendment) Act, 1999"

Substitute "Companies (Amendment) Act, 2000". (23)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 59, as amended, stand part of the Bill."

The motion was adopted.

Clause 59, as amended, was added to the Bill.

Clauses 60 to 70 were added to the Bill.

Clause 71 Amendment of section 163

Amendment made:

Page 9, line 32, *for* "Companies (Second Amendment) Act, 1999"

Substitute "Companies (Amendment) Act, 2000". (24)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 71, as amended, stand part of the Bill."

The motion was adopted.

Clause 71, as amended, was added to the Bill.

Clause 72 Amendment of section 165

Amendment made:

Page 9, lines 36 and 37 *for* "Companies (Second Amendment)

Act, 1999" *substitute* "Companies (Amendment) Act, 2000". (25)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 72, as amended, stand part of the Bill."

The motion was adopted.

Clause 72, as amended, was added to the Bill.

Clauses 73 and 74 were added to the Bill.

Clause 75 Amendment of section 176

Amendments made:

Page 10, in line 18, *for* "majority of the shareholders",

Substitute "requisite majority of the shareholders". (26)

Page 10, *after* line 27, *insert*--

'Explanation.--For the purposes of this section, "postal ballot"

includes voting by electronic mode.' (27)

(Shri Arun Jaitley)

SHRI G.M. BANATWALLA (PONNANI): Sir, I beg to move:

Page 10, line 18,--

for "by a majority of the shareholders"

substitute "both by a majority of the total numbers of

shareholders of the listed public company and by

shareholders holding a majority of the total shares of that

company. (63)

MR. DEPUTY-SPEAKER: I shall now put amendment No. 63 moved by Shri G.M. Banatwalla to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 75, as amended, stand part of the Bill."

The motion was adopted.

Clause 75, as amended, was added to the Bill.

Clauses 76 to 86 were added to the Bill.

Motion Re : Suspension of rule 80(i)

SHRI ARUN JAITLEY: Sir, I beg to move:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it relates, in its application to Government amendment No. 28 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

MR. DEPUTY-SPEAKER: The question is:

"That this House do suspend clause (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope of the Bill and relevant to the subject matter of the clause to which it

relates, in its application to Government amendment No. 28 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved."

The motion was adopted.

New Clause 86A

Amendment made:

Page 11, *after* line 12, *insert-*

`86A. In section 205 of the principal Act, after subsection (1), the following sub-section shall be inserted, namely:-

"(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.

(1B) The amount of dividend including interim dividend so deposited under sub-section (1A) shall be used for payment of interim dividend.

(1C) The provisions contained in sections 205, 205A, 205C, 206, 206A and 207 shall, as far as may be, also apply to any interim dividend".'. (28)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That new clause 86 A be added to the Bill. "

The motion was adopted.

New Clause 86A was added to the Bill.

Clauses 87 to 100 were added to the Bill.

Clause 101 Amendment of section 217

Amendment made:

Page 13, lines 42 and 43, *for* "Companies (Second Amendment) Act, 1999", *substitute,* "Companies (Amendment) Act, 2000". (29)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 101, as amended, stand part of the Bill."

The motion was adopted.

Clause 101, as amended, was added to the Bill.

Clause 102 Amendment of section 218

Amendments made:

Page 14, lines 4 and 5, *for* "Companies (Second Amendment) Act, 1999", substitute, "Companies (Amendment) Act, 2000". (30)

(Shri Arun Jaitley)

Page 14, *after* line 5, *insert-*

Explanation.â€"For the purposes of this section, "security" means and instrument which carries voting rights.'. (31)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 102, as amended, stand part of the Bill."

The motion was adopted.

Clause 102, as amended, was added to the Bill.

Clauses 103 to 121 were added to the Bill.

Clause 122 Amendment of section 245

Amendment made:

Page 16, line 35,--

for "shall have at least one director"

*Substitute "*may have a director*"* (47)

(Shri Arun Jaitley)

SHRI G.M. BANATWALLA (PONNANI): Sir, the small investors must have one director. Let the hon. Minister reconsider this aspect. The interest of the small investors must be protected.

MR. DEPUTY-SPEAKER: The Minister has already clarified this point. At least you should give that satisfaction to him.

The question is:

"That clause 122, as amended, stand part of the Bill."

The motion was adopted.

Clause 122, as amended, was added to the Bill.

Clauses 123 to 126 were added to the Bill.

Clause 127 Amendment of section 251

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

Page 17, line 24,-

for "fifteen companies"

substitute "seven companies" (64)

MR. DEPUTY-SEPAKER: I shall now put Amendment No.64, moved by Shri G.M. Banatwalla, to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 127 stand part of the Bill".

The motion was adopted.

Clause 127 was added to the Bill.

Clause 128 Amendment of section 252

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

Page 17, line 26,-

for "fifteen"

substitute "seven" (65)

MR. DEPUTY-SEPAKER: I shall now put Amendment No.65, moved by Shri G.M. Banatwalla, to the vote of the House.

The amendment was put and negatived.

Amendment made:

Page 17, line 29, -

for "Companies (Second Amendment) Act, 1999",

substitute, "Companies (Amendment) Act, 2000." (32)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 128, as amended, stand part of the Bill."

The motion was adopted.

Clause 128, as amended, was added to the Bill.

â€¦

Clause 129 Omission of section 261

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

Page 17, line 32,-

for "fifteen companies"

substitute "seven companies" (66)

Page 17, line 42,-

for "fifteen"

substitute"'seven" (67)

MR. DEPUTY-SEPAKER: I shall now put Amendment Nos.66 and 67, moved by Shri G.M. Banatwalla, to the vote of the House.

The amendments were put and negatived.

Amendments made:

Page 17, lines 34 and 35,-

for "Companies (Second Amendment) Act, 1999",

substitute, "Companies (Amendment) Act, 2000". (33)

Page 17, line 39 and 40,-

for "Companies (Second Amendment) Act, 1999",

substitute, "Companies (Amendment) Act, 2000". (34)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 129, as amended, stand part of the Bill."

The motion was adopted.

Clause 129, as amended, was added to the Bill.

â€¦

Clause 130 Amendment of section 269

SHRI G.M. BANATWALLA (PONNANI): I beg to move:

Page 17, line 44,-

for "fifteen companies"

substitute "seven companies". (68)

MR. DEPUTY-SEPAKER: I shall now put Amendment No.68, moved by Shri G.M. Banatwalla, to the vote of the House.

The amendment was put and negatived.

MR. DEPUTY-SPEAKER: The question is:

"That clause 130 stand part of the Bill."

The motion was adopted.

Clause 130 was added to the Bill.

Clauses 131 to 133 were added to the Bill.

Clause 134 Amendment of section 276

Amendment made:

Page 18, *after* line 39, *insert,-*

"(8A) If the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefor and communicate such reasons to the shareholders.". (35)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 134, as amended, stand part of the Bill."

The motion was adopted.

Clause 134, as amended, was added to the Bill.

Clauses 135 to 164 were added to the Bill.

â€¦

Clause 165 Amendment of Section 370 A

Amendment made:

Page 21, *for* line 37, *substitute*-

"as to whether the company has complied with all the provisions of this Act and a copy of such

certificate shall be attached with Board's report referred to in section 217". (36)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 165, as amended, stand part of the Bill."

The motion was adopted.

Clause 165, as amended, was added to the Bill.

â€¦

Clauses 166 to 209 were added to the Bill.

Motion Re : Suspension of Rule 80(i)

SHRI ARUN JAITLEY: Sir, I beg to move:

> "That this House do suspend clauses (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope fo the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 37 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved.".

MR. DEPUTY-SPEAKER: The question is:

> "That this House do suspend clauses (i) of rule 80 of the Rules of Procedure and Conduct of Business in Lok Sabha in so far as it requires that an amendment shall be within the scope fo the Bill and relevant to the subject matter of the clause to which it relates, in its applications to Government amendment No. 37 to the Companies (Second Amendment) Bill, 1999 and that this amendment may be allowed to be moved.".

The motion was adopted.

New Clause 209A

Amendment made:

Page 24, *after* line 28, insert--

'Insertion of "209A. After section 605 of the principal Act,

new Section the following section shall be inserted, namely:-

605A

Offer of "605A. Notwithstanding anything contained in

Indian any other law for the time being in force, the

Depository Central Government may make rules applicable

Receipts forâ€”

a. the offer of Indian Depository Receipts;
b. the requirement of disclosures in prospectus

   or letter of offer issued in connection with Indian

   Depository Receipts;

c. the manner in which the Indian Depository Receipts

shall be dealt in a depository mode and by custodian

and underwriters;

d. the manner of sale, transfer or transmission of

Indian Depository Receipts,

by a company incorporated, or to be incorporated outside India, whether

The company has or has not been established or, will or will not establish

any place of business in India.".'. (37)

(Shri Arun Jaitley)

MR DEPUTY-SPEAKER: The question is:

"That new clause 209A be added to the Bill."

The motion was adopted.

New Clause 209A was added to the Bill.

Clause 210 Amendment of section 551

Amendment made:

Page 24, *for* lines 29 and 30, *substituteâ€"*

'Amendment 210. In section 606 of the principal Act,--

section 606

(a)after the words "application for shares or

debentures", the words "application for shares,

debentures or Indian Depository Receipts" shall

be substituted;

(b) for words and figures "and 605", the word and

figures "605 and 605A" shall be substituted;

(c) for the words "five thousands rupees", the words

"fifty thousand rupees" shall be substituted.'. (38)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 210, as amended, stand part of the Bill."

The motion was adopted.

Clause 210, as amended, was added to the Bill.

Clauses 211 to 213 were added to the Bill.

Clause 214 Amendment of section 583

Amendment made:

Page 24, *for* lines 36 and 37, *substituteâ€”*

'214. In section 621 of the principal Act, in sub-section (1),

after the proviso, the following shall be inserted, namely:--

"Provided further that the court may take cognizance of

offence relating to issue and transfer of securities and non-

payment of dividend on a complaint in writing by a person

authorised by the Securities Exchange Board of India".'. (39)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"Clause 214, as amended, stand part of the Bill."

The motion was adopted.

Clause 214, as amended, was added to the Bill.

Clauses 215 to 224 were added to the Bill.

Clause 1 Short Title and Commencement

Amendment made:

Page 1, line 2, *for* "Companies(Second Amendment) Act, 1999",

Substitute "Companies (Amendment) Act, 2000.". (2)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Enacting formula

Enacting Formula

Amendment made:

Page 1, line 1, *for* "Fiftieth Year", *substitute* "Fifty-first Year" (1)

(Shri Arun Jaitley)

MR. DEPUTY-SPEAKER: The question is:

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

The Enacting Formula, as amended, was added to the Bill.

TheLong Title was added to the Bill.

MR. DEPUTY-SPEAKER: Now, the hon. Minister may move that the Bill be passed.

THE MINISTER OF LAW, JUSTICE AND COMPANY AFFAIRS AND MINISTER OF SHIPPING (SHRI ARUN JAITLEY): Sir, I beg to move:

"That the Bill, as amended, be passed."

MR. DEPUTY-SPEAKER: The question is:

"That the Bill, as amended, be passed."

The motion was adopted.

1947 hours

The Lok Sabha then adjourned till Eleven of the Clock

on Tuesday, November 28, 2000/Agrahayana 7, 1922 (Saka)
