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Title: Further discussion on the motion for consideration of the Companies (Amendment) Bill, 2014 moved by Shri Arun Jaitly on the 16th December, 2014.

HON. DEPUTY-SPEAKER: Now, the House will take up Item No. 14 – Further discussion on Companies (Amendment) Bill.

SHRI JAYADEV GALLA (GUNTUR): Thank you, hon. Deputy-Speaker,
Sir, for giving me this opportunity to speak on the Companies (Amendment) Bill, 2014.

Sir, the Cabinet on 2nd December, 2014 created 14 changes in the Companies Act, paving the way for tabling the amendments in the ongoing Parliament Session. The amendments are mainly aimed at making it easier to do business in India.

In the latest World Bank Report, as has been mentioned by many hon. Members in this debate, India ranks 142 out of 189 nations in terms of ease of doing business. Even though our score has improved on various parameters over last year, India is still the lowest ranked country in South Asia with Sri Lanka ranked at 99, Nepal ranked at 108, Maldives ranked at 116, Bhutan ranked at 125 and Pakistan ranked at 128. All ranked higher than India.

Sir, for our size, stature and capability, the Government should set a short-term target of getting it, at least, to the top 50 within next five years; and another target of getting into the top 10 within 10 years.

It would not be out of context to mention that for starting a business in India, 13 procedures are currently required. These include everything from obtaining a Direct Identification Number, obtaining a Digital Signatures Certificate, reserve the company name with the ROC and so on. So, 13 different procedures are required. The best in class, the top performing countries in the world, it is only five procedures. So, we should see how can we bring these 13 procedures down to five if we want to really ease of doing business.

Land acquisition for setting up of industries has its own set of procedures, thereby, making it tedious and time-consuming for both domestic and international companies; and also at times discouraging the new entrepreneurs. All the impediments from acquiring land as required to setting up industries, the procedures should be made easy, and allied approvals needed should be made seamless under single-window system with time line set. This would encourage and enable the domestic startups and foreign investments to flow in the country.

Yesterday, the Chief Minister of Andhra Pradesh has announced that under the New Industrial Policy of the State, 28 approvals would be given in just 21 days for setting up of business in Andhra Pradesh. Earlier, this would take 90 days for such approvals. He also observed that any single-window clearance should not become an additional window, which would otherwise obstruct industrial growth in the State or country for that matter.

Secondly, quite a few definitions and provisions in the company law and SEBI do not match. They need to be the same and synchronised, and the Companies Act should prevail. The SEBI should go on as per the Companies Act to avoid any confusion in understanding and misinterpreting. One example is that the definition of a 'related party' under the Companies Act and the definition in clause 49 of the SEBI regulations are not the same.

I wanted to give a couple of recommendations on the Corporate Social Responsibility obligations on industry. With effect from 1st April, 2014, every company, whether private limited or public limited, which either has a net worth of Rs.500 crore or a turnover of Rs.1000 crore or net profit of Rs.5 crore needs to spend at least two per cent of its average net profit for the immediately preceding three financial years on corporate social responsibility activities.

What I would like to suggest is that skill development also should be brought under the CSR. That way, I think if we have to grow as per the projections, if GDP is to grow at 7-9 per cent per year, by 2020, we will need 200 million or 20 crore additional skilled workforce. The only way that can happen is for industry to become more active in skilling the people as well. So, we can allow CSR funds to be used for skill development. I think that would go a long way in helping that to happen.

Further, on the lines of the *Sansad Gram Vikas Yojana* for each Member of Parliament, our Chief Minister of Andhra Pradesh, Shri Chandrababu Naidu *Garu* has envisioned that various companies should involve in the development of villages by adopting villages. Country-wide implementation of the same would streamline our CSR activities and expedite development work as well.

Sir, I would like to say that any regulation or control should not stifle innovation and entrepreneurism which ultimately lead to prosperity of not only the country but also the companies. But at the same time all factors must be carefully balanced in the legislation and rule making process. They must provide the requisite comfort to investors as well as other stakeholders that are affected by business activity. And, equally, the important point in the present competitive world is that every effort has to be made on the top ranks by demonstrating better environment in ease of doing business. It is only then that we will get foreign investors, which ultimately helps in inclusive growth and re-write the growth story of our country. With these words, I conclude my observations. Thank you.

SHRI KONDA VISHWESHWAR REDDY (CHEVELLA): Sir, thank you for the opportunity.

Growing up I always wondered why companies were called 'Limited' like ABC Airport Limited and XYZ Steels Limited. It is because companies want to grow and increase their market share and have a bigger market share ever. But still they are called 'Limited'. Then, I came to know the word 'Limited' does not apply to their growth or to their aspiration. It applies to the liabilities of the owner directors, which means, companies can do unlimited damage, unlimited fraud but the liabilities of the owner directors are limited. This is prevalent world over, and there it is required because if a damage is accidental, they should be protected.

But I come from the former State of Andhra Pradesh where several limited companies have done massive frauds and have gotten away. They have siphoned off money and they have invented several siphons. 'Related party transaction' is one such siphon. They reduced the limit of 75 per cent to 50 per cent. That is very good because a minority shareholder can object to a majority doing a related party transaction. So, that is actually very good. But there is one flaw here. If you go to any company and look at their promoter group shareholding, it shows 50 or 60 or 70 per cent. But even in the quota of minority shareholding, they hold controlling shares. So, I think we need to examine that as to what and who exactly control the minority shareholding. So, that is very crucial. So, that is a loophole that they cannot get around.

The second point is relating to sub-section 12 of Section 1. In the Principal Act, there is some inconsistency. The inconsistency is that it uses these words 'immediately' and 'within such time'. It says, "If an auditor of a company finds a fraud, he shall immediately report the matter to the Central Government within such time". Is it 'immediately' or is it 'within such time'? No lawyer can tolerate it and definitely Shri Arun Jaitley cannot tolerate it. He had an option of either removing one of the words. My suggestion is that he should have removed 'within such time' instead of 'immediately'. When a fraud happens, if it is not reported immediately, if it is reported after it becomes a public issue, if it is reported after they have taken deposit from public or if it is reported after they have taken a bank loan, I think it becomes too late. I would request the Finance Minister to insert 'immediately' instead of 'after specified period'.

Lastly, in Telangana we are introducing the real Single Window. These amendments are aimed at easing the business environment. Therefore, we support such amendments and we support the Bill. Thank you.

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Thank you, Chairman, for giving me this opportunity. Our party heartily welcomes most of the amendments that are brought in the Companies Act. However, I have few observations to make here. On several fora the hon. Finance Minister, who is quite intelligent, has mentioned that the inter-ministerial consultations will be done, particularly between the Finance Ministry, Corporate Affairs Ministry and the Law Ministry whenever any legal matter comes up

My earlier speaker has mentioned that there are some discrepancies between SEBI and the Companies Act. Similarly, in the later part, I mentioned that some discrepancies are coming up in cost accountancy and the chartered accountancy. Since the Finance Minister has indicated in his speeches earlier, I presume that inter-ministerial consultations have been done in this regard as well.

On several platforms, the Finance Minister mentioned that he would adopt transparency in most of the Acts. Generally, I appreciate that. But, when it comes to the Board resolutions, they were not transparent. I do not see any reason why the Board resolutions after entering into the registry should remain secret.

Similarly, hon. Minister has mentioned that international practices would be brought into India. He mentioned it three-four months ago. But, I do not see that these international practices have gone into these amendments in the proposed Bill.

Sir, Bills like this are extremely intricate and complicated. I earnestly request the Government through you that when such Bill comes up, people like us would like to understand it more. So, outside of office hours of Parliament a small brief may be given to educate us in future.

My next point is about the auditors, who after the Satyam episode, are looked at in a suspicious manner. Since auditors and cost accountants are part of it, their interests should also be protected if they have committed anything unwittingly.

The World Bank on repeated occasions has mentioned that how difficult it is to start a business in India. When in other countries it could take just a few weeks to start a business, in India it takes at least 10 to 12 months to start a company. Similarly, the companies have to pay 60 to 70 per cent of their profit towards whereas in other countries at best they pay 35 to 40 per cent. The companies have to cross, at least, 40 Acts before they pay taxes and all that, whereas in other countries this number is around eight. The World Bank has clearly mentioned it, and also it has appeared in most of our proceedings.

With regard to revaluation reserves, the amendment might bring down the dividends, and also the salary and remuneration aspects. Perhaps, a thought may be given to that.

When companies are particularly exploiting the natural resources, I think the managerial remuneration should be restricted. For example, when the Reliance is exploiting oil, which is a natural resource and pertains to everybody here, the managerial remuneration which runs into crores and crores of rupees, should be restricted and that money could be converted or transferred to the CSR funds.

The earlier speaker was also mentioning that it is extremely important that we should draw out a format, as far as CSR is concerned. Many companies, despite whatever profit they are making, are going away without doing much concrete work. Therefore, things like housing, roads, drinking water, sanitation and education should also be made compulsory, at least, in and around the villages where the company concerned is flourishing.

The dividend up to seven years, it is contemplated here, cannot be transferred into the Investors' Education and Protection Fund. I consider

that it is too long a period. That could be reduced to three or five years. The reason is that

as and when they do not claim, it could be paid later even from this fund. So, along with the interest, the money could go to the Government and to the public.

Under the present amendments, the relevancy of cost accountancy has also been made 'zero'. If you want good fiscal behaviour, the hon. Minister has been repeatedly mentioning the importance of cost accountants, they should be retained. Thank you.

SHRI ABHIJIT MUKHERJEE (JANGIPUR): Sir, I thank you very much for giving me this chance to speak on this Bill.

The Companies Act was amended in 2013, and in less than a year, I do not understand why this amendment has been brought in a hurry. These amendments should have been discussed or rather thought deeply because industry bodies or trade bodies will keep on asking for some kind of amendment as some amendments will help them and some amendments may not help them.

I am coming directly to the proposed amendments. Section 76 (a) outlines the penalty on non-payment of dues by deposit companies. It has been mentioned that if a company fails to make the payment within the stipulated time when it is due, a fine of not less than minimum one crore of rupees and a maximum of Rs. 10 crore will be imposed. Here, my submission is that the minimum fine is all right. However, in respect of the higher limit of Rs. 10 crore, it should be proportionate to the damage or the dues supposed to be given to the depositors. It should be made proportional. The Board of Directors as well as the individual Directors should be made responsible, and the money should be given back to the depositors. I feel this provision should be incorporated in the amendments.

Section 185 relates to loans to subsidiary companies. It must also be ensured that a loan given to a subsidiary or a sister concern should not be misused. It should not be siphoned out to other companies forgetting the purpose for which it was taken. The purpose can not be served; then, the loan should be given back. Any sort of siphoning from one company to another sister company should be avoided.

I have one of the most important points where this amendment is silent about. There is no provision of gender sensitisation. Usually, the policies evolved are men oriented leading to subtle gender discrimination. In our daily life, inadvertently or unknowingly, decisions are taken which lacks gender sensitisation. A provision must also be brought to have the gender sensitisation and I rather request you to make it compulsory. Many doctors, engineers and other professionals are coming out of universities/colleges. Women should be given a minimum of 30 per cent reservation in all public sector companies or in Government.

Since I was in industry for a long time, I have seen that regular works are being done by the contract labourers where regular employees are enjoying and not working. There must be a provision in the Companies Act that the regular work should be done by the regular employees and not by the contract labourers. Contract labourers are, in fact, being exploited both by the organisations/companies and the trade unions. To give them protection, you must ensure that contract labourers are not allowed to do any kind of job which the regular workers are supposed to do particularly in the steel industry and coal industry. These industries are labour intensive and are misusing the contract labourers. These organisations are saving a lot of money by getting done the regular job by assigning it to the contract labourers.

I have another point to make. Two speakers have already spoken on this point that is Corporate Social Responsibility. The Corporate Social Responsibility says that something has to be given back to the society. The quantum percentage is two per cent of the net profit. The companies are propagating to increase their business and propagation of business should not be included in the Corporate Social Responsibility Scheme. One of the Speakers was saying that it (CSR) should be done in the periphery of the company, I am in agrement with it.

Sir, two per cent of the net profit should be the minimum limit and it should be left optional to the companies for upper limit. They may like to spend more than two per cent also. This scheme should be dovetailed with the Government schemes like constructing toilets in girls' schools. Since, my time is over, I am concluding. Thanks Sir.

श्री सुभाष चन्द्र बहेड़िया (भीलवाड़ा) : सभापति महोदय, आपने मुझे कंपनीज अमेंडमेंट ऐक्ट, 2014 पर मुझे बोलने का अवसर दिया, इसके लिए मैं आपको धन्यवाद देता हूँ। जिस हिसाब से कंपनीज ऐक्ट, 2013 लागू किया गया था, उसमें कुछ कमियाँ रह गयी थीं, इसलिए यह अमेंडमेंट लाना जरूरी था। पहले कंपनीज ऐक्ट, 1956 लागू था, उसमें कुछ चैंजेज करके, कुछ सेक्शंस कम करके 2013 का ऐक्ट लाया गया। इस नये ऐक्ट में जो प्रैक्टिकल दिक्कतें आ रही थीं, उसको दूर करने के लिए अभी यह अमेंडमेंट लाया गया है। इसके लिए मैं आपके माध्यम से मंत्री जी को बधाई देना चाहता हूँ। मैं आपके माध्यम से एक विशेष बात कहना चाहता हूं कि जो पुराना कंपनीज ऐक्ट था, जो दो तरह की कंपनी होती हैं, एक प्राइवेट लिमिटेड और दूसरी पब्लिक लिमिटेड। एक में पब्लिक का पैसा लगा होता है, पब्लिक से मांग कर पैसा लिया जाता है, उनको योजना के बारे में बताकर पैसा लिया जाता है, पब्लिक से शेयर होल्डिंग ली जाती है और जो फैमिली मेम्बर या रिस्तेदार आपस में मिलकर जो कंपनी बनती है, उसमें पब्लिक का कोई पैसा नहीं लगता, इस तरह से प्राइवेट कंपनी बनती है। वर्ष 1956 के ऐक्ट में प्राइवेट लिमिटेड कंपनीज के लिए बहुत एग्जेम्पशंस थे क्योंकि उसमें पब्लिक का कोई पैसा नहीं होता था और कुछ न कुछ अपने परिवार को मिलने वाला, जैसे कुछ डिपोजिट लेनी है, तो किसी से भी लिया जा सकता था क्योंकि उसमें पब्लिक के साथ फ्रॉड होने का कोई चांस नहीं था।

15.00 hrs

इसलिए उनको सेक्शन 73 में जो डिपॉजिट लेने का रूल है, उससे छूट प्राप्त थी, लेकिन इस नए बिल में उसे बंद कर दिया गया। इसकी वजह से प्राइवेट कंपनीज की वर्किंग में बहुत दिक्कत आएगी। वे कहीं से कुछ फण्ड्स लेते थे जैसे अपने रिश्तेदारों से, मिलने वालों से, डायरेक्टर्स के परिवारवालों से लेते थे, लेकिन अब वे ऐसा नहीं कर सकेंगे। मेरा आपके माध्यम से निवेदन है कि इस बारे में विचार करें क्योंकि प्राइवेट कंपनीज को दिक्कत आ रही है। छोटी कंपनी होती है, जो एसएमई हैं - स्माल एंड मीडियम इंटरप्राइजेज - उनके द्वारा चलाई जाती है। अगर इनको ये सुविधाएं नहीं मिलीं, अगर उनके ऊपर यह कानून लागू हो गया तो इनको बहुत दिक्कत आएगी।

इसी तरह से ग्रुप कंपनीज की बात है। बैंकर्स कहते हैं कि ग्रुप कंपनीज की एक दूसरे के लिए गारंटी दी जाए, लेकिन इस बिल के सेक्शन 186 के तहत इस पर रोक लगाई गयी है कि आप न तो ग्रुप कंपनी को लोन दे सकेंगे और न गारंटी दे सकेंगे। ये ऐसी प्राइवेट कंपनीज हैं, जो कभी पब्लिक से पैसा

नहीं लेती हैं। जितने भी फ्रॉड हुए हैं, वे सब बड़ी कंपनीज में हुए हैं, पब्लिक कंपनीज में हुए हैं, प्राइवेट कंपनीज में आज तक कोई फ्रॉड नहीं हुआ है और जिसके पैसे उस कंपनी में लगे होते हैं, उनके पैसे वापस लौटाए जाते हैं। अतः आपके माध्यम से माननीय मंत्री जी से मेरा यही आग्रह है कि प्राइवेट लिमिटेड कंपनीज को एग्जम्पशन्स वर्ष 1956 के एक्ट में प्राप्त थे, वे इस कंपनीज बिल में और आगे आने वाले संशोधनों में भी दिए जाएं। यही मांग करते हुए मैं इस बिल का समर्थन करता हूं।

SHRI V. PANNEERSELVAM (SALEM): Sir, at the outset, I thank the Chair for giving me this opportunity to speak on this important Bill. I also thank heartily our beloved Leader Makkal Muthalvar Puratchi Thalaivi Amma who believes in smooth functioning of public bodies with right minded corrective measures.

The aim of this Bill is to ease the operations of the public limited companies, be they in the private sector or the Government sector. Primarily, this Bill seeks to move to the ambit of the SEBI Act, the shareholdings and selling. In this digital era, making available all the data related to the trade transactions should be possible and this Bill aims at this.

In an era of liberalization, free trade can thrive only when the trade exchanges are transparent. So far, the monitoring of purchases and sales of the shares were left to the discretion of the Directors of the Board. Now, through this Bill, we have made such transactions more broad-based. Major decisions resulting in amalgamations and take-over cannot come as a surprise any more. Instead of Government control, it will be under the guidance and monitoring of the members of the public limited company. All the shareholders now will become the stake-holders in the operations of the company.

It is necessary because in the globalized economy, there is a scope for corrupt practices and diabolical take-over. We have vigilance mechanism to monitor the functioning of the executive of the Government. On the similar lines, hereafter the company will be monitored by the broad-based shareholding community to manage the company. The minimum number required for establishing a public limited company has been increased to a higher number of members from 50 to 200.

The inclusion of independent Directors and Auditors is like infusing new vigour to the existing manner of operating company. This is one of the important highlights of this Bill. The Bill permits certain financial relationship between the independent Directors and the company. In my opinion, this may create a conflict of interest. I would urge upon the Minister to look into this aspect.

Violation of rules and financial mismanagement which cannot be tolerated can be overcome now. Fines and punishment for offences have been increased and intensified. In order to oversee this particular aspect of ensuring management according to the given rules, the National Law Tribunal is being established.

Sir, for speedy disposal of cases special courts can be formed. Market manipulation by companies indulging in trading in their own shares has taken its toll in the past. Such manipulations have resulted in great loss to several thousands of shareholders and also the Government. As a lesson learnt from the two great scams in the world of share markets, the Government now seeks to ensure transparency and integrity.

The dichotomy of productivity and 'marketivity' being treated separately and not inducted as 'Key Management Personnel' will not continue any more. Whole time Directors will also be prescribed as KMPs under new sub-clause.

Before concluding I would like to draw the attention of the Minister to certain provisions covering independent Directors and delisting of companies. These provisions appear to be in conflict with the rules, SEBI Act and its regulations. When SEBI is brought into the picture more prominently its dominant role should not be diluted.

I urge upon the Minister to see that this comprehensive Bill comes into force as an Act to do good to the world of companies.

Let me conclude. Thank you.

श्री दुष्यंत चौटाला (हिसार) : सभापति जी, आज कंपनीज अमेंडमेंट बिल, 2014 पर बोलने का आपने मुझे मौका दिया, इसके लिए मैं आपका आभार प्रकट करता हूं। जब से डिस्कशन शुरु हुई है, सभी ने यह मांग की कि इसके अंदर और भी संशोधन की जरुरत है। हमारे देश के अंदर, जहां कंपनीज को सुविधा, बिजनेस करने की होती है, वहां दुनिया के अंदर, हम 142वें नम्बर पर स्टेंड करते हैं। यह हालात किसने बनाए? ये हालात पिछली सरकार के द्वारा बनाए गये। मैं माननीय वित्त मंत्री जी को धन्यवाद देता हूं कि इन्होंने हालात को सुधारने के प्रयास किये हैं। साथ ही मैं यह भी मांग करता हूं कि जो संशोधन यह सरकार लेकर आई है, इससे ज्यादा संशोधनों की जरुरत आज इस बिल के अंदर है।

देश की आजादी से लेकर आज तक, इन दो बड़ी पार्टियों ने राज किया है। बिल इनके द्वारा ड्राफ्ट किये गये, लाए गये, मगर आज तक हमारे देश के अंदर, बिजनेस को लाने के लिए, जिन आवश्यकताओं की जरुरत थी, मुझे लगता है कि हम उसे समझ नहीं पाए। आज ये बिल लेकर आये हैं, लेकिन अगले एक-दो सालों में इन्हें दुबारा एक अमेंडमेंट बिल लाना पड़ेगा। जब हम उस अमेंडमेंट बिल को लेकर आयें, तो बड़ी गंभीरता के साथ ऐसा बिल लेकर आयें, जिसे दुबारा संशोधन करने की जरुरत न पड़े। साथ ही

साथ जो इंडस्ट्रीज हैं वे हमारे देश के अंदर आएं। माननीय प्रधान मंत्री का एक सपना है कि हमारे देश के अंदर इंडस्ट्रीज आएं। " मेक इन इंडिया" का जो सपना माननीय प्रधान मंत्री जी ने दिखाया है, मुझे लगता है कि मेक-इन-इंडिया को आगे ले जाने के लिए, हमें इस बिल के अंदर भी और संशोधन लाने पड़ेंगे, जिससे फॉरेन-इंवेस्टमेंट देश के अंदर आराम से आएं, इंडस्ट्रीज ग्रो हों और लार्ज-स्केल के साथ-साथ स्मॉल स्केल इंडस्ट्रीज भी ग्रोथ की ओर जाएं, बैंक-करप्सी की ओर न जाएं।

आज नया बिजनेस आयेगा, तो युवा को रोजगार मिलेगा और युवा को रोजगार मिलेगा, तो देश के अंदर रेवेन्यू ज्यादा जैनरेट होगा। सीएसआर की बात टीडीपी के माननीय जयदेव जी ने भी बात करी। जैसे सीएसआर 2 परसेंट है, उस 2 परसेंट को, उनकी कांस्टीटयूएंसी जो लोक सभा की है, उसे वहां यूटिलाइज करें। उस 2 परसेंट सीएसआर से उन कंपनीज को स्किल्ड डिवेलपमेंट प्रोग्राम चलाने चाहिए। हम

किसी इंस्टीटयूट के अंदर स्मॉल-स्केल स्किल्ड डिवेलपमेंट बनाएं, जिससे वहां के युवाओं को रोजगार मिले, वहां के युवा भी इंडस्ट्री के अंदर अपना हाथ बंटा सकें। साथ ही उन कंपनीज को, उस 2 परसेंट से ज्यादा,

अपना माइंडसेट बनाकर उस एरिया के विकास के लिए लगाना चाहिए, जिसके तहत आस-पड़ोस का विकास हो और हम मैडीकल-सुविधा की बात करें, इंफ्रास्ट्रक्चर डिवेलपमेंट की बात करें। अन्य चीजें हैं जिनके प्रति वे कंपनीज या कोरपोरेशन अपना माध्यम रख सकती है और सीएसआर के तहत वहां विकास कार्य करा सकती है। इतना कहते हुए मैं इस बिल का समर्थन करता हूं। धन्यवाद।

*SHRI SHER SINGH GHUBAYA (FEROZEPUR): I thank you, Chairman Sir, for giving me the opportunity to speak on "The Companies (Amendment) Bill, 2014".

Sir, this is a very important Bill. The country needs this bill. Modi ji's Government has passed several Amendment Bills in this august House. Sir, all the bills that have been piloted in this House in this Session are very useful bills. Similar is the case with the Companies (Amendment) Bill, 2014.

Sir, various multi-national companies have set up their bases either in the states or in Delhi. However, their main motive is profit. They only want to earn money. Whether it is the insurance sector or any other sector, earning profit has been their sole agenda. Such companies do not benefit our country in any way.

Sir, agriculture is the mainstay of our economy. Companies which can cater to food-processing etc. should be encouraged. Bringing in reforms in the agriculture sector is the need of the hour.

Sir, I support this bill and congratulate the Hon'ble Finance Minister. Several Hon'ble Members have expressed their views regarding this bill. The companies should be asked to take welfare measures for the people of the area where they are established. This social obligation should be made compulsory for these companies. The development of that area must be an integral part of the policy of these companies. These companies should provide health-care, employment and education to the people and children of their area. This is the need of the hour. These companies must earmark some amount for welfare measures.

Sir, Hon'ble Finance Minister is here. I urge upon him to ensure the security of our country when these multi-national companies establish their bases here. We have already seen how terrorists have indulged in an inhuman act of killing innocent school-children in Pakistan, yesterday. We must gird up our loins and allot more funds to gear up our security paraphernalia so that such mishappenings do not take place in our country.

Sir, I congratulate the Hon'ble Finance Minister for bringing this bill in the House. I whole-heartedly support this bill. This bill will definitely give a boost to the development of our country and a fillip to growth in this sector.

Thank you.

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, I oppose this Bill because most of the provisions in this Bill are not giving any transparency in the company administration. Also, the new provisions which are introduced by way of amendments are diametrically opposite to the provisions we had made in 2013 when the Bill was piloted by the then Minister Shri Sachin Pilot.

The intention of this Bill is to amend the Companies Act 2013 which was notified on 29th August 2013. Within such a short period, drastic basic structural amendments are being brought into the Bill. The reason which is stated in the Statement of Objects and Reasons is: firstly, it is very difficult to implement the provisions of the Amendment Act 2013, and secondly, it is to further facilitate 'ease of doing business'. The hon. Minister has been repeatedly using this phrase 'ease of doing business'. These are the two provisions or reasons for which this amendment is brought before the House. The reason put forward for this is that a difficulty is being faced by the industry, the Ministries and Departments and professional institutions. I would like to know from the hon. Minister what is the difficulty which the Departments and the Ministries are facing in implementing the provisions of Amendment Act of 2013. We can understand the difficulties being faced by the industries. It is very difficult for them to report any fraud or any cheating which is being done by the employer or the director of the company, which is to be reported to the Government of India – this is difficult as far as the company or the industry is concerned.

By making an amendment to that provision that you need not report to the Government of India and instead, you report only to the audit

committee, this will be favourable to them. My question is what difficulty the Government of India or the Ministry and the Department is facing in keeping the amendments made in 2013. The House may remember, when this amendment was made in 2013, Shri Sachin Pilot and many other hon. Members of this House had explained in this House and I am not going into the records of the proceedings; but it was stated that this was a landmark legislation in the history of Indian Parliament. That was the assessment in respect of 2013-Act. Now, the cardinal principle of that amendment is being taken away by means of this legislation, which is the focal point which I would like to make.

The 2013-amendment was made with an intention to bring more transparency, self-reporting, disclosure and also to make the corporates more responsible. That was the aim and intention of the 2013-amendment which was brought forward by the then UPA Government. When we think about relaxation and exemption to the companies, whether it is private or public, you may kindly see the situation prevailing in our country. Even Shri Ahluwalia also has given a notice for discussion of the Saradha Scam in this House. Everyday in every State, these kinds of fraudulent financial activities are going on; cheating and defrauding the customers or depositors are going on. When such a situation exists in our country, should we make the laws more stringent or should we relax and exempt? My point is, more stringent action has to be taken to check such fraudulent transactions which are taking place in our country.

Instead of making those provisions stringent, we are relaxing and exempting so that the corporates and companies can defraud the depositors and customers. That is the strong objection which I would like to place against this Bill.

We are also moving in the opposite direction. Instead of having transparency, accountability and responsibility of the company to the customers and to the country, we are moving in the opposite direction, by lowering transparency, accountability and responsibility.

Coming to the provisions or the main amendments of the Bill, the first amendment of the hon. Minister is regarding section 2, which is the definition clause. The clause 2 of the Bill seeks to amend clauses 68 and 71 of the 2013-Act or the original Companies Act of 1956. By this, the definition of the private and public companies are sought to be amended. What was the original provision? For a private company, the paid up capital should be minimum Rs. 1,00,000 or higher paid up capital as described by the Government. As far as the public company is concerned, the original provision was the minimum paid up capital is Rs. 5,00,000 or higher paid up capital which is specified or as described by the Government.

Now, we are omitting the minimum paid up capital. I would like to know from the hon. Minister, what is the aim or intention of simply omitting this 'minimum paid up capital'. My friend, Dr. Kirit Somaiya, yesterday said that it is with the Government and with the Parliament; it is not good; and every liberty should be given to the companies and corporates so that they can determine what the minimum paid up capital should be. In this case I would like to state that if this amendment is carried out, what would be the section? If the amendment is carried out, Clause 2 of Section 68 would be, 'a private company means, a company having a minimum paid up share capital of Rs. 1,00,000 or such a higher paid up capital – that is to be deleted – as may be prescribed'. So, my question to the hon. Minister is what is the harm in this Parliament determining the minimum paid up capital? Why is it being taken away and this right is being given to the executive? What aim will be achieved out of this amendment which is being made in section 2? Similarly, in clause 71 of Section 2 also, the definition part is given.

I would like to say about another amendment and it is regarding section 9. Common seal is referred to in section 9. To my limited knowledge, I would like to say something. When I was the student of Law College, I still remember the definition of a company and the interpretation of a company. A company means it is a legal entity having perpetual succession and common seal. Now, by amending Section 9 of the original Act, this common seal is removed or omitted. What is the intention behind removing this common seal? I feel that by omitting this common seal, it is exempting the companies from their joint and collective responsibility in issues which may come up in case of fraud and other things.

Another amendment is regarding the punishment by incorporating the amendment to Section 76. I fully endorse it. I congratulate the hon. Minister on making such an amendment to Section 76 and incorporating it in new Section 76. It is absolutely fine and I fully support the provision which has been made there.

Sir, coming to the declaration of dividend, there is a provision in Section 123. It is also affecting the shareholders. The existing right of the shareholders is being slightly taken away by means of this amendment also because the previous loss and depreciation will be calculated and only out of this, he will be entitled to have an appropriate dividend. That also is adversely affecting the poor shareholders or the customers, as the case may be.

Another amendment is about non-reporting to the Government of India on all frauds committed by the employer or the Director of the company. That is also being taken away.

I would like to know whether it is transparent. Is it transparency or is it accountability or is it the responsibility of the company? In the original position, whatever fraud is committed by anybody, be it the employer or the Director, he is responsible. The auditor has to report it to the Government. Here, in this case, Shri Jaitley is an eminent legal luminary who has brought this Bill.

What does this amendment say? It says that "if it is above a specified amount". What is that specified amount? That will be determined by the Government. If it exceeds the specified amount, only then the fraud needs to be reported to the Government of India. Why is this relaxation? Whether it is a fraud of Rs. 100 or Rs. 10 lakhs or Rs. 10 crore, it is the same, it is a fraud and it is a crime. It is a fraud on the customers and the creditors, as the case may be. So, in such a condition, I strongly oppose it.

There is a very important amendment about related party transactions. Section 185 and Section 188 are very crucial Sections. They say that these transactions have to be approved by a special resolution. But now, it is by means of a simple resolution.

Yesterday, Prof. Saugata Roy had also cited that in the case of the United Spirits, they have got only 70.5 per cent of the votes so that they cannot have their resolution passed and such a difficulty was experienced by United Spirits. So, the number of votes to be obtained is minimised to 50 per cent. The sale of land or purchase of land or entering into a contract with a holding company and the companies which are holding are all very important. I know the position. In my constituency, there is the case of revival of Punalur Paper Mills. If the Director of the Board wants to get the property sold in the real estate field, definitely, they will be benefited by this provision also. This provision is very crucial as far as I am

concerned. Therefore, all these provisions, except section 76(a), have to be relooked and reconsidered.

With these words, I conclude my speech.

ADV. JOICE GEORGE (IDUKKI): Mr. Chairman, Sir, thank you for giving me this opportunity to speak on this Bill. The very purpose and purport of this Amendment Bill is to increase the 'ease to do business' in our nation. In certain contexts, it may be true. But what is the reality faced by our nation? What is the hard reality which we are facing now? In this context, I would like to say that most of the frauds, in number and in quantum, are committed by the corporates, and by the body incorporates under the Companies Act, which are enjoying several privileges and immunities. Who are the cheated persons and the affected ones? In this case, it is the citizens and the poor investors who are affected the most. The Members who spoke before me also expressed their concerns in this regard. We will have to bring more transparency and more accountability. Instead of bringing more transparency and more accountability, we are relaxing certain provisions under the guise of increasing the 'ease to do business' in this nation.

There are numerous examples of cheating and fraud committed by these companies, and perpetuated by the incorporated companies by announcing ponzi schemes, like Satyam, Sarada and Sahara. Thousands of cases were filed against these companies by those who were cheated by their ponzi schemes and cases are being conducted, but to no avail. They are not getting the money back. This is the hard reality which we are facing.

15.27 hrs (Hon. Deputy-Speaker *in the Chair*)

Therefore, this House being the highest law making body of the nation, and as Members of this House, we also have the responsibility of being accountable to the people. We are talking about the Corporate Social Responsibility. We also have responsibility towards the people, those who voted for us to be here for making laws for them. So, we should ensure that this responsibility element is there in the Companies Bill.

Keeping this in mind, I would say that the amendments that have been brought forward to clause 2 proposess to omit the minimum requirement of having paid up share capital of Rs. 5 lakh for the public companies and Rs. 1 lakh for the private companies. What is the purpose that is sought to be achieved by these particular amendments? The object is to increase the 'ease to do business' here. By omitting this limit of having a minimum paid up share capital for conducting businesses or for taking loans, what is the purpose that is sought to be achieved? Instead of serving any particular object, this will help the companies or this will help the persons who want to commit fraud on us. This will help them to do business even without having any minimum responsibility or without having any minimum investment.

Therefore, the Government should show some serious concern over that also. So is the case with the provisions regarding the 'related party transactions'. There also the interest of the shareholders has been given a go-by because there the requirement for 'special resolution' has been replaced by 'ordinary resolution' for approval of 'related party transactions' by minority shareholders. So, we will have to seriously look at that provision also.

So is the case of exempting the 'related party transactions' between 'holding companies' and the 'wholly owned subsidiaries' from the requirement of minority share holders' approval. It is also an objectionable provision, which prohibits the public inspection of the Board Resolution files by the Registrar of Companies under the guise of protecting the secrecy of the company's strategy. Under the guise of protecting the companies to keep their strategy secret, we are giving a go-by to transparency and accountability of these companies.

What is the purpose that is sought to be achieved by permitting a company to keep all their strategies secret and simply permitting them to cheat the people, and permitting them to perpetuate fraud on the people? We should give serious consideration to that provision also.

We are all talking about the frauds committed by the companies by announcing ponzi schemes, etc. But here, by amending section 143, the minimum responsibility of the auditor to report the fraud to the companies and the Government has been taken away. That is also an objectionable amendment. If we are for transparency and if we are for ensuring more accountability by the companies, we should retain that provision making the auditor responsible to report all these frauds, whether they are small or big. Fraud is always a fraud. That fraud should be reported to the Government.

With these reservations, I conclude. Thank you.

श्री हुकुम सिंह (कैराना) : उपाध्यक्ष जी, मैं आपका धन्यवाद करता हूँ कि आपने मुझे बोलने का अवसर दिया। इस संशोधन विधेयक पर मैं बहुत सीमित बोलूँगा और अपने को केवल संशोधन तक ही सीमित रखूँगा।

महोदय, कल कांग्रेस के एक सम्मानित नेता, जो इस पर प्रथम वक्ता थे, उनको बोलते हुए मैंने सुना। ऐसा लगता था कि उनकी बात में तर्क कम है और किसी बात की नाराज़गी ज़्यादा है। उन्होंने कहा कि 12 सालों के प्रयास के बाद, विभिन्न लोगों से परामर्श करने के बाद कानून बनाया था, उसमें इतनी जल्दी संशोधन कैसे हो गया? मैंने साल गिने। उनकी सरकार तो 10 साल ही रही और 12 साल से वे इस पर विचार कर रहे थे। हो सकता है कि सरकार में आने से पहले ही इस पर विचार करना शुरू कर दिया हो। इस बिल में जितने संशोधन आए हैं, मैं केवल उनका समर्थन ही नहीं करता हूँ बल्कि वित्त मंत्री जी को बधाई भी देता हूँ क्योंकि ये संशोधन समस्त कानून को और ज़्यादा सार्थक और प्रभावी बनाने के उद्देश्य से आए हैं। अगर माननीय सदस्य बिल के ऑब्जैक्ट्स एंड रीज़न्स को पढ़ लेते, तो उसमें कहा भी गया है कि बिज़नैस को और सरल करने के लिए कुछ संशोधनों की आवश्यकता है, और वास्तव में जो संशोधन आए हैं, उनके बाद यह कानून और ज्यादा प्रभावी, सरल और सार्थक होगा। जैसे माननीय सदस्य को शिकायत थी

कि डिविडैंड वाले मामले में जो पाबंदी आपने लगाई, वह नहीं लगानी चाहिए थी, और उन्होंने कहा कि यह तो बहुत ही ज्यादा सख्ती की बात की गई है। लेकिन अगर उसको आप देखें तो कहाँ पाबंदी लगाई गई है - अगर पूर्व देनदारी उन्होंने क्लियर न की हो, उनके ऊपर कोई भारित न हो। जब तक उनके ऊपर पूर्व देनदारी रहेगी, चाहे वह कर्ज़ के रूप में हो या किसी और रूप में हो, तब तक वह डिविडैंड नहीं दे पाएँगे। कर्ज़ा तो 50 करोड़ रुपये का है और आप डिविडैंड बाँट रहे हैं, जो देनदारी है, उसको क्लियर नहीं कर रहे हैं। इस तरह से बहुत ही व्यावहारिक पहलू यह था कि पहले उनको अपनी पूर्व की देनदारी क्लियर करनी चाहिए।

इसमें हम आगे देखते हैं। मान लें कोई ऑडिटर उसमें ऑडिट कर रहे हैं और ऑडिट करने के बाद फ्राड मिलता है तो क्या हम इंतज़ार करेंगे जब तक ऑडिटर की रिपोर्ट तैयार होगी और तैयार होने के बाद वह सरकार के सामने आएगी, तब तक शायद उसका अर्थ ही समाप्त हो जाएगा। इसलिए प्रावधान किया गया कि अगर कोई फ्राड मिलता है तो उनका दायित्व होगा कि तुरंत सरकार को इस बात के लिए सूचित करें और सरकार उसमें तुरंत प्रभावी कार्रवाई कर सके। इसमें मेरे ख्याल से कोई कमी की बात नहीं रह जाती।

दूसरी बात हम देखें कि कंपनीज़ ने सब्सीडरीज़ बना दीं धोखा देने के लिए, अपने पैसे और अधिकार को डाइवर्ट कर दिया। हमारे सामने उदाहरण हैं और बहुत व्यावहारिक उदाहरण हैं। सत्यम का नाम कल भी लिया गया। मैं लेना नहीं चाहता था, लेकिन कल काफी वक्ताओं ने उसका नाम लिया। उन्होंने क्या किया था कि न जाने कितनी कंपनियाँ बना दी थीं और कंपनी बनाकर अपना अधिकार और पैसा वहाँ ट्रांसफर कर दिया था। इसमें प्रावधान है कि जितने उनके अधिकार हैं, जो उनका दायित्व है, उस दायित्व तक सीमित रहकर ही उसको खर्च कर पाएँगे, दूसरे पहलुओं में खर्च नहीं करेंगे, यह पाबंदी उन पर लगाई। तो यह व्यावहारिक हुआ या नहीं?

मान्यवर, अभी नौएडा का केस चल रहा है। सबको जानकारी है कि एक अच्छी सरकार के नेतृत्व में वह सब काम कितना हुआ, दो सरकारें वहाँ रहीं और दो सरकारों में एक अधिकारी ने अब तक जो जानकारी आई है, उसके अनुसार 40-50 करोड़ रुपये का गबन कर लिया। यह गबन कैसे किया? परिवार की विभिन्न कंपनीज़ फर्ज़ी नामों पर खड़ी कर दीं, दर्जनों कंपनियाँ खड़ी कर दीं और कंपनी खड़ी करने के बाद नौएडा के हज़ारों प्लाट उन कंपनियों के नाम करके गबन करते रहे। अगर इनके ऊपर पाबंदी नहीं लगेगी और इनको एक लाइसैंस मिल जाएगा कंपनी बनाने का कि अब तुम मकान अलाट करो, प्लाट अलाट करो, पैसा वहाँ इनवैस्ट करो तो धोखा होगा या नहीं? अगर वह पैसा सरकारी मद में खर्च हुआ होता, पुलों और सड़कों पर खर्च हुआ होता, मदरसों और अस्पतालों पर खर्च हुआ होता तो प्रदेश की हालत ही दूसरी होती। ऐसे फ्राड करने वालों पर अगर पाबंदी लगती है तो क्या दिक्कत इनको आती है?

महोदय, एक प्रैक्टिस बहुत ज्यादा आजकल चल रही है और चाइना माडल और यू.एस. माडल की बात कही जा रही है। आरोप लग रहा है कि आप चाइना माडल से हटकर यू.एस. माडल की तरफ जा रहे हैं। हमें माडल की आवश्यकता नहीं है, हमें भारतीय माडल चाहिए। हमारे सामने जो कठिनाई आई है, उसका समाधान हमें चाहिए। हम व्यवहार से जो सीख रहे हैं, उसका हमें हल चाहिए। ऐसे-ऐसे कठिन शब्द इस्तेमाल करके जनता की आंखों में धूल झोंकने का काम किया जा रहा है। मैं जानता था कि वे बहुत वरिष्ठ नेता हैं। अगर वे गौर से इस संशोधन का अध्ययन कर लेते, तो शायद ऐसी गलती न करते।

उपाध्यक्ष जी, अब जो धोखा देगा, जिस मद के लिए पैसा दिया गया है, उस मद में पैसा खर्च नहीं करेगा, जो स्टेक होल्डर्स को धोखा देगा, उसके लिए जेल का भी प्रावधान किया गया है, जुर्माने का भी प्रावधान किया गया है और जुर्माना केवल हजारों या लाखों रुपयों का नहीं बल्कि करोड़ों रुपये के जुर्माने की बात कही गई है। इससे कम से कम उनके मन में डर तो रहेगा कि अगर हम ऐसे धोखा करेंगे तो हमें सात साल तक जेल जाना पड़ेगा या इतना भारी जुर्माना देना पड़ेगा। ऐसे प्रभावी उपाय करके मंत्री जी ने खास तौर से इस दिशा में बहुत ही मजबूत क़दम उठाया है, मैं इसके लिए उन्हें बधाई देता हूं और जो संशोधन लाया गया है, उसका भरपूर समर्थन करता हूं।

उपाध्यक्ष जी, इससे पहले की आप घंटी बजाएं, मैं इन्हीं शब्दों के साथ अपनी बात समाप्त करता हूं।

THE MINISTER OF FINANCE, MINISTER OF CORPORATE AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI ARUN JAITLEY): I am extremely grateful to a very large number of hon. Members who have spoken on this Bill. The substance of what has been said is, the Bill was introduced in Parliament in 2008; it went through the Standing Committee process; it was legislated in 2013. Why is it that in 2014 we felt the necessity of having to amend some of the provisions of this Bill?

There are clearly two kinds of opinion which have been expressed by Shri Kirit Somaiya, Shri Pinaki Misra, and several others, who were in support of this Bill. They have contented that - in fact there are many more changes which are required to be made - because with a Bill of this kind, doing business in India may become difficult. There is another view which has been expressed. Why should we have a Bill which makes it easy for companies? What does the Government gain out of it? I have no hesitation in admitting that I agree with the former opinion. It is companies which create jobs. The West Bengal Government does not. Therefore, if the economy of this country is to revive, we cannot make it impossible to do business in this country. After this law has been enacted, I would just place some of the provisions which I am seeking to change, on which comment has not been made.

People represented to the Government even when the UPA was in power that it is perhaps better to create a proprietorship or a limited liability partnership and do businesses rather than having such a restrictive regime. But then raising public finance, getting loans, getting institutional finance becomes difficult. So people have to corporatise their structure and do it. I will just give an illustration.

There are four kinds of changes which we are making. One is with an intention of `ease of doing business'; the other is, drafting errors; the third is oversight; and the fourth is some provisions which are *ex-facie* oppressive to an environment to do business. Let me start with the fourth category.

I would request any hon. Member, if he has a copy, to pick up section 212(6) of this Act. I am referring to an extraneous fact when in 2004 the UPA came to power, there was a law which the NDA had enacted called the Prevention of Terrorism Act (POTA).

The UPA's main criticism of POTA was that some of the provisions are very repressive and so they repealed POTA. When they repealed the anti-terrorism law, they incorporated most of the provisions under the Unlawful Activities Prevention Act. But one provision the UPA said that they would not agree to put in the Unlawful Activities Prevention Act was regarding a harsh bail provision. The POTA said that any person arrested for

terrorism will not get bail till either the Public Prosecutor consents to the bail or the court gives a finding that the person is innocent on the face of it. Now finding of innocence is not possible till the trial is held. So, the UPA's own case was that this is not a provision we can agree with and, therefore, they removed that provision from the anti-terrorism law. Having removed it from there, they brought in the POTA bail provision under Section 212 (6) of the Companies Act, which says:

> "Notwithstanding anything contained in the Code of Criminal Procedureâ€¦.the following offences which attract the punishment for fraud as provided inâ€¦.to a person accused of those offencesâ€¦no person shall be released on bail unless the prosecutor has been given notice where the prosecutor opposes it, the court is satisfied that reasonable grounds for believing that the person is not guilty of the offences."

Verbatim, full stop for full stop, comma for comma, they incorporated the POTA provision into the bail provision of this Act. Now this language exists in the narcotics law. When we invite the rest of the world to come to India, form a company, do business and invest in India, are we trying to say that in case you commit any of these offences you will never get bail or you will indefinitely never get bail? Therefore, most companies said that it is safer for them to switch over to a limited liability partnership than continue to do business.

Now, if you look at the other provisions of the Act, all offences under grievous laws relating to terrorism, narcotics, sedition, prevention of corruption etc., they say that ordinary courts will not try these cases and there will be special courts. So, all offences against a company will go to a Special Court. The ordinary Magistrate's jurisdiction is taken away. Are we trying to induce investors to come and invest in India or are we trying to scare them away from the country? We have, therefore, brought in an amendment that extremely harsh offences will be before a Special Court and the rest will be before the normal courts of the land. If a man wants to wind up a company, there has to be a provision in law. The case relating to winding up these days normally goes to a single judge of the High Court as one judge in every High Court is a company law judge. If somebody says that there is a commercial insolvency or any other reasoning or the company itself wants to be wound up, it goes to a single judge, there is a procedure to be followed and it gets wound up.

This Bill says that simple company matters and other matters go to a single judge, appeals go to a Division Bench and some extraordinary matters also go to a Division Bench. A company to be wound up has to go to a full Bench of three judges. What is the rationale? That is why I said either some of the provisions are oppressive or some of the provisions like having one judge or two judges or three judges could have even come by an oversight.

Now, let me give you another oversight provision. There are offences companies commit. If there is a company which does not follow the procedure and starts collecting deposits, it is a punishable offence. In the Act, we forgot to make it an offence. So it is the case of an oversight. If I run through each of these 14, the first two, requirement of capital and seal, the international standard practice now in corporate laws across the world is that you have done away with these requirements. So, here it has been brought at parity with international laws.

The next provision, section 76 says, we forgot to provide for an offence where somebody collects deposits in violation of law. We did not make it an offence under the Companies Act; so it has been made an offence.

You asked a question. It is a very standard speech we can deliver in every legislation that there must be greater transparency. World-over the practice is, in the old Companies Act from the very beginning, all resolutions of the Annual General Meeting are subject to public scrutiny, but Board resolutions are not. I will tell you the reason why Board resolutions are not subject to public scrutiny. A company decides in its Board, let us say it is an automobile company, that this is going to be my next model. The very next day, are they going to allow their business rivals to come to know of this? The company decides in its Board that this is going to be my next trade mark, this is the product on which I am going to now acquire an intellectual property. I am a pharmaceutical company; this is my formulation; this is the next drug I am manufacturing and what is my funding mechanism? In a Board resolution, you take all kinds of strategic, commercially confidential decisions.

Nowhere in the word are Board resolutions subject to public scrutiny. It is only the AGM resolutions which are subject to public scrutiny. Just because transparency and accountability are words which we in public life and politics are fond of using, we say make it transparent, make it accountable. So why not put cameras in every Board meeting of a company so that its secret intellectual property, its financial strategies are known to its business rivals? It will be the most accountable procedure and most transparent procedure. But then nobody is going to come and set up a company in India if we create such an environment for doing business. So, before we say, make it accountable, there is some conspiracy why you are taking it away, please see the consequences of what we are doing.

Then there is a provision that you set off past losses against future profits and only then declare a dividend. The meaning is, a company has accumulated losses. This year it has some profit. So it allows the losses to continue in the name of the banks and others. But, out of this profit, the majority decides to usurp the dividend in its pocket. In the old Companies Act the rule was very clear that you must first write off those losses and then start declaring dividends when your health is good. Probably in this Companies Act, the intention was the same. So, what we did was, we provided for a rule which says this. The declaration and payment of dividend rule 3, sub-rule 5 says this but the provisions is, the Act does not permit this. So it is obviously a drafting error and this has to be corrected.

Rectifying the requirement of transferring equity shares for an unclaimed dividend, now the rule is that if there is a dividend not claimed for a period of seven years, that dividend goes into the Investor Protection Fund. If for seven years, somebody does not claim dividend, the dividend will go into the Investor Protection Fund; so will the shares also go into the Investor Protection Fund. But the language in which the Act has been written and drafted is, the dividend will go after seven years but the shares may get transferred to the Investor Protection Fund in the first year itself. So, in one year you do not take dividend, your shares are lost. Obviously, there is an ambiguity there and that ambiguity had to be corrected.

There is this enabling provision about fraud. When you are auditing the affairs of a company –this is a view put up by the Institute of Chartered Accountants – there may be dozens of irregularities that you will find out. Is everyone of them to be reported to the Central Government or are the major ones to be reported?

There is a principle of *de minimis* that triviality is ignored. So, what is very small can be ignored and what are major ones are to be reported. All that it says is that a threshold will be fixed by the Government beyond which all such requirements will have to be reported; otherwise the Department of Company Affairs will become the largest Department in the Government of India. It will have only complaints arising out of some voucher for Rs. 100 which is not available. So, all these complaints will reach the Department of Company Affairs. That is not the intention. Therefore, a threshold will be fixed by the Department of Company Affairs and beyond that it will go to the Government of India.

With regard to related party transactions, a very large part of the corporate world, all chambers and many people have objected to this because procedurally we had made it difficult. What had we done in the Bill? Let us take a company in which some individuals control most of the shares. They have substantially owned subsidiaries. In related party transactions, only the procedures have been simplified. The procedure is that at the AGM, the persons, in relations to whom the resolution is being passed, will not vote and the rest of the minority shareholders will vote.

So, to have a related party transaction, you need the confidence of the minority shareholders. It said: "You need confidence of 75 per cent of them." That 75 per cent has been made easier instead of a special resolution. Special resolutions are required only when fundamental changes are being made in the business of a company; otherwise, normal resolutions are required so that special resolution becomes normal. That is all that is being done. You may have a majority of the shareholding in a company but you need the approval of the majority of the minority. The original provision was that you need the approval of three quarters of that minority, which may be extremely difficult. Therefore, people said: "It will become impossible to have related party transaction. This law requires to be simplified." There is an exemption of related party transactions and wholly owned subsidiaries, the principal controlled 100 per cent subsidiaries where there is no minority shareholding. So, there is nobody whose 50 per cent or 70 per cent consent you require. Then, in bail provisions we have said: "Except in heinous offences under the Companies Act, which is related to fraud under Section 447, for all others the normal bail provisions will apply. Only for this extreme offence, an extreme bail provision which was put in into this Act, will apply. There is a Special Court and a two-Judge Bench instead of a three-Judge Bench to hear the winding up of these cases.

Sir, none of the amendments has any ulterior motive. Therefore, nobody needs to claim that there is a high moral ground in opposing such an objection. With some of these provisions, doing business in India would become extremely difficult. There are some provisions which we are easing. There are some which were oversight. There are some which were left out. And there are some which came in but came in as a part of this thinking that we must make doing business extremely difficult. So, if somebody is arrested and he belongs to a company, a terrorist can get bail but he should never get bail. Now, this kind of thinking, I am afraid, we do not subscribe to. I, therefore, commend to this hon. House that these amendments be accepted.

HON. DEPUTY SPEAKER: The question is:

"That the Bill to amend the Companies Act, 2013, be taken into consideration."

The motion was adopted.

HON. DEPUTY SPEAKER: The House shall now take up clause-by-clause consideration of the Bill.

The question is:

"That clauses 2 to 21 stand part of the Bill."

The motion was adopted.

Clauses 2 to 21 were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

HON. DEPUTY SPEAKER: Motion moved:

"That the Bill be passed."

SHRI N.K. PREMACHANDRAN : Hon. Deputy Speaker, Sir, the Companies (Amendment) Bill, 2013 was passed by this House after it was discussed threadbare in the Standing Committee. For two times, that Amendment Bill was discussed in the Standing Committee. Now, the Companies (Amendment) Bill, 2014 is being passed without going through the scrutiny of the Standing Committee on Finance. So, passing this Bill is not

proper. My suggestion and submission before this August House is this. The amendments in the original Act were passed during 2013 by means of the recommendations of the Standing Committee for two times and after due diligence.

The hon. Minister is arguing about many things. Irregularity and fraud are entirely different. So, my point is that the amendments in the original Act during 2013 were made after due deliberations by the Parliamentary Standing Committee. My humble submission is that it is better that this Bill be referred to the Standing Committee which can have a very detailed scrutiny. Still we are not clear on certain aspects. So, the Standing Committee can examine those aspects. That is my humble submission before you, Sir. ...(*Interruptions*)

SHRI MALLIKARJUN KHARGE (GULBARGA): Sir, why there is hurry? Out of these 21 amendments ...(*Interruptions*) In a hurry, you want to bury this Act. ...(*Interruptions*) Therefore, I am requesting the hon. Minister to refer this Bill to the Standing Committee. ...(*Interruptions*) Already Section 176A, which is a new thing, we all welcome. But there are amendments where certain reservations are there. Why should this Bill not be referred to the Standing Committee or Select Committee? ...(*Interruptions*) The Finance Minister has to be considerate. Why is he so rigid? ...(*Interruptions*)

SHRI ARUN JAITLEY: In all the 14 amendments I have explained, if there was a plausible argument why those original provisions should remain even for a day, I would have agreed. But you want the investment environment in the country to be disrupted by these kinds of laws. In fact, it is not a great reflection on all of us, you and me both included, if by oversight or otherwise allow these provisions to go through in such a monumental law.

HON. DEPUTY SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.