

**Fourteenth Lok Sabha**

**Session : 7**

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**Participants : Dikshit Shri Sandeep, Radhakrishnan Shri Varkala, Gupta Shri Prem Chand, Mahtab Shri Bhartruhari, Gupta Shri Prem Chand, Swain Shri M.A. Kharabela, Oram Shri Jual**

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Title : Discussion on the Motion for consideration of the Companies (Amendment) Bill, 2006 as passed by Rajya Sabha (Bill passed).

MR. CHAIRMAN : Now, the House shall take up Item No.17 – Companies (Amendment) Bill, 2006.

THE MINISTER OF COMPANY AFFAIRS (SHRI PREM CHAND GUPTA): Sir, I beg to move \*\*:

“That the Bill further to amend the Companies Act, 1956, as passed by Rajya Sabha, be taken into consideration.”

Sir, it may be recalled that the said amendment Bill was introduced in the Rajya Sabha on 6<sup>th</sup> March, 2006 and was passed by the Rajya Sabha on 21<sup>st</sup> March, 2006. The Ministry of Company Affairs is implementing the e-governance initiative through a project termed as MCA-21. This project will provide the public, the corporate entities and others an easy and secured on-line access to MCA services including filing of documents and data access to corporate information required to be in the public domain under the statute at any time and from anywhere. This would result in efficiency in provisions of professional services and statutory supervision of corporate processes through the use of modern information technology and computers[r4].

Sir, the proposed amendments enable modifications of the Act by notification in relation to amendment and format of electronic records and provide for electronic identity for company directors. There are adequate safeguards provided in the proposals in respect of use of powers to subordinate legislation that would follow the enactment of the proposed amendment. The changes proposed will enable implementation of MCA-21 project which, in turn, will modernise administration of the corporate sector in India.

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\*\* Moved with the recommendation of the President.

Therefore, the limited changes proposed to enable implementation of MCA-21 are commended for approval of the House.

MR. CHAIRMAN : Motion moved:

“That the Bill further to amend the Companies Act, 1956, as passed by Rajya Sabha, be taken into consideration.”

SHRI KHARABELA SWAIN (BALASORE): Sir, I rise to support this Companies (Amendment) Bill, 2006. This Bill, as I presume, has already been passed by the Rajya Sabha without any debate and, therefore, I am also not very keen on a debate on this Bill here.

I am very happy that the Government has, at least, introduced a Bill which would facilitate e-governance in this country. I think, it was long over-due. As a Member of the Standing Committee on Finance, I felt, this sort of a Bill should have been introduced much before. While I appreciate the fact that people would now be allowed to file their documents from anywhere, I particularly appreciate the point that any director of a company is going to have a Director's Identification Number. This is one of the most important features of this Bill. It is because as a Member of the Joint Parliamentary Committee probing the security scam, which worked for two years during the Thirteenth Lok Sabha, I know that it is the directors of the financial institutions and companies who mostly create various financial irregularities and frauds. There would be a company director who would cause a lot of financial loss to a company but by virtue of his being a director in another company, he would take loan. But if the Government provides a Director's Identification Number, then it would be easy for the public and also for the companies to know that this was the man who had committed a fraud elsewhere. So, I appreciate this provision in the Bill. For those people who become directors in multiple companies this is going to serve as a deterrent from causing any fraud or irregularities.

**16.24 hrs.**

(Dr. Laxminarayan Pandey *in the Chair*)

I am also happy about the fact that it has been provided in the Bill that a director could not have more than one identification number. It was found that in PAN one person has filed application for four to five PAN and that has created a situation conducive for him to perpetrate a fraud and take loan from different banks and from different financial institutions. I appreciate the fact that there should be one identification number for one director. He should not be allowed to file applications by giving false addresses and get more than one number.

The other point is about the obligation of the director to intimate the Director's Identification Number to the concerned companies. This is also very much required because whenever we file any return to the Income Tax Department, or in any other case we are obliged now to indicate our PAN numbers.

Just like that, Director Identification Number is also absolutely required and the obligation of the company to inform the Director Identification Number to the Registrar is also an appreciable feature in this Bill.

I am happy that violation of any such provision calls for a fine of Rs. 500 per day. That is quite appreciable. You will have to pay a penalty of Rs. 500 per day. But I do not think it is less. Paying Rs. 500 everyday, I think, is quite heavy.

I thank the hon. Minister for bringing out such a good Bill to enhance corporate governance in the country and to strengthen corporate entities. I appreciate and support this Bill.

SHRI SANDEEP DIKSHIT (EAST DELHI): Sir, I rise to support this Bill and the amendments that are being brought in. As my predecessor, Shri Swain, has said, this Bill could have been easily passed without discussion. But since there is a debate on the Bill, I would like to outline a few points here.

It is a very progressive piece of legislation which enables companies and other entities across India to use the great benefits that the electronics and information technology sectors have brought in. The easiest way of filing returns will not only ease the filing of returns wherever they are sitting, through their designated Directors but there will also be a reduction of human interface with the Government Departments. This filing of returns will necessarily lead to a lot of reduction of general harassment which, all of us know, will happen whenever people contact the Government Departments. I think, for this purpose, the Government and the Minister need to be congratulated for bringing this piece of legislation. It will ensure that companies can file their returns fast and also

ensure that results of what they are filing in can be available quickly through Internet and other electronic means. It will mean that information can be assessed and collected fast. Even our information agencies that use the kind of information that is put in will feel it easier to collect the information and display the same for public access.

I must outline some of the provisions of the Bill here. One is, of course, about the Director Identification Number which my predecessor talked about. But when you see the documents pertaining to the Bill that is being proposed, I think a very comprehensive and a very detailed procedure is being followed. A legacy data for the last two years is being computerised and scanned so that once the system comes into effect, some historical data is already available there. It is already talking about opening up of about 52 or 53 locations where offices shall be established that shall do hand-holding operations for companies, corporations and entities that may not themselves be able to shift over from a physical form of filing

to the electronic form of filing. Normally, it is seen that whenever something goes electronic, it is not an interface that is extremely easy for the use of a large number of people. There are barriers created by non-accessibility of Internet. There are problems of language and there are problems of people trying to understand how forms are filled in. I think this small provision in which they will envisage, for the next two years, that physical help is available across the 52 or 53 important locations is an excellent step taken by the Department of Company Affairs.

There is also a provision of digital signature certification to ensure that documents remain safe and secure and you can actually give secure options to companies to file in. I would tell the Minister and the Government that technology in the Internet and the electronic fields is changing extremely fast. While we keep creating more and more secure options on the Net, there are people constantly trying to break any form of secure option that is available. Therefore, to counter that and to prevent that, very often, experts in IT field are coming up with new intricate options to keep documents secure, to keep information secure and to keep database secure.

There is a provision in this Bill that wherever changes are required in the electronic filling in of forms, it need not be brought in further legislation, but it can be just notified. It may be kept in Parliament for thirty days' notice and since it needs quick reflection, it may quickly be taken on after that. I think that is a step that is to be commended. I would only say the link between the Department of IT which I am sure keeps track of changes, which are constantly going on, and the Department of Company Affairs should be constant so that wherever an opportunity comes people realise that there are new forms of hacking or opening into data bases available and there are better forms of protection available. There are better forms of keeping lines more secure that should be taken immediately taken on and put into the system.

My last urge is that, though this form of application has come in some fields -- we have already found that this has come in the income tax -- there are large number of interfaces still available between the Government of India and citizens, and between various State Governments and its citizens where electronic form of filling or electronic interface with the Governments has not really taken off. There are lot of programmes and lot of skills that have been spoken about, but very few of us have seen the actual results of the kind of initiative that could be taken up through what is broadly called e-governance in India.

I would take this opportunity to urge the Government to speedily take on, wherever possible, this form of interface. This reduces not just harassment, but enables people to not travel long distances. It helps people from stopping to interface with rather tough and hostile Government environment. Otherwise, they have to go to Government offices to file applications or simply just access small applications. It would enable more people in a family or in an economic entity to use the interface, understand, realise and even fill in forms. It would generally lead to probably more honest work environment in India.

Mr. Chairman, I thank you for giving me this opportunity. Once again I support this Bill.

SHRI VARKALA RADHAKRISHNAN (CHIRAYINKIL): Sir, I rise to support the Bill. But at the same time I may have to point out certain difficulties that may arise in the implementation of the Act. The Bill appears to be simple one. This has been introduced mainly for two purposes. One is to issue Director Identification Number by the Central Government. Second purpose is to switch over to electronic forms. These are the two main purposes for which the Amendment Bill has been introduced.

Regarding the issue of Identification Number Cards, there may arise some difficulties. Now, the time allotted for getting the Director Identification Number for persons who have become Directors without a number is sixty days. They will have to apply for the same within sixty days. I do not know whether this will be sufficient for all the Directors who have been appointed without an Identification Number. I do not know whether we will be able to comply with this provision within the time allotted under the statute. This may be looked into. Sixty days may not be sufficient because thousands and thousands of people are appointed as Directors without an Identification Number. I do not know whether all of them would be able to comply with the provisions of this Bill. That is one thing.

Secondly, time allotted for the Registrar for giving the Identification Number is one week. That also is not workable because one week's time is not sufficient. How can he give Identification Number to all these people within a period of one week? The idea is good. The provision is also good. But how far it will be workable is a matter to be seen. In a country like ours I do not know whether this provision of the Bill would be complied with as desired by the statute. There are practical difficulties which you may please look into. I think, you will have to come with another amendment. Do not come for that purpose.

Now, coming to switching over to electronic form, that is a laborious work. For example, switching over all these applications and then details, all these will have to be in electronic form. That is a good thing. I fully agree. But there also, some difficulties may arise. That I cannot predict now. What kinds of difficulties may arise in the future is a matter to be seen afterwards. Again, with abundant caution, I advise the Government that switch over, all of a sudden, to electronic form, will not be possible. But the electronic form is good, and electronic document also is as valid as per the new Act, that is, Information Technology Act, 2000. By this Act, all these electronic forms become a documentary evidence. So, I would like to suggest whether all the electronic form under Section 610 B of the Act, how far it will be possible, that is also a matter to be worked into. Since the Rajya Sabha has already passed it, I am not moving any amendment because it will go back to the House again. So, I do not go to that purpose. But whether this Technology Act Section 610-B will be fully implemented, this is a matter to be decided.

With these observations, I support the Bill.

श्री जुएल ओराम (सुन्दरगढ़) सभापति महोदय, मैं कंपनी (संशोधन) विधेयक, 2006 को सपोर्ट करता हूँ और बाकी माननीय सदस्यों ने जो विचार रखे हैं, उनसे सहमत होते हुए खाली एक ही प्रोविजन की तरफ माननीय मंत्री जी का ध्यान आकर्षित करना चाहता हूँ। इसमें फाइन का जो प्रोविजन है, पता नहीं, छोटी-मोटी कम्पनी कोई गलती करेगी या नहीं, लेकिन अगर कम्पनी का डायरेक्टर गलती करेगा तो पांच हजार रुपए का इसमें आपने फाइन रखा है। इससे पता नहीं क्या परिस्थिति बनेगी। आप पर-डे 500 रुपए फाइन उस पर एड करते जाएंगे। यह मेरा अज्ञान हो सकता है, लेकिन

मैं खाली क्लेरीफिकेशन चाहता हूँ, माननीय मंत्री जी जब उत्तर दें तो इस बारे में बताएं। अगर कोई कम्पनी जानबूझ कर गलती करे तो उस पर कितना फाइन होगा - एक बार पकड़ेंगे तो पांच हजार रुपए होगा और अगर वह पांच-सात दिन डिले कर दें तो पांच-सात-दस हजार रुपए और फाइन होगा। उसके बाद आप कुछ नहीं कर सकते हैं, क्योंकि आप इसे एक्ट में, रूल में ला रहे हैं। फिर क्या करेंगे, पता नहीं। इसलिए इस स्ट्रिजेंट प्रोविजन में कितना दम है, क्योंकि जो फाइन का प्रोविजन है, उसके आधार पर ही आकलन होता है। आपने इसमें जो व्यवस्था रखी है, वह बहुत ही कम लगती है। मेरे ख्याल से कोई कम्पनी अपना रजिस्ट्रेशन और बाकी व्यवस्था करने के लिए 20-25 हजार रुपए खर्च करती होगी, उस पर आप पांच हजार रुपए फाइन करेंगे। अगर वह नहीं दे और गलती करती जाएगी तो फिर उससे 500 रुपए डेली के हिसाब से लेंगे। मेरे विचार से यह कुछ भी नहीं है - इसे आप देख लें। हम आपको पूरा सपोर्ट कर रहे हैं। हम गांव से आते हैं। हम वहां जैसे जमीन का एनक्रोचमेंट करते हैं, ताकि हमारे नाम से फाइन आदि होकर रिकार्ड में आ जाए। इसलिए आगे चल कर इसमें भी ऐसा कुछ न हो, जिससे कि कोई लू-पोल्स रहे - आप जो सोच रहे हैं, इस तरह कुछ भी हो सकता है। इसलिए इसे आप देख लीजिए।

SHRI B. MAHTAB (CUTTACK): Thank you, Mr. Chairman.

The accounts payable, accounts receivable, invoices, purchase orders are the four words which I have mentioned. They sound very boring but are critical back office functions. If one gets them wrong, the whole institution falls down and companies can go bust. Get them deliberately wrong and people go to prison eventually. Corporate America woke up to the prison part just a while ago. I would like to ask the Minister, with this Bill have we woken up to that provision? We have come across a large number of vanishing companies within last 10-15 years. What steps are there to stop a company from vanishing? What method is there to track them and to punish them? This Bill, of course, is confined to, more or less, giving a statutory provision, giving it a legal structure by e-governance and a number of amendments to that effect has been mentioned but, specially, the MCA-21 is the point which is being discussed. It is clear that reforms and upgradation of basic legal framework for corporate entities is essential for sustainable economic reforms.

The Bill is said to be comprehensive with a focus on promoting greater transparency and better governance. It is recognized that the framework for regulation of corporate entities has to be in tune with the emerging economic scenario so as to encourage corporate governance and protect the investors' interest and other stakeholders. Dr. J.J. Irani was appointed and a Committee was formed and that committee, which was set up on 2<sup>nd</sup> December, 2004, has come out with a report in May, 2005 stating the flaws of existing Companies Act and pressed for the strengthening of reforms in various disciplines as covered in principal Act relating to regulation of companies in the country. The report had stated, had stressed on creating a healthy and investment destination for foreign investors. The objective was also to create more remunerative opportunities for the Indian investors also. There must be changes in the Act, which the Committee had stated, to comply with the changing business environment in the country. I would like to make it clear, Sir, that the proposed changes in the Companies Act will emphasize more on self-regulation and greater accountability through disclosures. Now, the onus is on the companies themselves. The law when enacted in full, will entail penalties including criminal liability for violations of prescribed norms. The Government has launched a major e-governance project known as MCA-21; MCA - Ministry of Company Affairs - and 21 meaning 21<sup>st</sup> Century on 1<sup>st</sup> March, 2005, which was launched in

Coimbatore. I do not know whether the Minister also went to Jaipur to launch that but it started with the Prime Minister's presence. It started on 1<sup>st</sup> March, 2005. It was a sixty-week project, which I had gathered. Through this, the entire business process of registrar of Companies is being shifted to e-governance mode. But, the question is has it been able to eliminate the physical interface between companies and the ROCs. All services such as registration of new companies, filing of annual returns and balance sheets and also viewing of documents, are all these things being done online? What is the position today? The Government had come out with a concept paper on Limited Liability Partnership Law. What steps have been taken in this regard? There is a grave problem today which is being faced due to slow liquidation process.

If a company has outlived its utility or if the directors of a company want to close the company, can they do that in simple terms? How many such cases are there? I need not refer to that now. But I think the Minister is aware of it. For long years, some companies want to wind up, but they are not able to do so. Is that flexibility available in this Bill or do you intend to bring that type of provision in future? The House would like to know about that. Then, what steps have been taken to speed up the mechanism and improve on the recovery rate within the existing legal framework? My doubt is, this issue has not been addressed in this Bill.

The major changes envisaged through this Amendment Bill are, allotment of Director Identification Number (DIN), which will, no doubt, help in paperless transaction, e-filing facility which includes incorporation of new companies, filing of Annual and other Statutory Returns, registration and verification of charges and applying for various approvals and clearances. Besides, inspection of company documents, request for certified copies and reporting of investor grievances can be done through the MCA-21 portal.

The allotment of Director Identification Number and digital signature are essential pre-requisites for e-filing. This will, no doubt, help companies. I commend the Government for this. The Government has done the right thing. This will help the investors to easily get the information on the companies which they are seeking to know. According to the provisions of the Companies Act, a person is entitled to file returns in the physical form also. Manual filing is, therefore, a legally available option. You cannot insist on e-filing alone unless the relevant section in the Act is amended. Have you done it or are you keeping both the options open? More than the forms, the new rules also mandate that the director of the company obtain a Director Identification Number (DIN) and digital signature.

At the end, I would like to know as to why the Ministry of Company Affairs was in such a hurry to start MCA-21 in March, 2005, when the Bill was yet to be placed in the Parliament, what to speak of passing it. What was the urgency? The country and the House should know the reason for it. Why did the Government want to put the cart before the horse? Can the Minister explain it? Does he have an answer?

Sir, all of us are aware that 24 amendments have been made to the Companies Act in the past, with major amendments having been made in 1988 and 2002. The MCA-21 is one of the largest e-governance projects being carried out at a cost of Rs. 350 crore or more. It was supposed to have ended on 24<sup>th</sup> April, 2006. MCA-21 opens a whole new world of information on the corporate sector by becoming the largest ever repository of information.

The Ministry of Company Affairs should keep pace with the world. Dealing with frauds is an important role on which little has been achieved. I would urge that more steps be taken to protect the interests of citizens of this country.

With these words, I support the Bill, but at the same time, I would like to hear clarifications on the questions which I posed to the Minister.

SHRI PREM CHAND GUPTA : Sir, the Companies Act 1956 was enacted in 1956 and has been amended 24 times, as has been rightly said. It was merely a patchwork. In different committees and standing committees, we have been jointly members with Shri Kharabela Swain, Shri Mahtab and Shri Radhakrishnan, who is not present in the House at the moment.

SHRI KHARABELA SWAIN : Shri Jairam Ramesh was also a member.

SHRI PREM CHAND GUPTA: He is now my colleague in the Ministry.

The problem has been that a few crore documents were filed every year with different registrar offices. It was humanly not possible to go through all the documents whether they were right or what they were containing or what they were not containing. From 30,000 companies in 1956, as of now, we have over seven lakh companies. The workload has increased. There was a hue and cry that documents were not available and there was harassment at ROC Offices.

The step, to introduce MCA 21, which we have decided to take is a revolutionary step. It is a historical step. In different committees, this issue was discussed and it was approved. With this, the e-filing would reduce the interface, the issue which was raised by my colleagues. The interface of public with Government officials would reduce to a great extent and MCA 21 would help in that.

Sir, with seven lakh companies, ROC offices had become mostly acting as receiving documents only. There was no strength left for any inspection, any findings as to what is going on in different companies. We had the cases of corporate frauds, we had the issue of many sick companies. So, with MCA 21, all these factors would be under control. I hope that we would be able to look into these issues more efficiently.

Sir, an issue has been raised by Shri Sandeep Dixit that technology is changing very fast and security of data is very important. There is no doubt about this. This project, MCA 21, provides for adequate safety measures, on which he can be rest assured.

Shri Radhakrishnan, who is not present here, has stated that whether 60 days' time is sufficient for directors to apply for DIN certificate. I am glad to tell him that almost 1.5 lakh directors have already applied for DIN certificate. Our offices have been allotting DIN without any delay. If there is any problem, we will look into that.

Sir, you would appreciate that in any new system whenever it is introduced, there may be some teething problems in the beginning. But as far as MCA 21 is concerned, we are in control and we have started this MCA 21 project in almost 12 stations and except for some teething problems the project is taking place smoothly.

Shri Mahtab mentioned about accounts receivable and payable. I want to tell the hon. Members that with digital signature certificates, accounts cannot be deliberately made wrong. It is not possible. Whatever you file is stored and it cannot be changed later on. So safety measure has been taken care of.

Sir, DIN would definitely curb the menace of vanishing companies. Today, many companies file their directors name in the name of their drivers, their peons, domestic helps, etc. With this DIN you would be able to get the complete history of a director as to on how many companies' board he is director, what is his background, whether he is a defaulter, all the information would be available on Internet. So, there would be no chance of any wrong information. In fact, to a great extent, we would be able to check the menace of vanishing companies.

Sir, when UPA Government came into power, we were finding that almost one and half lakh companies were not filing returns. We tried to look into this issue. We gave them an easy exit route and I am glad to say that

almost 30,000 companies came forward to take advantage of this scheme. We are trying our best. Sir, as a habit, there are some wrong-doers. We have to look into that aspect also.

Mr. Mahtab asked for LLP. LLP Bill is under consideration of the Government and I may tell him that very soon he will see that. On the Companies Act, 1956 Dr. J.J. Irani's Committee Report has been received. The Bill is under final drafting. I feel and I hope that we should be able to introduce the Bill in the hon. House in the Monsoon Session.

Official liquidation, as Mr. Mahtab said, is a serious problem. I fully agree with him. There are companies in liquidation for the last fifty years. Over fifty years, there are companies in liquidation. Here, we are just helpless. We are trying to resolve it by bringing some changes very soon. Amendments in the Companies Act in the year 2002 were made to set up National Company Law Tribunal. However, these were challenged in the courts and the matter is presently pending before hon. Supreme Court. Once the order of the Supreme Court is received, the Government shall take further steps.

Closure of companies would be easier with MCA 21 in place. It would be easier because we have reduced the number of forms. Earlier there were many forms to be filed by a company which we have reduced to some extent. With the changing time, we would ensure that there is no doubt in it. E-filing is to become mandatory. That is why we are here in the House today. We want your permission. Although we could do this under IT Act, 2000 but we decided that we should go to the hon. House and take permission to introduce E-filing as mandatory.

MCA 21 would deal with frauds also because all the information about the companies would be available on the Internet. Except for certain informations which are not in public domain, rest everything will be available on Internet. This will definitely check the frauds, which have taken place in the past, as more information would be available.

So, Sir, these were the issues which were raised by the hon. Members. I am grateful to my friends who wholeheartedly supported this Bill and for any apprehension on their part I am always available to them. They can always come and consult me and they can bring it to my notice. With these words, I would request that the House may pass this Bill.

MR. CHAIRMAN : The question is:

“That the Bill further to amend the Companies Act, 1956, as passed by Rajya Sabha, be taken into consideration.”

*The motion was adopted.*

MR. CHAIRMAN: Now the House will take up clause by clause consideration of the Bill.

The question is :

“That clauses 2 to 4 stand part of the Bill ”

*The motion was adopted.*



## *Clauses 2 to 4 were added to the Bill.*

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

**17.00 hrs.**

MR. CHAIRMAN : Now, the Minister may move that the Bill be passed.

SHRI PREM CHAND GUPTA: I beg to move:

“That the Bill be passed. ”

MR. CHAIRMAN: The question is:

“That the Bill be passed.”

*The motion was adopted.*

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**17.01 hrs.**

**CESS LAWS (REPEALING AND AMENDING) BILL, 2005 \***