

Lack of clarity on adjudicatory forum - an issue to be clarified in the proposed Companies Bill in I

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As everybody admits, by its very nature, company management and the governing law will always be complicated. Company is a juristic person, it will survive irrespective of its members coming and going, it is run by professionals called directors, company needs to adhere to the strict rules pertaining to disclosure of material information to the statutory bodies, fairness is to be adhered to at any cost and as such the company management will always be complicated. Indian Companies Act, 1956 deal with the issues pertaining to incorporation, management and winding-up of companies in India. With many amendments and new concepts coming-in, a need was felt to repeal the existing companies act, 1956 and to enact a new company law. The concept paper with regard to the proposed companies bill is kept in the official websites seeking suggestions/comments from the public. Though, the ministry of corporate affairs in India very frequently highlights the new companies bill, it is yet to be passed and it still remains as a Bill.

Under the existing companies act, 1956, the central government to some extent, the Registrar of Companies, the Company Law Board, the Company Court and SEBI in case of listed companies, are conferred with certain powers like calling for information, taking action for violation of law, the prevention of mismanagement and the liquidation process etc. It is there everywhere that it is the responsibility of the state to safeguard the interests of the public and it always includes shareholders. As such, everywhere the state's authority to take appropriate action against the erring companies and erring officials is preserved though the state will very rarely exercise its power. Apart from the other authorities, the Company Law Board and Company Court are conferred with certain powers like entertaining applications from the minority who allege oppression and mismanagement, the applications seeking winding-up, sanctioning the scheme of amalgamation etc. Again, the power of Company Law Board is limited while dealing with the issue of remedial nature. Thus, the shareholder or the person concerned or the company, are normally confused as to where he should go seeking redressal in a company litigation and its a fact. Again, when the power is split among many independent forums, then, there will be confusion and administration of justice will be difficult. Addressing this, the state has proposed to set-up a tribunal called "National Company Law Tribunal" and also "Appellate Tribunal". The issue is challenged before the Constitutional Court and the issue is now pending before the Supreme Court of India.

In the proposed Companies Bill, there is a provision for establishment of National Company Law Tribunal and the issue of its Jurisdiction in entertaining all company litigation is to be further stressed and clarified.

I do strongly feel that there is no clarity under the Indian Companies Act, 1956 as to where a company issue is to be agitated and it is to be clarified in the proposed bill. It is very very vital where India attracts so much FDI and where there tend to be a rise in Economic Growth in India.