Workshop on ‘The Companies Bill, 2012’

The Chamber organised a Workshop on ‘The Companies Bill, 2012’ on 9th February, 2013 from 11.30 a.m. at Hotel Hindusthan International, Kolkata. The Panel Speakers at the Workshop were Shri B Ganesh, Partner, Deloitte Haskins & Sells, Hyderabad and Shri Vinod Kothari, eminent Chartered Accountant and Company Secretary and an internationally acclaimed HRD consultant on specialised financial subjects. The Workshop was attended by ……participants representing Company Secretaries and Senior Executives of member concerns of the Chamber.

Welcoming the participants Shri S M Surana, Chairman, Taxation & Company Affairs Standing Committee of the Chamber observed that the year 2012 has been quite eventful for the Indian economy because the robust GDP growth witnessed in the earlier years had declined. Besides, in order to arrest the decline, the Government of India has made some serious efforts to introduce reforms by way of amendments to a number of Acts and Laws. These include Foreign Investment in Retail, Banking Laws, enunciation of the National Manufacturing Policy, Broadcasting and Aviation Policy and amendments to The Companies Act, 1956. He stated that the objective of the Workshop was to analyse the repercussions of the various provisions of The Companies Bill, 2012. This Bill, according to Shri Surana, has proposed to introduce a number of new features which include special regulatory issues concerning ‘One Person Company’, and ‘Woman Director’. Besides, other features include Corporate Social Responsibility (CSR), ‘dominant companies’ and e-Governance. Shri Surana thus, expected the Companies Bill, 2012 to be more user-friendly and provide a greater congenial atmosphere for companies to undertake business and make larger contribution to the economic growth of our country.

Shri B Ganesh, Partner, Deloitte Haskins & Sells, Hyderabad observed that the Companies Bill, 2012 aims to introduce greater flexibility to the Company Secretaries and at the same time, restricts Accountants and Auditors. The Bill mainly focuses on the accountability of Auditors and Company Directors so as to make the accounting procedure of the company more transparent. Shri Ganesh emphasised that the Bill, for the first time has made proprietors of a business organisation equally accountable for the accounting transparency of the company as the Auditor. He emphasised that the Bill could be considered path-breaking from the perspective that for the first time, it has introduced imprisonment as a penalty to discrepancies in the audit and accounts of a Company and the failure to comply with the norms of The Companies Act. The penalty introduced by the new law ranges between fines of a few lakhs of rupees to imprisonment upto 10 years. Thus, in totality the Companies Act regulates the role of Auditors so as to ensure that financial differences that tantamount to fraud are detected at an early stage.

The Companies Bill, 2012 has also allotted a judicial role to NFRA- (National Financial Regulatory Authority). The NFRA has also been allotted the right to issue Audit and Accounts Standards under the Company Law. Such regulations according to Shri Ganesh have been put overboard as a panacea to declining standards of Accounting in India. The non-compliance with the standards and norms fixed by the NFRA is also liable to penalties. In this way the Companies Bill also reduces the burden of the judiciary, Shri Ganesh stated. He emphasised that the Companies Bill, 2012 has proposed to change the definition of 'Control' and 'Association'. This marks the versatility that has been allotted to the structure of Company law which ensures adaptability to the changing circumstances. From the amendments made to the Companies Law, it is clear that though it makes governance stringent, yet it fails to deal with 'Professional Skepticism'.

Shri Ganesh observed that the Companies Bill, 2012 mandates Corporate Social Responsibility (CSR) for all corporate bodies with a net profit of above Rs. 5 crore before taxation or 2 per cent of the average profit in the last 3 years, whichever is more, thereby outlining the social responsibility that a corporate organisation holds towards reducing the brunt of unhealthy competition. Shri Ganesh also stated that the new Bill should be made compatible with IFRS to meet financial standards in the changing global scenario.

Shri Vinod Kothari, eminent Chartered Accountant and Company Secretary observed that The Companies Act, 1956 which contained a total of 658 Sections and 14 Schedules had been reduced to 470 Sections and 7 Schedules. A large part of the provisions under the Act had been converted from being statutes to being Rules. The Companies Bill, 2012, according to Shri Kothari increases the levels of exemptions as well as Special Resolutions. It also relieves the corporate bodies from the permits that it needed to acquire from the Government before carrying out certain functions. Shri Kothari highlighted that, over and of above all the aforesaid amendments and additions the Companies Bill, 2012 allows a company to be kept dormant for certain period of time after being formed and before it could start its operations. The corporate bodies would also have to follow the norms placed under 'Private Placement Code' for carrying out private placements. Company Law has been made more stringent through the introduction of non-bailable warrants for all monetary frauds. The Sections of the Bill which make provisions for non-bailable warrants include 7(5) & 6, 34, 36, 38(1), 46(5), 56(7), 66(10), 140(5), 206(4), 213, 229, 251, 339(3), 448, Shri Kothari pointed out.

The Bill increases the statutory liabilities of auditors by making them accountable to the banks for a defaulting company. The banks can claim money not paid by the company from its auditors in case the former defaulted in repaying the bank. The Companies Bill, 2012 for the first time includes a separate section for small companies, Shri Kothari stated. It also incorporates entrenchment provisions for companies with ‘Entrenched Capital’.

The Board of Directors of a Company and CFO, according to the new law must have Directors who are residents of India i.e. the Director has been dwelling in India for atleast 182 days and provisions for a ‘Woman Director’ should also be made on a mandatory basis. The age of a Director has also been fixed between a minimum of 25 years and a maximum of 75 years. Other important provisions incorporated by the Companies Bill, 2012 include prosecution against absence in Board Meetings by a Director without seeking a Leave of Absence. In case the Director failed to attend the meetings on a regular basis throughout the month without providing a Leave of Absence he would have to vacate his office. However, according to Shri Kothari, the Bill leaves out the provisions for Board Meetings in a ‘One Person Company’. The Bill makes effective provisions that save a Director against prosecution provided he did not fail to report fraudulent activities in a diligent manner. Resignation procedures have been relaxed by the Bill. According to the provisions of the Bill, resignation from a post would become effective on submitting an application even if the company does not accept the employee’s resignation, Shri Kothari observed.

Shri Santosh Choraria, Co-Chairman, Taxation & Company Affairs Standing Committee offered a hearty vote of thanks to the Learned Speakers.