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FUGITIVE ECONOMIC OFFENDERS BILL, 2018



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The law is important as it serves as the guideline for the conduct of the citizens. In the past decade or so in India various laws have been amended, few laws which have lost their significance in the current realm have been repealed; while, there are number of new laws which have been enacted. Whenever there is a new Bill, it is pertinent to understand the reason why the legislation needs to be enacted and whether the same is a reactionary or well-thought of legislation.

The Satyam scam highlighted several loopholes in the Indian corporate governance like the ineffectiveness of the Board, failure of the independent directors, prevalence of insider trading, role of the auditors, unethical conduct, fraudulent accounting and non-disclosure of material facts to the shareholders.

Post Satyam, substantial changes were introduced with respect to corporate governance in India. Over a period of time, many new laws have been enacted or provisions introduced to regulate corporate conduct.

In April 2014, SEBI amended Clause 49 of the Listing Agreement while in 2015, SEBI framed the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 applicable to all listed companies, and provided for stringent guidelines relating to reporting, disclosure of material events and actual and suspected fraud. Further, the Companies Act 1956 was repealed and replaced with the new Companies Act, 2013 (CA 2013). The CA 2013 provides for corporate fraud as a criminal offence. It clearly sets out the obligations on auditors, cost accountants and company secretaries to report instances of fraud and emphasises the responsibility and accountability of auditors and independent directors.

Even in case of Insolvency and Bankruptcy, there were multitude of laws (Sick Industrial Companies (Special Provision) Act, 1985 (SICA), SARFAESI Act, 2002 (SARFAESI Act), the Recovery of Debts due to Banks and financial institutions Act, 1993 (RDDBFI Act), Presidency Towns Insolvency Act, 1909, Provincial Insolvency Act, 1920, CA 2013) and to add to this various judicial forums, adjudicatory bodies and Tribunals to seek relief. In view of unclear knowledge about the forum and in light of the overlapping decisions, there was large number of stressed assets (NPAs) with very low recovery rates. There was therefore a need for specialized forum with a uniform procedure to oversee all liquidation and insolvency proceedings. It was with this purpose the Insolvency and Bankruptcy Code, 2016 (IBC) was enacted. The IBC has repealed and/or amended the conflicting laws and come up with a uniform procedure.

Further, in order to further streamline the existing framework for resolution of stressed assets the RBI has recently in February 2018, issued a revised framework whereby extant instructions on resolution of stressed assets such as Framework for Revitalising Distressed Assets, Corporate Debt Restructuring Scheme (CDR), Flexible Structuring of Existing Long Term Project Loans, Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR and Scheme for Sustainable Structuring of Stressed Assets (S4A) have been withdrawn with immediate effect. In the revised framework, it has been clarified that all accounts, including such accounts where any of the schemes have been invoked but not yet implemented, shall be governed by the revised framework.

While, the Banks were still trying to grapple with and fathom the extent of the NPAs, yet another financial fraud to the tune of approximately Rs.13,000 crores (PNB Fraud) has come to light. Like in so many other cases (Lalit Modi, Vijaya Mallaya, bookie Sanjeev Kumar Chawla, Jatinder Angurala and his wife accused of financial fraud) the perpetrators of the PNB fraud are currently not in India and residing in another jurisdiction.



In order to curb such future instances wherein a person leaves the country to avoid criminal prosecution and evade being arrested for economic fraud the Union Cabinet has approved introduction of Fugitive Economic Offenders Bill, 2018 in the Parliament. While the Bill is being considered by some as a strong deterrent to people fleeing the country after committing a crime, there are other who are pointing out the flaws in the proposed legislation. Any law evolves gradually and time will only prove whether the same is a flawed or effective but the question needs to be addressed - what is new in this proposed legislation.

On closer reading of the provisions of the proposed legislation, one will observe certain similarity with the provisions of the PMLA. In fact, not only the definitions but also the list of Scheduled Offences have been incorporated from PMLA with the increased threshold of Rs.100 crores as against Rs.10 crores under PMLA.

The Bill defines the terms 'fugitive economic offender' and provides for proclaiming an economic offender who has fled the country as a fugitive where the offence is above Rs100 crore. In such cases the authorized officers may by a written order confiscating the assets for a period of 180 before making an application to the Special Court in order to prevent asset stripping and with a view to preserve the property. The power to search/seizure and attachment of property is also provided under various Acts like SARFAESI Act, RDDBFI Act, Criminal Procedure Code, 1973, Civil Procedure Code, 1908, Income Tax, FEMA, PMLA, Benami Transactions (Prohibition) Amendment Act, 2016, IBC etc. Under these laws the confiscation of property is done after completing various stages, which has been skipped under this Bill.



The Bill lays down the procedure for making an application to the Special Court for declaring an individual a fugitive economic offender and provides that a notice will be issued not only to the individual alleged as fugitive economic offender but also to other persons who has any interest in the property. On declaration of the individual as fugitive economic offender, the property may be confiscated and an insolvency professional is proposed to be appointed as the administrator to manage and deal with the property. The Bill empowers the administrator with the disposal of the confiscated property to satisfy the final list of creditors or as per the order of priority as set out under IBC, SARFAESI Act or RDDBFI Act.

While under PMLA there is confiscation of property of any description which are proceeds of crime, the focus of this Bill is on the individual and his property and is not only limited to property which are proceeds of crime.

Since the individual is alleged as fugitive economic offender and the Special Court presumes this fact, the burden shifts on the individual to prove that the individual is not a fugitive economic offender and the property is not proceeds of crime. Considering the draconian nature of the provision and the implications of the same the Bill provides that the standard of proof should be beyond reasonable doubt.

The intent of the Bill is lauded but ideally, any person who has fled the country to evade the process of Indian law should be brought under the ambit of this proposed legislation. A financial fraud whether it is of Rs.10 crores or Rs.100 crores involves the money of the already burdened tax payers. Simultaneously efforts should also be taken to improve the enforcement process, like revisiting the extradition treaties, streamlining the multiple laws having similar intent and/or provisions, reorganising multiple investigating agencies, making the directors, auditors, key managerial persons be it in the Banks or the errant corporate entities accountable quickly and effectively.

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