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THE LEGALITY OF CORPORATE AMNESTY: ASSESSING THE EFFICACY OF THE COMPANY FRESH START SCHEME (CFSS) 2020 IN REGULARIZING PAST FILING DEFAULTS

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INTRODUCTION

Compliance is a key part of good governance, and is crucial to ensuring transparency, accountability and investor confidence. According to Companies Act, 2013, the companies have to submit the following statutory return, financial statements, annual returns and others documents with the Registrar of Companies (ROC) within the stipulated timelines.[1] If these obligations are not met, extra filing fees, penalties and, in some instances, prosecution of the company and the company officers, may be imposed.

Many companies had been in default for many years with the financial strain, business problems, administrative failure, or simply because they had not been operational for long. These problems were exacerbated by the COVID-19 pandemic, which caused significant disruptions to business and hindered businesses from meeting their legal obligations. In this unprecedented scenario, MCA has launched the Company Fresh Start Scheme (CFSS), 2020 to offer a one-time chance to defaulting companies to regularize pending filings without having to pay a significant extra fee or be prosecuted.[2]

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[1] Companies Act, No. 18 of 2013, §§ 92, 137 (India).

[2] Ministry of Corporate Affairs, General Circular No. 12/2020, Companies Fresh Start Scheme, 2020 (Mar. 30, 2020).

It was a corporate amnesty, where regulation and economic rehabilitation were found a balance. The Government did not want to punish companies during an economic downturn, nor did it want companies to be put back on track with the law. It manifested a progressive regulatory concept which is based on compliance instead of punishment and improves corporate governance in the long run.

UNDERSTANDING CORPORATE AMNESTY

Corporate amnesty is a temporary, legal avenue that allows regulatory bodies to waive penalties, prosecutions, and/or further compliance expenses for organizations that will self-correct in a limited amount of time their past statutory failures. Such schemes give organizations the incentive to confess non-compliance and re-establish regulatory discipline without going through the process of lengthy litigation.

The difference between a permanent waiver of legal obligations and corporate amnesty is that amnesty is conditional. To qualify for immunity, all outstanding statutory requirements must be fulfilled and all statutory procedures followed. The goal isn't to condone non-compliance; it's to encourage companies to return to the formal regulatory system.[3]

There are a number of countries that have introduced similar programs of compliance regularization in the fields of taxation, corporate law and securities regulation. The CFSS, 2020 was an attempt to create an amnesty program for companies, with the intent to give them a fresh start with a clean compliance record.

LEGAL FRAMEWORK OF THE COMPANY FRESH START SCHEME, 2020

The Company Fresh Start Scheme, 2020 has been introduced by the Ministry of Corporate Affairs, by General Circular of Companies Act 2013. It continued to function until 31st

[3] Ministry of Corporate Affairs, General Circular No. 12/2020, Companies Fresh Start Scheme, 2020 (Mar. 30, 2020).

December 2020[4], during which defaulting companies could submit their late statutory paperwork to the Registrar of Companies.[5]

The scheme included the nearly all documents that were pending to be filed under the Companies Act such as annual returns, financial statements, appointment documents, and other statutory documents.[6] The filing fees would be the normal filing fee, but there would be no additional fees that would have been accrued because they had filed late.[7]

Eligible companies could apply for an immunity certificate once all of the outstanding filings were completed and subsequent to completion of the scheme, the companies would be immune from prosecution or proceedings relating to the outstanding filings that were regularized in the scheme.[8]

OBJECTIVES OF THE SCHEME

The CFSS 2020 had several regulatory and economic goals. The primary goal was to enhance corporate compliance by urging those companies facing possible regulatory action to provide outstanding documents now.[9]

This improved the quality and reliability of information on the MCA portal which has been useful to the regulators, investors, creditors and others.[10] One other goal was to minimize unwarranted litigation stemming only from defaults.

The Government's immunity after compliance was a move that made the job of adjudicating authorities easier and helped in the efficient regulatory administration. The scheme has also

[4] Ministry of Corporate Affairs, General Circular No. 30/2020 (Sept. 28, 2020) (extending the validity of CFSS, 2020 until Dec. 31, 2020).

[5] Ministry of Corporate Affairs, General Circular No. 12/2020, Companies Fresh Start Scheme, 2020 (Mar. 30, 2020).

[6] Companies Act, No. 18 of 2013, §§ 92, 117, 137 (India).

[7] Ministry of Corporate Affairs, General Circular No. 12/2020, ¶¶ 5–7 (Mar. 30, 2020).

[8] Ministry of Corporate Affairs, General Circular No. 12/2020, ¶¶ 8–10 (Mar. 30, 2020).

[9] Ministry of Corporate Affairs, General Circular No. 12/2020, Companies Fresh Start Scheme, 2020 (Mar. 30, 2020).

[10] Ministry of Corporate Affairs, Annual Report 2020–21.

helped businesses impacted by the COVID-19 pandemic to alleviate the additional expense of any built-up financial obligations relating to filing fees.[11]

BENEFITS OF CFSS, 2020

The one most important benefit of the scheme was the total exemption from extra fees for late files.[12] Many companies would have to pay much more than the normal filing fees of the company, as additional fees were frequently much higher.

This immunity from prosecution was another strong motivator.[13] Regularization of company filings provided companies protection against lawsuits concerning defaulting filings, thus lowering legal uncertainty and promoting voluntary disclosures.

CHALLENGES AND LEGAL CONCERNS

Although the Company Fresh Start Scheme had proved successful it was not without criticism. A major concern was that there might be a loss of culture of timely compliance through repeated amnesty schemes.[14]

Companies regularly fulfilling statutory requirements could feel that such schemes are inequitable, especially because there is significant relief for companies that default regularly, of accumulated penalties. The other restriction was that the scheme was only for one year. Those businesses which missed the opportunity were again subject to further penalties and legal ramifications, with no ongoing compliance rehabilitation process in place.[15]

EVALUATING THE EFFECTIVENESS OF CFSS, 2020

The Company Fresh Start Scheme, 2020, was a great success in inducing voluntary compliance both legally and from a policy standpoint. Thousands of companies benefitted from the scheme

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[11] Ministry of Finance, Government of India, Atmanirbhar Bharat Package (2020).
[12] Ministry of Corporate Affairs, General Circular No. 12/2020, ¶¶ 5–7 (Mar. 30, 2020).
[13] Ministry of Corporate Affairs, General Circular No. 12/2020, ¶¶ 8–10 (Mar. 30, 2020).
[14] Umakanth Varottil, Corporate Governance in India (Oxford Univ. Press 2019).
[15] Companies Act, No. 18 of 2013, §§ 403, 454 (India).

to get their pending statutory filings done, enhancing the quality of the corporate regulatory database in India.[16]

However, the scheme cannot be regarded as a long term solution for the regulation of a once in a lifetime crisis. By regularly relying on corporate amnesty, the threat of statutory penalties may be reduced and delayed compliance may be promoted.[17]

In the future, policy makers should extend such schemes with digital compliance systems, automated reminders, simplified filing systems and awareness campaigns to promote corporate discipline in the long run.

CONCLUSION

The Companies Act, 2013 has brought about one of the most impactful changes in the area of corporate compliance with the Company Fresh Start Scheme, 2020. The scheme was able to put more money in consumers' pockets while reducing the burden on regulators, as it offered temporary relief from more fees and prosecution for filing deficits during the COVID-19 pandemic.[18]

While corporate amnesty ought to be an exceptional instance of regulation, and not a routine practice, CFSS, 2020, proved that responsive, facilitative regulation could be most beneficial to the corporate legal framework. The insights gained from the scheme can inform future compliance reforms that strike a balance between accountability and support for businesses, as India's corporate landscape evolves.[19]

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[16] Ministry of Corporate Affairs, Annual Report 2020–21.
[17] Umakanth Varottil, Corporate Governance in India (Oxford Univ. Press 2019).
[18] Ministry of Corporate Affairs, General Circular No. 12/2020, Companies Fresh Start Scheme, 2020 (Mar. 30, 2020).
[19] Ministry of Corporate Affairs, Annual Report 2020–21.