

The QUINTESSENTIAL CHARTERED ACCOUNTANT

Laws, Rules, Regulations by whatever name called, from time immemorial, with the exceptions of the Manusmriti and the Arthashastra by Kautilya, have always been reactive rather than proactive. The new Companies Act 2013 is no exception. If the famed Sarbanes Oxley Act was America's response to the Enron scam and the blood shed thereafter, the new legislation here is India's to the Satyam that rocked India Inc. This is a significantly delayed albeit aggressive and punitive legislation that seeks to end the alleged misuse of the Company form of organisation and the protection and wealth that it offered to unscrupulous promoters whose coffers filled at the munificence of unsuspecting bankers and share holders

This legislation is an attempt to elevate governance of India Inc and the various stakeholders to global standards. Our professional community has been far from happy on this development and rightly so. We think that rotation is the biggest aspect of this Act in so far as our profession is concerned. This is only partly true and I set out below a brief impact assessment of far more overreaching aspects of this enactment that merit our consideration

- One, the act has repeated references (about 18 times) to a certain Section 447 on frauds and punishments therefor and auditors have been included in the purview this section. The rules framed under the Act in addition to defining fraud at certain turnover and profit thresholds also include **"frauds happening regularly"**. It is now going to be easier, than ever, to pass responsibility of frauds to the auditors and a quiet burial to the landmark judgement of Kingston Cotton Mills appears well marked and in progress
- There is a new body called the National Financial Reporting Authority. This body (not ICAI) has a predominant role of adjudicating the quality of work performed by CA's in respect of complaints received about certain classes of companies and by certain categories of firms. The rules have defined certain threshold limits for NFRA jurisdiction and inclusion of **bank branch audits for NFRA merits further clarification on whether the threshold applies at an entity level or audit unit level**. Presently, if references about audit quality are being referred to RBI, it may not be unlikely (and I wish not) that NFRA would be involved as it is sum of parts that make the whole
- There is a significant increase in the penal provisions in this Act both at an entity level and for the Officer in default. The auditors are also liable for such penal consequences and certain circumstances may warrant refund of fees or higher amounts as may be prescribed. Additionally this enactment also includes the provisions of **Class Action Suits** and auditors are well included under potential respondents.
- A very quick reading of the above will indicate that the Statutory Auditor of a Company is required to perform attest, internal audit and investigative roles to be able to express a safe opinion on the Truth and Fairness of the financial statements. And this would translate to a much higher cost of compliance (exactly what SOX did to the US market) especially in the context of the elaborate, dynamic and complex regulatory framework in India.
- This Act will completely and comprehensively threaten the existence of small and mid-size firms who are likely to be risk averse and it is not unlikely that this will foresee dominance of a few large firms who would also be able bear the increased cost of compliance. The translation of the higher costs to larger and more acceptable client fee levels cost will be crucial to the continuance of small and medium firms and entirely dependent on the unity we can demonstrate as a profession. The ICAI would do well to issue advisories on minimum fee levels and also work with the government to abolish tenders for professional work

The finance minister in a budget speech quoted a certain line by Hamlet, the prince and hero of the eponymous play by Shakespeare. It is high time we read the second line of the complete quote that reads: "I must be cruel only to be kind, Thus bad begins, and worse remains behind"