APPENDIX

Changes made by the Companies (Second Amendment) Act, 2002

Tribunal and Appellate Tribunal

The Company Law Board is to be abolished and, in its place, the National Company Law Tribunal (Tribunal) and the National Company Law Appellate Tribunal (Appellate Tribunal) are to be established. Apart from vesting in the Tribunal the jurisdiction of the Company Law Board, jurisdiction for most of the matters under the Companies Act, for example, mergers, etc., and winding is going to be vested in it. The jurisdiction of the ordinary civil courts and that of the High Courts will become marginalised. The appeals from decisions of the Tribunal will be heard by the Appellate Tribunal and final appeals will be before the Supreme Court.

Transfer of powers

Certain powers of the Company Law Board have been vested in the Tribunal and certain others in the Central Government. The list of such powers has been appended at the end of this matter.

Sick Industrial Companies

A new chapter has been added (Chap VI-A) to provide for rehabilitation of sick industrial companies. The Sick Industrial Companies (Special Provisions) Act, 1985 is to be repealed and the functions of Board of Industrial and Financial Reconstruction (BIFR) are to be performed by the Tribunal.

Objects and Reasons

The statement of objects and reasons proceeds as follows:

(*i*) A National Company Law Tribunal will be set up. The powers and jurisdiction presently being exercised by various bodies viz., Company Law Board or Board for Industrial and Financial Reconstruction or Appellate Authority for Industrial and Financial Reconstruction or High Courts will now be consolidated and entrusted to the Tribunal. Thus, multiplicity of litigation before various courts or *quasi*-judicial bodies or forums regarding revival or rehabilitation or merger or amalgamation or winding up will be avoided as all these matters will be heard and decided by the proposed National Company Law Tribunal;

(*ii*) All the parties will be bound by the Tribunal's orders and in case of non-availability of a workable proposal for revival or rehabilitation etc., the Tribunal can decide the matter on merits including introduction of its own scheme;

(*iii*) The Tribunal shall work through Benches. There shall be ten special benches which will deal with the matters relating to revival or reconstruction or rehabilitation or winding up of companies;

(*iv*) This will reduce the entire process which is presently taking several years in winding up of the companies to about two years or so;

(*v*) Stripping of assets of sick companies will be avoided;

(*vi*) Since individual affidavits will be filed with National Company Law Tribunal which will have powers of contempt of court, there will be an inbuilt seriousness;

(*vii*) There will be a fund known as Rehabilitation and Revival Fund which will be used to make primarily;

(*a*) interim payment of the dues of workmen of the company which has been declared sick or is under liquidation;

(*b*) protection of the assets of sick companies;

(*c*) revival and rehabilitation of sick companies;

(*viii*) 'Industrial Undertaking' in terms of sickness does not include:

(*a*) small scale industrial undertakings, as defined in clause (*j*) of Section (3) of the Industrial (Development and Regulation) Act, 1951;

(*b*) Public Sector Undertakings, unless a reference is made by the Central Government and/or State Government, as the case may be;

(*ix*) As a result of this enactment everyone including workers, creditors, investors and the economy as a whole will stand to benefit.

Transfer of powers from the Company Law Board to the National Company Law Tribunal

Section 58-A(9)	To direct the company to make repayment of the matured deposits;
Section 58-AA(1)	Intimation of default made by the company in repayment of small deposits or part thereof or any interest thereupon;
Section 111	Power to refuse registration and appeal against refusal;
Section 111-A	Rectification of register on transfer;
Section 117-C(4)	Redemption of debentures forthwith by payment of principal and interest;
Section 168	Penalty for default in complying with Section 166 or 167 (Central Government or NCLT);
Section 186	Calling an extraordinary general meeting;
Section 203	Power to restrain persons from managing companies (Court or NCLT);
Section 235	Investigation of the affairs of a company;
Section 236	Application by members to be supported by evidence;
Section 237(*b*)	Investigation of company's affairs in other cases;
Section 241(2)(*dd*)	Inspectors report;

Section 247	Investigation of ownership of company;
Section 250	Imposition of restriction on shares & debentures;
Section 251	Saving for legal advisers & bankers;
Section 269(8)	Issue of notice to managing/whole-time director/manager to comply with the requirements of Schedule XIII;
Section 304(2)(*b*)	Inspection of register of directors (Central Government or NCLT);
Section 307(9)	Inspection of register of directors' shareholding (Central Government or NCLT);
Section 388-B	Reference of cases against managerial personnel;
Section 388-C	Interim order in connection with cases under Section 388-B;
Section 388-D	Findings in connection with cases under Section 388-B;
Section 388-E	Power of Central Government to remove managerial personnel on the basis of findings in connection with cases under Section 388-B
Section 396(3-A)	Preferring an appeal from assessment of compensation made by prescribed authority;
Section 397	Application for relief in cases of oppression;
Section 398	Application for relief in cases of mismanagement;
Section 400	Notice to be given to Central Government of applications under Section 397, 398;
Section 401	Right of Central Government to apply under Section 397, 398;
Section 402	Power on application under Section 397, 938;
Section 403	Interim order;
Section 404	Effect of alteration of memorandum or articles of company by order under Section 397, 398
Section 405	Addition of respondents to application under Section 397, 398;
Section 407	Consequences of termination of modification of certain agreements;
Section 408	Power of Government to prevent oppression or mismanagement;
Section 409	Power to prevent change in Board of Directors likely to affect company prejudicially;
Section 410	Appointment of advisory committee;
Section 614(1)	To pass an order directing a company to make good the default from its failure to make returns etc., to the ROC;

Section 637-A	Power to accord approval etc., subject to conditions & to prescribe fees on applications;
Section 640-A	Exclusion of time required in obtaining copies of orders;
Schedule XI	Form in which Section 539 to 544 are to apply to cases where an application is made under Section 397, 398.

Transfer of powers from Court to National Company Law Tribunal

Section 100 to 104	Reduction of share capital;
Section 107	Rights of dissentient shareholders to have variation cancelled;
Section 203	Power to restrain persons from managing companies (Court or NCLT);
Section 243	Application for winding up of a company or an order under Section 397 or 398;
Section 318(3)(*d*)	Compensation for loss of office to managing/whole-time director/manager;
Section 391	Power to compromise or make arrangements with creditors & members;
Section 392	Power to enforce compromises & arrangements;
Section 394	Provisions for facilitating reconstruction & amalgamation of companies;
Section 394-A	Notice to be given to Central Government for application under Section 391 & 394;
Section 395	Power & duty to acquire shares of share-holders dissenting from scheme or contract approved by majority;
Section 424	application of Sections 421 to 423 to receivers & managers;
Section 425	Modes of winding up;
Section 426	Liability as contributories of present and past members;
Section 427	Obligations of directors & managers whose liability is unlimited;
Section 433	Circumstances in which company may be wound up;
Section 434(1)(*b*)	Company when deemed unable to pay its debts (Court or NCLT);
Section 434(1)(*c*)	Company when deemed unable to pay its debts;
Section 439	Provisions as to applications for winding up;
Section 440	Right to present winding up petition where company is being would up voluntarily;
Section 441	Commencement of winding up;
Section 443	Powers on hearing petition;

Section 444	Order for winding up;
Section 446	Suits stayed on winding up order;
Section 448	Appointment of Official Liquidator;
Section 450	Appointment & powers of provisional liquidator;
Section 451	General provisions as to liquidators;
Section 453	Receiver not to be appointed of assets with liquidator;
Section 454	Statement of affairs to be made to Official Liquidator;
Section 455 (2) & (3)	Report by Official Liquidator;
Section 456	Custody of company's property;
Section 457	Powers of liquidator;
Section 458	Discretion of liquidator;
Section 458-A	Exclusion of certain time in computing periods of limitation;
Section 459	Provision for legal assistance to liquidator;
Section 460	Exercise & control of liquidator's powers;
Section 461	Books to be kept by liquidator;
Section 462	Audit of liquidator's accounts;
Section 463	Control of CG over liquidators;
Section 464	Appointment & composition of committee of inspection;
Section 465	Constitution & proceedings of committee of inspection;
Section 466	Power to stay winding up;
Section 467	Settlement of list of contributories & application of assets;
Section 468	Delivery of property to liquidator;
Section 469	Payment of debts due by contributory & extent of set off;
Section 470	Power to make calls;
Section 471	Payment into bank of moneys due to company;
Section 472	Moneys & securities paid into Bank to be subject to order;
Section 473	Order on contributory to be conclusive evidence;
Section 474	Power to exclude creditors not proving in time;
Section 475	Adjustment of rights of contributories;
Section 476	power to order costs;
Section 477	Power to summons persons suspected of having property of company etc;
Section 478	Power to order public examination of promoters, directors, etc.
Section 479	Power to arrest absconding contributory;
Section 480	Saving of existing powers;

Section 481	Dissolution of company;
Section 490	Power of company to appoint & fix remuneration of liquidators;
Section 492	Power to fill vacancy in office of liquidator;
Section 494	Power of liquidator to accept shares etc., as consideration for sale of property of company;
Section 497	Final meeting and dissolution;
Section 502	Appointment of liquidator;
Section 503	Appointment of committee of inspection;
Section 504	Fixing of liquidator's remuneration;
Section 506	Power to fill vacancy in office of liquidator;
Section 507	Application of Section 494 to a creditors' voluntary winding up;
Section 509	Final meeting & dissolution;
Section 511-A	Application of Section 454 to voluntary winding up;
Section 512	Powers and duties of liquidator in voluntary winding up;
Section 515	Power to appoint & remove liquidator in voluntary winding up;
Section 517	Arrangement when binding on company & creditors;
Section 518	Power to apply to have questions determined or powers exercised;
Section 519	Application of liquidator for public examination of promoters, directors, etc.;
Section 531	Fraudulent preference;
Section 531-A	Avoidance of voluntary transfer;
Section 533	Liabilities & rights of certain fraudulently preferred persons;
Section 534	Effect of floating charge;
Section 535	Disclaimer of onerous property in case of a company which is being wound up;
Section 536	Avoidance of transfers etc., after commencement of winding up;
Section 537	Avoidance of certain attachments, executions, etc., in winding up;
Section 538	Offences by officers of companies in liquidation;
Section 540	Penalty for frauds by officers;
Section 542	Liability for fraudulent conduct of business;
Section 543	Power to assess damages against delinquent directors, etc.;
Section 544	Liability under Sections 542 & 543 to extend to partners or directors in firm or company;

Section 545	Prosecution of delinquent officers & members of company;
Section 546	Liquidator to exercise certain powers subject to sanction;
Section 547	Notification that a company is in liquidation;
Section 549	Inspection of books & papers by creditors & contributories;
Section 550	Disposal of books & papers of company;
Section 551	Information as to pending liquidations;
Section 553	Voluntary liquidator to make payments into Scheduled Bank;
Section 555	Unpaid dividends & undistributed assets to be paid into the Companies Liquidation Account;
Section 556	Enforcement of duty of liquidator to make returns;
Section 557	Meetings to ascertain wishes of creditors or contributories;
Section 558	Before whom affidavit may be sworn;
Section 559	Power to declare dissolution of company void;
Section 560	Power of Registrar to strike defunct company off register;
Section 581	Suits stayed on winding-up order;
Section 582	Meaning of unregistered company;
Section 583	Winding up of unregistered company;
Section 587	Suits etc., stayed on winding up order;
Section 588	Directions as to property in certain cases;
Section 589	Provisions of Part cumulative;
Section 610	Inspection, production & evidence of documents kept by Registrar;
Section 614	Enforcement of duty of company to make returns, etc., to Registrar;
Section 626	Application of fines;
Section 632	Power to require limited company to give security for costs;
Section 635	Enforcement of orders (CLB or NCLT);
Section 635-B	Protection of employees during investigation by Inspectors or pendency of proceeding in certain cases.

Transfer of powers from CLB to Central Government

Section 17	Change of place of registered office from one state to another;
Section 18(4)	Extension of time for filing the order of shifting of registered office;

Section 19	Revival of order of shifting of registered office;
Section 43 proviso	Consequences of default in complying with conditions constituting a private company;
Section 49(10)	Direction to inspect Register of Investments;
Section 79	Power to issue shares at a discount;
Section 80-A(1) proviso	To give consent to issue of further redeemable preference shares in line of irredeemable preference shares;
Section 113(1)	Extension of time for issue of certificates;
Section 113(3)	To correct the default in non-compliance of sub-section (1) of Section 113 providing time limit for issue of shares/debenture certificate;
Section 117-B(4)	Debenture trustee to ask for restriction to be imposed on the company;
Section 118(3)	Right to obtain copies of trust deed;
Section 141	Rectification of register of charges;
Section 144(4)	Inspection of copies of instruments creating charges and register of charges;
Section 163(6)	Inspection of registers and returns;
Section 167	Direct the calling of an annual general meeting except by a sick industrial company;
Section 168	Penalty for default in complying with Section 166 or 167 (Central Government or NCLT);
Section 188(5)	Restriction on circulation of statement with respect to any proposed resolution;
Section 196(4)	Inspection of minute books;
Section 219(4)	Directing copy of balance-sheet or auditors' report to be furnished forthwith;
Section 225(3) proviso	Restricting copies of representation of the auditor to be removed to be sent out;
Section 284(4) proviso	Restricting copies of representation of the director to be removed to be sent out;
Section 304(2)(*b*)	Inspection of register of register of directors (Central Government or NCLT);
Section 307(9)	Inspection of register of directors' shareholding (Central Government or NCLT);
Section 621-A	Composition of certain offences.

Powers remaining with court

Section 81(7)	Appeal to court if the terms and conditions of conversion of debentures or loans into shares are not acceptable to the company;
Section 237(*a*)(*ii*)	Investigation of company's affairs;

Section 424-L(2)	No court to take congnizance of any offence under sub-section (1) except on a complaint in writing of an officer of the NCLT or NCLAT or any officer of the Central Govt;
Section 581-ZN(16)	Appeal to the High Court by any member or creditor or employee aggrieved by the transfer of assets, division, amalgamation a merger of producer companies;
Section 581-ZS(1)	Reconversion of producer companies to interstate co-operative society;
Section 630(2)	Penalty for wrongful withholding of property;
Section 633(3)	Power of court to grant relief in certain cases.

Changes made by the Companies (Amendment) Act, 2002 (First)

Producer Companies

This Amendment Act added a new chapter, namely Chapter IX-A to the Act. The chapter contains a complete set of provisions dealing with producer companies. It runs from S. 581-A to 581-ZT.

Objects and Reasons

The statement of objects and reasons appended to the Bill proceeded as follows:

During the last decade, changes have taken place in the Indian economy, in the communication and transportation infrastructures, as well as in the method of commerce, banking and international trade. Liberalisation of the economy is in the process of changing the terms of trade between rural and urban, labour and industry, finance and commerce. Biotechnology, the information revolution, computerisation can all be used to raise the standard of living of the rural masses and ultimately link this economy with regional, national and global demand. Institutions are needed to link the rural economy with the emerging new opportunities. Rural producers are at a potential disadvantage given their generally limited assets, resources, education and access to advanced technology. In the present competitive scenario, if cooperative enterprises are to continue to serve rural producers, they require an alternative to the institutional form presently available under Law.

Keeping all this in view the Government constituted a Committee consisting of experts led by Dr. Y.K. Alagh, economist, former Union Minister, to examine and make recommendations with regard to (*a*) framing a legislation which would enable incorporation of cooperatives as companies and conversion of existing cooperatives into companies and (*b*) ensuring that the proposed legislation accommodates the unique elements of cooperative business within a regulatory framework similar to that of companies. The Committee had a series of meeting during which it interacted with, and received responses from various cooperatives, institutes and individuals.

On the basis of the recommendations of the Committee the present Bill has been prepared with the main objective of facilitating formation of cooperative business as companies and to convert existing business into companies. The salient features of the Bill are:

(*i*) to offer a statutory and regulatory framework that creates the potential for producer-owned enterprises to compete with other enterprises on a competitive footing. The Companies Act envisages and provides for various forms of companies including private limited, public limited, trusteeship companies and *nidhis*, each with specific and appropriate provisions applicable to them;

(*ii*) to provide for the formation and registration of producer companies which include the mutual assistance and cooperative principles within the more liberal regulatory framework afforded by the Company Law with suitable adaptations;

(*iii*) to provide an opportunity to cooperative institutions to voluntarily transform themselves into the new form of producer companies;

(*iv*) Under the Bill conversion of cooperatives to producer companies is purely voluntary;

(*v*) Member equity may not be publicly traded, but may only be transferred, with the approval of the producer company's Board of Directors. Producer companies would not be vulnerable to the takeover by multinationals or other companies;

(*vi*) The conversion option by cooperative society to producer company can be exercised only if two-thirds of the members of the concerned society vote in favour of a resolution to that effect;

(*vii*) The new form of company is designated as "producer company" to indicate that only certain categories of persons can participate in the ownership of such companies. The members of the Producer Company have necessarily to be "primary producers", that is persons engaged in an activity connected with, or relatable to, primary produce;

(*viii*) The objects of a producer company have been defined to include, among other things, production, processing, manufacture and sale of primary produce as well as allied matters.

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