

APPENDIX T

Draft of Section 397:

section 397(1) "Any member of a company who complain that the affairs of the company have been or are being conducted in a manner prejudicial to public interest or to the interest of the Company ~~or~~ in a manner oppressive of any member or member (including any one or more of themselves) or that those in conduct of the affairs of the Company have been or guilty of mismanagement of its affairs may apply to the Court for an order under this section, provided that such members have a right so to apply by virtue of section 399.

(2) If, on any application under S/S (1) the Court is of opinion:

(a) that the Company's affairs have been or are being conducted in a manner prejudicial to public interest or to the interest of the Company or in a manner oppressive to any member or members or that the company's affairs have been are being mismanaged and

(b) that it is necessary, just and equitable so to act, the Court may, with a view to bringing to an end the matters complained of and/or with a view to prevent the recurrence of the acts of oppression and/or mismanagement alleged, or any of them, make such orders as it think fit.

(3) In passing orders under Clause (1) above, the Court may restrain the commission or continuance of any act and may, if it thinks it necessary so to do examine into the conduct of any person, director or officer of the company who has misapplied, retained or become liable or accountable for any money or property of the company or has been guilty of any misfeasance or breach of trust in relation to the company and allow him to pay or restore the money or property

or a part thereof respectively with interest at such rate as the Court think just, or to contribute such sums to the assets of the company by way of compensation in respect of the misapplication, retainer, misfeasance or breach of trust as the Court thinks just.

(4) An order against delinquent directors, other officers and other persons shall not be maintainable in respect of any misapplication, retainer, misfeasance or breach of trust committed more than five years prior to the filling of the application under s/s(1)".

Recommendation in respect of section 398(1):

Section 398(1) "Any members of a company who complain that a material change (not being a change brought about by or in the interest of any creditors including debenture holders, or any class of shareholders of the company) has taken place in the management or control of the company, whether by any alteration in its board of Directors or in the ownership of the Company's shares, or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to the interest or in a manner prejudicial to the interest of the company, may apply to the Court for an order under this section, provided such members have a right to apply by virtue of Sec.399".

Recommendation in respect of Section 403:

In respect of Section 403 the following changes have recommended by the Committee:-

(1) (i) In section 403(1), for the words--

"That it is necessary to make the appointment or appointments in order to prevent the affairs of the company being conducted either..

the following words shall be substituted;

(3)

"That it is necessary to make the appointment or appointments in order to prevent or bring to an end the conduct of the affairs of the company, which have been or are being conducted either in a manner..."

(ii) At the end of the first para of section 408(1), add:-
provided that no such order shall be passed untill after an opportunity is given to those in management of the Company to be heard in the matter. Reason will be recorded in writing for every order passed under this section."

(b) In section 408(1) the existing proviso should ~~from~~ form a separate S/S (numbered Sub-Sec.(2)) and the present sub-Sec.(2) should be part of recommended sub-Sec.(2).

(c) In company or any party aggrieved by any order passed under section 408(1) may move the High Court where the registered office of the Company is situated, in appeal on the ground that the impugned order is not in the interest of the Company or in the interest of its shareholders, or in the public interest or occasioned a miscarriage of justice.

(d) The appeal will be filed within a period of thirty days from the date of the order complained of.

(e) The order passed by the Central Government under section 403(1) shall be effective and in operation from the date of the order untill set aside by the High Court in appeal filed under Clause(c) above.

(f) The appeal filed under clause (c) above will ordinarily be disposed of by the High Court within a period of six months from the filing of the appeal.

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(g) The present sub-Sec.(7) should be renumbered as (7)(a). and a new sub-Clause(b) should be added as follows:

"(b) such directors so appointed under this section shall, whether required to report or not under Sub-Clause(a), report to the Central Government once atleast in every three calendar month on such matters and aspects relating to company's working which they consider the Government ought to know or should be made aware of. In case there is more than one such director, a joint report may be forwarded in place of individual report."

Recommendation in respect of Section 409:

Suggested changes are as under:-

(h)(i) in section 409 substitute the word ' Company Law Board's for the Central Government.'

(ii) in section 409(1) after the words "where a complaint is made to the Central Government (to be read as Company Law Board), the following words shall be added-" by member of a company having the right to apply under sections 397 or 398 or"

(iii) After sub-sec.(1) of sec.409, a new sub-Sec.(2) should be added which will read as follows:

"The final order under sec.409(1) will be passed within a period of six months from the date of the first interim order, if any, passed under sec.409(2) or from the date of the filing of the complaint, whichever is later."

"The company or any party aggrieved by the final order passed under Sec.409(1) may move the High Court where the registered office of the Company is situated, in appeal on the ground that the impugned

ordered has occasioned miscarriage of justice or is not in the public interest or in the interest of the company or of its shareholders. The appeal will be filed within a period of thirty days from the date of final order and the appeal will ordinarily be disposed of by the High Court within a period six months from the filing of the appeal. The final order passed by the Company Law Board, under Section 409(1) shall be effective and operative from the date of the order unless set aside by the High Court in the appeal."

(iv) At the end of the present Sub-Sec.(2) of Sec.409 (to be renumbered as Sub-Sec.(3)), the following clause should be added:-

"Provided that such interim order shall only operate in the first instance for a period of ten months, within which period the Company Law Board, may continue the interim order, if the circumstances so justify, only after giving an opportunity to the complainant and the affected parties of being heard in the matter."

(v) Sub-Sec.(3) of section 409 should be renumbered as Sub-Sec.(4).