

The Small Company Threshold and the Limits of Delegated Legislation

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The [Corporate Laws \(Amendment\) Bill, 2026](#), is [framed](#) to facilitate ease of doing business by increasing the size that defines a ‘small company’. The 2026 Bill raises the outer ceiling, calculated based on paid-up share capital/annual turnover, in section 2(85) of the Companies Act, 2013, from Rs. 10 crore/Rs. 100 crore to Rs. 20 crore/Rs. 200 crore, respectively. The actual operative figure is whatever the Ministry prescribes by rule within that ceiling. That framing understates what the clause does. The clause confers on the executive control over a single figure that determines audit exposure, board oversight, and penalties for all private limited companies, which constitute [96%](#) of the two million active companies in India, with no mechanism for distinguishing a genuinely small business from one merely small enough to escape scrutiny.

This post illustrates the issues that arise from such a framing of the definition of a ‘small company’ through a hypothetical case of Company Y. The sections that follow examine what its bundled relief permit, why the dispute is over who sets the threshold and not the number itself, how that discretion can be narrowed, and what the Joint Committee’s report still leaves open.

Company Y

Suppose that Y Ltd. has a paid-up capital of Rs. 18 crore and a turnover of Rs. 180 crore. Its promoters run a real business. A meaningful share of its funds also moves through entities owned by their relatives, billed as consultancy fees and supply contracts above arm’s length. None of this appears as a single red flag, only as a pattern spread across several years of filings.

At this size, Y Pvt. Ltd. is not a “small company”: the figures prescribed under section 2(85) stand at Rs. 10 crore and Rs. 100 crore (before the Amendment). It must hold four board meetings a year under section 173(1), Companies Act, 2013, prepare a full cash flow statement, and face the Act’s penalties in full if a regulator examines its related-party transactions. Although this does not guarantee the detection of self-dealing, it leads more people to examine the company’s affairs, making a sustained pattern of self-dealing harder to conceal.

The 2026 Bill changes this without Y Pvt. Ltd. changing anything. The ceiling in section 2(85) of the Companies Act, 2013, rises to Rs. 20 crore and Rs. 200 crore. Y Pvt. Ltd. qualifies, not when the Bill passes, but when the Ministry prescribes, up to the new ceiling, by rule. It would then hold two board meetings a year instead of four under section 173(5), need not prepare a cash flow statement under section 2(40), and face penalties under section 446B of no more than half the specified amount, capped at Rs. 2 lakh and Rs. 1 lakh.

What the Same Bundle of Relief Permits

Y Pvt. Ltd. is the mild case; it qualifies for relief without changing anything. Three further possibilities follow, each describing a way to actively exploit the same ceiling.

First, fragmentation. A larger operation can be split into three or four entities, each under the new ceiling, sharing directors and a registered address. The proviso to section 2(85) excludes holding and subsidiary companies, but not siblings under common control, so no single entity attracts full scrutiny, though the group would fail the size test. It is the shared-director pattern that a regulator would seek to identify, and the Bill gives that pattern a wider ceiling.

Secondly, the loss of the cash flow statement. A lender or vendor extending credit against a small company’s filings has no ready means of seeing a liquidity crunch build until default, since disclosure is no longer required.

Thirdly, layering through related entities. A shell built for that purpose remains punishable in full as fraud under section 447. But section 446B speaks only to penalties for non-compliance, and it is the disclosure and

filing defaults through which such structures usually surface: those cost at most Rs. 2 lakh, set against layered transactions running into crores.

Why This Is Not About the Number

Commentary has welcomed the higher threshold as relief; the more consequential question is, who sets it?

Section 2(85) of the Companies Act, 2013, sets only an outer limit; the operative figures are prescribed by rule. On 1 December 2025, the Ministry of Corporate Affairs raised them to Rs. 10 crore and Rs. 100 crore, exhausting the room the Act allowed, lawfully, under the rule-making power in section 2(85), but without the vote or committee scrutiny a primary amendment would require. They had been Rs. 50 lakh and Rs. 2 crore at enactment, Rs. 2 crore and Rs. 20 crore from 2021, and Rs. 4 crore and Rs. 40 crore from 2022, every step by notification. The Ministry told the Rajya Sabha that 19,01,589 companies now qualify.

The Bill does not so much double the threshold as reset the ceiling to which the government may return by notification.

This borders on a constitutional question about the limits of delegated legislation. Courts have long accepted that Parliament may delegate the filling in of technical detail, and adjusting a figure for inflation is the textbook instance of permissible delegation. What Parliament may not delegate, under the doctrine against excessive delegation traced to In re Delhi Laws Act, 1912, and applied in Hamdard Dawakhana v. Union of India, is an essential legislative function: a policy choice Parliament alone is meant to make.

That figure does far more than fill in a technical detail. Even so, the doctrine is hard to invoke: as restated in Gwalior Rayon Silk Mfg. Co. v. Assistant Commissioner of Sales Tax, the Court asks only whether the legislature laid down a policy or standard, and modern benches have been markedly deferential, most recently in Vivek Narayan Sharma v. Union of India. The point is not that a challenge would succeed, but that a threshold of this reach has not been tested against this question.

The premise that the threshold needed updating is not unreasonable. A genuinely small business that has kept pace with inflation should not carry compliance designed for a company twenty times its size. The Bill does not

ask a second question: whether every company under that ceiling merits the whole bundle regardless of what it is doing with its books?

The small company threshold is not the only figure moving. The net profit threshold triggering CSR obligations is also rising, from Rs. 5 crore to Rs. 10 crore, with no official estimate of how many companies it would exclude. Each change is defensible in isolation. Together, they widen, on two fronts, the population facing the least regulatory scrutiny.

The definition measures size alone. It was never designed to detect a related-party pattern such as Y Pvt. Ltd., so doubling the ceiling admits more companies resembling it.

Two Ways to Narrow the Discretion

The first is to replace discretion with a formula. Existing proposals leave it to an official to decide the number. Writing the threshold into the Act as a formula tied to an index, whether nominal GDP or the Wholesale Price Index, removes the discretion over the number itself. There is then no essential legislative function to argue over. The trade-off is real: rigidity, periodic clarifications from the regulator, and dependence on the chosen index's data and methodology.

The US Federal Deposit Insurance Corporation adopted this approach in a rule laid down in December 2025, indexing dollar thresholds, including its asset-size audit limits, to the Consumer Price Index for Urban Wage Earners and Clerical Workers so that they adjust without fresh rulemaking. No proposal appears to import that model here; it needs no inventing, only adapting.

The second is to make the exemption conditional rather than automatic. The Bill's own audit-exemption clause exempts whatever class of companies satisfies conditions still to be prescribed, placing the same choice in the same hands. Naming a class tests status, not conduct. What is missing is a way to condition relief on conduct without new compliance work for the honest majority.

Filings pass through the MCA21 portal, which captures director identification numbers, registered addresses and shareholding in structured form. The data to see shared directorships is held, and has flagged shell companies; it has never been pointed at the size threshold.

A company could keep its official ‘small company’ label but lose the actual exemptions, if it matches patterns the MCA21 system can already detect: the same people acting as directors of several companies that each sit just under the threshold, capital sitting suspiciously close to the ceiling, or related-party transactions spiking soon after the company is set up. A flagged company would need Registrar clearance before the exemptions apply. An ordinary small business should clear these checks; a company structured like Y Pvt. Ltd. would not. Two caveats: the Bill contemplates no such gate, and defining a flag would be a judgment call with false positives.

What the Committee Left Open

The argument here is not for reversing the relief genuinely small businesses need. It is that size has always been a proxy for risk, not a substitute for it, and that the Bill is about to extend that proxy to companies twice as large as those it now covers.

The Joint Committee report, released on 3 August 2026, recommended that the audit exemption not extend to public companies, and the Bill was not taken up for passing before the Monsoon Session ended. It returns to Parliament with the threshold clause intact and the exemption still drawn by corporate form rather than by conduct.

The decisive act still lies ahead. Because the Bill raises only the outer limit in section 2(85), the actual figure governing audit exposure and board oversight has yet to be prescribed. However, the decision lies with the government.

Company Y is not a loophole in the Bill; it is what the Bill is designed to do. A single ministry-set number now determines board oversight, audit exposure, and penalty exposure for over nineteen lakh companies, and raising that number only expands the scope of that discretion. Whether that discretion is narrowed by a formula or conditioned on the compliance data MCA21 already holds is a choice Parliament could still make. Leaving the threshold clause as it stands means making it by default.

– *Moksha Pancholi & Piyush Pranjal*