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Aftermath of COVID 19 in the 'Role of Internal Audit Leaders'

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IMPACT OF COVID 19

BY THE **PROFESSIONALS** FOR THE **PROFESSIONALS**

From FOUNDER'S DESK

Reflecting on the decade long history of Achromic Point, of overcoming numerous obstacles and imperfections, of growing and maturing in all sorts of ways and having a host of accomplishments of which we are incredibly proud of, I would like to say THANK YOU to each one of you - our greatest achievement and assets, for your continued support and endorsements. We are grateful for the faith placed in us and we are pleased and confident to have lived up to that trust. We deeply appreciate your continued commitment to the company and its growth and our present existence bears witness to our past successes.

In an era, where perfection cannot be bypassed, our firm hold on quality has empowered us to emerge as pioneers in the trade. We believe that our emphasis on total client satisfaction is the key to our success and prosperity. To improve our reputation, meet our commitments and deliver excellence, we bring "Achromic Point Knowledge Forum E-magazine" to you with the Mantra of "by the professionals for the professionals" which sums up a decade serving you professionally. We hope you enjoy reading this magazine and we look forward to your feedback so we can improve along the way.

I am so pumped to see what is in store for us on the other side of this great decade because, without a shadow of doubt about our greatest accomplishments, I am confident that expansion, growth and a lot of excitement still lie ahead of us. We cannot THANK YOU enough for helping make Achromic Point a fantastic company now and for decades to come. We plan to keep our business and relation growing with you and continue to provide you nothing less than the best. With your support, we wish to explore new heights this year. As Henry Ford rightly said, coming together is the beginning, keeping together is progress and working together is success.

Let's be successful together.

March 06, 2020

Anti Fraud Conclave & Awards 2020 organized by Achromic Point in Mumbai, achieved its two-fold objective of unpacking a complex and open framework for detection and prevention of the fraud risk and at the same time brought together a community of fraud management professionals to reach a shared understanding around establishing an Anti- Fraud Culture.

The programme commenced with a very warm welcome from the Director of Achromic point - Aashish Verma and inviting Rajkumar Shriwastav, Certified Fraud Examiner & Trainer to share his insights upon the alternate recovery options in Fraud Investigations. Anirban Banerjee Global Head - Business Advocacy & Excellence at TCS BFSI Operations as a moderator with his co panelists as Asish Saraf EVP & Chief Risk Officer at Dewan Housing Finance Corporation Limited, Sandeep Mehra, Chief Executive Officer at Academy of Fraud Investigations & Vicky Shah Advocate - Cyber Law, Data Protection, GDPR and Privacy shed light on the assessments of financial fraud Investigation and forensic processes.
During the day, Conference participants were given the chance to understand as to how KYC framework is continuing to detect and prevent fraudulent activities with the growing usage of e-wallets and e-KYC and much more by Hardik Sheth Head-Internal Audit & Risk Management at Tech Mahindra Business Services anchoring the discussion with Anil Chiplunkar Cyber Fraud Investigator at Infocounselors , Ritesh Bhatia Founder at V4Web Cybersecurity & Anand Trivedi Business Head at Cyber Proof where as Puneet Bhasin Advocate Cyber Law Expert, S.V. Sunderkrishnan Chief Risk Officer at Reliance Nippon Life Insurance Company Limited, Yatin Narang Principal Associate at Vaish Associates Advocates, Padmanabhan Ramakrishnan spoke on Industry perspective on the policing approaches to fraud which received a lot of attention from the audience. With regard to the E-Payment Fraud, Yatin from Vaish Associates has some really interesting points to make and case studies to share, which really left the audience spell bound. Nagesh Pinge an Ethics, Corporate Governance, Risk Management & Internal Audit Expert were gracious enough to moderate the panel discussing along the lines of establishing an Anti Fraud culture in an organisaion where his co-panelists Nirmal Paul Head-Fraud Prevention Unit at Bajaj Allianz Life Insurance Company, Alok Saraswat Head - Fraud Control Unit at Max Bupa Health Insurance Company Limited, Syed Rashid Ausaf - Vice President & Head-Fraud & Risk Management at Reliance Jio, Anirban Banerjee shared some really intersting insights and examples on the same.

Achromic Point brought a seminar on Detecting and Preventing Internal and External Fraud in Delhi and Chennai on February 20th & March 12th 2020 respectively where practical Knowledge about how common frauds are committed and why it is vital to an organization, large or small to have a fraud prevention plan in

place was discussed by the expert panel. During Delhi seminar, Industry leaders like Harish Dua Advisor-Internal Audit, IASB (ICAI) and Adjunct Faculty Indian Institute of Corporate Affairs (SCGPP), Alok Saraswat Head - Fraud Control Unit at Max Bupa shared their expertise on the fraud matrix and recognizing the red flags of internal fraud during fraud risk assessment. They were joined by Ankur Jain Managing Partner at The Achilles, Varun Wadhwa Head Compliance & Internal Audit at CBRE India, GK Gupta Vice President- Internal Assurance at Max Life Insurance, Vinesh J. Karvir Head – Forensic & Internal Audit at Fabindia Overseas Pvt.Ltd. spoke on important fraud detection measures and Instruction on basic steps and techniques and how to gather required data during the panel discussion whereas Anurag Parashar, Sr. Vice President & Head Anti-Fraud at Home Credit, Saurabh Gupta Partner at Addvals Advisory Services Pvt. Ltd.discussed on various investigative techniques. Ashish Malhotra Director at RiskPsy Services shared his insights on

Internal Controls and Other Fraud Prevention Measures.

In the series conducted in Chennai on March 12th, we had the privilege to witness Jayashree C B Associate Director - Risk Advisory at Deloitte and Srinivasa Rao Partner & Leader/ Forensics Business Advisory Services at BDO India LLP sharing their expertise on the major fraud problems and lessons to be learned from the fraudsters and conducting on the Internal and External Fraud problems respectively.

During the day, we also had Giridhar Janardhana Managing Partner at Blue Ridge Consulting Services as an anchor of a panel discussion on fraud detection along with his co panelists Sandip Kumar Partner Sukumar & Sandip & Ponpandi Raj C Head – Fraud Monitoring Cell Lakshmi Vilas Bank. Pranav Gopalakrishnan from Aarna Law presented on Forensic accounting/auditing technique, Documenting findings and much more.

SEMINAR ON DIGITAL AND DATA ANALYTICS

Achromic Point had launched a multicity series on Digital and Data analytics with Protiviti India panning from Delhi on January 23rd, Mumbai on February 6th, Bengaluru on March 5th & in Chennai on February to assist the Data and analytics leaders in overcoming the Big Data Challenges and to drive the digital transformation.

Experienced thought leaders from Protiviti India Dhrubabrata Ghosh, Shubhodipto Roy, Debarshi Dutta, Chitrabhanu Mukherjee, Kallol Kumar, Chockalingam N shared their valuable expertise in all the cities.

During the conference, participants were able to gain real-world perspectives on how to pull out trends and insights and apply technology and methods that effectively help solve business problems and create profitable solutions. Our experienced faculty talked on Digital Transformation, Automation & Analytics techniques and helped audience learn practical methods to overcome complexity and ambiguity to drive business value and ideal organizational structure.

DIRECT TAX
SUMMIT & AWARDS
2020

The prestigious 2nd Annual Direct Tax summit organized by Achromic Point along BRICS CCI in Delhi on February 21st 2020 provided a platform for industry stakeholders to work out a road map for unleashing the future of Direct Taxation in India. The day-long summit saw an eminent list of delegates discussing recent trends and issues in the field of International Tax and identified the best methods for integrating into the new systems while deriving the most tax benefits. It was honored by prominent luminaries from the industry and had received the support from Aourakii Legal as Knowledge Partner, Versari Advisors & Avinav Consulting as Corporate Sponsor, Chilana & Chilana Law offices as Litigation Partner.

The Honorable chief guest address was delivered by Shri P.K. Dash Member (Income Tax & Revenue) Central board of Direct Taxes Income Tax Department. Aashish Verma, Director at Achromic Point and Dr. BBL Madhukar Director General at BRICS CCI, Pranshu Goel, Convener and Programme Director, Direct Tax Committee, BRICS CCI kick started the event with their opening remarks. During the day, Conference participants were given the chance to be aware of the Key amendments vide budget, 2020 by Amit Singhania Partner at Shardul Amarchand Mangaldas & Co and Amit Kumar Sarkar-Managing Partner, Versari Advisors India LLP along with the topics like Penalty and prosecution provisions under income tax law Black Money Act, Benami Law and money Laundering Laws – Government tightening the rope which was taken up by Sharad Goyal from GSAP & Associates LLP & Vijay Pal Dalmia-from Vaish Associates Advocates respectively. Some of the key topics discussed at the summit included key amendments vide Budget 2020, India's tax litigation scenario and way forward, penalty and prosecution provisions under Income tax law, India's take on taxation of digital economy, cross border investments, structuring and transactions (key provisions), Black Money Act, Benami Law and Money Laundering laws-Government tightening the rope Krishnan Shakkotai from Aarna Law along with Alok Pareek-Associate Director (Head of Tax) at Discovery, Pushpendra Dixit-General Manager-Taxation at PVR Group, Salil Goyal-Tax Lead-International Operations at Mahindra Comviva , Aditya Gupta-Tax Head at Reckitt Benckiser India shared their insights on India's take on taxation of digital economy.Audience also witnessed Nidhi Goyal, Managing Director at Avinav Consulting & CA Dilip Gupta-Partner Sandeep Ramesh Gupta & Co. discussing on Cross Border Investments, structuring and transactions & Interplay of TP with GAAR and POEM respectively. These sessions received a lot of audience attention. A good discussion occurred on India's tax litigation scenario and way forward (E-Assessments-Hits or Miss;

CIT (A), ITAT, High Court and Supreme Court) among Kavita Jha-Partner at Vaish Associates Advocates, along with Chandan Agarwal-Head Taxation at Dabur, Sanjay Gulati-Group Vice President at GMR Group & Haroon Qureshi-Vice President-Taxes at Genpact.

"Aftermath of COVID 19" in the 'ROLE OF INTERNAL AUDIT LEADERS'

The "WhatsApp University", as it is popularly known has more Teachers & Influencers than just the Readers. It is a great place to learn new and refreshing ideas on a daily basis. You must, however, develop the knack of distinguishing the relevant ideas and to junk the rest to ensure 'Effective Time Management'. Today I received an interesting Multiple-Choice Question (MCQ), which set my thoughts rolling:

Who led the Digital transformation of your company?

A. CEO B. CTO C. COVID-19

It is quite a straightforward question and with a very obvious answer too! However, at the root of this question and its answer lies a huge learning from this simple MCQ. There is little doubt that "COVID-19" is one of those Black Swan events which could perhaps lead to a brave new world. During its peak, it has locked out many societies and nations and has forced them to adapt to new International Order and created a need to adopt a "Jugadu" (Innovative within Constraints) attitude for survival during uncertain times.

There is no doubt that goals of managing 'Positive Cash Flows' & 'Managing Expense & Cost Structure' would remain at the forefront for commercial organisations during these crises. However, what will be eternally remembered is that these concepts will also get meshed and read along with some other terms such as Collective Good, Sustainable Power & Strength and measures to be taken for the good of mankind before pure commercial goals. Together, these ingredients indeed are set to make a great recipe for some heady cocktails!

It is universal truth that after every Black Swan event, whether an epidemic or a World War, the economy witnesses a huge setback and downturn and it eventually sets up the "Refresh" button before moving to the path of revival. During its occurrence and in the aftermath, the impact is pervasive, affecting all constituents of the society and only those people/ professions are able to survive, revive and thrive who are able to adapt themselves to the Darwinian "Theory of Evolution" i.e.

'Survival of the Fittest'.

As the popular saying goes, "When the Going gets Tough, the Tough gets Going!" There is little doubt that India will get stronger post COVID-19 and emerge as a stronger economy in a short span of time. However, this period of transition offers, all of us, an opportunity to introspect ourselves, both as an individual as well as the organisation that you work for. A stricter self-assessment would aid you to understand the challenges in front of you and the organisation and your preparedness to remain as Leader and keep you and your organisation ahead of the curve.

Few thoughts and questions, more to be treated like a 'Litmus Test', that have been put together which will give a sense of the status of an Internal Auditor in relation to his organisation during the ongoing challenges of COVID 19 are as follows:

1. *Did the Internal Audit Team volunteer to get involved in your Organisation's fight with COVID-19 and challenges created due to lockdown and whether the Organisation gleefully accepted your "Offer" to assist! (Great!! If the answer is in affirmative!)*

2. *Alternatively, did Management, on its own accord, reached out to the Internal Audit Team for assistance and advise? (If yes, then you are very much in the scheme of things from Management's perspective...Congratulations!)*

3. *Did Internal Audit team choose to understand & assess the full range of immediate risks emanating out of COVID-19? Did you in turn, communicate the results to the Management and the Audit Committee! (If yes, then Bravo!)*

4. *Did you get in touch with the Audit Committee to understand their apprehensions and did you explain them the Mitigants that are being planned. (If you were the first mover then great job or else something to introspect).*

5. *Did you make an attempt to find out what your competition is doing better, to address the challenges & whether you communicated the same to your Management? (If yes, then Thumbs Up!)*

6. *Did you think in terms of giving a moratorium from Internal Audit for the organisation? (Brilliant if it's done at your behest!)*

7. *Did you think in terms of refreshing the "Internal Audit Plan" to prioritise the challenges arising due to COVID-19? (Super Duper if it's your initiative & shows care and due consideration for your colleagues!)*

8. *Did you offer your team's expertise in managing the challenges without giving too much importance to the famous "Three Lines of Defence"? (If yes, then Congratulations for being an integrated part of the Management!)*

9. *Were you the first to suggest "Work from Home" for your team as well as for the Organisation or you waited for the Management to take a call? (Congratulations if you initiated the concept!)*

Please note that the above questions are not a Questionnaire forming part of any survey. But answers to these could give you a sense of where your Internal Audit function stands in the Organisation in terms of its recognition and recall value for problem solving and thought leadership.

The aftermath of COVID 19 is likely to be a Game-Changer in terms of how the world will perceive the "Normal". Each country will revise and recalibrate its national priorities, interests and dependence on other countries based on this 'Life Changing' one significant event. This could lead to different ways of managing the economy, businesses and risk. In this process, many traditional models may get challenged and will evolve significantly to cater to the new 'World-Order'.

Likewise, even the Internal Audit function is not an exception to this. Hitherto, Internal Audit was an integrated part of the "Overall Assurance" framework. The Audit Committee which has an oversight on the "Business & Management Assurance" is traditionally used to a "Four-Dimensional View" to seek its much-desired Assurance. It relies on the following:

- *Business MIS prepared by the Management*
- *Internal Financial Controls from CFO*
- *Internal Audit Assurance*
- *Statutory Auditor's Report*

Based on the representations from the above "Assurance Providers", Audit Committee carries a matured review on the state of Business & Assurance Process. This "Four-Dimensional" view eventually gets endorsed by them to the Board whilst approving "Financials & the Budgets" of the organisation.

In the aftermath of COVID-19, it's imperative for the Audit Committee & the Board to revaluate the relevance of this "Four Dimensional View" and in all probability it is quite likely to move towards a more 'Cost-Effective' and "Integrated Assurance" framework, that is very much conceived and under discussion but has been kept on hold for a long period of time by the Regulators globally.
However, in times to come with the pressure mounting on costs, this multi-faceted assurance may find much needed traction and may initially get subsumed into a more pragmatic Three-Dimensional Assurance to begin with and eventually creating a way towards an "Integrated Assurance" over a period of time. The simplest way to achieve this would be to integrate the internal assurance activities by effecting a merger of 'Internal Financial Controls (IFC Group)" with 'Internal Audit". This may mean there could either be an extension of Scope for Internal Audit or vice versa. This in turn could result into many redundancies and opportunities for elimination.

Considering all these factors, a Chief Internal Auditor needs to review/ adopt a fresh approach towards the audit function and review the following:

- Monitor Cost per Audit and to evaluate ways of reducing the costs (to get more from less).
- Flexibility to move freely within otherwise traditional & orthodox "Three Lines of defence". Frankly this will lead to an agile & flexible audit and in turn can do more of "Business Value Add" rather than merely "Process Value Add".
- Be pragmatic and replace "Pure Process Recommendations" by valuable "Business Aiding Recommendations". In short, provide "Solution Oriented Suggestions" & much needed help in its implementation
- Learnings from COVID-19 should be built into DNA of the Internal Audit Department such as:

  I.Create Digital enablers/ tools/dashboards to ensure that costs are reduced, coverage is enhanced (through 100% data scanning) and get data directly from the source to ensure "Social Distancing" is continued forward to create a healthy mutual respect between Internal Auditors & the Business.

  II. Continue "Social Distancing" amongst employees by continuing to adopt/ mix "Work from Home" culture without compromising on the quality and timely completion of Audits and thus energising & creating "Balance of life" in employees which will further enhance the productivity and quality of the staff.

  III. Learn from 'Sanitising of Hands'. This would be necessary to pay special attention on "Agile & Flexible" Auditing by refreshing the Audit Plan from time to time, to review critical Businesses in time, albeit with the prior consent of Audit Committee. Also monitor Action Tracker of Pending Audit Points as a part of good hygiene & to ensure that just like the learnings of "Sanitisation of Hands", these pending audit observations are brought to its closure.

  IV. Learn from "Wearing of Masks". This is also very critical to be implemented in Internal Audit. Internal Auditors need to take care

that they use appropriate filters in their Internal Audits which would ensure that they communicate correct message through written audit observations and filter out unnecessary discussions/ arguments and interpretations.

- Learn from providers of "Essential Services". Always exhibit a friendly attitude and appreciate business challenges with empathy even during difficulty time. This would ensure that Business would consider internal auditor as a "first point of reference" for advice/suggestion without any apprehension

*Last but not the least, stay connected with all your stakeholders and ensure that you are in listening mode 24*7*

Stay safe & stay relevant!

Nagesh Pinge
Ethics, Corporate Governance, Risk Management & Internal Audit Expert

The current Health Crisis is unprecedented. Internal Audit would also be tested once again to prove its value. In my view, this is not a "Short-Term" Project but is going to become a "New Normal" and it will continue well into next couple of years. Hence, this would require 'Internal Audit' to continue to remain agile, adaptive and responsive, both control-wise as well as Business-wise.

Tomorrow's successful Internal Auditor would be the one, who is able to strike the right chord and create a perfect symphony between 'Controls', "People' & 'Business'., much in the same manner in which the great conductor Zubin Mehta would conduct at the famous Israel Philharmonic Orchestra!

Impact of COVID-19 on FORCE MAJEURE and RELATED ASPECTS

The declaration of the novel coronavirus as a pandemic by the World Health Organisation has driven governments across the globe to take extraordinary measures to contain the spread of the virus, the most substantial being the imposition of lock-down and consequent restrictions on movement of people, goods and services (barring essential items). This has pushed the issue of force majeure ('FM') to the forefront.

Commercial contracts world-over generally contain FM clauses so as to address situations that were not contemplated by the parties at the time of entering the contract which prevent a party from carrying out its obligations under the contract due to reasons beyond its control. An FM clause may set out specific events such as acts of god, change in government regulations, change in law ('acts of state') as well as events such as epidemics, pandemics, labor unrest, wars, etc. or it could contain a boiler plate catch-all phrase such as 'beyond the reasonable control of the parties'.

In the wake of the Covid-19 pandemic, can the lockdown be termed as an 'act of state' and hence constitute an FM event? In the absence of a FM clause or an event of 'act of state' in the contract, could it be said that the lockdown has led to frustration of the contract?

The answers to these questions depend greatly on the particular facts and circumstances surrounding a particular case. For example, the Bombay High Court in its order dated 8th April 2020 in Standard Retail P Ltd v G S Global Corp & Ors has observed that steel being an essential commodity and therefore being exempt from lockdown restrictions, a party to a contract for supply of steel cannot invoke FM or the doctrine of frustration in order to resile from its obligations under the contract.

The language of the FM must also be closely scrutinized to determine the scope of events covered under the clause, the formalities for its invocation, and the consequences of such invocation. It would be a mistake to assume that the mere occurrence of a FM event would justify termination of the contract. The ICC Force Majeure Clause – March 2020, for example, provides for termination of contract by either party if the duration of an FM impediment exceeds 120 days, unless otherwise agreed.

Underlying factors such as the closure of factories and offices or restrictions on movement of non- essential goods and persons might fall within the scope of the 'acts of state' under an FM clause depending upon the extent to which performance is impeded by such measures.

Further, where a contract permits alternative modes of performance, it is incumbent upon the party seeking to invoke force majeure or the doctrine of frustration to demonstrate that it sought to perform by one of the alternative methods available to it.[1] Where alternative modes

of performance are found to exist, albeit at a higher price, it cannot be said that a contract is frustrated.[2]

The concept of FM involves three aspects: (i) the non-performance of obligation by a party is on account of an event beyond the reasonable control of the party; (ii) such an event was not foreseeable at the time the contract was entered into; and (iii) the party is unable to overcome the effects of the event to perform its obligations. The third part would generally determine whether the party would be given the benefit of exculpation from performance.

Frustration of a contract

The doctrine of frustration of contract is embodied in sec. 56 of the Indian Contract Act, 1872. A contract which is frustrated due to an unforeseen supervening event is not voidable at the option of the parties but rather necessarily becomes void on the impossibility or unlawfulness arising and discharges the affected party from performing the contract.

A pandemic situation like the Covid-19 in itself may not make the contract unlawful but could make performance impossible under certain circumstances but if it is considered as a force majeure event, then the obligation to perform may remain suspended during the lockdown period which in fact is an imposition by the State. It, therefore, depends on the facts of individual cases as to whether Covid-19 can lead to frustration or constitute force majeure.

The duty to mitigate would apply even in a case of frustration.

Hardship clauses

If the performance of a party to the contract becomes onerous on account of a supervening event which is not FM but was nevertheless foreseeable, a 'hardship' clause permits parties to re-negotiate the terms of the contract in good faith so as to make performance possible and feasible. Where alternative terms are not agreed upon within a reasonable time from invocation, the disadvantaged party may terminate the contract and also take recourse to other reliefs under the law.

Closing remarks

- Review the FM clause to determine whether it can be invoked on account of events such as Covid- 19 or resultant governmental pronouncements.
- In the absence of an FM clause, whether frustration of contract could be pleaded.
- Whether timely notice of inability to perform has been given?
- Have reasonable steps been taken to mitigate the effect of the FM event?
- Consider the applicable law and how it will affect force majeure or frustration of contract.

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1 The Furness Bridge [1977] 2 Lloyd's Reports 367
2 Energy Watchdog v CERC (2017) 14 SCC 80

COVID-19 PANDEMIC

RELIEF PACKAGE UNDER INDIRECT TAX LAWS

The COVID-19 pandemic continues to affect the humanity globally in an unimaginable manner, like a script from a scary apocalyptical movie coming true. With no immediate cure or vaccination in sight, strict lockdowns have now been globally accepted as reasonable means to delay and minimize the impact of the contagion.

As expected, the 21-day complete lockdown in India aimed at disrupting the spread of COVID-19, have bought most of the supply chain to screeching halt, seriously affecting the health of economy at macro as well as micro level.

While the well-being of its people remains the paramount consideration for the Government, it has not lost sight of the fact that the economy would need some serious handholding before it can be revived after this mayhem of COVID-19 is over.

In order to relieve the businesses of the pressures of undertaking various statutory compliances, which were becoming due during the period of lockdown or soon thereafter, the Hon'ble Minister of Finance Smt. Nirmala Sitharaman on 24th March 2020 vide a press release announced a slew relief measures with respect to statutory and regulatory compliances including the compliances under the Goods & Services Tax Act, 2017[1] ("GST"). In order to bring into effect such relaxations, the Central Government promulgated the Taxation & Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 ("Ordinance") on 31st March 2020.

Amongst others, the Ordinance, provided following relaxations and measures in relation to indirect tax laws:

Proceedings under Customs, Central Excise & Service Tax Laws

In terms of Section 6 of the Ordinance, any time limit specified under the customs, central excise or service tax laws which fall during the period from 20.03.2020 till 29.06.2020 will now stand extended to 30.06.2020.

The said provision would enable the assessees to file any appeal, reply, application or return becoming due during such period, by 30.06.2020. Similarly, the said provision would also allow the department to complete any proceeding or issue notice, order or approval etc. becoming time barred during the relevant period, by 30.06.2020.

Proceedings under SVLDRS Scheme, 2019

In terms of Section 127 of the Finance Act (No. 2), 2019 where an assessee had filed a declaration under SVLDRS Scheme, the designated committee was required to issue a statement / demand as follows:

a. Where amount declared by assessee was equal to amount estimated by the designated committee – A statement within 60 days from the date of receipt of the said declaration;

b. Where amount declared by assessee was not equal to amount estimated by the designated committee – An estimate within 30 days from the date of receipt of the said declaration and a statement within 60 days of filing the declaration;

The aforesaid time limit for issuance of declaration under a) above has now been extended till 31.05.2020. Further the time

1 For the purpose of brevity, Goods and Services Tax Act, 2017 shall mean Central Goods and Services Act, 2017, State / UT Goods and Services Act, 2017 and Integrated Goods and Services Act, 2017.

limit for issuance of estimate under b) above stands extended till 01.05.2020 and time limit for issuance of statement stands extended till 31.05.2020.

It is pertinent to note that the last date of filing declaration under SVLDRS Scheme was 15.01.2020 and therefore, in case the designated committee was not agreeable with the amount calculated under the declaration, it was mandated to issue an estimate within 30 days i.e. by 14.02.2020. Accordingly, extension of such time till 01.05.2020, which is not directly on account of COVID-19 pandemic will impact the vested rights of various applicant under SVLDRS Scheme who had deemed there declarations as accepted.

In addition, where the assessee was required to pay any amount as per the aforesaid statement issued by the designated committee, such assessee was required to pay the amount payable as indicated in the statement issued by the designated committee within 30 days of issuance of the declaration. The said time frame for making payments under SVLDRS Scheme stands extended till 30.06.2020.

It is pertinent to note that the Ordinance specifically provides that the said extended dates may further be extended by the Central Government by way of notification.

Enabling Provision under CGST Act, 2017

Vide Section 8 of the Ordinance, an enabling provision in form of Section 168A has been inserted under CGST Act which provides that the Central Government may, on recommendation of GST Council, extend the time limit for any actions contemplated under the CGST Act which cannot be completed or complied with due to force majeure such as epidemic.

The said enabling provision further provides that the power to issue notification shall include power to issue notification with retrospective effect.

Various Notifications issued by Central Government

In addition the above and in order to implement various relaxation announced by the Hon'ble Finance Minister, the Central Government has issued various notification which are summarised hereunder:

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Sl. No.	Notification No.	Relief Provided
1)	15/2020 – Central Tax dated 23.03.2020	Time limit for furnishing of the annual return for FY 2018-2019 extended till 30.06.2020.
2)	27/2020 – Central Tax dated 23.03.2020	Time limit for furnishing FORM GSTR-1 by registered persons having aggregate turnover of up to 1.5 crore rupees, for Q1 FY20-21 by 31.07.2020 and for Q2 FY20-21 by 31.10.2020. Time limit for submitting details of inward supplies for said period to be subsequently notified.
3)	30/2020 – Central Tax dated 03.04.2020	Rule 3(3) of the CGST Rules, 2017 amended to provide that registered person who wants to opt for composition scheme for FY 2020-21 can file intimation in FORM GST CMP-02 on or before 30.06.2020. Rule 36 (4) of the CGST Rules, 2017 amended to provide that the restriction of availment of ITC on to the extent of 10% in respect of invoices not appearing in 2A, has been deferred for months of February, March, April, May, June, July and August 2020. The said restriction shall now apply cumulatively for the above periods while filing GSTR-3B for September 2020.
4)	31/2020 – Central Tax dated 03.04.2020	Date of filing GST 3B for the month of February-April, 2020 and payment of tax not extended. However, rate of interest payable amended as follows: *For Registered Tax Payers with aggregate turnover more than 5 Crore Rupees in preceding financial year* Interest payable by such tax payers would be Nil if the returns are filed within 15 days of the due date. Thereafter, the interest rate would be 9 % provided all the returns are filed on or before 24.06.2020. If any of the returns are filed after 24.06.2020, the rate of interest would be 18%. *For Registered Tax Payers with aggregate turnover more than 1.5 Crore Rupees but not exceeding 5 Crores Rupees in preceding financial year* Interest payable by such tax payers would be Nil, provided the returns for February and March 2020 are filed on or before 29.06.2020 and return for the month of April is filed on or before 30.06.2020. *For Registered Tax Payers with aggregate turnover upto 1.5 Crore Rupees in preceding financial year* Interest payable by such tax payers would be Nil, provided the returns for February is filed on or before 30.06.2020, return for the month of March 2020 is filed on or before 03.07.2020 and return for the month of April is filed on or before 06.07.2020. The said notification has been made effective retrospectively with effect from 20.03.2020.

Sl. No.	Notification No.	Relief Provided
5)	32/2020 – Central Tax dated 03.04.2020	In line with the aforementioned notification, the present notification seeks to waive any late fee payable on late filing of return as follows: For Registered Tax Payers with aggregate turnover more than 5 Crore Rupees, the whole of the late fee for filing returns for the month of February – April 2020 has been waived provided all the returns are filed on or before 24.06.2020. For Registered Tax Payers with aggregate turnover more than 1.5 Crore Rupees but not exceeding 5 Crores Rupees in preceding financial year, the whole of the late fee for filing returns for the month of February – April 2020 has been waived provided the returns for February and March 2020 are filed on or before 29.06.2020 and return for the month of April is filed on or before 30.06.2020. For Registered Tax Payers with aggregate turnover upto 1.5 Crore Rupees in preceding financial year, the whole of the late fee for filing returns for the month of February – April 2020 has been waived provided the returns for February is filed on or before 30.06.2020, return for the month of March 2020 is filed on or before 03.07.2020 and return for the month of April is filed on or before 06.07.2020. The said notification has been made effective retrospectively with effect from 20.03.2020.
6)	33/2020 – Central Tax dated 03.04.2020	Late fee payable under section 47 of the CGST Act, 2017 for delay in filing GSTR-1 waived for the months of March - May, 2020 (including for quarter ending March, 2020) provided that GSTR-1 for the said period is filed for the said period on or before 30.06.2020. No exemption granted for filing of GSTR 1 for the month of Feb 2020.
7)	34/2020 – Central Tax dated 03.04.2020	Last date of filing details of payment of self-assessed tax in FORM GST CMP-08 by composition dealers extended till 07.07.2020 Further, the last date of filing annual return by Composition Dealers in GSTR-4 extended till 15.07.2020.
8)	35/2020 – Central Tax dated 03.04.2020	Time limit for all proceedings and compliances including issuance of notice, filing of appeals, returns, refunds etc. due date of which falls between 20.03.2020 and 29.03.2020 extended till 30.06.2020. However, the said overarching extension to not apply to time of supply, automatic lapsing of composition option in case of exceeding the threshold, liability to obtain registration, validity of registration certificate of casual dealers and non-resident taxable persons, obligation to raise tax invoice, obligations to file returns, payment of interest and late fee (except as waived in terms of aforesaid notification), powers to arrest, penalties for specified offences, detention and seizure of goods in specified cases, obligation to generate e-way bills. It is further provided that where validity of any e-way bill expires during the period 20.03.2020 till 15.04.2020, the validity period of such e-way bill shall be deemed to have been extended till the 30th day of April, 2020. The said notification has been made effective retrospectively with effect from 20.03.2020

As can be seen from above, the Government has not outrightly extended the last date for filing the GST returns and has provided for conditional waiver of interest and late fee in case of delay in filing the GST returns for different categories of tax payers.

At this critical time, when government has announced substantial relief package for the economically weaker section including daily wagers who are unable to earn any wage due to lockdown, it would be important for the government to collect all possible taxes in a timely manner.

Therefore, conditional waiver in interest and late fee would ensure that all industries that are allowed to operate during the lockdown as well as other large industries which form source of 90% of GST revenue would file returns with a maximum delay of 15 days from the due date to avoid any interest or late fee payment.

While the aforesaid measures would provide temporary relief to the industry in form of sufficient time for making necessary compliances, such measures may not be enough to give an impetus to the industry, especially MSME sector, in reviving demand as and when the lockdown is lifted. It is expected that the Central Government would soon announce a fiscal package to help the industry face the impact of COVID-19 on the economy.

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THE COVID-19 LOCKDOWN AND ITS IMPLICATIONS ON THE LABOUR/WORKFORCE IN INDIA

The breakout of the corona virus the world has had a multitude of impact on our lives, but most importantly the impact on the world economy is resounding. The lockdown imposed by the governments world over and in particular India has meant that majority of the Industries have had to pull their shutters down.

India went on a country wide lockdown on 24th March 2020. The invocation of the lockdown was triggered by the central government under two laws- the archaic British law- The Epidemic Diseases Act 1897 and the more recent National Disaster Management Act,2005 ("NDMA"). Along with this the government is also using the National Disaster Management Guidelines in order to control the declared Pandemic Covid-19.

On March 24th the Ministry of Home Affairs ("MHA") as the Executive Authority has issued various advisories on the imposition of Lockdown stipulating the exceptions and guidelines to be adhered during the time of Lockdown. The advisory has indicated the establishments and industries that can function (the list extended through six addendums). The advisory has also sought businesses not to cut wages and to terminate its employees, with references on casual workers and contract workers.

The foremost question that runs through many is whether the MHA Guidelines are binding. There are many that have taken the stand that the Guidelines issued by the MHA are in fact purely advisory and therefore not binding. First and foremost, the NDMA under which the Central Government is issuing the Guidelines and circulars clearly provides in its preamble that the Act is enacted "…to provide for the effective management of the disasters and for matters connected therewith or incidental thereto". Section 6(1) of the NDMA and Section 10 of the NDMA Act provides for the authority vested in the national authority to do the acts to control the disaster including to mitigate or prevent the disaster as well as to prepare and do capacity building for the disaster that might occur. Covid-19 is a declared disaster. Using the NDMA the MHA has the Executive Authority to issue the Lockdown order as it sets out the proven method of social distancing which has been stated to be the best method to deal with the spread of the Covid virus. In furtherance of this it also took out a list of guidelines that provided for the Industries/establishments that could function as exceptions as being providers of essential commodities and the rest of the establishments including several manufacturing industries were to make their employees to work from home. This advisory taken under the NDMA has ramifications under section 51 of the NDMA of fine/imprisonment if not followed.

Today with the issuance of the MHA lockdown order, nearly 80% of the establishments have had to provide for work from home capabilities to their employees including those in the SEZ/STPI/OTS space. These advisements also sought that the companies to not reduce or deduct wages or terminate employees. The idea behind the MHA Guidelines was not only to control the spread of the virus but also that the non-functioning of the industries should not lead to a scenario where people would not adhere to the guidelines and break the guidelines in search of a livelihood.

It is also to be noted that the advisory issued by the Government has been followed by a circular issued by the Labour Commissioner in this regard as well as notifications/orders taken out by 18 states supplementing and/or endorsing the Centres' view to take care that all employers whether industry or shops and commercial establishment shall make the payment of wages to their workers on the due date without deductions even during the closure of the establishment during lockdown. This is further seen in the extension of Lockdown until May 3rd declared by the Prime Minister where once again, he sought that employees must not be terminated and wages need be paid, however the basis for this call out was empathy.

Both if read together would indicate that the advisories issued by the Home Ministry followed by the State orders/notifications would require to be followed. However, one must also look into the aspect of whether the establishments/industries can in fact maintain employees when they themselves have had little opportunity to run their establishments. In ordinary circumstances if businesses are unable to cope with their losses, the response is to terminate employees or trigger the lay off or retrenchment of employees. This scenario is no different. Companies are beginning to question, whether the employees can be sent on leave without pay or can they trigger layoffs and retrenchment of the employees. Another query that arises among the companies is the holding back of the service fees of contract labour when they are not servicing the company anymore.

In the present case the Covid-19 is not a permanent situation but the spread of the virus and its arrest when it is not known gives rise to a new order. Which leads to the larger question that each industry would have to or can look at alternate means to survive or look towards business continuity plans but in the event they are not able to function, the law requires them to follow certain process and procedures which are existent in the present labour laws in the event the outcome of the lockdown is for them to taper or cut their losses.

Therefore, there are certain dos and don'ts that an employer can do-

1. If you have triggered work from home for your employee, it is imperative that you re-examine the present contracts to include aspects of work from home policy, a Non-disclosure Confidentiality agreement as well as an IT and cyber security policy and Intellectual Property rights assignment.
2. It is equally important for the organisation to conduct and provide for assessments and reviews of the employees including trackers and log data to facilitate as well as check the productivity of the employee. However, the checks and balances must be so modulated in order to facilitate the employee but not lead to workplace harassment of the employee.
3. The employer must also provide for webinars and meetings for the employee in order to facilitate the smooth transition of the employees into work from home scenario. These amenities can be used to educate the employee on the safeguards that require to be provided on the laptop and work environment as also provide for support to increase the productivity of the employee.
4. For the exempted establishments it is important that they follow all the guidelines provided by the health ministry on social distancing while enabling the production done by their units. The health and welfare of the employee is the responsibility of the employer. In order to sustain their establishment, it is imperative that the exempted establishment follows the protocol provided:
   a. Thermal screening of all employees entering the establishment
   b. Cleanliness of the establishment

especially the areas which are frequented and touched by the employees require to be disinfected at regular intervals

c. Provision of masks and gloves while working in the industry/establishment

d. Minimal staff to be used keeping in mind the social distance of 6m being kept between the employees.

e. Cooked meals on the premises

f. Promote/advocate and teach frequent hand washing and sanitisation among the employees

g. Procure the passes required for the employees and goods so that they might have safe passage

h. Use a manual attendance system

I. Provide adequate sanitisation methods

j. Get the travel history of all the employees

k. Check the employees for any symptoms on a periodical basis.

5. It is to be noted that for Workers any condition for change in their scenario would require a 21-day notice to be provided to them. In the event of any change in the salaries or leave stipulations of an employee, the employer requires to revisit the contract of employment signed with their employees and make changes in them before triggering the changed conditions of employment. Suo motto a company must not make actions of change in employment conditions without due notice.
6. No leave can be imposed on the employee except through the contract or a changed contract, however the leave has to be with pay and has to be as per statutory minimum.
7. In the event a Company would like to treat it as a lay-off or retrenchment then the process under the Industrial Disputes Act and Industrial Employment (Standing Orders) Act requires to be followed.
8. Contract labour is the principal employer's responsibility therefore holding back of the fees is not possible and the contract again would require to be explored.
9. Overtime too would require to be paid therefore monitoring the hours of work is important and phased accordingly.

On the humanitarian response an organisation may require retaining its workforce so that the already existent economic stress does not turn into a more social problem. However, the factual scenario cannot also be ignored that the financial crunch the employers are facing requires them to realign themselves to the workforce. The need of the hour is therefore to assess, review, modify their obligations with the employees/workers through dialogue. These are tough times both for the employers and employees therefore any decision to be taken cannot be done in haste and the ramifications for the same require to be looked at from a long-term basis. It is clearly indicative that the government has taken the stand to direct establishments not to terminate or reduce wages or stop wages, however if an establishment has to take this painful decision it may do so provided it follows due process.

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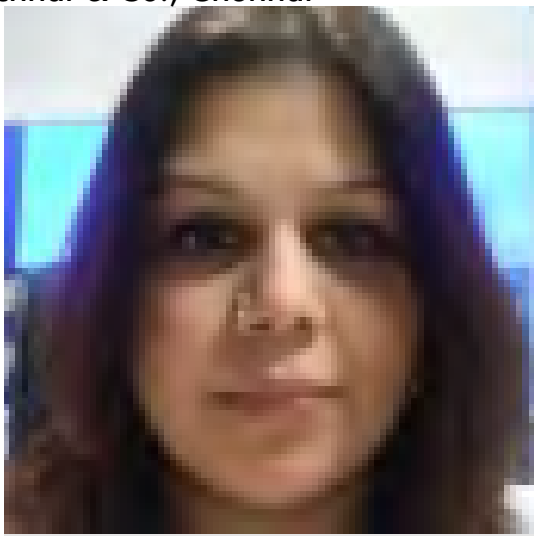
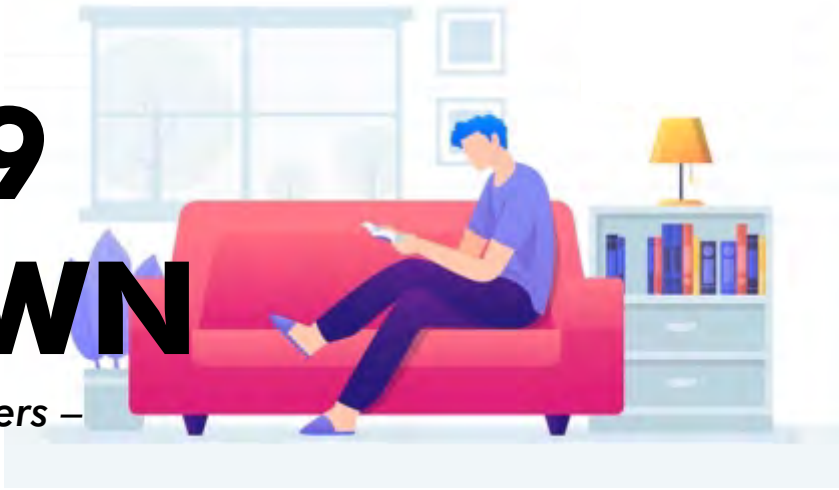


COVID-19 LOCKDOWN



Payment of Wages to the Workers – Obligatory or Discretionary

The COVID-19 pandemic has entered the fourth month of its first being deducted, continuing to create substantial and significant health, social, and economic challenges worldwide. Within a single quarter, it has affected more than one million of the world population with approximately eighty thousand reported deaths globally.

In order to deal with this pandemic, the Central Government has invoked the Disaster Management Act, 2005 (DMA) and ordered a complete lockdown of the entire country barring the essential services. Simultaneously, the State Governments, following the Central Government, have also invoked The Epidemic Diseases Act, 1897 (EDA), and directed a complete shut-down of the operations of the shops, commercial establishments, industries, factories and godowns, except those qualifying as essential services, amongst other measures including prohibiting and controlling movement of transport services, plying of private vehicles and gathering of people to avoid the spread of the pandemic.

The Central and the State Governments have also issued different orders directing the shops, commercial establishments, Industries and Factories to not terminate their employees including contract and/or migrant labour, or reduce their wages and further, to give them paid leaves during the period of lock down. This effectively means that an employer cannot terminate any employee, reduce his/her salary and is also obligated to pay the entire salary to the employee during the lockdown period against the commonly adopted process of "No Work - No Salary".

With orders being passed separately, by both the Central and the State Governments, under two different enactments namely, DMA and EDA respectively, the concerns that arise are:

> *Whether it is mandatory to pay wages to all the employees in accordance with the Directives given by Central or State Governments; and*

> *In the event that there is an inconsistency between the order/directives issued by the Central and the State Governments, which one will prevail.*

Order Issued by the State Governments

Section 2 of the EDA, confers powers to the State Governments to take measures and, by public notice, prescribe such temporary regulations to be observed by the public or by any person or class of persons, as it shall deem necessary, to prevent the outbreak of such disease or the spread thereof, and may determine in what manner and by whom any expenses incurred (including compensation, if any) shall be defrayed.

The EDA was initially enacted, during the pre-independence era, in 1897 to stop the spread of bubonic plague. The objective of the Act is to prevent the spread of epidemic diseases. Under the EDA, both the Central and the State Governments are empowered to take measures in order to control the epidemic. Section 2 of EDA only enables the State Government to prescribe measures to prevent the outbreak of such disease or the spread thereof.

It can be argued that the EDA, however, does not specifically empower the State Government to direct a private employer including that of any shops and establishments to mandatorily pay wages to its employees during the lockdown period.

In the circumstances that the State Governments do have the above power, the other contention then put forward is whether the obligations prescribed by the State Governments in their orders are applicable only to 'workers' or 'workmen' defined under the provisions of the Factories Act, 1948 and the shops and commercial establishments and employees not falling under the definition of 'Workmen' remain out of the present directive issued by the State Governments and accordingly, can choose to provide these benefits only on a humanitarian ground.

Order Issued by the Central Government

The Central Government, vide Order Number 40-3/2020-DM-I(A) dated March 29, 2020, issued by the Ministry of Home Affairs, under section 10(2)(I) of the Disaster Management Act 2005, has directed the State / Union Territory Governments and State / Union Territory Authorities to take necessary action and to issue necessary orders to their District Magistrate/ Deputy Commissioner and Senior Superintendent of Police/ Deputy Commissioner of Police, to ensure that, "All the employers, be it in the industry or in the shops and commercial establishments, shall make payment of wages to their workers, at their work places, on the due date, without any deduction, for the period their establishments are under closure during the lockdown."

Further, Section 62 of the DMA provides power to the Central Government, which is notwithstanding anything contained in any other law for the time being in force, to issue direction in writing to the Ministries or Departments of the Government of India, or the National Executive Committee or the State Government, State Authority, State Executive Committee, statutory bodies or any of its officers or employees, as the case may be, to facilitate or assist in the disaster management and such Ministry or Department or Government or Authority, Executive Committee, statutory body, officer or employee shall be bound to comply with such direction.

Section 72 clearly lays down that the DMA shall have an overriding effect and the provisions of DMA, shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

Directives Obligatory or Discretionary

Thus, the Government of India has put an end to the controversy of whether it is mandatory or discretionary to pay wages to the workers by their employers during the lockdown period, by specifically directing the state / union territory governments to ensure that the employers pay wages for the lockdown period not only to the permanent workmen of an industry, shops or commercial establishment but also to contract workmen and inter-state migrant workers.

Power of Central vs. State Government

While both orders deal with similar aspects, constitutionally the State Government's order finds its power enumerated under Entry 1 and Entry 6 related to public order and public health of the State List, the Central Government's power to pass the order is derived from Entry 29 of the Concurrent List, which reads as under:
"29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants".

Entry 29 of the Concurrent List empowers the Central and State Governments to legislate on matters pertaining to the prevention of an infectious or contagious disease spreading from one state to another. The entry does not limit the powers to simply public order or health, but allows for any relevant legislation to be passed, so long as it is to prevent the disease from spreading across state jurisdictions.

Although, both Central and State Governments are empowered to legislate on an entry in the Concurrent List, Article 254 of the Constitution of India provides guidance on as to which order shall prevail in the event of an inconsistency between the two; *Art 254 reads as under:*
254. Inconsistency between laws made by Parliament and laws made by the Legislatures of States

(1) *If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void*

(2) *Where a law made by the Legislature of a State with respect to one of the matters enumerated in the concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or*

repealing the law so made by the Legislature of the State.

The Supreme Court of India in the case of M. Karunanidhi v. Union of India has also held that "where the provisions of a Central Act and a State Act in the Concurrent List are fully inconsistent and are absolutely irreconcilable, the Central Act will prevail and the State Act will become void in view of the repugnancy".

Manish Tyagi
Partner, MHA Legal

Thus, Constitution of India and the Supreme Court of India clearly recognize the supremacy of the order passed by the Central Government over the State Legislation in the Concurrent List.

R. Hiranmai
Partner, MHA Legal

Accordingly, the orders passed by the Ministry of Home Affairs under section 10(2)(I) of the Disaster Management Act 2005 shall prevail over the order passed by the States Government under sections 2, 3, of the EDA and all the shops, commercial establishments, Industries and Factories are duty bound to pay their all employee including contractual, migrant and temporary workers, entire salary during the lockdown period and are restricted to terminate or layoff the employee /worker due to circumstances arising as a result of lockdown.

IMPACT OF SARS-COV-2 (COVID-19) ON INSURANCE SECTOR

COVID-19 virus has already changed many aspects of our everyday life. Our grocery shopping, socializing habit, working patterns to travelling everything is seeing a massive change. In this article let's focus on a sector which is expected to provide cushion in times of uncertainty to policy holders however, is this sector prepared for a large pandemic like this? Insurance subject is basically a science of undertaking smart risks by churning out big data with an ability to forecast futuristic risk. However, how do we plan for unplanned? The Indian insurance industry is generally well regulated and adopts healthy governance practices hence, is perceived to be prepared for major pandemic like this however, are we reading it right? Like any other Pandemic the impact to come will be at global stage requiring local level response. Insurers need to respond to SARS-CoV-2 at multiple fronts such as; claims payout, employee wellbeing and managing investment portfolios. As the adverse impact will last for long duration and on large scale global economy; the mitigation plan is not going to be easy to execute.

Let's see this challenge for **insurance sector** in following **headers:**

1. Impact on customer (policy holder)
2. Impact on long term financial health of insurers
3. Strategy, policies or governance requirement for risk mitigation

Impact on Customer:

a. Customer's fragile trust in insurers is at test again as customers finding out that many basic policies do not cover the impacts of a global pandemic. Global customer behavior analysis reveal that majority of customers do not make an effort to fully understand their insurance coverage though insurers' can be blamed partly for using legalese and long, complicated terms and conditions. We have also ended up creating an environment where people buy insurance based on which policy is cheapest and, unsurprisingly, cheap policies rarely cover unexpected or unusual events - like global pandemics.

b. Customer engagement and satisfaction score for insurers are expected to drop due to stress on customer service assets. Distressed customers calls and queries are at unprecedented stage along with increasing escalations in the press and on social media. This is exacerbating the situation, resulting in long wait times for responses and further customer disgruntlement.

Impact on long term financial health of Insurers:

a. There is general perception that insurers are large organizations with deep pockets failing to realize that these organizations need to mitigate enormous risks at a scale which is complex & uncertain. Under these popular sentiments insurers are being forced into action to customers' benefit by governments' despite available pandemic guidelines on insurance claim settlement.

b. Despite global pandemic being voted as the biggest risk to insurance industry in a poll of insurance executives in 2013, most insurance companies seem to have taken little financial risk mitigation actions to be prepared for such event.

c. Insurers and reinsurers face huge financial exposure as major events are cancelled, business operations is interrupted hospitalization and death claims increase. Munich Re has exposure to the Olympic Games in the region of hundreds of millions of Euro to take one example. It is almost certain that we will see insurance businesses fail and quite possibly in significant numbers.

d. We could see the significant stress on individual life and health insurance companies. Rating agency Fitch has already warned that life insurance companies could be particularly hard hit by the combination of falling stock markets and increasing mortality rate.

e. Giant global businesses are on a downward slope such as airlines and hospitality chains. Such firms are most likely to have comprehensive insurance cover, so having to pay out on any policies will further add to stress on insurance companies.

f. Insurers dealing with travel insurance policies will be specially bearing burden of cancellation cover.

g. As global stock markets are in tailspin the return on investments are increasingly diminishing thus eroding market investment value thus causing serious liquidity crisis for insurance players.

Strategy, policies or governance requirement for risk mitigation:

a. Ensure a comprehensive plan is in place to prioritize the safety of employees, distributors and vendor partners.

b. Create effective alternative work arrangements for employees and create governance mechanism to improve virtual workplace productivity.

c. Boost operational readiness to manage additional load of customer enquiries and support or counsel they may need at this time.

d. Review and strengthen cyber security digital transactions and new modes of working and exchange of information.

e. Re-draw enterprise risk register and undertake business reviews on most venerable segments of insurance business such as claims exposure & profitability impact, credit insurance, supply chain, contingency insurance, travel, health, retirement and term insurance segment.

f. Evaluate potential brand risk exposure areas due to expectation vs. policy terms & conditions and develop a proactive mitigation plan.

g. Develop effective customer response system especially in situation of surge enquiries.

h. Review and strengthen Business Continuity & Contingency Plan including planning for shortage of skilled workforce.

I. Emphasize a clear executable action to maintain stakeholder and Regulator confidence by active engagement.

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Max Bupa Health Insurance Co. Ltd.

To conclude we are in an uncharted territory and all conventional processes will be at test. Insurance sector is expected to be hit hard however, continue to engage with market to gasp shining examples of risk mitigation.

GOVERNMENT EFFORTS TO PIN THE BLACK MONEY

CAN IT WITHSTAND JUDICIAL SCRUTINY?

Since coming into power, Mr. Narender Modi led government has taken numerous steps to pin the black money. The government in series of steps have made efforts in not only curbing the menace of black money stashed overseas but to also put a halt on the domestic parallel cash economy.

In order to curb the 'tax manoeuvring' arrangements and black money generating activities, India has supported all global efforts of international cooperation. In this regard, emphasis are laid on the White Paper on Black Money issued by Ministry of Finance dated May 16, 2012, the Central Board of Direct Taxes ('CBDT'), the apex direct tax administrative body in India, which brought to light the menace of black money and that it could be curbed by undertaking several unilateral & bi-lateral measures.

In this pursuit, the Union Budget, 2015 was perceived to have chalked out the roadmap of achieving the elusive great Indian story and the "Ghar Wapsi of Ache Din and Black Money", the then Finance Minster Late Mr. Arun Jaitley in his budget speech asserted that the first and foremost pillar of his tax proposals is to effectively deal with the problem of black money which eats into the vitals of the economy and society. To quote 'tracking down and bringing back the wealth which legitimately belongs to the country is his government's abiding commitment to the country' and that the problems of poverty and inequity cannot be eliminated unless generation of black money and its concealment is dealt effectively and forcefully.

The Finance Minister while acknowledging the menace of funds illegitimately stashed abroad, promised the introduction of a new comprehensive law to curb the same. Going forward, The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (**Anti Black Money Act**) and has been made effective from July 1, 2015.

The primary objective of the Anti Black Money Act is to tax the undisclosed foreign income and foreign assets acquired from such undisclosed foreign income and initiate punitive actions against those indulging in this illegitimate means of causing loss to the exchequer.
The law is draconian and unique in a sense, as it provides for taxability of a foreign asset or foreign income, which has been illegally stashed overseas (and not declared in the one time declaration scheme), in the year in which it comes to the knowledge of the tax authorities, irrespective of the period to which it pertains. In simpler words, the Anti-Black Money Act would also be applied to such illegal foreign income and foreign asset which also pertains to period prior to coming into force of such Anti Black Money Act [1].

The highlights of the Anti Black Money Act are the draconian penalty and prosecution provisions whereby a penalty of 300% is levied for non-disclosures of foreign income or foreign asset. Furthermore, slab rates of penalty have been specified for non-disclosures or non-furnishing of return or information, or furnishing of inaccurate particulars etc. Also, stringent provisions for imprisonment have been provided for wilful evasion of taxes, penalty or interest etc., wherein the period of sentence has been provided for a minimum period of three years with a maximum of ten years. The penalty and prosecution provisions enshrined under the Anti Black Money Act are higher vis a vis to the penalty and prosecution provisions that are provided under the Income Tax Act, 1961.

Thus, for an example, an assessee who has illegally stashed his income overseas in the year 2002, would have been exigible to tax, penalty and prosecution provisions as per the Income Tax Act, 1961 applicable to the year 2002, however, since that assessee escaped the rigours of Income Tax Act and now the tax department comes to know about such illegal foreign income and asset, the Anti Black Money Act may now be made applicable to such transaction pertaining to the year 2002, and he would be exigible to draconian penal and prosecution provisions provided under the new Anti Black Monty Act.

Apart from the above, the order passed under the Anti Black Money Act is made a scheduled offence under Prevention of Money Laundering Act, 2002 (PMLA). Thus, if any order is passed under the Black Money Act making assessment of any undisclosed foreign income or asset, the same would also be a scheduled offence under **PMLA** and rigorous provisions of PMLA would also become applicable, which may lead to attachment, confiscation of the property (proceeds of crime) and imprisonment of the assessee under the PMLA separately.

Also, amendments were brought to the provisions of Foreign Exchange Management Act, 1999 (**FEMA**), for penalising and prosecuting the act of illegally stashing assets overseas. The amended provisions provide for attachment and confiscation of the equivalent amount of property in India in lieu of the assets illegally stashed abroad and also provides for imprisonment.

It is worth noting that the penal and criminal punishments are significantly enhanced through amendments in the way of Anti Black Money Act, PMLA and FEMA ***ex post facto*** vis a vis the quantum of penalties and criminal punishment that were in force and applicable at the time of commission of the act of illegally stashing income and assets overseas.

A table summarising the penal and criminal provisions applicable at the time of commission of an offence (say for example in the year 2002) and the penal and criminal provisions that are now made retrospectively applicable to such offences committed prior to such amendments but detected/investigated now.

Pranshu Goel
Partner Ashok Pranshu & Co,
Chartered Accountants

1 Section 72(c) of the Anti Black Money Act

S.No.	Provisions applicable at the time of commission of offence (say for example in the year 2002)	Penalties and punishments enhanced retrospectively to the offence committed (say for example in the year 2002) i.e. prior to introduction of such penalties and punishments
1	**Penalty under Section 271(1)(c) of the Income Tax Act, 1961 –** 100% to 300% of the tax sought to evaded	**Penalty under Section 41 of the Anti Black Money Act –** 300% of the tax on the undisclosed foreign income and asset
2	**Prosecution under Section 276C of the Income Tax Act, 1961** Rigorous imprisonment from 6 months to 7 years with fine (Option for compounding of offence is available on payment of fees)	**Prosecution under Section 51 of the Anti Black Money Act –** Rigorous imprisonment of 3 years to 6 years with fine. (Option for compounding of offence is not available)
3	No provision of imprisonment under PMLA or any other similar act was applicable at the time of commission of offence	**Imprisonment under Section 4 of PMLA –** Rigorous imprisonment 3 years to 4 years with fine.
4	No provision of confiscation of proceeds of crime/ foreign asset or income was in place at the time of commission of offence	**Section 8 of the PMLA** Confiscation of property representing proceeds of crime
5	No provision under FEMA for confiscation of equivalent property in India were applicable at the time of commission of offence	**Section 37A of the FEMA –** Confiscation of assets equivalent to value in India of the value of foreign assets.
6	No provisions for prosecution under FEMA at the time of commission of offence	**Section 13(1A) and Section 13(1C) of the FEMA –** Penalty upto three times the value of foreign income and asset. Imprisonment upto 5 years with fine

In other words, the draconian provisions of Anti Black Money Act, PMLA and FEMA are now made retrospectively applicable to the offence committed at a time when such severe provisions were not in place.

Here, it is important to consider whether such retrospective action on the part of the government is constitutionally valid and can a person be charged to rigorous penalty and punishments for an act/offence committed at a time when such act/offence did not attract such rigorous penalties and punishments.

Though Article 245 of the Constitution of India, provides power to the parliament to enact, make or amend laws prospectively as well as retrospectively. However, Article 20(1) of the Constitution of India, clearly restricts the legislature in enacting, making or amending laws retrospectively to provide for criminal punishments. In nutshell Article 20(1) provides that a new law cannot punish an old act.

Article 20(1) of the Constitution of India is usefully extracted hereunder:

"No Person shall be convicted of any offence except for violation of law in force at the time of the commission of act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence"

Article 20(1) guarantees that no persons shall be convicted of any offence except for the violation of a law in force at the time of commission of the act charged as an offence, not be subjected to a penalty greater than which might have been inflicted under the law in force when it was committed. If an act was not an offence when it was committed, a subsequent law cannot make it criminal. Similarly, the penalty attached to an act when it was committed cannot be enhanced by a subsequent law[2].

It is also worthwhile to take note of the finding of the Hon'ble Supreme Court in the case of ***T. Barai v. Henry Ah Hoe, AIR 1983 SC 150***, wherein, the Hon'ble Apex Court held that where a later statute again describes an offence created by a statute enacted earlier and the later statute imposes a different

2 West Ramnad Electric Distriution Co. Ltd. v. State of Madras AIR 1962 SC 1753, Ganesh Gogoi v. State of Assam (2009) 7 SCC 404, Rao Shiv Bahadur Singh v. State of Vindhya Pradesh AIR 1953 SC 394

punishment, the earlier statute is repealed by implication. The later law would have no application if the offence described herein is not the same as in the earlier law i.e., if the essential ingredients of the two offences are different. If the later law creates a new offence or enhances the punishment for the same offence, no person can be convicted under such ex post facto law nor can the enhanced punishment in the later law be awarded to a person who had committed the offence before the enactment of the later law [3].

Form the aforesaid analysis, though, the Anti Black Money Act in itself may not be anti-constitutional, as it provides for the similar tax rate as that is provided under the Income tax Act, 1961, however the penal provisions and provisions providing for prosecution may not withstand the scrutiny in terms of Article 20 of the Constitution of India. The retrospectively enhanced penalties and criminal punishment under the Anti Black Money Act, PMLA and FEMA for the offence of hiding of illegal foreign income and foreign assets committed in the past but detected, investigated and prosecuted now appears to be in contravention of Article 20(1) of the Constitution of the India, and may not withstand judicial scrutiny.

Pursuant to the Swiss bank leaks, Panama Paper leaks and enforcement of exchange of information, the government has taken numerous steps to detect, investigate and prosecute the assessee's for the act of illegal stashing of income and assets overseas, however, nothing significant has been achieved. Furthermore, with the possibility of the assessee's invoking the option of judicial scrutiny in terms of Article 20(1) of the Constitution, the road seems tough for the government.

Having analysed above, it is also imperative to take note that pursuant to a declaration scheme that was introduced in the year 2015 pertaining to the undisclosed foreign income and assets, there is no such other scheme that was introduced that gave any relief to any assessee still having any such undisclosed foreign income and assets. Many disclosure schemes, like Income Disclosure Scheme, Pradhan Mantri Garib Kalyan Yojna Scheme, Dispute Resolution scheme were introduced post the declaration scheme pertaining to undisclosed foreign income and foreign assets, but all such schemes did not allow the assessee's to take benefit of such scheme(s) regarding undisclosed foreign income and assets. Recently the Vivad se Vishwas scheme is also introduced, wherein also the assessee's having any pending litigation pertaining to undisclosed foreign income and assets cannot take the benefit of such scheme.

In this tough time when the whole world is locked down due to the Covid-19 pandemic and the world economies are struggling, the government, keeping aside the political motive behind the issue of undisclosed foreign income and foreign assets, may consider, including the pending litigation pertaining to the undisclosed foreign income and foreign asset under the Vivad se Vishwas Scheme and may also consider introducing a disclosure scheme for the undetected undisclosed foreign income and foreign assets to fuel the tax collection.

3 Commentary on Constitution of India, Durga Das Basu, 9th edition, Page 4511

ADVERSITY AN ADVANTAGE

Adversity. It's the feeling we all avoid talking about or sometimes even ignore when it hits initially and casually say 'oh well, it's just a phase, it will all be over soon'. Well sure yes... COVID-2019 will also be over soon ! and it will be just another lost phase in our lives. The question is- Are we going to review this challenge as an opportunity and make it an advantage ?

COVID-19 in many ways has disrupted the lives of students, teachers and parents from around the world. Efforts to utilize technology in support of remote learning, distance education and online learning are emerging and evolving quickly. It's called "the new normal" for education: one that technology is playing a key role to facilitate. A lot of remote learning strategies are being developed to expand the array of providing education to students in many countries. Possible delivery modes are only successful when they are in sync with the basic infrastructure that is available. Unfortunately in a few countries, the situation varies and we need to take necessary steps in the right direction to minimise the vast inequality of opportunities that exist. Some students are not able to access the internet, they do not have laptops, or desktops at home while the others do. This might lead to a huge difference and impact a student's understanding of the entire year.

Another challenge emerged when people started moving and considering the option of going back to their native places as a refuge. They returned to their native villages to ensure the safety of their children and also to look after their elders. Sadly, the internet connectivity becomes a huge drawback at such places as there is no availability of a strong network. The students are not able to access their basic lesson plans or tutorials even after availing mobile devices. Internet connectivity, 4g, WiFi run at a very low speed and sometimes are not available at all. Among the challenges cited are easy to fall behind, there is no social life, there isn't enough supervision, and it's rather difficult to personalise education according to an individual's need. Remote learning is all about connecting with the learner beyond time and distance. It is also about learning through media to reach as many students as possible, today. Today, it is easy to connect with the teacher or the school to get more clarity on learning and instructions. WhatsApp, Microsoft teams and Zoom are the most popular avenues to engage with our students.

Aligning the purpose of learning and understanding is the need of the hour. Therefore, students need to be exposed to an optimum amount of synchronous and asynchronous learning. To put this vision in to practise, Pathways School Noida was among the first few to initiate mindful remote learning. All the educators ensure the balance between the two and students engage with hands-on experience with learning and strive to become independent learners while on the other hand they learn their ways through technology and access and analyse information through various mediums. Remote learning might not be the 'perfect'

system to teach students, however, it represents the impact of technology as a bridge to keep people connected even when they are away from each other. The most considerable benefits of virtual discipline will come after our educators and students return to their real schools and classrooms. The fundamental need for teaching and learning with asynchronous and synchronous platforms will produce significant benefits when these methods are merged with face-to-face instructions. We will come back from COVID-19 with a much more widely shared understanding that digital tools are complements, not substitutes, for the intimacy and immediacy of face-to-face learning. Planning our online content and aligning it with our physical classroom time will be more productively utilized for debates, discussions and guided practices. Technology or onscreen learning will not be required just for research projects, it will be recognized as core to every school's plan for institutional resilience and academic continuity. As an educator, it is so fulfilling to see the other side of the coin as well. A student going to school not only learns strenuous math concepts or English language's trickery but develop social relationships and peer interactions. Past two months have presented us with an opportunity to be a mindful citizen and encourage students of all ages to learn the true meaning of empathy, critical thinking, adaptability and collaboration. Students are engaged in enjoying simple life pleasures like watering plants, looking after their pet dog, helping their parents in maintaining the hygiene of their homes. Parents, on the other hand, are involved with their learning and expose their children to new ways to dive into becoming better at what they already are. Just the other day, I heard a friend speak so passionately about the amazing realisation of her 4yr old daughter. The little girl insisted that the house help should be paid a lot more than her actual wages. Her exact words 'that's a lot of work

pheww'. It's the ultimate connection of an individual with the more real but easily overlooked abilities and constraints.

In these adverse times people have started to dig into their inner resources to find different ways of physical and mental engagements. Students are motivated to follow the footsteps of the older generation and becoming eager to learn things from their experiences. Many things like storytelling, making illustrations, sketching, going back to those older bookshelves to dig out comics and series speaking about of Mythology, history, architecture is becoming the norm of the day. Every grain of rice, every vegetable, the flour seems to be talking to us again. Conservation is the key to self-preservation one more time and mankind has woken up to the fact that we have plundered our resources and this is perhaps, the reset button that nature has inadvertently pressed on to for us humans to realise the mistakes we have made in the past.

Our students are the citizens of the future, and they are realising and experiencing a different world. All and all adversity is what tries the resilience of us humans and the best lessons are realised on their own. This time has forced us to apply brakes and take a complete detour. This might just be the most fruitful time to revel in this novelty and remind ourselves to become stronger and better guardians of this world. Time for self-evaluation, analysis, introspection. It's the time to reboot education.....I am reminded of a quote by Roy Bennett -"When things do not go your way, remember that every challenge contains within it the seeds of opportunity and growth"

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INSOLVENCY & BANKRUPTCY CODE, 2016

JOURNEY SO FAR AND WAY FORWARD

Background

Insolvency and Bankruptcy Code, 2016 (Code /IBC) is considered to be transformational legislation of recent times governing businesses in India. The IBC continues to hit the headlines since its introduction as it entailed moving of control of corporate to creditors and inability of the existing owners to bid and take it back from insolvency process. The IBC has been brought in based on the recommendations of Bankruptcy Law Reforms Committee (Chaired by Dr. T. K. Vishwanathan). The code underlines objectives as – promoting entrepreneurship, availability of credit, balancing interest of all stakeholders, maximisation of value of assets and timebound resolution of insolvency. Code has taken into consideration best practices and principles all over the world. The whole objective of IBC is to detect potential insolvent companies at an early stage and allow new buyer to come in and pay price, diagnose the problem and revive the corporate debtor. If the corporate debtor does not find suitable buyer let the company go into liquidation as market is not finding the asset / business worth buying.

According to a World Bank statement, IBC has improved the recovery rate of stressed assets in India to 48% in two years from 26% in the pre-IBC era. IBC has enabled India to improve its overall ranking by 14 places to 63rd position among 190 countries as against last year's 77th position.

IBC has been notified for all corporate persons i.e. Companies and Limited Liability Partnerships, and individuals who have provided guarantee to the corporate borrowers. Its yet to be notified for individuals, partnerships etc.,

Corporate Insolvency Resolution Process (CIRP)

IBC has brought in cash flow test to decide whether an entity is insolvent or not as against net worth test followed earlier in India. If a corporate person defaults Rs. One lac or more to a creditor, it qualifies to be dragged into insolvency by a financial creditor, operational creditor or corporate itself can file application for admission into insolvency. There have been questions on should the threshold for triggering insolvency be linked to paid up capital or turnover or total debt etc., Further it was also felt lower threshold enables lot of operational creditors to use insolvency mechanism for recovery. In the very beginning lot of applications have been filed by financial creditors and operational creditors without understanding the insolvency resolution process, priority of payments during CIRP and liquidation. Over a period of time all the creditors understood resolution process, creditors rights vs their entitlement, time and cost involved in the process. Rs. One lac is very nominal definitely it should be linked to the paid-up capital of the company. There were also views that operational creditors should not use insolvency mechanism for recovery. Generally operational creditors are who supply materials, people and other inputs and have continued engagement with the corporate debtor expected to know financial strength and

behaviour of corporate debtor and deal with them more diligently and they are unsecured. Should there be a problem in getting the money from the Corporate Debtor, the recovery of dues by operational creditor is a painful process it may need to resort to civil court or MSME council which generally takes lot of time. I personally feel there is noting wrong if IBC is used by operational creditors and they have been able recover their money, this will improve credit culture and behaviour of debtors. Last few years' experience shows lot of applications filed by operational creditors have been settled by corporate debtors before admission which is a very good sign and one positive outcome of implementation of IBC. Due to Covid-19 lockdown in India and likely negative impact on large number of business, the threshold for initiating insolvency is increased to default of Rs. One core which is a good sign.

Committee of Creditors (CoC)

Another important construct of IBC is giving control of corporate debtor to the creditors during insolvency resolution process as against equity holders who were continuing to have control in the earlier regime. A mechanism has been put in place in the form of CoC who consists of financial creditors and they shall decide on whether a resolution plan should be accepted besides taking certain other calls such as appointment of resolution professional and liquidator, getting into the shoes of board of directors for the limited activities. IBC wants revival of insolvent company whereas financial creditor is looking for immediate recovery of its debt and there is a misalignment of expectation. Particularly Indian banking system which itself going through huge NPA issue and lack of liquidity made them behave like this. There has been reconciliation of this concept by financial creditors and they are mindful now before pushing for insolvency.

Resolution Plan and Resolution Applicant

Resolution Applicant (RA) is expected to submit a resolution plan for revival of insolvent company covering the resolution amount to creditors, revival strategy, how liabilities are going to be settled etc., Resolution Plan has to be approved financial creditors having voting power of 66%. The goal is to maximise value of corporate debtor and that is possible only when business / assets are attractive, and you have buyers looking for these assets. It was also thought lot of foreign investors would come and buy these stressed assets in India and initially there was decent interest from global stressed funds but the same waned over a period of time and one of the reason people attributed was delay in resolution process and code does not provide enough insulation from prior liabilities of corporate debtor, which now has been amended.

Further Indian businesses are majority owned by families, run by families and even in the listed companies this is very evident and without key promoter lot of businesses loose its value particularly for small and medium enterprises, getting resolution applicant for these companies is very difficult hence lot of companies are going into liquidation.

National Company Law Tribunals (NCLT)

NCLTs have been entrusted with powers to admit companies into insolvency, liquidation, approval of resolution plan etc., There has been huge load on NCLT

benches to deal with insolvency and liquidation matters besides handling various other matters under the companies act. The insolvency process has to be time bound and should be very swift so that businesses can move seamlessly to resolution applicant and that's how the law has been enacted. Due to insufficient infrastructure and frivolous interlocutory applications the disposal of matters getting delayed which is a cause of concern. As now we have enough jurisprudence developed under IBC, lot of amendments have been brought in as required coupled with the use of technology for filing of applications and disposal, the speed is likely to improve significantly.

Speed of amendments

The speed at which Insolvency and Bankruptcy Bord of India (IBBI) spearheaded the entire implementation of IBC deserves huge amount of appreciation. They have been able put in place all building blocks and solid foundation for effective insolvency and liquidation framework in India like registration and regulation of insolvency professionals and valuers, insolvency professional agencies, information utilities, bringing awareness and education about IBC etc., The following major amendments have been done very quickly in response to the genuine need of various stakeholders:

- Prohibiting existing promoters to bid their own businesses. The line of thinking was the owners who could not run the companies profitably and eventually landed those companies into insolvency process should not get an opportunity to buy their own assets at a lesser price. This is blanket ban on all the promoters disregarding was there any mischief, malafide etc., It was realised lot of MSME were getting into liquidation and a relaxation has been provided for MSME Promoters to bid their assets. However, given MSME definition covers only up to companies with assets maximum of Rs. 5 crores very few companies could make use of this relaxation. The proposal to revise MSME definition and link with the turnover criteria is pending for government approval, that should be amended immediately so that lot of insolvency companies could benefit from this. I feel the prohibition should be limited to those promoters who are wilful defaulters or who have done mischief in the affairs of the company.
- Withdrawal of Company from insolvency resolution process – NCLT can approve withdrawal of company from insolvency process on settlement application made by the applicant (who has dragged company into insolvency) with the approval of CoC with 90% voting power. This is again a very welcome amendment. Before the amendment Supreme Court had to intervene and pass order as law did not provide for the withdrawal.
- Immunity for prior liabilities – This has been a demand from the resolution applicants that they are not burdened with liabilities of prior period including any action from statutory authorities and they should get company on a clean slate. A suitable amendment has been made to provide immunity to the corporate debtor post approval of resolution plan for any prior civil and criminal liabilities.
- Compromise or arrangement post liquidation order - Several National Company Law Appellant Tribunal (NCLAT) rulings facilitated compromise or arrangement under section 230 of the Companies Act, 2013 even after liquidation order being passed under section 33 of the Code. There had been no explicit enabling provision under the Code or the Regulations for such compromise/arrangement. The liquidation regulations have been amended to provide for compromise and arrangement under sec 230 of the

companies act post liquidation order for a period of 90 days.

- Sale as a going concern - Going concern sale has been advocated to be preferred mode of sale where – the committee of creditors had recommended such sale, or where liquidator is of the opinion that such sale will maximise value. The maximum time limit within which going concern sale is to be attempted is 90 days from the liquidation commencement date. In case the sale does not happen as such, the liquidator shall attempt other modes of sale – slump sale, piecemeal sale, etc.

Jurisprudence -IBC

Jurisprudence also developed at very fast pace and Hon'ble Supreme Court prioritised IBC matters in the interest of protecting economic value and delivered path breaking judgements under IBC. Few highlights of landmark judgements passed by Supreme Court and NCLAT:

- In the matter of Essar Steel Supreme Court of India held that - adjudicating authority / NCLAT has power to decide on a case even if it exceeds 330 days, CoC is competent authority to decide on viability, commercial aspects of resolution plan and adjudicating authority should not interfere except to the extent of judicial review, also held hat different class of creditors can be dealt differently provided such treatment was equitable and based on reasonable grounds. Further stated that the resolution plan being approved by the CoC does not affect pending litigations on account of invocation of personal guarantees and distribution of profits made during the CIRP would not go towards the payment of the creditors.
- Supreme Court in Swiss Ribbons v. Union of India held that Section 29A is based on a justifiable legislative policy choice that a person who is unable to service its own debt is unfit to be a resolution applicant. In ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta, Supreme Court has clarified that it is clear that in order to establish the eligibility of a resolution applicant in the matter of submission of a resolution plan, the same must be determined at the very moment of the submission of a plan and in accordance with the relevant parameters of Section 29A of the Code applicable at the time
- Supreme Court in the case of Innoventive Industries Limited v. ICICI Bank Limited* delivered its first extensive ruling on the operation and functioning of the Insolvency and Bankruptcy Code, 2016. The Court said that it is pronouncing its detailed judgment in the very first application under the Insolvency Code, so that all Courts and Tribunals may take notice of a paradigm shift in the law.
- The key criterion to determine if a debt is a financial debt is if it was extended for time value of money. On the other hand, a debt would be operational debt only if it relates to the four categories: goods, services, employment and Government dues. Debts other than these would be classified as other debts.
- In Kirusa Software Pvt. Ltd. v. Mobilox Innovations Pvt. Ltd, NCLAT provided a liberal interpretation to the phrase's 'dispute' and 'existence of dispute'. The NCLAT held that the definition of "dispute" is "inclusive" and not "exhaustive" and includes mediation, conciliation, labour court, consumer court or any other proceedings pending or raised before any court of law or authority. The NCLAT also held that the dispute need not be pending between the parties prior to the notice of demand but could be raised thereafter.
- NBFC's and IBC- The National Company Law Appellate Tribunal, Delhi in its decision dated 10th July, 2019 in HDFC v. RHC Holding Private Limited [Company Appeal (AT)(Insolvency)No.

26 of 2019] while upholding the order of the National Company Law Tribunal has held that the Respondent Company being a Non-Banking Financial Institution ("NBFC") is outside the purview of the Insolvency and Bankruptcy Code, 2016.

Twelve Highly Stressed Accounts-IBC-Progresses

As a sense of another dimension to Swachh Bharat, Government and RBI issued legal framework in respect of 12 accounts, having very large NPAs cumulating approximately 25 per cent of the aggregate NPAs of the banking system. Banks initiated CIRP of 12 large accounts, as directed by the RBI. 11 accounts had Rs.3.45 lakh crore claims against liquidation value of Rs.73,220.23 crore. Of these, resolution plan in respect of seven CDs have been approved and orders for liquidation have been passed in respect of two CDs. Due to failure of implementation of approved resolution plan in respect of one CD (Amtek Auto Ltd.), the process has restarted. Thus, CIRPs in respect of three CDs and liquidation in respect of two CDs are ongoing and are at different stages of the process.

Among these 12 biggest defaulters, the resolution of Essar Steel has yielded the highest realisation at 82.91% followed by Bhushan Steel at 63.5% to its creditors. The biggest haircut has been taken by lenders to Alok Industries, since they could not recover even a fifth of their loans, getting only 17.11% of their dues.

The process has got delayed in some cases. Further, given the stakes involved, there have been appeals and counter-appeals and litigations in high value cases. The contentious issues are getting settled, some of them at the level of the highest court, streamlining the process for future.

IBC progress in numbers

The resolution plans have yielded about 168.35 per cent of liquidation value for Financial Creditors. They are realising on an average 49.68 per cent of their claims through resolutions plans under a process which takes on average about a year significantly lower than the previous regime which yielded a recovery of 25 per cent for creditors through a process which took about 5+ years and entailed a cost of 9 per cent. As per December Quarterly report by IBBI for 970 cases which have been closed through the IBC Process so far, 780 cases were liquidated. The data shows 3:1 ratio, for everyone company resolution three companies are going for liquidation resulting in loss of employment, productivity etc., Lot more work needs to be done to attract domestic and international investors to come and participate in stressed assets such as removing all bottlenecks, easing the process, improving the speed of resolution etc.,

Covid-19 & IBC

World is witnessing unprecedent crisis due to Covid-19 and India is no exception to this. Positive cases have touched 10k. At least for now it appears India is doing very well, and number of cases are under control. No one knows what is working in our favour – the immune system, temperature levels, the strain that came into India, the vaccination protocol we have been following etc., but overall, we are all fortunate. Let's hope this shall pass soon. Government quickly reacted to the situation and provided for increase in threshold limit to Rs one crore from Rs. One lac and also said it may consider suspending provisions for initiating fresh matters into insolvency. I personally feel suspending provisions is not needed as current system itself providing enough opportunities to the corporate debtor to restructure outstanding, also settle with the creditors only all this is failed creditor are moving debtor into insolvency. Event the NCLTs are providing enough opportunities to the debtor to settle after application is filed against them and before application is admitted. In view of the ground realities suspension of provisions not warranted.

Jet Airways

I strongly believe an operating company which is going through stress should be put through this process and transition has to be very swift and seamless so that value and jobs can be protected, and better realisation happens to the creditors. We all know Jet Airways is a strong brand and had a market share of 18% in the year 2018 and now it's going through insolvency. What are the reasons no resolution so far, was it referred to insolvency at the right time, how did financial creditor deal with this matter, are the issues company specific or systemic issues? If IBC is not enabling companies like Jet, who else could be right candidate for resolution. I am only quoting Jet as an ideal example. This needs razor sharp study and taking corrective steps to strengthen IBC mechanism.

Conclusion

I have been very actively associated with IBC as an insolvency professional since introduction of this law as a practitioner. Lot has been achieved through rapid amendments and evolution of jurisprudence in these three years. What's needed is a solid track has been built but speed of the train is going at a pace of 40 kms / hour if we can ramp up this to 60kms / hour, it can deliver fantastic results and meet the objectives set by the code.

Raghu Babu Gunturu
Founder & Managing Partner, EzResolve LLP

Rescuing Implementation Of RESOLUTION PLAN DURING COVID-19

The outbreak of Novel COVID-19 and the nationwide imposed lockdown in India has caused all walks of life to a standstill. Courts and Tribunals came to the rescue of litigants who were facing practical difficulties in filing the petition and passed orders on both judicial side protecting the right to institute proceedings belatedly as well administrative side by bringing the court-room to computer desks.

In respect of insolvency matters specifically, both the Tribunal and the IBBI allowed exclusion of lockdown period for the purpose of timelines under Section 12 of the IBC.

In this article, we discuss the process of implementation of Resolution Plan and whether various Court orders and notifications helped in seeking extension of implementation of Resolution Plan during the lockdown. We also discuss the aid of technology in implementing a Resolution Plan during lockdown period.

Keywords: Insolvency, Resolution Plan, Implementation, COVID-19.

RESCUING IMPLEMENTATION OF RESOLUTION PLAN DURING COVID-19

The recent outbreak of the Novel Coronavirus 2019 ("COVID-19") has caused major disruptions in the World, affecting even the most developed nations such as United States of America and China. Newspapers, blogs, phone notification and private messengers speak only of the mighty virus. Globally, about 17 Lakh people have been tested positive and near about 1 lakh people have lost their lives [1]. The impact on the economy is more severe than the 2008-2009 recession, in less than 4 weeks.

In these unprecedented times, Governments across nations have stood up to provide not only food and shelter, but also introduced various regulatory and statutory relaxations such that citizens do not face penal consequences of their inadvertent non-compliance. Some of these relaxation in India include (1) extension of last date for filing IT Returns and GST Annual Returns for FY 2018-19 from 31-March-2020 to 30-June-2020 (2) extension of mandatory requirement to hold Board Meetings by a period of 60 days till next two quarters i.e., till 30-Sep-2020 (3) extension of timelines for filings under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

1 See https://www.worldometers.info/coronavirus/, last visited on 11 April 2020

For the purposes of this article, we deal with (1) *the meaning and process of implementation of Resolution Plan* (2) *scope of Corporate Insolvency Resolution Process qua implementation of a Resolution Plan* and, (3) *exclusion of time during lockdown period to implement the Resolution Plan and the need thereto*. We also briefly discuss the experience of authors in implementing a Resolution Plan during the lockdown period with help of technology.

MEANING AND PROCESS OF IMPLEMENTATION OF RESOLUTION PLAN

In the Corporate Insolvency Resolution Process **("CIRP")** of a Corporate Debtor, the Resolution Professional processes Claims of Creditors of the Corporate Debtor[2] and constitutes a Committee of Creditors[3]. The Resolution Applicant who desires to acquire the debt ridden Corporate Debtor, provides for the mechanism and amount of payment to the Creditors in its Resolution Plan[4]. The Resolution Plan is put to vote before the Committee of Creditors (CoC)[5] and if approved by a majority of 66% or more, is put for approval before the Adjudicating Authority[6] (National Company Law Tribunal).

Usually, the Resolution Applicant seeks a time period of 30-90 days from the receipt of order approving the Resolution Plan by the Adjudicating Authority to complete the process of acquisition. This time period is sought to complete the process of acquisition and involves raising the funds to make payment to the Creditors against their approved claim amount. This aspect of payment of Creditors is *though one of the various process of implementation of the Resolution Plan albeit the most important one*. In most cases, the Adjudicating Authority is pleased to grant the said 30-90 days' time.

The payment to Creditors has to be made in accordance with, inter-alia, Section 30 of the Code, 2016 and Regulation 38 of the CIRP Regulations Code, 2016 which prescribe priority in payment to categories of Creditors.

Other process in the implementation typically involves reduction of share capital of the Corporate Debtor, issuance of new shares of the Corporate Debtor to new shareholders, appointment and constitution of new Board of Directors of the Corporate Debtor, conversion of debt into equity, merger, execution of agreements for availing funding from third parties such as banks and financial institutions, execution of escrow agreement between CoC and the Resolution Applicant for payment to the Creditors, issuance of no-dues certificate by the Creditors etc. The order approving Resolution Plan of *Ruchi Soya Industries Limited*[1], *Euro Pallets Pvt. Limited*[8], *Monnet Ispat and Energy Limited*[8] mention some of these steps above.

If the Corporate Debtor is a listed company on the stock exchange, then the process also involves intimation to the stock exchange about completion of the CIRP. If the Resolution Applicant proposes to keep the Corporate Debtor as a listed company on the stock exchange, then the process involves initiation of trading on the stock exchange. The process also includes intimation to the Registrar of Companies and stock exchanges of closure of the CIRP.

Furthermore, immediately upon implementation of resolution plan, the lenders are required to handover the original title deeds and other papers relating to the assets of the Corporate Debtor to the nominee of Resolution Applicant. There are several integration activities which are required to be undertaken immediately after the implementation of a Resolution Plan by the Resolution Applicant such that the Corporate Debtor can be revived.

[7] CP 1371 of 2017, NCLT Mumbai
[8] CP 1658 of 2017, NCLT Mumbai

Each of the above mentioned process involves hours of drafting and negotiation between the Resolution Applicant, Resolution Professional and Committee of Creditors and their respective advisors. It also involves coordination and liaisoning with several stakeholders including statutory and regulatory authorities. It is a lengthy and time consuming process and hence, the Adjudicating Authority is often pleased to grant time period of 30 to 90 days to implement the Resolution Plan. Often in this process, one or the other Creditor, unsuccessful Resolution Applicant (s) challenges the Resolution Plan which derails the process. Each litigation during the implementation gives rise to new challenges for the Resolution Applicant and the lenders, all of the above which require significant man hours.

SCOPE OF CIRP & INCLUSION OF IMPLEMENTATION OF RESOLUTION PLAN

Under the Code, 2016, the CIRP is said to have been initiated once an application for initiating CIRP is admitted by the Adjudicating Authority under Section 7 or 9 or 10 of the Code, 2016[10]. However, the Code, 2016 does not provide specifically provide when the said CIRP ends. The limited direct and specific reference is under Section 15 (1) (f) of the Code, 2016 , whereby the Interim Resolution Professional is required to mention the date on which the CIRP shall close. The said provision does not prescribe the event or completion of a particular activity which shall be deemed to be closure of CIRP.

Some indirect references can be drawn from Section 12 (1)[11], Section 14 (4)[12], Section 31 (3)[13] and Section 33 (1) (a)[14] of the Code, 2016, which guide us towards the answer *that approval or rejection of a Resolution Plan under Section 31 of the Code, 2016, would be the date when the CIRP is said to have been ended/closed*. Another reference can be drawn from the model time-line prescribed under Regulation 40A of the CIRP Regulations provides for 'Approval of resolution plan by AA' as the last step towards CIRP.

Therefore, the period after approval by the Adjudicating Authority during which the various activities or processes required to be undertaken, colloquially referred to as implementation period, is not included within the meaning of CIRP under the definition and meaning ascribed under the Code, 2016 and CIRP Regulations.

RELAXATIONS BY COURTS AND TRIBUNALS

9 CP 1139 of 2017, NCLT Mumbai

10 **Section 15: Public announcement of corporate insolvency resolution process**

(1) The public announcement of the corporate insolvency resolution process under the order referred to in section 13 shall contain the following information, namely:

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

11 **Section 12: Time-limit for completion of insolvency resolution process**

(1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process.

12 **Section 14: Moratorium**

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be

13 **Section 31: Approval of resolution plan**

(3) After the order of approval under sub-section (1), -

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

14 **Section 33: Initiation of liquidation**

Where the Adjudicating Authority, - (a) before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the corporate insolvency resolution process under section 12 or the fast track corporate insolvency resolution process under section 56, as the case may be, does not receive a resolution plan under sub-section (6) of section 30;

After imposition of nationwide lockdown and various notifications/circulars by Central and State Government thereto, physical filing of pleadings in Courts became practically impossible. Hon'ble Supreme Court of India took suo moto cognizance and passed an order dated 23-Mar-2020 extending the limitation prescribed under general law or special law, whether condonable or not, with effect from 15 March 2020 till further orders.

In respect of insolvency matters, Hon'ble NCLT notified that all NCLT benches shall remain closed from 23-March-2020 to 31-March-2020 and only urgent matters would be taken up in accordance with the said notification. The said notification makes a categorical note that *"As regard to the IBC-2016 matters extension of time, approval of resolution plan and liquidation will not be construed as urgent matters"*. After imposition of the national lockdown, the above notification was extended to 14-April-2020 by another notification .

Relying on the order passed by the Hon'ble Supreme Court, the Hon'ble NCLAT vide order dated 30-Mar-2020 , excluded the lockdown period for the purpose of counting of the period for *'Resolution Process under Section 12 of the Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated*. Significant respite also came from the 29-Mar-2020 amendment to Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (the "**CIRP Regulations**"), wherein Regulation 40C[20] was introduced which provides that *period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process*.

The cumulative effect of the above mentioned orders, notifications and amendment to CIRP Regulations was that **if the CIRP were to end between 24-Mar-2020 and 14-April-2020** (tentative), **the said time period of 21 days would be excluded from the 'CIRP Period'.**

EXCLUSION OF TIME PERIOD FOR IMPLEMENTATION DURING THE LOCKDOWN PERIOD AND NEED THERETO

Since the process to be executed after approval of the Resolution Plan by Adjudicating Authority does not fall within the meaning of "CIRP" under the extant insolvency laws, the order dated 30-Mar-2020 by NCLAT and Regulation 40C would not aid the Resolution Applicant for any additional time. The consequence this non-inclusion is that *if the last date of implementation of a Resolution Plan falls within the lockdown time period,* then the Successfully Resolution Applicant is contractually and legally required to implement the Resolution Plan, failing which the Successful Resolution Applicant is at the risk of *breach of contract, contempt of court and other non-compliances*.

15 Order dated 24 March 2020 issued by Ministry of Home Affairs, Government of India
16 Suo Moto Writ Petition (Civil) No. 3 of 2020
17 Notice dated 22 March 2020 issued by National Company Law Tribunal.
18 Notice dated 28 March 2020 issued by National Company Law Tribunal.
19 Suo Moto - Company Appeal (AT) (Insolvency) No. 01 of 2020
20 **Regulation: 40C. Special provision relating to time-line**
Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process
21 Suo Moto - Company Appeal (AT) (Insolvency) No. 01 of 2020
22 Supra 18

Usually, a Resolution Plan requires deposit of Earnest Money Deposit **("EMD")** by all Resolution Applicant (s) at the time of *submitting their Resolution Plan*, which is refunded to all Resolution Applicant (s), *except obviously to the Successful Resolution Applicant*. The next step/instance of deposit is at immediately after approval of *Resolution Plan by the CoC*, which is commonly referred to as Performance Deposit or Performance Security. The IBBI amended the CIRP Regulations to introduce Regulation 36B (4)[23], which requires the request for Resolution Plans ("RFRP") to provide for a clause mandatorily requiring the Successful Resolution Applicant to provide a Performance Security upon approval of its Resolution Plan by CoC and failing implementation of the said Resolution Plan, such Performance Security to be forfeited. The usual practice is that the Resolution Applicant deposits Performance Security by way of a Performance Bank *Guarantee,* however, some CoCs require *bank deposit of the Performance Security in the accounts of the Corporate Debtor*. The Performance Security and EMD collectively amounts to approx. 10-20% of the Resolution Plan Value, if the Resolution Plan Value runs in thousands of Crores and nearly 30%, if the Resolution Plan Value is less than Rs. 500 Crores (*based on broad estimations*). For instance, the Resolution Plan pertaining to *Euro Pallets Pvt. Ltd.,* required EMD of Rs. 40 Lakh constituting 12.9% of the Resolution Plan.

The importance of highlighting the above is that failure in implementation of the Resolution Plan could lead to a potential loss to the Successful Resolution Applicant. This financial loss of EMD and Performance Security is coupled with the counsel and advisory fees spent in drafting and negotiating the Resolution Plan, along with loss of opportunity cost. Failure in implementation also results in contravention of Section 74 (3) of the Code, 2016[24], which is punishable with imprisonment of 1-5 years or fine of minimum Rs. 1 Lakh- 1 Crore or both.

Apart from monetary loss, the Resolution Applicant also suffers a loss of reputation for not being able to implement the Plan. All future acquisitions attempted by that Resolution Applicant would be seen through the lenses of this failure and bankers may not be able to repose in faith in future. Regulation 36 (1B) of the CIRP Regulations requires a statement in the Resolution Plan stating *if the Resolution Applicant or any of its related parties has failed to implement or contributed to the failure of implementation of any other resolution plan approved by the Adjudicating Authority at any time in the past.*

The need for exclusion of this time period is essential because *receipt of payment to the Creditors and change of management of the Corporate Debtor is the ultimate goal of resolution process.* The execution of various agreements as mentioned before require inter-se deliberation between advisors/counsels of the Successful Resolution Applicant as well as among the advisors/counsels of CoC and the Successful Resolution Applicant. The

23 **Regulation 36B: Request for Resolution Plan**
(4A) The request for resolution plans shall require the resolution applicant, in case its resolution plan is approved under sub-section (4) of section 30, to provide a performance security within the time specified therein and such performance security shall stand forfeited if the resolution applicant of such plan, after its approval by the Adjudicating Authority, fails to implement or contributes to the failure of implementation of that plan in accordance with the terms of the plan and its implementation schedule.

24 **Section 74: Punishment for contravention of moratorium or the resolution plan**
Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and willfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.

execution require stamp papers, procuring of which has become extremely difficult, if not impossible.

In many resolutions, the Successful Resolution Applicant engages with lenders to fund the acquisition, which funds are at times located abroad. The international transition of funds becomes another challenge. The hurdles can be as simple as printing of documents to arranging the funds, which would vary from the steps envisaged during the implementation period.

It is certain that declaring breach of Resolution Plan by the Successful Resolution Applicant would result in financial loss of the CoC, given that in almost all cases, nearly all of the sanctioned CIRP Period of 270 days (extendable to 330 days) is spent in seeking approval of one Resolution Plan, hence the non-compliance of an approved Resolution Plan would likely result in liquidation of the Corporate Debtor. Even facing this threat of financial loss, the CoC in not a position to unilaterally extend the time period since the time period is approved by Adjudicating Authority in Resolution Plan approval order.

The usual recourse left with the Successful Resolution Applicant is approaching the Adjudicating Authority seeking extension of time under Section 60 (5) of the Code, 2016, however, with the 22-Mar-2020 notification[25] of the Hon'ble NCLT stating "extension of time" would not be considered as urgent, it may not be prudent step to approach the Adjudicating Authority and be left with either no order extending the time period or rejection of prayer.

Another recourse which the Successful Resolution Applicant may consider adopting is invoking the Force Majeure clause under the Resolution Plan (if any) with the aid of Section 56 of the Indian Contract Act, 1872, and plead impossibility in performance of the transaction. The step of invoking Force Majeure is a difficult road to travel for the Successful Resolution Applicant has to establish actual impossibility in implementing the Resolution Plan.

Recently, the Hon'ble High Court of Kerala vide order dated 19-Mar-2020 in Writ Petition (Civil) No. 8231/2020 and Hon'ble High Court of Judicature at Allahabad in Writ Petition (Civil) No. 7014 of 2020 had passed which orders had effectively deferred the recovery of all taxes till April 6 in view of the Coronavirus outbreak, as reported. The Hon'ble Supreme Court of India vide order dated 20-Mar-2020[26] have granted an ad-interim ex-parte stay on both abovementioned orders stating the stand taken by the Government of India through learned Solicitor General that the Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one. Thus, to say that there is absolute impossibility in implementing the Resolution Plan taking aid of Force Majeure would be very difficult to establish in a Court of law.

The extension of this time period is not unusual since both Courts and Legislature have recognized movement restrictions and have therefore, excluded lockdown period from CIRP Period and also relaxed the time-lines prescribed under the laws. The extension would also benefit the Resolution Applicant who would later take control of the Corporate Debtor since due to economic depression caused by COVID-19, the chances of Corporate Debtor making profits right after the acquisition would be little. The above, coupled with the existing loss that the Successful Resolution Applicant might be facing currently and the financial burden to implement the Resolution Plan, has the potential to put the Successful Resolution

25 Notice dated 22 March 2020 issued by National Company Law Tribunal

Applicant in a significant financial burden. Relaxation in this unprecedented time has likelihood of giving a necessary breather to the Successful Resolution Applicant.

IMPLEMENTATION DURING THE LOCKDOWN

One of the major challenges in execution of agreements is physical presence of the stakeholders, for negotiation and signing. One way of managing negotiation process is through video conferencing available on Microsoft Teams, Skype, etc.

Execution of the documents can be greatly helped by the customary process of exchanging only the scanned image of the signature pages of agreement, with the understanding that original executed signature page will be couriered after normalcy. Subscription based services such as Leegality, Signdesk can be availed for payment of stamp duty and execution of documents without requiring the physical presence of parties.

Intimation to authorities including SEBI, ROC, Creditors, etc., is possible through digital signature on the document or simply issuing the document with 'Sd/-' with the phone number for the authorities to verify on receipt, which is a pleasant accommodation which various statutory authorities offer.

WAY FORWARD

Whilst it is true that technological aid has provided us platforms for execution of even the most difficult of assignments, however, the absence of personal interaction between the various stakeholders leaves little scope of negotiation wherever required. This gap can be bridged by relying more and more on digital platforms for discussion, negotiation and execution.

Given the importance implementation of a Resolution Plan holds, the process needs to be incorporated into the statute, such that statutory aid can be taken by the Successful Resolution Applicant, Committee of Creditors and the Resolution Professional, whenever required. The entire process of appointment and running of Monitoring Committee/Steering Committee can be brought into the resolution process for uniformity and guidance. Further the CIRP Process Period should be defined to include the time take for implementation of the Resolution Plan as per the terms thereof.

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